

Teaching human rights in Ontario

A guide for
Ontario schools



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne



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Preface

In recent years, the Ministry of Education has implemented its Equity and Inclusive Education Strategy across Ontario, and has also updated how schools need to approach discipline. These steps are part of a larger vision of embedding human rights into our education system. The Ministry has worked with the Ontario Human Rights Commission (the OHRC) at key points along the way, to achieve our shared vision of a school system where every student has the opportunity to succeed.

These changes reflect how education services are delivered – but there is also a curriculum requirement to teach about human rights. That’s where this guide can help. First introduced in 1995, the guide offers information on Ontario’s *Human Rights Code* (the *Code*) and how to deal with complaints. This third edition has been updated to reflect the many changes that have happened in human rights over the past decade. For example, in June 2012, the Code was updated to prohibit discrimination based on the new grounds of gender identity and gender expression.

We live in challenging times. As our society becomes more diverse, the human rights challenges we face become more complex, and the need to bring a solid grounding in human rights becomes more critical.

This guide can serve as a starting point for what I hope will be lifelong learning about human rights, and the value of respecting the dignity, worth and inclusion of all Ontarians.

Barbara Hall, B.A, LL.B, Ph.D (hon.)
Chief Commissioner
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Introduction

The Ontario *Human Rights Code* (the *Code*) is one of the most important pieces of legislation in Ontario. This guide is designed to help educators discuss with students the rights and responsibilities the *Code* covers. It explains human rights protections and identifies who is responsible for protecting everyone's rights.

Human rights legislation deals with discrimination in particular areas of our lives. Discrimination results from intentional and unintentional prejudice, stereotyping and misuse of power. The *Code* provides a legal mechanism to prevent or stop discrimination, and to offer remedies when discrimination happens.

This package contains information and activities to help students learn the difference between permissible behaviours and illegal behaviours.

About this guide

This educational resource package introduces students to the *Code* and the roles of the three agencies that make up Ontario's human rights system. It includes information on *Code* grounds and on the parts of society – called social areas – where discrimination is against the law in Ontario. It also includes activities to help you teach these concepts. You can use the activities in the order they appear, or you can choose individual exercises based on your class needs.

Teaching human rights in Ontario can be used by secondary school teachers for law, history and civics courses and cooperative education programs. It can also be used in other high school courses, such as media studies, with few or no changes needed.

If you are teaching Grade 8 or 9, review the materials to make sure they are appropriate for your younger students. The guide can also help if you are teaching adult “English as a Second Language” classes.

Learning outcomes

Completing the activities in this package will help students to:

- Increase their awareness of the Ontario *Human Rights Code* and the work of the three agencies that make up Ontario's human rights system: the Ontario Human Rights Commission, the Human Rights Tribunal of Ontario, and the Human Rights Legal Support Centre
- Identify the grounds and social areas the *Code* covers
- Explain what discrimination is
- Explain how the *Code* protects individuals and groups from discrimination and harassment
- Know their rights and responsibilities under the law, how to protect those rights and how to help others who experience discrimination or harassment.

A note about language

While this guide tries to use as clear language as possible, some key human rights terms and phrases are important for interpreting and understanding the *Code*. Definitions are included in the fact sheets (in the students' handouts) and the glossary in the teachers' reference section.

Real-life cases

Most situations used in this resource are based on real-life cases at the Human Rights Tribunal of Ontario (formerly called Boards of Inquiry) and/or the courts. For more information on these cases, see [Case study references](#).

Students' handouts and teachers' references

The Students' handouts section at the end of this package includes a [human rights quiz](#), five [fact sheets](#) and 12 [case studies](#). You will find instructions and extra information for using these materials, and a glossary, in the Teachers' references section.

The OHRC allows and encourages you to reproduce all materials for classroom use.

Classroom activities

The teachers' package includes instructions and additional background information about each topic. No timelines are given for the activities – you can set aside time for each part as you see fit.

Teachers' Package





What is the *Human Rights Code*?

The Ontario *Human Rights Code* is the law in Ontario. This legislation was written to provide comprehensive human rights protections for all people in Ontario.

The Preamble sets the spirit

The intent (or spirit) of the *Code* is defined in the Preamble – which appears at the very beginning. The Preamble sets out what the legislation is intended to achieve. It is very important because it helps define the meaning of equality. When we are not sure how to interpret a section of the *Code*, the Preamble can guide us. It sets out the basic assumptions underlying this important legislation.

The Preamble says that we recognize that all people:

- Have human rights that cannot be infringed upon or dismissed
- Have individual dignity and worth
- Are entitled to equal rights and opportunities without discrimination
- Need a climate of understanding and mutual respect, so that everyone feels a part of society and can contribute fully to it.

Teaching tip: Hand out copies of “Preamble to the Ontario *Human Rights Code*” to your students, or post it in a visible place in the classroom. A print-ready handout of this is included in the “Student handouts” section.

The *Code* evolves over time

While the principles of the Preamble remain constant, the way we interpret these principles continues to evolve in step with changes in our society. Examples of how the *Code* has changed include:

- In 1981, adding sexual harassment as a violation of the *Code*
- In the 1980s, adding disability and sexual orientation as prohibited grounds of discrimination
- In 2012, adding the new grounds of gender identity and gender expression.

The *Code* is remedial

Human rights legislation is meant to remedy the situation for the person or group discriminated against, and to prevent further discrimination. It is not meant to punish the individual or organization that has discriminated.

The Ontario *Human Rights Code* provides for civil remedies, not criminal penalties. Individuals or organizations found to have discriminated are not sent to jail but can be required to compensate the person discriminated against, or make major changes in the way they conduct their affairs.

Focus on these main points with your students and tell them that you are going to start your study of the scope and intent of the *Code* by discussing the topic of discrimination.



Activity #1: Exploring the concept of discrimination

In this activity, students explore the concept of discrimination and gain an appreciation of its complexity.

Break the class into small groups, and have each group develop its own definition of discrimination. At this point, they should not have seen the definition in the [Glossary](#).

Remind them to think about the points raised in the Preamble.

Ask them to consider questions like:

- What are stereotyping and prejudice and what are the differences between these concepts and the concept of discrimination?
- What does “fairness” mean?
- What is the effect of discrimination on a person?

Have the students record their ideas on chart paper. Each group then presents their definition to the class. When all groups have presented, identify those ideas that are common and use them to develop a shared definition of the term. Compare their definition to the one in the [Glossary](#).

Introduce or highlight the concept that “discrimination” can sometimes result from treating people the same and that occasionally we are required to treat people differently to achieve equal results. For more information about this, refer to the definitions of “[equal treatment](#)” and “[adverse impact](#)” in the Glossary.

With this exercise, the charts show that many, many people are subjected to different types of discrimination. Based on the lists generated, how does the information answer this question: “Who is not discriminated against?”

Next, have students discuss in their groups some specific ways that discrimination occurs (see Fact sheets 2-6). As before, have them record their ideas on chart paper and then compare their lists with the other students. Build a class list with input from each group.

Summarize this activity before moving on to another topic.

Background information: What is equality?

The notion of a legal right to equality and how we create a society in which all have equal rights requires that we challenge our ways of thinking about “equality.” First, it is important to understand that “equality” does not stay the same – it is an evolving concept that the courts continue to define and reinterpret.

The traditional approach to understanding equality is based on the idea that it can be achieved by providing identical treatment to all individuals, regardless of their actual circumstances. With this approach, if people are similar and you treat them the same, you cannot be said to have discriminated even though the result may in fact add to the disadvantage experienced by members of particular groups.

This notion of equality has many shortcomings. People have different needs because of their physical or mental abilities, race, ethnicity, creed, gender, sexual orientation, etc. However, when these needs are not recognized, the unequal effects that identical treatment can sometimes produce are ignored. Treating everyone the same may result in inequities, because this does not consider without considering their histories of exclusion or restricted access to resources and opportunities. This, in turn, perpetuates group-based inequalities and compounds the experience of disadvantage.

For example, if a business requires that all its employees be available to work Monday to Saturday, people whose faith requires that they do not work on Saturdays may be excluded from employment. A residence or business that is only accessible by stairs denies entry to people with certain physical disabilities. Also, an organization that provides information solely in print form excludes people who are blind or who have some types of learning disabilities from access to that information.

Current approaches to the idea of equality stress the need to look beyond the forms of treatment to the context of people's circumstances, including their historical experiences. Important aspects of this context are the social, economic, political and legal realities affecting the individual or group – realities that have both historical and contemporary components. Differences in the context could mean that, in some cases, *same treatment* will lead to *unequal results* while *different treatment* will sometimes be required to accomplish an *equality of results*. Achieving a more substantive or meaningful equality of results requires that the “different-ness” of their realities be acknowledged, as well as accommodated, in our laws and in the policies and practices of our social and business institutions.

Achieving true equality may require us to change rules and practices that appear to be neutral but, in fact, when applied have a disproportionately negative effect on groups of people protected by the *Code* (see [adverse impact](#) in the Glossary). In fact, the *Code* requires changing these rules and practices unless it can be shown that the cost of the change would be too great (having also considered external sources of funding that may be available), or that there will be a substantial health or safety risk involved.

It doesn't matter if the organization didn't intend to discriminate. In the case of the business mentioned earlier, the employer must make alternative arrangements for the person who cannot work on Saturday for religious reasons, unless to do so would cause undue hardship.

Owners of public buildings with elevated entrances or multiple stories must build ramps or install elevators to allow persons with a physical disability the same access available to others, unless to do so would cause undue hardship. As well, publications must be provided in an electronic version that can be read out loud by a computer equipped with special screen-reading software, in Braille, large print or on audiotape depending on the needs of the reader.

The *Code* recognizes that to achieve equality of results, it is sometimes necessary to adopt special programs to assist historically disadvantaged individuals and groups to overcome discriminatory practices that have become ingrained in our institutions and organizations. Section 14 of the *Code* allows special programs that are designed to relieve hardship and economic disadvantage or to achieve equality of results in society, as envisioned in the Preamble to the *Code*.



Activity #2: Human rights quiz

Instructions: Distribute the [human rights quiz](#) (Students' handouts) to your students. Tell them that the quiz looks at some situations where the Ontario *Human Rights Code* may have been violated. Have them work individually or in groups of two to three.

When they have finished, the students will want to discuss their answers immediately, but ask them to put their answers aside for now. The [answers to the quiz](#) will be reviewed once they've completed activities 3, 4 and 5.



Activity #3: The scope of the Ontario *Human Rights Code*

Instructions: Tell students that they will now learn where and how the Ontario *Human Rights Code* prohibits discrimination. First, review the [Preamble](#) and ask them to keep in mind how the various parts of the *Code* you will be dealing with reflect its "intent" as expressed in the Preamble.

Distribute copies of Fact Sheet #1: "[Scope of the Code](#)" (Students' handouts). Students may work individually or in small groups. Have them read the information and encourage them to ask questions to ensure they understand.

Post chart paper with the following headings around the room:

- Areas of discrimination
- Prohibited grounds of discrimination
- Exceptions to the prohibited grounds of discrimination
- Other points

When they finish reading, have them complete the charts in their own words. Ask them to underline or circle key words or phrases. Review what they have written on the charts to help clarify their individual and collective understanding of the information.



Activity #4: Types of discrimination – preparation

In this activity, students work in small groups in a cooperative learning process called a “jigsaw.” A jigsaw is a cooperative learning activity designed for use in the classroom. For more information about this teaching strategy, see Coelho, E., *Jigsaw Plus*, Unionville, 1991.

If your class already has a “home group” structure, the following activity will flow naturally from these groupings.

To form appropriate home groups, place students in groups of five. Have each group review the examples of discrimination that they discussed earlier. Remind them of the principles of the Preamble and the areas and grounds of discrimination protected by the *Code*. Ask them if they can think of any other examples to add to their lists.

Each group can record its ideas on chart paper and report back to the class before moving into the jigsaw activity.



Activity #5: Types of discrimination – using the fact sheets

For this activity, students may need to look up the meaning of some words. Give each group a set of [Fact sheets 2 through 6](#) (Students' handouts) that describe types of discrimination: direct discrimination, harassment, sexual harassment, poisoned environment, constructive discrimination and systemic discrimination. Tell them that the *Code* deals with all of these types of discrimination.

Each student takes one fact sheet. Then, the home groups split up into five new groups. Each individual joins a new “exploration group” comprised of the others who have the same fact sheet (for example, one exploration group is made up of everyone who received Fact sheet #2: Harassment). Give students in the exploration groups time to read and discuss the information on their fact sheet. They may read the information aloud or silently, depending on their reading abilities, ESL requirements, other learning ability factors and the room set-up.

Have the groups answer the following questions about the type of discrimination on their fact sheet:

1. What are the key words you need to understand when discussing this type of discrimination?
2. Can you give examples from real-life situations to show this type of discrimination?
3. What effect could/would this type of discrimination have on someone?
4. How do you think this kind of treatment would make someone feel?

You can develop other questions that challenge the group and stimulate discussion.

After thoroughly discussing in these groups, the students can return to their home groups. In their home groups, the students discuss the type of discrimination they learned from the fact sheets and what they learned from other students.

Throughout this activity, act as the facilitator or coach for the groups.



Activity #6: Debriefing the answers to the human rights quiz

If there's time, students can re-do the human rights quiz and compare their answers with those from their first attempt. Discuss their answers to the quiz. Provide information as required to ensure that everyone understands the concepts shown in each situation. The story and discussion points for each situation appear below. You may wish to read or have students read from these discussion points.

Make sure that the Preamble and the charts listing the social areas and prohibited grounds covered by the *Code* are posted prominently in the classroom.

Question #1: Anthony

Anthony, who is 18 years old, applies for a job as a clerk in a sporting goods store. The store manager is impressed with Anthony's maturity and ability and says that he would like to hire him, subject to reference checks. Later, the manager calls Anthony to say that he will not be hired. On checking his references with a former employer, the manager found out that Anthony was convicted of careless driving under the *Highway Traffic Act* when he was younger. Has the store manager violated Anthony's human rights by refusing to hire him?

Discussion points:

Yes, the manager has violated Anthony's human rights. The *Code* covers employment (area) and prohibits discrimination in hiring based on having a record of offences (ground).

The *Code* says that “every person has a right to equal treatment with respect to employment without discrimination because of ... record of offences.” In other words, an employer cannot discriminate against someone convicted of a provincial offence or who has been pardoned for a federal offence. But each situation must be judged on its own merit.

In this scenario, Anthony's offence is unrelated to the job duties he would have to do. However, if the job involves driving a car for delivery and no other employee could be given that duty, then the manager might be able to show that he had a good reason for not hiring Anthony. Or, if he had had a conviction for theft, then the manager could likely prove that the store would be at financial risk to have Anthony work with cash. In either case, the manager would have to prove that driving the car or taking cash were *bona fide*—or necessary—occupational requirements (BFOR) and that no one else could reasonably be assigned the duties.

Question #2: The women's hockey team

Naomi and several of her friends play in a women's hockey league at the local community centre. Whenever they play, the male rink attendants never give them their full allotted ice time, even when there are no scheduling conflicts. The attendants jeer every time one of the young women falls and there are often pin-up pictures of women in the dressing rooms. Naomi has complained but the manager has done nothing, saying that women should “stick to figure skating” and “leave hockey to boys.” Have the rink attendants violated the young women's human rights?

Discussion points:

Yes, the rink attendants and manager have violated the young women's rights. The *Code* covers facilities (area) and prohibits discrimination based on gender or sex (ground).

The *Code* says that “every person has a right to equal treatment with respect to services, goods and facilities without discrimination because of ... sex.” Factoring scheduling and rink availability, if there is free ice-time and the women are not given equal consideration by not receiving their allotted ice time, Naomi and her team are being treated differently.

What about the jeering, pin-ups and manager's comment that they should not be playing hockey? Taken together, these actions create a poisoned environment that is threatening and demeaning to women. Such a poisoned environment takes away the rights of women to take part without discrimination in the community facility.

What do you think should be done? Both the manager and the rink attendants should be made aware of their responsibilities under the *Code*. They must give the women their full share of ice time, stop the jeering and remove the pin-ups. As well, management must take steps to make the facilities more receptive to both genders.

Question #3: Yvon

After years of fighting, Yvon's parents are getting a divorce. Things are so tense that Yvon feels he must live on his own if he is to successfully complete his school year. He has been a good student and stayed out of trouble. At 16, he has qualified for social assistance and has put in an application at a rooming house near his school. The property manager refuses to rent Yvon a room, saying that he does not rent to “welfare kids.” Has the property manager violated Yvon's human rights?

Discussion points:

Yes, the property manager has violated Yvon's rights. The *Code* covers discrimination in the area of accommodation (housing), prohibiting it on both the grounds of age and receipt of public assistance.

The *Code* says that “every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination.” In addition, no one can be discriminated against in housing simply because he or she receives social assistance.

In this case, the property manager based his decision on a subjective opinion. If Yvon makes a complaint (called making an application) with the Human Rights Tribunal of Ontario, it would consider the evidence presented including comments or actions made by the property manager. Even if the property manager had *not* made a comment about “welfare kids,” Yvon may have been discriminated against based on the property manager's assumptions.

Question #4: Maya and her friends

Maya and several Black friends go to a local restaurant after school. They are laughing and carrying on like others in the restaurant. Things start to get out of hand between their group and several White students sitting at another table. Food is thrown and the groups exchange angry remarks. When the restaurant staff ask Maya and her friends to leave the restaurant, they feel angry and discriminated against. Have the restaurant staff violated the group's human rights?

Discussion points:

“Maybe” is the correct answer for this scenario. Assuming that the White students took part equally in the fight, Maya and her friends' rights may have been violated. This would depend on whether the White students were also asked to leave. The *Code* says that “every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of ... race.” If the staff asked only the Black students to leave, they would be treating Maya and her friends differently. This would be an example of direct discrimination.

Would you say that neither group has been discriminated against if the staff asked both groups to leave? The service provider does have the right to ask anyone to leave the premises for being unruly or disruptive to business. So, by asking both groups to leave, he or she would be protecting the business and preventing further disturbance to other customers.

However simple this scenario might appear at first glance, it requires a great deal of analysis to understand what happened and what should be done. Would it make a difference if the White students had been harassing Maya and her friends before the fight? The *Code* says that the service provider also has the responsibility to make sure that all its customers are free from discrimination while on the premises. Staff would then be correct in asking only the White students to leave.

Question #5: Meerai and Sean

Last week, Meerai and her friend Sean organized a school group to raise funds for AIDS research. Yesterday, on their desks, they both found crudely-drawn cartoons making fun of people who are gay and lesbian. Last night, several students shouting anti-gay comments verbally attacked them on the street opposite the school yard. Their teacher saw the cartoons and has heard rumours of the verbal attack, but feels that nothing can be done because the attack took place off school premises. Neither student has complained to school officials. Have the students violated Meerai's and Sean's human rights?

Discussion points:

Yes, the students have violated Meerai and Sean's human rights. And so has the teacher and the school.

Do we know whether Meerai is a lesbian and Sean is a gay man? No, we don't. If they are not, is there a prohibited ground? Yes, there is. Regardless of their sexual orientation, the other students are discriminating against them because of their "perceived" sexual orientation and/or association with a group protected under the *Code* (sexual orientation). This means that someone incorrectly thinks that a person is a member of a group protected under the *Code*, and treats the person differently because of a *Code*-related ground. Here, Meerai and Sean are involved with an LGBT event and have LGBT friends. Some people may discriminate against them because they perceive that they are gay or lesbian.

Is there an obligation for the teacher to act? Yes, under the *Code* schools have a duty to maintain a positive, non-discriminatory learning environment. As an education provider, the teacher has a responsibility to take immediate remedial action once made aware of harassing conduct. The teacher could be liable in a human rights claim if he knew about the harassment and could have taken steps to prevent or stop it, but did not.

The students have discriminated against Meerai and Sean because of their participation in a school activity associated with AIDS, a condition wrongly identified by some people as a “gay disease.” In addition, the derogatory cartoons in the classroom create a poisoned environment for Meerai and Sean, and for LGBT students in general. As a service provider, a school is required to make sure that everyone is treated equally, without discrimination and harassment based on sexual orientation.

If Meerai is lesbian and Sean is gay, why might they hesitate to complain to school officials or file an application with the Human Rights Tribunal of Ontario? By taking such action, they might think they would have to publicly disclose their sexual orientation. They would not have to, however, because the Tribunal would still take the application based on their association with the LGBT community or because they were "perceived" to be lesbian, gay or bisexual.

Although today's society is more progressive, homophobia continues to exist. Many people still feel they have to conceal their sexual orientation or gender identity to avoid rejection, ostracism and possibly violence from friends, family, work colleagues and others around them.

Question #6: Chantal

A local optician's office has an opening for a part-time receptionist. The position requires excellent communication skills, as the person will answer customers' telephone calls and receive patients who enter the clinic. Chantal, who was born and raised in Quebec City, applies for the job. The owner does not hire her, because she feels customers may not understand her because of her accent. Has the owner violated Chantal's human rights?

Discussion points:

This may be a violation of the *Code*, if it could be objectively shown that Chantal did not satisfy a *bona fide* occupational requirement that she be understood by customers. However, we all have accents. Does her accent truly affect her ability to communicate effectively or is this an excuse by the owner not to hire her because of her ancestry/ethnicity/place of origin? If Chantal filed an application with the Tribunal, a hearing would probe whether the owner's decision was purely subjective or had some objective basis, such as the results of an objective test of Chantal's communication ability. What if the owner argued that customers would not like to deal with her because of her accent? Under the *Code*, people can't use customer preference to defend discriminatory acts.

Question #7: Michael

Last Saturday, Michael and his friends attended a movie theatre they had never been to before. The theatre staff told Michael, who uses a motorized wheelchair because he has muscular dystrophy, that he would either have to transfer into a theatre seat or watch the movie from the only area available for the wheelchair – in front of the first row of seats. When he complained about this arrangement, the theatre staff told him he was entitled to the same service as everyone else – a ticket and a seat to watch the movie. Has the movie theatre staff violated Michael's human rights?

Discussion points:

Yes, the theatre has discriminated in providing services, on the ground of Michael's disability.

This scenario is based on a case heard by the Saskatchewan Court of Appeal in 1985 (*Huck v. Canadian Odeon Theatres Ltd.*), which established that treating people the same does not necessarily give them an equal result. The theatre argued that it provided Michael with the same services as all other patrons – a ticket and a seat – and had no intention of discriminating against him.

However, Michael's lawyers argued that, unlike other patrons, he could not take any seat in the theatre, because with his disability he could not transfer out of his wheelchair. The area offered to him in front of the front row of seats was restricted and inferior to the range of seating offered to other theatregoers. The Court found that even though the theatre management did not intend to discriminate, its actions had a discriminatory effect on Michael.

Many actions or seemingly “neutral requirements” are not intentionally discriminatory. That is why human rights legislation, such as the *Code*, is concerned with equality of results and not the intent of the respondent. As a result of this decision, theatres all over the country now offer a variety of spaces throughout their cinemas for people with wheelchairs.



Activity #7: Using the case studies

The [case studies](#) in the Students' handouts section can be approached in two ways. The first is a forum discussion of each of the case studies. The second has students role-play at a human rights tribunal hearing. Using both approaches will give students a more complete understanding of how the *Code* is applied.

Option 1: Forum activity

Divide the class into groups of four or five. Give each group a separate case study for discussion and analysis. Have each group read its case study carefully and then discuss the questions that follow. If students have other questions, these should be noted and answered. Each group identifies one person as the representative for the feedback session.

Set up a forum or fishbowl structure by arranging chairs in a circle (one for each representative), plus one for a group discussion facilitator (you or a student). Include one empty chair, where others will sit when they wish to ask questions or challenge statements raised by the reporting students. The rest of the class should sit outside the circle of representatives.

Each representative reports on her or his case study by explaining the scenario and sharing the group's answers to the questions.

To challenge statements and/or raise other questions, a student must sit in the empty chair, make the point and then vacate the chair.

As each group reports its findings, provide input using relevant information from the discussion points included below.

Option 2: Tribunal role play

With this activity, students take part in a tribunal scenario for each case study. A tribunal usually consists of one person who decides on the human rights complaint (called an application). A final decision by a tribunal can order a person or company that discriminates to pay for any of that person's losses and make the company change the way it operates to make sure the discrimination does not continue. A tribunal decision is a legal one and therefore can be appealed to a higher court. For more information about this process, see "[The Human Rights Tribunal of Ontario](#)" in the appendix.

In groups of seven or eight, students select one of the case studies and prepare arguments for and against the alleged violation. In their groups, they will choose their parts:

- Applicant(s) – the person who has the complaint and files an application
- Respondent(s) – the person or organization that the complaint is against and is named in the application
- Lawyer(s) for the respondent
- Lawyer(s) for the applicant
- Witnesses for the applicant and respondent
- Vice-Chair or Adjudicator (who conducts the Tribunal hearing).

When each group has prepared its case, set up a "hearing room" in your classroom. Everyone should have a role in each case as it is acted out. Encourage everyone to try as many roles as possible.

- The Vice-Chair or Adjudicator introduces him/herself and the parties
- Next, the Vice-Chair sets out the ground rules
- The applicant or his/her counsel starts by setting out his/her issues
- The respondent or the respondent's counsel sets out their issues

- Both parties present evidence, ask the other party questions
- The Vice-Chair or Adjudicator hears the facts, applies the *Code* and case law, and makes a decision.

Compare the students' conclusions with the actual findings, included in the discussion points below.

Case study 1: Darlene

This scenario is based on the real-life human rights case of *Noffke v. McClaskin Hot House*.

As part of a government program, Darlene, a grade 12 graduate, got a job with a local garden nursery. She was to help Mr. M., the owner, tend plants and shrubs, place orders and serve customers.

Mr. M's first review of Darlene's work showed that she was performing all her job duties exceedingly well. It was obvious that Darlene liked the work.

Over the next three months, Mr. M's behaviour toward Darlene began to change. As they worked, he would often put his hands on her shoulders and hips or lean over closer to her. At these times, she would quickly draw away from him. He then began to make offhand remarks about how he was sick of his wife and that he needed "satisfaction" from another woman.

Darlene did not encourage the comments or actions, nor did she say anything against them. However, she was becoming increasingly uncomfortable with the situation and tried to avoid the owner as much as possible. One day, Mr. M. asked her for a kiss. When she refused, he said "I know what's wrong with you. You're scared you're going to like it." A few days later, Mr. M. suggested that she come to his apartment to have sex with him. Darlene firmly refused, saying that she was seriously involved with her boyfriend. On several other occasions, the owner tried to get Darlene to come to his apartment.

In June, Mr. M. terminated Darlene's employment, saying he had no work for her, even though June is the busiest month of the year for the nursery.

Group discussion questions:

1. Did the nursery owner violate the *Human Rights Code*? If so, how?
2. When Darlene first became uncomfortable with the nursery owner's behaviour, why wouldn't she have said something?
3. In this situation, would Darlene have had to say anything to the nursery owner for him to know that he might be violating the *Code*?
4. Is Darlene's termination a factor when assessing if her rights were violated?

Discussion points:

Was the Ontario *Human Rights Code* violated? Yes, it was. Darlene's employer sexually harassed her. He repeatedly touched her. He said he was sick of his wife and needed satisfaction from another woman. And, he asked her to come to his apartment to have sex with him.

Why didn't Darlene speak out when she first became uncomfortable with the owner's behaviour? Maybe she was too frightened, too shy, didn't know how to stop it, or didn't want to lose her job. These are all feelings that can happen when someone is being harassed by someone who is in a position of power over them, whether it be a boss, a landlord, a teacher, etc.

Would Darlene have to say anything to the owner for him to know he was violating the *Code*? No. The *Code* recognizes that some forms of harassing behaviour are commonly recognized as unwelcome or unwanted. There are also people who may harass others because they think they can get away with it. That is why the definition of harassment includes the words "ought reasonably to be known to be unwelcome." Even withdrawing from his touching was enough to let the owner know his actions were unwelcome. We can make someone know that an action is unwelcome through our body language, such as turning away, or by communicating verbally and telling them so.

Was Darlene's termination from her job a factor in assessing whether her rights were violated? Yes. The owner violated the *Code* on a second count by terminating her after she rejected his sexual advances. This is called "reprisal." Why else would he terminate her employment when she was performing her job well and it was the busiest time of the year for his business? It is a violation of the *Code* when a person in a position of authority penalizes or threatens an employee for not complying with a sexual demand. A finding of discrimination may be made if discrimination on a *Code* ground was one factor in the decision to terminate employment.

In its finding, the Tribunal ordered the owner to pay Darlene \$2,750 for mental anguish and \$240 for lost wages. It also ordered the owner to post a copy of the *Code* at his business site and, for a two-year period, to inform the OHRC (which used to monitor settlements and decisions) any time he terminated a female employee.

Having a separate provision for sexual harassment in the *Code* recognizes that many harassment complaints are sexual in nature and commonly committed by people in positions of authority.

Sexual harassment is not, however, limited only to male-female situations. It can also occur between two men, two women or woman to man.

Case study 2: Paramvir

This was real-life case: *Pandori v. Peel Board of Education*

In response to increased violence in its schools, a local school board adopted a policy prohibiting carrying weapons on school grounds. The following spring, the school administration learned that Paramvir, a Khalsa Sikh, was wearing a kirpan in school. The school wanted to implement its “no weapons” policy.

Of the estimated 250,000 Sikhs living in Canada at the time, more than 10% are Khalsa Sikhs – they have gone through the Amrit ceremony, symbolizing spiritual commitment. One of the duties of the Khalsa Sikh is to carry, at all times on his or her person, a kirpan, an article of faith symbolizing a spiritual commitment to law and morality, justice and order. A kirpan is a steel knife, encased and secured in a sheath, and generally worn out of sight under normal clothing.

After prolonged discussions with Paramvir's family and Sikh organizations, the school board amended its weapons policy to include kirpans. It forbade Sikh students to wear the kirpan in school – they could only wear a symbolic representation of the kirpan, provided it did not involve a metal blade that could be used as a weapon.

A Sikh teacher took the case to the Tribunal. At the hearing, it was argued that Sikh religious practices dictate that the kirpan must be made of iron or steel and worn at all times, otherwise the Khalsa would break their holy vows. It was shown that, while the kirpan has the appearance of a weapon, it has never been used in Canada as a weapon. Furthermore, it was argued that other school boards did not have a policy restricting kirpans.

The school board argued that:

- Education was not a service covered by the Ontario *Human Rights Code* but was instead under the jurisdiction of the *Education Act*
- The kirpan posed a risk as it looked like, and could be used as, a weapon
- Others could perceive the kirpan as an invitation to violence.

Group discussion questions:

1. Does the *Code* prevail, or have “primacy,” over the *Education Act*?
2. Did the weapons policy discriminate against Khalsa Sikhs? How?
3. Was the policy reasonable? Suggest some ways the school board could accommodate Khalsa Sikhs without undue hardship – for example, posing a safety risk?

Discussion points:

Would the *Code* take precedence – or have primacy – over the *Education Act*? Yes. The Tribunal has ruled that education is a service under the *Code*, referring to section 47.2 which provides primacy over the *Education Act*. A school board can exercise its rights under the *Education Act* as long as those rights do not violate the *Code* or the *Canadian Charter of Rights and Freedoms*.

Does the weapons policy discriminate against Khalsa Sikhs? Yes. On its face, the weapons policy violates their rights. Although they can attend school, they will not be able to fulfil one of the important requirements of their religion. However, to demand that a person choose between school or a job and his/her religion constitutes discrimination. Sikh organizations in Canada and high-level Sikh authorities from India verified the argument that the kirpan must be made of iron or steel and worn at all times.

Was the policy discriminatory? Can the school board prove that providing Sikhs with the right to practise their religion (that is, to wear the kirpan) would cause the school undue hardship? Would it pose a substantial risk to student safety?

The Tribunal based its decision on these main issues:

- There was no evidence that Khalsa Sikhs had ever misused a kirpan in any Canadian school
- The kirpan's similarity to a weapon (particularly when secured and worn under clothing) was irrelevant
- While others might well steal a kirpan to use as a weapon, a person bent on aggression could easily get other weapon-like objects on school premises, such as screwdrivers, knives, forks and baseball bats.

In its decision, the Tribunal ruled that sacrificing the rights of Sikhs to control non-Sikhs, who might be violent, was unacceptable, given the other measures available to curtail violence in schools.

It found that the school board had not proven undue hardship and ordered the board to withdraw the amendment about the kirpan. Khalsa Sikhs would be entitled to wear real kirpans to school.

To meet the concerns of both parties, the Tribunal stated that kirpans would have to be of reasonable size, worn under clothing and secured so that removing the kirpan would be difficult. Principals would also have the right to suspend the wearing of a kirpan if its wearer misused it.

Case study 3: Danté

After months of searching for a weekend job, Danté, who is Black, finally got an interview with the owner of a busy car wash and gas station. The owner seemed reluctant to hire him, but Danté managed to win him over. The owner gave him the job, saying that he would be working on a weekend shift with seven other young men, all students from the local area. The shift manager would train him on the car wash equipment.

On Danté's first day, the shift manager gave him only a few minutes of instruction on the equipment. Dante watched what the other men were doing, but when he asked questions, they were not very helpful.

Over the next few weekends, Danté concentrated on his work but because of certain events, he increasingly began to stay by himself. A few co-workers invited him to join their little group for lunch or breaks, but others consistently cracked ethnic and racial jokes, often within hearing of the shift manager. One day Danté overheard the manager say that Black people were responsible for increased violence in the community. This statement encouraged some co-workers, who had previously eaten lunch with Danté, to tell a couple of jokes about Black people. When they glanced at him as they told their jokes, he got up and walked away.

One busy Saturday afternoon, a whole section of the car wash equipment broke down because someone had allowed the system to become overheated. Danté had worked on that section until his break, when a co-worker took over. The system had broken down at some point after that.

The shift manager was furious and accused Danté of negligence. Danté replied that he believed the system was fine when he left for his break. Although Danté insisted that the equipment failure was not his fault, the shift manager fired him. Danté believed he was discriminated against because he is Black, while his co-workers and managers are White.

Group discussion questions:

1. Did the shift manager have good reason for firing Danté? Why?
2. What factors would a human rights tribunal take into consideration?

Discussion points:

Did the shift manager have good reason for firing Danté? No, he probably didn't. It would be difficult for the manager to show that it was Danté who caused the equipment failure, as he had already left for his break. It was not clear if the other employee had partial or total responsibility for the problem.

Danté believed he was fired because he is a Black person. What additional factors would be taken into consideration in a human rights tribunal hearing? The owner promised Danté he would be trained on the equipment by the shift manager. Yet the manager only gave him a few minutes of instruction. Why? Is it possible that the manager did not want to work with him? Is that why the owner was reluctant to hire Danté in the first place?

The shift manager was overheard to say that Black people were responsible for increased violence in the community. Could Danté reasonably expect to get equal treatment from a supervisor with that kind of attitude? The shift manager also contributed to the harassment and poisoned environment by sharing racist jokes with Danté's co-workers.

Furthermore, some co-workers ignored and isolated Danté, possibly contributing to the harassment. This and the poisoned environment constituted discrimination.

A tribunal hearing would determine whether Danté's firing was, at least in part, due to racial discrimination by the shift manager. In effect, if a tribunal finds that discrimination plays even a part in a decision by an employer, then the employer has violated the *Code*.

Case study 4: Tammy

This case, *Youth Bowling Council v. McLeod*, was heard by a Tribunal and was then appealed to Divisional Court which dismissed the appeal. The Ontario Court of Appeal later endorsed the Divisional Court decision.

By age 11, Tammy had bowled for five years in the local recreation league. She and several others qualified to enter a province-wide competition sponsored by the Youth Bowling Council.

Tammy has cerebral palsy and uses a wheelchair, but she has some movement and coordination. So she could bowl, her father built a wooden ramp, the top of which rests in Tammy's lap. She lines up the ramp towards the bowling pins and lets the ball roll down the ramp.

Just before the competition, the Council ruled that Tammy was ineligible to take part. While the Council's rules allowed persons with disabilities to use special equipment to assist them in recreational bowling (provided the equipment did not add force or speed to the ball), they prohibited the use of such equipment in competitions.

The Tribunal and later the Supreme Court of Ontario heard Tammy's application. The Youth Bowling Council argued that it had not violated her rights under the *Code*, because Tammy wasn't capable of the essential requirement of bowling—manually releasing the ball. The Council also contended that the use of special devices would make competition between the bowlers unfair, because the skills assessed would not be common to all competitors.

Tammy's lawyers argued that Tammy was bowling—she was using the ball to knock down pins. Also, the Youth Bowling Council had a duty to accommodate her under the *Code* by allowing her to use the ramp. Speed and accuracy tests showed that Tammy did not gain any advantage over other bowlers. Her ball speed was too low for maximum results and her accuracy no better than average.

Group discussion questions:

1. Could Tammy perform the essential requirement of bowling? Should this argument have been a factor in determining whether a violation occurred?
2. Should the Council have to accommodate Tammy (for example, should they allow her to bowl in competitions with the ramp)?
3. Would the Council experience undue hardship if it accommodated her in competitions? Would it change the sport too much? Give your reasons.

Discussion points:

This case, *Youth Bowling Council v. McLeod*, was heard by a Tribunal and was then appealed to Divisional Court. The Divisional Court decision was later endorsed by the Ontario Court of Appeal.

This was the issue: could Tammy perform the essential requirement of bowling, and should this have been a factor in determining whether a violation had occurred?

The Court agreed that manual control and release of the ball (that is, the physical activity in delivering the ball) were the essential requirements of bowling. Tammy needed the ramp to release the ball and thus could not perform the essential requirement.

Since Tammy could not perform the essential requirement without her ramp, did the Council have an obligation to accommodate her? The Tribunal said, "Yes, it did." In effect, the rule that the ball must be manually controlled has an adverse impact on many people with disabilities such as Tammy, or people without full use of a hand or arm.

The *Code* says that an organization must accommodate a person with a disability who cannot meet essential requirements, unless it can prove undue hardship.

Would it cause undue hardship to accommodate Tammy in competitions? The Court said "no" for several reasons. Allowing Tammy to use her ramp would not give her an unfair advantage over other bowlers. As the tests proved, Tammy had no competitive advantage over others. While the Council said that skills should be common to all competitors, it did not account for other differences, such as height, weight or maturity, which also affect a person's ability to bowl.

The Court rejected the argument that special devices could be used in recreational bowling but not in competitive bowling.

Was it fair to welcome persons with disabilities in recreational bowling but not in competition, particularly when such persons would have no proven competitive advantage? As the Tribunal pointed out, all participants strive to win, whether they are in recreational or competitive settings, and everyone should have the opportunity to take part in both settings.

The Court supported the Tribunal's decision that Tammy had been discriminated against based on her disability. The Court ordered the Council to allow Tammy to use the ramp in competitions. This effectively permits all bowlers with disabilities to use special equipment as long as the equipment does not mechanically add force or speed to the ball.

Case study 5: Kyle

This scenario is based on *Kyle Maclean v. The Barking Frog*.

Kyle is a young man who went to The Barking Frog, a bar in London, Ontario. He went on a "Ladies" Night," when women are charged a lower cover charge than men. Bars across Ontario (and indeed across Canada and parts of the United States) routinely hold what are commonly called ladies' nights, where women are charged a lower cover charge or no cover charge to enter the bar or are given discounts on their drinks. This practice has been common in Ontario and elsewhere for decades.

Kyle went to The Barking Frog, where the doorman told him the cover charge was \$20 for the men but only \$10 for the women in the group. Kyle was upset and was unwilling to pay the \$20, so he did not enter the bar.

Kyle launched a human rights complaint claiming the different cover charges amounted to discrimination based on the ground of sex.

Group discussion questions:

1. Did Kyle face discrimination? If so, what type?
2. What factors would be taken into account to determine if there was a violation of the *Code*?
3. How is substantive equality different from formal equality?

Discussion points:

At the Tribunal, the adjudicator explained that the Ontario *Human Rights Code* is aimed at achieving substantive equality as opposed to formal equality. Substantive equality recognizes that not all differences in treatment lead to substantive discrimination under the *Code*. The Tribunal stated that in the societal and cultural context of Ontario, holding a “ladies’ night” could not be found to substantively discriminate against men. [See *Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 (CanLII), 2010 ONCA 593 at paras. 77 to 91.]

What kind of discrimination is Kyle claiming? He alleges discrimination based on sex. Charging different cover charges based on sex violated his right to freedom from discrimination in services.

Kyle told the Tribunal that by charging men twice what was being charged to women, the Barking Frog supported the belief that men are less worthy than women. He also said that charging a higher cover charge for men discourages them from entering the bar. The Tribunal didn’t accept either argument, noting that men hold a privileged position in our society.

The Tribunal noted that Kyle may have felt that the difference in cover charges seemed unfair. “But whether or not something is unfair in some general sense does not mean it is discriminatory within the meaning and purpose of human rights legislation.” The Tribunal dismissed the case saying that a “ladies night” or setting a lower cover charge for women is not discrimination against men.

In this scenario, are there different rules and conditions governing men and women in services? Is there a *bona fide* reason for the difference? Do you agree with the adjudicator’s reasoning for dismissing the application?

Case study 6: Rita

Rita and her family moved to the city from a remote community in the middle of the school year. Within a week, Rita was registered at the local high school and began attending classes. She travelled to and from school by school bus.

After two weeks at the new school, Rita was just beginning to settle into her classes. However, she was somewhat nervous about her history course. After her first class, the teacher made it clear that Rita had a lot of “catching up” to do, if she were to pass the course.

The following week, some students gave a presentation on Columbus' voyage in 1492 to the "New World." There was lively discussion, and readings and prints were circulated depicting Columbus' arrival in various territories. There were several references made to "Indians and savages" that the colonists "had to defeat" to settle the New World.

As a member of the Cree Band, Rita was dismayed by the way the teacher did not question the portrayal of Aboriginal persons in the presentation. She approached her teacher before class the next day to discuss the issue. As the class began, the teacher announced that Rita had concerns with the Columbus presentation. She then turned to Rita and asked her to give her version of the "Columbus discovery" from an Aboriginal point of view.

Caught off guard, Rita haltingly made several points, and then sat down quickly when several of the students began to snicker. Later that day on the bus ride home, some of the other students jeered at her, saying if she didn't like history the way it was taught, then she should drop out. She turned away and ignored them. The next day, the jeering continued in the hallway. When she went to her locker at lunch, someone had scrawled the words "gone hunting" on her locker door. Again, she ignored the curious students around her.

Rita told her parents about the incidents. They called the principal, who said she would give "hell" to the offenders. She also suggested that Rita should make more of an effort to fit in and get along with others.

Group discussion questions:

1. How should the teacher have handled Rita's concern over the Columbus presentation?
2. Should the principal deal with the situation in a different way?

Discussion points:

How should the teacher have handled Rita's concern about the class presentation? As school curriculum areas better reflect diversity issues, this type of situation should cease to arise. The students showed a very ethnocentric view of the events surrounding Columbus' voyage. Obviously, the experience of the settlement of North America was not the same for the Aboriginal Peoples as it was for people who came here from Europe.

Asking Rita to present the "Aboriginal point of view" was extremely unfair. It assumed that Rita could speak for all Aboriginal peoples – an action that stereotypes Aboriginal persons. As well, it implied that it was not the teacher's job to make sure a balanced view of the subject was presented.

When the teacher first gave the assignment, or later, when Rita raised her objection, the teacher could have prevented the situation by either:

- Asking the class to discuss the 1492 events from the point of view of both Columbus and of the Aboriginal Peoples living in the Americas
- Identifying similar situations in history and asking students to examine the perspectives of both "invader" and "invaded."

Either of these alternatives would have avoided singling Rita out and making her feel different because of her Aboriginal heritage. By setting Rita apart from the others, the teacher set the stage for the student harassment and bullying that followed.

How should the principal deal with the situation? The school has a legal obligation to maintain an educational environment free from harassment and discrimination. The principal should take the matter very seriously and make sure that everyone knows the school does not tolerate this type of behaviour.

If the principal disciplines the offenders, she may create an even worse situation for Rita, as they may feel they were punished because of her. Rita might then be confronted by taunts for being a troublemaker, in addition to the racism she has already experienced.

The principal should consider having an educational session to discuss diversity, equity and human rights issues with all students and staff. The school should adopt a positive approach to help everyone develop more favourable attitudes toward Aboriginal culture. This can be accomplished by assigning readings, showing videos, inviting guest speakers, etc.

If Rita's harassment continues, then the principal or teacher may need to take disciplinary action.

Case study 7: Cindy

This scenario is based on *Cameron v. Nel-Gor Castle Nursing Home*, which went before a Tribunal and then was appealed to Divisional Court.

Cindy, 19, applied for a job at a nursing home as a nursing aide. She had previously worked part-time as a kindergarten teacher's aide and had also cared for children with mental and physical disabilities during her high school years. In her initial interview, the assistant administrator told Cindy she was an ideal candidate and that she probably would be hired.

She was given a pre-employment medical examination for her family doctor to complete. He confirmed that she could meet the requirement of being able to lift patients.

At a second meeting, the interviewer reviewed the completed medical form and noticed Cindy's hand. During the initial interview, the assistant administrator had not observed her left hand, on which the index, middle and ring fingers were much shorter than those on most hands. Following this, the interviewer and another nursing director spent much time discussing Cindy's disability and the job requirements. Even though they both really wanted to hire Cindy, they didn't think she would be able to cope with the gripping or claspings that is needed to lift patients.

Although Cindy said she could perform the duties and had done similar tasks in her previous job with children with disabilities, she was not hired.

Group discussion questions:

1. Did the interviewer have reasonable grounds to believe that Cindy could not do the job?
2. On what basis did the interviewers assess that Cindy could not meet a *bona fide* job requirement?

Discussion points:

What do you think the interviewer and the nursing director should have decided? What are your reasons? On what basis did the employers make their assessment of Cindy's physical ability? Did they have reasonable grounds to believe that Cindy could not do the job?

It appears that the administrator and director had honest opinions, based on their medical and nursing home experience. Their opinion, however, contradicted both Cindy's doctor's assessment and her own belief. Having performed similar tasks before, Cindy felt she was able to meet the requirements.

Their assumption that Cindy could not handle the essential duties of the job was based on the subjective "impression" that Cindy could not lift patients.

The administrator didn't contact Cindy's doctor or ask Cindy to take a test to show that she could perform the essential duties of the job.

The Tribunal found that an "impression" is subjective in nature and that the respondent must establish an objective basis, through facts or evidence, that Cindy's alleged disability would preclude her from meeting the essential job requirements.

While the employers made their decision in good faith without intent to discriminate, the effect of their actions on Cindy was, nevertheless, discriminatory.

Case study 8: Maria

This case study is based on *Maria Vanderputten v. Seydaco Packaging Corp. and Gerry Sanvido* (No. 2, 3 and 4). In presenting the case to the Tribunal, the applicant's lawyers raised these issues:

1. She was harassed in the workplace and subjected to a poisoned work environment
2. She was dismissed from her job because of her gender identity.

When Maria began working for the packaging company in 2003, her first name was Tony. She was hired as a general labourer on August 24, 2003. In 2008, she was accepted in the gender identity clinic and began transition from living as a man to living as a woman. She started the process of sex reassignment and developed female breasts as a result of hormone treatments. Maria says that she was harassed, subjected to a poisoned work environment and dismissed – all violations of the *Human Rights Code*.

Maria said that Gerry, a lead hand and machine operator, played a central role in the harassment and the incident that led to her dismissal. The packing company said the allegations never happened. The company argued that it treated the applicant appropriately, considering her a man and treating her like other men until it received medical or legal documentation that she was a woman. They say they fired her because of her attitude and being involved in workplace conflicts that were her fault, as well as insubordination.

Group discussion questions:

1. In what ways do you think Maria might have experienced discrimination in her employment?
2. What reasons do you think Maria's supervisor would give for firing her? What do you think of these reasons?
3. What remedy do you think Maria should receive because she was discriminated against?

Discussion points:

Poisoned environment: Maria argued that the following contributed to a poisoned environment in her workplace”:

- Derogatory comments made by co-workers about her gender identity and being required to use the men’s change room
- The owner of the company contributed to this poisoned work environment by insisting that Maria be treated like a man in all respects until she completed surgery, including requiring her to change with men
- The owner also failed to investigate and respond reasonably to Maria’s allegations that she was being harassed because of her sex and gender identity.

The adjudicator heard evidence that Maria was often in conflict with her co-workers and had been disciplined for making a racist remark in the workplace because she was angry with a co-worker. At the time of this complaint, Maria dressed as a woman before changing into a gender-neutral jumpsuit that all employees wore on the plant floor. She often wore make-up at work.

Harold, the Director of Operations, said that he wasn’t aware of Maria’s transition until 2008 when she began wearing women’s clothing. He said Maria did not specifically tell him of her transition or request modifications to her work or use of gender-segregated facilities.

Maria was stared at, pushed, shoved, or people threw things at her. She said other employees were coerced into avoiding her and not helping her in her work. When people made derogatory comments, she reacted by swearing at them.

The adjudicator found that Maria was a good worker, but often got involved in interpersonal conflicts. She was disciplined for making a racial remark while getting angry at a co-worker; and for getting angry at other co-workers. She was disciplined for these incidents and then Harold fired her. Shortly after, Harold left the company for another job and Maria was rehired. In November 2007, she was suspended without pay for a week for becoming aggressive and upset, throwing a piece of wood and swearing at another employee.

The adjudicator also found that before she was fired she was subjected to a poisoned environment because of the harassing comments about her gender identity and the requirement that she use the men's change room. The lead hand, Gerry, in particular contributed to the poisoned work environment by insisting that Maria be treated as a man in all respects. The Adjudicator stated, "Insisting that the applicant be treated in the same manner as men until her transition was fully complete, was discrimination. It failed to take into account the applicant's needs and identity."

Maria was awarded \$22,000 for injury to dignity, feelings and self-respect together with pre-judgment interest, as well as the wages she would have earned had she continued to be employed in her previous position until January 11, 2011.

The company was also ordered to hire a human rights expert to help develop and implement human rights and anti-harassment policies, and all company managers had to take training on human rights law and how to administer the provisions of the organizational human rights and anti-harassment policy.

Case study 9: Tawney

This case is known as *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* and is frequently referred to as "*Meiorin*" or the "B.C. Firefighter Case." Even though the case was originally dealt with as a grievance, it is still a "human rights" case as many provinces have labour legislation giving arbitrators the responsibility of applying human rights laws in relevant cases [for Ontario, see the *Labour Relations Act, 1995*, s. 48(12)(j)]. Ultimately, this case was decided at the Supreme Court of Canada, which means it also applies in Ontario.

Tawney worked as a forest firefighter for the Province of British Columbia and was a member of the Initial Attack Forest Firefighting crew for a small area in the forests of BC. The crew's job was to attack and suppress forest fires while they were small and could be easily contained. Her supervisors found her work satisfactory and had no reason to question her continuing ability to do the work safely and effectively.

After she had been successfully doing this job for three years, the government adopted a new series of fitness tests for forest firefighters. The tests were developed in response to a Coroner's Inquest Report that recommended that only physically fit employees be assigned as front-line forest firefighters for safety reasons. The tests required that forest firefighters weigh less than 200 lbs. (with their equipment) and complete a run, an upright rowing exercise, and a pump carrying/hose dragging exercise within stipulated times.

The running test was designed to test the forest firefighters' aerobic fitness. Subjects were required to run 2.5 kilometres in 11 minutes. After four attempts, Tawney failed to meet the aerobic standard, running the distance in 11 minutes and 49.4 seconds instead of the required 11 minutes. As a result, she was laid off.

Stating that the test unfairly discriminated against women, Tawney's union brought a grievance on her behalf.

Group discussion questions:

1. What do you think about having different standards for men and women?
2. Do you think the test was a fair way of measuring a firefighter's ability to do the job?
3. If Tawney was passed, even though her running time was below what was required, is she being given preferential treatment over men?

Discussion points:

Evidence accepted at the hearings showed that, due to physiological differences, most women have a lower aerobic capacity than most men. Even with training, most women would not be able to increase their aerobic capacity to the level required by the aerobic standard adopted by the government in this case, although training can enable most men to meet it. Evidence was also heard that 65% to 70% of male applicants pass the tests on their initial attempt, while only 35% of female applicants are successful. This was accepted as evidence of discrimination based strictly on gender, as these conditions resulted in significantly fewer women than men being employed in the particular Attack Crew that Tawney worked on.

The government argued that it had done extensive research in determining the threshold levels for passing the tests. However, it was unable to convince the Court that the required aerobic capacity was really necessary for either men or women to effectively perform the work of a forest firefighter. On the contrary, because Tawney had in the past performed her work well, without apparent risk to herself, her colleagues or the public, it appeared that the test was invalid. This shows that, while physical fitness may still be a job requirement, that particular test could not adequately measure a person's ability to perform the duties of a forest firefighter.

It was suggested that if Tawney was allowed to stay in her position this might result in "reverse discrimination," i.e., setting a lower standard for women than for men would discriminate against men who couldn't meet the men's standard but were nevertheless capable of meeting the women's standard. The Court disagreed with this logic. It held that equality means to be treated according to one's own merits, capabilities and circumstances. True equality requires that differences be accommodated; that equal treatment may require that people sometimes be treated differently. A lower aerobic standard capable of identifying women able to perform the job safely and efficiently does not necessarily imply discrimination against men.

The Court decided that the aerobic standard discriminated against women. In its defence, the government then had to show that the standard was necessary to safely and effectively perform the essential job duties of a forest firefighter. This it failed to do.

As a result, Tawney was given her job back and the government was given the task of finding some other non-discriminatory way of testing firefighters to assess their physical fitness as a condition of holding their job.

Case study 10: Réjeanne

Québec (*Commission des droits de la personne et des droits de la jeunesse*) et *Mercier v. Montréal (Ville)* (2000), 37 C.H.R.R. D/271 (Supreme Court of Canada)

This is a very significant human rights decision for Ontario, even though it took place in another province. Each province has its own human rights system responsible for promoting and enforcing human rights legislation within that province. Decisions handed down in one province can potentially give guidance to other provinces when considering similar cases. Decisions that are made at the level of the Supreme Court will normally be precedent-setting in all jurisdictions within Canada.

Réjeanne lived in Montreal. Her career goal was to become a horticulturalist. She had successfully passed a college course and completed an apprenticeship as a gardener with the city's Botanical Gardens. When a suitable opening came up to work as a horticulturalist with the city, she immediately sent in her application.

Réjeanne was fully qualified for the position and was invited for an interview. She successfully passed the interview. However, she also had to undergo a physical check-up to confirm her suitability for the job. This check-up indicated she had a slight curvature of the spine called *scoliosis*. Réjeanne was surprised to learn this, as she had never experienced any symptoms from this relatively common condition. In fact, she had never experienced any pain, nor had she suffered any limitations because of her condition. A later evaluation showed that Réjeanne was able to perform all the duties of a gardener-horticulturalist in complete safety to herself and others, and that there was no need to limit her duties.

When it became aware of Réjeanne's condition, the city decided to hire another candidate who it thought would be less of a risk for back problems and therefore unlikely to incur increased health care costs later on. The city rationalized its decision saying that it had the right and even the responsibility to employ individuals who would pose the least potential cost to taxpayers.

Believing the city had rejected her application because of a handicap, Réjeanne made a complaint to the Human Rights Tribunal. Réjeanne alleged that the city acted in a discriminatory way that deprived her of unemployment insurance benefits, caused her a high level of stress and deeply humiliated her. The city responded that because Réjeanne had no functional limitations, it could not be said that she had a disability under Quebec's *Charter of Human Rights and Freedoms*.

Group discussion questions:

1. Why do you think that the city should or should not have hired Réjeanne?
2. If it is possible that Réjeanne will develop back problems, do you think that the city did the right thing by not hiring her?
3. Do you think society's view towards persons with disabilities has a positive or negative impact on the barriers they face?

Discussion points:

In the case of Réjeanne, the provincial Human Rights Tribunal dismissed the claim based on the city's argument that they were entitled to choose candidates who were in better health. The Tribunal further stated that, since Réjeanne did not appear to have any limitations as a result of her condition, she could not make a claim based on "handicap" or disability under the *Charter of Human Rights and Freedoms* (Quebec's human rights legislation).

Réjeanne's lawyers appealed the Tribunal's dismissal to the Quebec Court of Appeal. Both the Court of Appeal and, later, the Supreme Court of Canada, overturned the Tribunal decision and ruled in Réjeanne's favour. The reasoning behind the Court's decision reflects an emerging view of discrimination at that time. Discrimination because of disability and other grounds as well may be based as much on *perceptions, myths and stereotypes*, as on the existence of any real limitations on a person's abilities.

Today, this is referred to as "perceived disability" (see *Understanding discrimination in a social context – "social construction of disadvantage"*).

Disability, the Court said, is not defined by the *Charter*. However, the Court also noted that, consistent with the intent of human rights legislation, the concept of disability should be interpreted broadly when considering what will be accepted as an application or complaint.

It also said that Canadian courts have begun to consider the objective basis for certain exclusionary practices (for example, whether the person actually has a disability), as well as the subjective and erroneous perceptions held by employers, landlords, etc., that a person has limitations. Therefore, the term "disability" may include either a real disability or one that is only perceived to exist. What really matters is how the person experiences and is affected by the distinction, preference or exclusion, not the precise nature of the handicap, or its cause or origin. These are seen as being immaterial.

The Court also pointed out that the *Canadian Charter of Rights and Freedoms* prohibits discrimination based on the possibility that a person may develop a handicap in the future.

Having found that the city had discriminated against Réjeanne on the basis of handicap, the Court referred the case back to the Tribunal to set a remedy. Réjeanne was awarded \$102,075.67, an amount that included lost salary and interest as well as \$5,000 damages for injury to her self-esteem. The City of Montreal was also ordered to offer her sufficient hours of work so she could complete her probation period within 12 months. This would allow her to seek full-time employment.

Case study 11: Alia and Ahmed

This situation is based on the *Eldridge v. British Columbia (Attorney General)* decision.

There are many people in Ontario who are deaf, deafened or hard of hearing. Some people may use sign language as their first language or preferred means of communication, and their lack of fluency in English can seriously impede their ability to communicate unless aided by interpretation. For these Ontarians, effective communication and getting fair access to services and employment is very hard.

Alia and Ahmed are parents who were both born deaf. They were expecting twins and would usually provide their own sign language interpreters for their medical visits. Unless an interpreter was present, communicating information was often frustrating for them. At the same time, any miscommunication about medical information could be dangerous.

Alia went into labour eight months into her pregnancy. She and her husband found themselves at the hospital without the aid of an interpreter. Neither the attending doctor nor the nurses could effectively communicate with the parents, who found this isolation difficult and frightening. After the babies were born, they were immediately taken away from the delivery room and put under observation in another area of the hospital. One nurse wrote on a piece of paper that the children were “fine.” Otherwise, no one gave any details about the twins’ condition to either Alia or Ahmed.

In their human rights complaint, Alia and Ahmed alleged that the hospital was providing unequal services because it did not accommodate their needs as deaf persons. The hospital replied that it was too hard to bring in interpreters on such short notice, and that it was too expensive to keep interpreters on call 24 hours a day.

Group discussion questions:

1. How would you feel if you were in the same situation as Alia or Ahmed?
2. Whose responsibility is it to provide sign language interpreters in public service sectors?
3. How would this claim be covered under the *Code*?
4. Do you think it's unreasonable for deaf people to expect interpreters to be available in emergency situations? What about in other non-emergency situations?

Discussion points:

The Supreme Court of Canada issued a unanimous decision on this case. The Court required the Government of British Columbia to make sure that sign language interpreters are provided where necessary for effective communication when delivering medical services. Not providing such interpretation violates the rights of people who are deaf and who cannot adequately access health care services without an interpreter. The Court said that the health care system must accommodate the needs of people who are deaf under the equality provisions in the *Charter of Rights and Freedoms*.

The *Eldridge* ruling has wide-ranging consequences. The decision went beyond guaranteeing interpreters for persons who are deaf in medical situations when necessary. It stated that governments have a legal obligation to provide equal access to public services for all people, including people with disabilities. Within reasonable limits, persons with disabilities should not be prevented from using government services like health care, education and training, or social services that are available to everyone else. Services should be designed to be fully accessible, and barriers that prevent every member of the community from fully taking part must be removed.

The government argued that providing sign language interpreters on a continuous basis was too expensive and caused it “undue hardship.” The burden of proving undue hardship lies with the person or body responsible for providing the accommodation. In determining if an accommodation measure creates undue hardship, the following factors should be considered: cost and health and safety risk. In this case, the Ministry of Health could give no evidence that providing sign language interpretation would result in a serious threat to government resources. In fact, the total budget of the Ministry would hardly be affected by the cost of the small number of interpreters needed to maintain the service. In the case of a smaller business, however, the defence of “undue hardship” might still be used.

In assessing undue hardship, the size of the organization and its operations, the nature of its business and its financial capabilities are considered.

Case study 12: Marc

Hall (Litigation guardian of) v. Powers, 2002 CanLII 49475 (ON SC),
<http://canlii.ca/t/1w3mh>

Marc is a gay 17-year-old student attending a publicly-funded Catholic high school. He wishes to go to the prom with a same-sex date. The prom is being held at a rental hall off school property.

The school principal and the Catholic School Board have said “no” on the grounds that this would be endorsing conduct contrary to the church’s teachings. Marc believes that this is a violation of his human rights. He is considering seeking a court injunction because the prom is only weeks away.

Group discussion questions:

- What ground and social area does Marc’s application fall under?
- What competing rights are involved here?

The questions below take you through each step of the OHRC’s *Framework for balancing competing rights*. First, review each question with the facts that are set out below; then discuss whether the facts can help you come up with an answer to each question.

- a. **What rights and/or interests, if any, are the claims linked to? Does the situation involve individuals or groups? Or is it about how the school operates?**
- Marc and his boyfriend who attends another school
 - Marc's school friends and peers who can bring their opposite-sex dates
 - Other LGBTQ students who might have liked to bring dates
 - Marc's parents and parents of other LGBTQ students who are involved in school life and look forward to this "rite of passage" for their children
 - School staff who have worked hard with students and want to support their celebration
 - LGBTQ community members and advocates who could not bring same sex dates to their proms and continue to experience stigma and discrimination
 - The school principal who understands his job responsibilities include instilling a religious environment across extra curricular and social activities
 - Catholic school board members who understand their responsibilities to include upholding religious teachings through board policy and practice
 - The Catholic Church, which sees its role as the spiritual guide to school board policy and practice over religious matters
 - Other students, staff and parents who are concerned about maintaining a Catholic environment and not promoting the "gay lifestyle"
 - Other schools in the board that may have to address similar requests and are watching the outcome of this case.
- b. **What human rights, other legal entitlements or *bona fide* and reasonable interests might be invoked?**
- Freedom from discrimination based on sexual orientation including a poison-free environment under Ontario *Human Rights Code* s.1 and *Charter* equality rights s.15(1)
 - Freedom of expression, *Charter* s. 2(b)
 - Freedom of association, *Charter* s. 2(d)
 - Reasonable limits on rights *Charter* s.1
 - Right to and requirement for elementary and secondary school education from age 6 to 18 under Ontario's *Education Act*
 - Right to education without discrimination under the UN *Convention on Economic, Social and Cultural Rights* articles 2 and 13.1 & 2
 - Freedom of religion only limited by need to protect rights of others, UN *Convention on Civil and Political Rights* article 18.3
 - School-sanctioned extracurricular and social activities may be a *bona fide* reasonable benefit of school life
 - Separate (Catholic) school rights preserved under Ontario's *Human Rights Code* s.19, *Charter* s.29, 1867 *Constitution Act* s. 93
 - *Education Act* provisions and regulations relating to Roman Catholic Boards
 - Freedom of conscience and religion under *Charter* s. 2(a), and under the UN *Convention on Civil and Political Rights* article 18.1

c. Does the claim fall within the scope of the right or other entitlement in this context?

Marc's claim:

- Extracurricular/social activities held off school premises not at the core of teaching
- Prom is not a religious event, is not educational in nature, and is held off school property
- Diversity and inconsistency of Catholic opinion and practice: school accepts gay students but wishes to suppress all activity connected with their sexuality.

Catholic School Board claim:

- Catholic school rights include full board discretion over religious matters
- All school sanctioned activities, on or off-site, must promote and uphold religious teachings
- School board practice has been consistent with policy, even if diversity of Catholic opinion exists.

2. Amounts to more than minimal interference with a right?

Marc's claim:

- Unlike other students, he is not free to choose his date for school social functions, and would have to go without his boyfriend
- Prohibiting a same-sex date substantially interferes with the nature of a prom, which typically involves bringing a date and/or dancing with a partner of choice
- Would miss out on this end-of-school/graduation "rite of passage"
- Different treatment based on sexual orientation amounts to serious injury to dignity.

Catholic School Board claim:

- Allowing same-sex date at extracurricular/social activities would impede school's ability to promote religious school environment and teach religious curriculum consistent with tenets of the faith during core hours
- Would have broad impact on other Catholic schools and the Catholic Church.

Reconciling rights

3. Is there a solution that allows enjoyment of each right?

Option 1:

- Prohibit non-LGBTQ students from bringing formal "dates" to the prom as well
- Allow any student to bring a "guest" who is not a student of that school
- Require all students to refrain from intimate behaviour
- Using such neutral terminology and an inclusive policy approach could help avoid further stigmatizing people based on their sexual orientation
- School would otherwise limit upholding formal Catholic board policy and Church position on religious tenets to educational settings and core hours
- Board could maintain position that a "don't ask, don't tell" guest policy would not prejudice Catholic school rights.

Option 2:

- Change school/board policy to no longer sanction/organize/fund proms as official school events; these events would be a student-initiated responsibility held off-site without any formal connection to the Catholic school or board.

4. If not, is there a next best solution for one or both rights?

Marc's claim:

- Allow Marc to attend with a "guest" friend of his choice while allowing other students to attend with their formal opposite-sex "date"

Catholic School Board claim:

- Comply with any court injunction and allow Marc to attend the prom with his "boyfriend" in this case only
- Take the position that such an injunction does not prejudice Catholic school rights
- Examine Church doctrine more closely against school/board policy to deem whether proms are at the core or periphery of Catholic school rights.

Making decisions

Must be consistent with human rights and other law, court decisions, legal principles and have regard for OHRC policies.

Marc's claim:

- *Hall v. Powers*, Ont. Superior Court 2002 (injunction order allowing Hall to attend prom with same-sex date)
- *Smith v. Knights of Columbus*, BCHRT 2005 (re: scope of organizational obligations on versus off premises)

Catholic School Board claim:

- *Hall v. Powers*, Ont. Superior Court 2002 (did not rule on Catholic school rights)
- *Ross v. New Brunswick School District No. 15*, SCC 1996 (re: poisoned environment).

At least one claim must fall under the *Code* for it to be considered at the Human Rights Tribunal of Ontario.

Marc's claim:

- Schools fall under *Code* s.1 "service"
- Marc's claim involves *Code* ground of sexual orientation.

Catholic School Board claim:

- Catholic board claim falls under *Code* s.19 defence. Section 19 (1) says:
This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*.
R.S.O. 1990, c. H.19, s. 19 (1).

Court's decision: The court ordered the Board to not allow any staff who know about the case to prevent Marc from attending the prom with his boyfriend.

For more information on competing human rights, see the *OHRC's Policy on competing human rights*: www.ohrc.on.ca/en/policy-competing-human-rights; or the special issue of Canadian Diversity on Balancing Competing Human Rights: www.ohrc.on.ca/en/news_centre/special-issue-canadian-diversity-talks-about-competing-human-rights



Across the curriculum: ideas for other activities

This section includes ideas for other curriculum areas, like role-play techniques in drama classes. Where appropriate, additional references have been provided, but many of the resources are already in this package. For example, to do role-plays during dramatic arts activities, use the [case studies](#) in the Students' handouts.

Language arts

Have the class research language that has been used to define human rights since the mid 1950s. How has it changed? Have new words and expressions been created? Have the meanings of words altered over time?

Organize a debate on the merits of freedom of speech and belief versus the right to protection from discrimination. However, approach this activity with caution. It is important to give both sides of the discussion equal consideration, and to treat the feelings and rights of everyone with the utmost care and sensitivity.

Have the group discuss the question: Where do the rights of the individual end and those of the group begin? Should this boundary change in certain cases? Encourage students to read one or more books related to human rights, such as Joy Kogawa's *Obasan*, Timothy Findlay's *Not Wanted on the Voyage*, Lawrence Hill's *Book of Negroes*.

Have students keep a journal where they can reflect on the human rights issues covered in this package.

Encourage students to write poems, plays or short stories about incidents involving human rights issues that either they, their friends or their families have encountered. They may expand this activity by starting a class or school human rights newsletter.

Connect with the Living Rights Project: Have your students submit articles, essays, poems, creative writing songs, videos or any other creative endeavour, on human rights in Ontario, or on their personal experience related to one of the Code grounds. This project is an online “living library” that is designed to be a helpful classroom tool that adds a human face to human rights issues. For more details, go to the OHRC website at www.ohrc.on.ca/livingrights.

Drama

Students can research and develop an improvisation based on an actual human rights case. Case summaries in this package include:

- *BC (Public Service Employee Relations Commission) v. BC Government and Service Employees Union* (Meiorin)
- *Kyle Maclean v. The Barking Frog*
- *Maria Vanderputen v. Seydaco Packaging Corp. and Gerry Sanvido* (No. 2, 3 and 4)
- *Cameron v. Nel-Gor Castle Nursing Home*
- *Marc Hall v. Powers*
- *Eldridge v. British Columbia (Attorney General)*
- *Huck v. Canadian Odeon Theatres*
- *Noffke v. McClaskin Hot House*
- *Pandori v. Peel Board of Education*
- *Québec and Mercier v. City of Montréal*
- *Youth Bowling Council of Ontario v. McLeod*.

Have senior-level students create a contemporary, interactive dramatic presentation to help their peers and younger students learn about the different types of discrimination and why the Ontario *Human Rights Code* exists.

Students might compare Canada's human rights legislation to similar legislation in other countries. This activity will probably require a good deal of research. They can create a title for the final piece and present it at a school or class drama festival. You might consider videotaping the production. If you make a video, again consider submitting it to the OHRC's Living Rights Project.

Family studies

Students could chart the demographic histories of various racial and ethnic groups in Ontario, such as Aboriginal Peoples, people of African or Chinese descent. They might also look at shifts in Ontario's multicultural population since 1945. Do our social institutions acknowledge and reflect our cultural diversity?

How has society's understanding of the concept of family changed, and what effect is this having on human rights?

What social changes have come about since more women have entered the workforce?

Why do we need special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve equal opportunity? The class may present debates, simulated interviews and videos advertising the benefits of such programs. Consider submitting your students' work to the Living Rights Project.

History

Have students review the *Canadian Charter of Rights and Freedoms* and the Constitution of the United States and look at the rights guaranteed to people living in each country. They could then develop a list of rights and protections outlined in each country and discuss the advantages and disadvantages of each system.

Students could research the reasons for the development of the United Nations' *Universal Declaration of Human Rights*, and explore its value to Canadian society since its introduction. For more information, see the Franklin and Eleanor Roosevelt Institute's website at <http://rooseveltinstitute.org>.

Ask the following questions:

- Why has the human rights movement developed since the 1940s?
- What happened in society during that time?
- What do you think is different when you compare society today and society in the 1950s?

The Living Rights Project includes a history section, where students can see people talking from personal experience about the changes in our society. For example, see the video "Jean Augustine – A job, a home, but not to you."

Media literacy

Have students monitor the media for its coverage of human rights issues. Keep a journal for a one-week period noting what gets coverage on radio or television. Save clippings from the local newspapers. What is the "spin" that the reporter takes? Does it take a pro human rights position?

Have students review some local newspaper classified ads. Do broadcast and print ads reflect the principles of human rights as they understand them? They could create a survey with appropriate questions and find out what others think.

What is the relationship between propaganda and the rights and freedoms of individuals and groups? How is this debate expressed in the news media? For more information on this topic, see the web site: www.mediasmarts.ca.

The Living Rights Project also includes some interesting stories about how human rights pioneers used the media to make change happen. For example, see the video clip featuring Alan Borovoy: “No room for your coloured maid.”

Music

Encourage your students to collect songs and music inspired by the human rights movement. Bring in your own collection and listen to the music selections with the class. How many Canadian compositions relate to this topic?

Have students write lyrics and compose music for an original song that expresses their beliefs about human rights. If you videotape these, consider submitting the videos to the Living Rights Project.

Visual arts and multi-media

Symbols are powerful tools. Can students identify local, national and international symbols connected with human rights? As a class, group or individual project, ask them to create a visual interpretation of the meaning of human rights. Ask them to share their talent by submitting their work to the Living Rights Project – and while they are there, check out the oil painting of the service dog!



Human rights activities in your school

Encourage students to start a club or association in your school to deal with social issues. The following objectives could be incorporated into the club's mission statement:

- To raise awareness of local, national and international issues concerning human rights
- To take a proactive role in stopping and preventing harassment and discrimination within the school and community environment.

All school boards in Ontario are now required to develop and implement policies on equity and inclusive education. Find out what your school is doing and how you can become involved.

Consider researching issues of gender, disability, sexual orientation, racial, ethnic and cultural equality in the school and community. If your school board has consultants who work in the areas of anti-discrimination and equal opportunity, they can provide support for such initiatives.

To explore international human rights issues, consider setting up an Amnesty International chapter in the school. Contact a local chapter of the Association for more information, or visit their website at www.amnesty.ca.

Raising awareness

Many activities can help build awareness of human rights issues. Students might organize:

- Assemblies that feature short theatrical productions, debates or readings on human rights issues
- Poster or essay contests
- Visits from community associations that represent groups protected by the *Code*
- Conferences on human rights issues for peers and/or students in younger grades.

Have a “Human Rights Award” in your school. The award will recognize the individual or group from the school who makes a significant contribution to educating others about human rights and the effects of discrimination.

Coordinate these and similar activities with special human rights events that happen in Canada each year. They include:

- International Human Rights Day (December 10)
- International Women's Day (March 8)
- International Day for the Elimination of Racial Discrimination (March 21).

International Human Rights Day commemorates the anniversary of the signing of the United Nations' *Universal Declaration of Human Rights* on December 10, 1948.

Other annual events include Black History Month (February), Heritage Day (usually the third week in February), Asian Heritage Month (May), National Aboriginal day (June 21) the anniversary of Ontario *Human Rights Code* (June 15), Pride Week (June), and National Access Awareness Week for persons with disabilities (May/June).

Dealing with discrimination

All school boards are required to develop and implement equity and inclusive education policies. In addition to drafting these policies, many Ontario school boards have set up an internal complaints process. This ensures that schools deal with complaints promptly and in a way that respects the rights of both the people who complain and the people who are subjects of the complaint. For more information, visit the OHRC's website (www.ohrc.on.ca) and view the publication *Guidelines on developing human rights policies and procedures*.



Case study references

Most decisions on the human rights cases cited in this resource can be found in the *Canadian Human Rights Reporter*, which is available in several reference and law libraries. Visit their website at www.cdn-hr-reporter.ca. As well, many newer cases are available online at www.canlii.org. Specific references are given below:

- *Kyle McLean v. Barking Frog*
- *Maria Vanderputen v. Seydaco Packaging Corp. and Gerry Sanvido* (No. 2, 3 and 4).
- *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union* (1999), 35 C.H.R.R. D/257 (Supreme Court of Canada).
- *Cameron v. Nel-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170 (Ontario Board of Inquiry).
- *Eldridge v. British Columbia (Attorney General)* (1997) 3 S.C.R. 624. (see <http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/1552/index.do>)
- *Hall v. Powers*, Ont. Superior Court 2002
- *Huck v. Canadian Odeon Theatres Ltd.* (1985), 6 C.H.R.R. D/2682 (Saskatchewan Court of Appeal).
- *Huck v. Canadian Odeon Theatres Ltd.* (1981), 2 C.H.R.R. D/521 (Saskatchewan Board of Inquiry).
- *Maclean v. The Barking Frog*, 2013 HRTO 630 (CanLII)
- *McLeod v. Youth Bowling Council of Ontario* (1988), 9 C.H.R.R. D/5371 (Ontario Board of Inquiry).
- *Noffke v. McClaskin Hot House* (1989), 11 C.H.R.R. D/407 (Ontario Board of Inquiry).
- *Pandori v. Peel Board of Education* (1990), 12 C.H.R.R. D/364 (Ontario Board of Inquiry).
- *Peel Board of Education v. Ontario (Human Rights Commission)* (1990), 12 C.H.R.R. D/91 (Ontario Supreme Court).
- *Peel Board of Education v. Ontario (Human Rights Commission) and Pandori* (1991), 14 C.H.R.R. D/403 (Ontario Divisional Court).
- *Québec (Commission des droits de la personne et des droits de la jeunesse) et Mercier v. Montréal (Ville)* (2000), 37 C.H.R.R. D/271 (Supreme Court of Canada)
- *Ross v. New Brunswick School District No. 15*, SCC 1996
- *Smith v. Knights of Columbus*, BCHRT 2005
- *Vanderputten v. Seydaco Packaging Corp* 2012 HRTO 1977
- *Youth Bowling Council of Ontario v. McLeod* (1990), 14 C.H.R.R. D/120 (Ontario Divisional Court).



Human rights resources

The following resources focus on human rights. For information on specific types of discrimination related to groups protected by the Ontario *Human Rights Code*, see [“Other information sources.”](#)

Reference books

- Abella, Judge R., *Report of the Commission on Equality in Employment*, Ottawa, 1985.
- Aggarwal, A.P., *Sexual Harassment in the Workplace*, 2nd ed., Butterworths, Toronto, 1992.
- Aggarwal, A.P., *Sexual Harassment: A Guide for Understanding and Prevention*, Butterworths, Toronto, 1992.
- Backhouse, Constance, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950*, University of Toronto Press, Toronto, 1999.
- Foster, Lorne et al.(eds), *Balancing Competing Human Rights Claims in a Diverse Society: Institutions, Policy, Principles*, Irwin Law Press, Toronto, 2012.
- Bayefsky, A., & Eberts, M. (eds.), *Equality Rights and the Canadian Charter of Rights and Freedoms*, Carswell, Toronto, 1985.
- Brodsky, G., and Day, S., *Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?*, Canadian Advisory Council on the Status of Women, Ottawa, 1989.
- Cholewinski, R.I. (ed.), *Human Rights in Canada: Into the 1990s and Beyond*, University of Ottawa, Ottawa, 1990.
- Gall, G. (ed.), *Civil Liberties in Canada: Entering the 1980s*, Butterworths, Toronto, 1982.
- Grosman, B.A., and Martin, J.R., *Discrimination in Employment in Ontario*, Canada Law Book Inc., Aurora, 1994.
- Kallen, Evelyn, *Ethnic and Human Rights in Canada*, Oxford University Press, 2010
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- Kallen, Evelyn, *Ethnicity and Human Rights in Canada: A Human Rights Perspective on Race, Ethnicity, Racism and Systemic Inequality*, 2003.
- Keene, J., *Human Rights in Ontario*, 2nd ed., Carswell, Toronto, 1992.
- Sheppard, C., *Study Paper on Litigating the Relationship Between Equity and Equality*, Ontario Law Reform Commission, Toronto, 1993.
- Tarnopolsky, W.S., and Pentney, W.F., *Discrimination and the Law*, 2nd ed., Carswell, Toronto, 1993.
- *A Guide to the Charter for Equality-Seeking Groups*, Canadian Council on Social Development, Court Challenges Program, Ottawa, 1987.

eLearning materials

The Ontario Human Rights Commission has developed several electronic learning modules to help members of the public understand their rights and responsibilities under the *Code*. These may be particularly informative for students. See the OHRC website at: www.ohrc.on.ca/en/learning/ohrc-elearning-your-elearning-source-human-rights.



Other information sources

Canadian Human Rights Commission

The Canadian Human Rights Commission (CHRC) enforces the *Canadian Human Rights Act*, which governs the federal government and federally-regulated companies like banks, railways and airlines. Included in its mandate are the federal Employment Equity and Pay Equity programs.

The following CHRC materials may be requested by phone, mail or on the Internet (www.chrc-ccdp.ca):

Policies

- Policy on Alcohol and Drug Testing (2009)
- Aboriginal Employment Preferences Policy (2003)
- Policy and Procedures on the Accommodation of Mental Illness (2008)
- Policy on Special Programs
- Pregnancy & Human Rights in the Workplace - Policy and Best Practices

Guides

- The Human Rights Impact Assessment for Security Measures
- A Template for Developing a Workplace Accommodation Policy
- A Template for Developing an Anti-Harassment Policy
- Pregnancy and Human Rights in the Workplace – A Guide for Employers
- The Medical Perspective on Environmental Sensitivities
- Accommodation for Environmental Sensitivities: Legal Perspective

Other

- Annual Reports (1996 – 2011)
- "*Accommodation in the 21st Century*," Gwen Brodsky, Shelagh Day and Yvonne Peters
- Anti-Discrimination Casebook: Race, Colour, National or Ethnic Origin
- Anti-Harassment Policies for the Workplace: An Employer's Guide
- Bona Fide* Occupational Requirements and *Bona Fide* Justifications under the *Canadian Human Rights Act* – The Implications of *Meiorin* and *Grismer*
- Brochure on "Conciliation"
- Discrimination Prevention Program Fact Sheet
- Duty to Accommodate Fact Sheet

Duty to Accommodate – Frequently Asked Questions
Brochure on “Early Resolution”
Employment Equity Compliance Program Fact Sheet
Employment Systems Review: Guide to the Audit Process
Report on Equality Rights of People with Disabilities
Fair Play at Work
Framework Document for Compliance Audits under the *Employment Equity Act* –
Audit Process and Statutory Requirements
Frequently Asked Questions on Employment Equity
Guide for Managing the Return to Work
Guide to Screening and Selection in Employment
Guide to the *Canadian Human Rights Act*
Harassment and the *Canadian Human Rights Act*
Harassment: What is it and what to do about it
Human Rights Handbook for First Nations
Human Rights Maturity Model – Continuum
Human Rights Maturity Model – Information Pamphlet
Human Rights Maturity Model – Implementation Guide
Brochure on “Investigation”
Brochure on “Mediation”
Brochure on “Other Redress Procedures”
Place for All: A Guide to Creating an Inclusive Workplace
Brochure on “Settlement Monitoring”
Brochure on “Tribunal Hearings”
Your Guide to Understanding the *Canadian Human Rights Act* (2010)

For more information contact:

The Canadian Human Rights Commission
344 Slater Street, 8th floor
Ottawa, ON K1A 1E1
Tel.: 613-995-1151
TTY: 1-888-643-3304
Fax: 613-996-9661
Website: www.chrc-ccdp.ca

Canadian Human Rights Reporter (C.H.R.R.)

This publication prints the full text of most human rights decisions from all jurisdictions in Canada, in two or three volumes per year. Decisions handed down by tribunals and courts often break new ground in interpreting anti-discrimination law and equality rights in cases involving issues such as harassment, race discrimination, affirmative action, disability, maternity and pension benefits, sexual orientation and mandatory retirement. C.H.R.R. is available in most public reference libraries and law libraries.

For more information go to: www.cdn-hr-reporter.ca
To search decisions, go to www.canlii.ca

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor
Toronto, Ontario M7A 2A3
Tel.: 416-326-1312
Toll free: 1-866-598-0322
TTY: 416-326-2027
TTY (toll free): 1-866-607-1240
Website: www.hrto.ca
Email: hrto.tdpo@ontario.ca

Human Rights Legal Support Centre

180 Dundas Street West, 8th floor
Toronto, Ontario M7A 0A1
Tel.: 416-597-4900
Toll free: 1-866-625-5179
TTY: 416-597-4903
TTY (toll free): 1-866 612-8627
Website: www.hrlsc.on.ca

Ontario Human Rights Commission

180 Dundas Street West, 9th floor
Toronto, Ontario M7A 2R9
Tel.: 416-326-9511 or
Toll free: 1-800-387-9080
TTY: 416-314-6526
TTY (toll free): 1-800-308-5561
Website: www.ohrc.on.ca/
Email: info@ohrc.on.ca



OHRC publications available online – www.ohrc.on.ca

Plain language guides

- Room for everyone: Human rights and rental housing licensing (2013)
- In the zone: Housing, human rights and municipal planning (2012)
- Human rights and policing: Creating and sustaining organizational change (2011)
- Special programs and the Ontario *Human Rights Code* – A self-help guide (2013)
- Anti-racism and anti-discrimination for municipalities: Introductory manual (2010)
- Count me in! Collecting human rights-based data (2010)
- Guide to your rights and responsibilities under the Human Rights Code (2013)
- Human Rights at Work, third edition (2008)
- Policy primer: Guidelines on developing human rights policies and procedures (2013)
- Guidelines for collecting data on enumerated grounds under the Code (2010)

Policies and guidelines

- Policy on removing the “Canadian experience” barrier
- Policy on competing human rights (2012)
- Policy on preventing sexual and gender-based harassment (2011)
- Policy on human rights and rental housing (2009)
- Guidelines on accessible education (2004)
- Policy on discrimination because of pregnancy and breastfeeding (2008)
- Policy and guidelines on discrimination because of family status (2007)
- Policy on discrimination against older people because of age (2002)
- Policy on discrimination and harassment because of sexual orientation (2000)
- Policy and guidelines on racism and racial discrimination (2005)
- Policy and guidelines on disability and the duty to accommodate (2000)
- Policy on drug and alcohol testing (2000)
- Policy on discrimination and harassment because of gender identity (2000)
- Policy on female genital mutilation (FGM) (2000)
- Policy on scholarships and awards (1997)
- Policy on HIV/AIDS related discrimination (1996)
- Policy on creed and the accommodation of religious observances (1996)
- Policy on requiring a driver’s license as a condition of employment (1996)
- Policy on height and weight requirements (1996)
- Policy on employment-related medical information (1996)
- Policy on discrimination and language (1996)

Other publications

- Annual reports
- Minds That Matter: Report on the consultation on human rights, mental health and addictions (2012)
- Fishing without fear: Report on the inquiry into assaults on Asian Canadian anglers (2008)

Right at home: Report on the consultation on human rights and rental housing in Ontario (2008)

"Next stop, accessibility": Report on the inquiry into public transit stop announcements in Ontario (2008)

Moving towards barrier-free services: Final report on the restaurant accessibility initiative (2006)



Let us know how we're doing

This guide is a work in progress, and we need your help to continue to refine it. Please take a moment to complete the evaluation below. Your comments will help us design future education materials that will work in your classroom.

By email:

Please copy the questions on this form, paste it into the body of an email and send it to: info@ohrc.on.ca. Make the subject heading "Teaching human rights in Ontario."

By mail:

Please complete this form and mail it to:

Teaching human rights in Ontario
Policy, Education, Monitoring and Outreach Branch
Ontario Human Rights Commission
180 Dundas Street West, 9th floor
Toronto, Ontario M7A 2R9



Evaluation

Please give us information about the students with whom you used this package:

School and School Board: _____

Location: _____

Course Name: _____

Age and/or grade level: _____

How did you get this package? _____

1. Before using this package, how much did you know about the Ontario *Human Rights Code* and the Ontario human rights system?

nothing some a great deal

2. Considering the design of the package as well as the content, how easy was it to use with your students?

very easy easy somewhat hard very hard

3. How effective were the package/exercises/handouts in helping students to understand their rights and responsibilities under the *Code*, and the roles of the various human rights agencies in protecting and enforcing those rights?

quite effective somewhat effective not effective

4. What exercises or handouts did you find particularly helpful?

5. What exercises or handouts did you find least helpful?

6. What type of information or material would you find most useful in the future?

1

7. Any comments on the package as a whole?

1

If you have developed any materials on human rights (exercises, case studies, etc.) and would like to share them with your colleagues, we would like to know about it. Please send a copy along with relevant instructions for using them to the above address. The OHRC will be developing a bank of instructional material and will make them available to other interested teachers.

Name: _____

Mailing Address: _____

City: _____ Postal Code: _____

Telephone: _____ Fax: _____

Email: _____

Thank you for your assistance.



Keep in touch

Human rights legislation continues to evolve, and it is a challenge to keep track of the changes. We would like to let you know when there are changes or developments that would significantly affect the contents of this guide. To ensure that your name is on our mailing list, please send in a copy of the attached information form. To get on our school contact list, just send an email to info@ohrc.on.ca with the subject title "OHRC school mailing list" and include the following information:

Name: _____

Department: _____

School: _____

Address: _____

Town/city: _____

Province: _____ Postal code: _____

Telephone: _____ Fax: _____

Email: _____



Appendix 1: Glossary of human rights terms

Ableism: attitudes in society that devalue and limit the potential of persons with disabilities. People with disabilities are assumed to be less worthy of respect and consideration, less able to contribute and take part, and of less value than other people. Ableism can be conscious or unconscious and is embedded in institutions, systems or the broader culture of a society.

Aboriginal Peoples: a collective name for the original people of North America and their descendants. The Canadian Constitution (the *Constitution Act*, 1982) recognizes three groups of Aboriginal Peoples – First Nations, Métis and Inuit – as separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.

Accessibility for Ontarians with Disabilities Act (AODA), 2005: the purpose of the *AODA* is to develop, implement and enforce accessibility standards to remove barriers for Ontarians with disabilities on or before January 1, 2025 in relation to: goods, services, facilities, accommodations, employment and buildings, structures and premises. The *AODA* came into effect on June 4, 2005.

Accessibility: a general term for the degree of ease that something (e.g., device, service, physical environment and information) can be accessed, used and enjoyed by persons with disabilities. The term implies conscious planning, design and/or effort to make sure something is barrier-free to persons with disabilities. Accessibility also benefits the general population, by making things more usable and practical for everyone, including older people and families with small children.

Accessible: does not have obstacles for people with disabilities – something that can be easily reached or obtained; facility that can be easily entered; information that is easy to access.

Adaptive technologies: products that help people (primarily people with vision, hearing, mobility or other disabilities) who cannot use regular versions of products.

Adverse impact: having a harmful result. Sometimes treating everyone the same will have a negative effect on some people.

Affirmative action: action designed to address the historic disadvantage that identifiable groups (e.g., women, racialized persons) have experienced by increasing their representation in employment and/or higher education.

African Canadian: a Canadian of African origin or descent.

Ageism: discrimination based on age.

Ally: a member of the dominant group who acts against oppression.

Alternative (alternate) format: a method of communication that takes into account a person's disabilities. Examples include providing a text version of a website, or a large print version of a document for someone with a visual disability.

Anti-racism/Anti-oppression: an active and consistent process of change to eliminate individual, institutional and systemic racism as well as the oppression and injustice racism causes.

Assistive device: devices to help people – primarily people with disabilities – to perform a task. Examples are a wheelchair, personal oxygen tank, assistive listening device, electronic device with adaptive technology, or visible emergency alarm.

Audism: the notion that a person is superior based on their ability to hear or to act like a person who hears.

Band: the *Indian Act* defines band as a body of First Nations people for whose common use and benefit lands have been set aside or monies held by the Government of Canada or declared by the Governor in Council to be a band. Each band has its own governing band council, usually consisting of one Chief and several Councillors. Community members elect the Chief and Councillors, or sometimes choose them through traditional custom. Band members generally share common values, traditions and practices rooted in their ancestral heritage. Today, many bands prefer to be known as First Nations.

Band Council: the governing body of a band. It usually has a Chief and Councillors who are elected for two or three-year terms (under the *Indian Act* or band custom) to carry out band business. This may include education, water, sewer, fire services, bylaws, community buildings, schools, roads and other community businesses and services.

Barrier: anything that prevents a person from fully taking part in all aspects of society, including physical, architectural, information or communications, attitudinal, economic and technological barriers, as well as policies or practices.

Bias: a predisposition, prejudice or generalization about a group of persons based on personal characteristics or stereotypes.

Bigotry: intolerance, negative attitudes or stereotypes related to another person's creed, race, sexual orientation, etc.

Biological sex: the biological classification of people as male and/or female. A doctor usually assigns sex at birth, by visually assessing external anatomy. Sex terms are "male," "female" and "intersex."

Biracial: a person whose ancestry includes members of two racial groups.

Bisexual: a person who is emotionally, physically, spiritually and/or sexually attracted to members of more than one gender.

Black: a social construct referring to people who have dark skin colour and/or other related racialized characteristics. The term has become less of an indicator of skin colour and more of racialized characteristics. Diverse societies apply different criteria to determine who is Black.

Characteristics: a personal trait or attribute

Cognitive disability: see Disability.

Coming out: the often life-long process of discovering, defining and proclaiming (usually non-heterosexual) sexuality.

Competing rights: situations where parties to a dispute claim that the enjoyment of an individual or group's human rights and freedoms, as protected by law, would interfere with another's rights and freedoms.

Culture: the customs, beliefs, behaviours and/or achievements of a particular time and/or people; behaviour within a particular group.

Cultural competence: an ability to interact effectively with people of different cultures, particularly in human resources, non-profit organizations, and government agencies whose employees work with persons from different cultural/ethnic backgrounds. Cultural competence has four components:

1. Awareness of one's own cultural worldview
2. Attitude towards cultural differences
3. Knowledge of different cultural practices and worldviews
4. Cross-cultural skills (developing cultural competence results in an ability to understand, communicate with and effectively interact with people across cultures.

Culturally competent organization: an organization that displays cultural competence, in both its systems and individual behaviour.

Custom: a traditional practice. For example, band councils chosen "by custom" are elected or selected by traditional means, rather than by election rules contained in the *Indian Act*.

Dimensions of diversity: the unique personal characteristics that distinguish us as individuals and groups. These include but are not limited to: age, sex, gender, race, ethnicity, physical and intellectual ability, class, creed, religion, sexual orientation, educational background and expertise.

Disability: There are two common ways of looking at what disability is.

One way is to see a disability as a medical condition that a person has. From this perspective, disability covers a broad range and degree of conditions, some visible and some not visible. A disability may have been present from birth, caused by an accident,

or developed over time. There are physical, mental, cognitive and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities and other conditions.

A newer way of looking at disability is that it is not something a person has. A person with a medical condition is not necessarily prevented (or disabled) from fully taking part in society. If society is designed to be accessible and include everyone, then people with medical conditions often don't have a problem taking part. From this point of view, disability is a problem that occurs when a person's environment is not designed to suit their abilities.

Discrimination: treating someone unfairly by either imposing a burden on them, or denying them a privilege, benefit or opportunity enjoyed by others, because of their race, citizenship, family status, disability, sex or other personal characteristics (note: this is not a legal definition).

Diverse: of various kinds, forms, characters, etc.; varied.

Diversity: the presence of a wide range of human qualities and attributes within an individual, group or organization. Diversity includes such factors as age, sex, race, ethnicity, physical and intellectual ability, religion, sexual orientation, educational background and expertise.

Duty to accommodate: Under the Ontario *Human Rights Code*, people identified by *Code* grounds are entitled to the same opportunities and benefits as everybody else. In some cases, they may need special arrangements or "accommodations" to take part equally in the social areas the *Code* covers, such as employment, housing and education. Employers, housing providers, education providers and other parties responsible under the *Code* have a legal obligation to accommodate *Code*-identified needs, unless they can prove it would cause them undue hardship. Undue hardship is based on cost, outside sources of funding and health and safety factors.

East Asian people: people who share ancestry, heritage and culture from several countries and regions, such as: Cambodia, China, Hong Kong, Indonesia, Japan, Korea, Laos, Macau, Malaysia, Philippines, Singapore, Taiwan, Thailand and Vietnam.

Elder: a distinguished man or woman who is recognized in the Aboriginal community for the gift of wisdom, healing and/or spiritual leadership.

Equal opportunity: aims to ensure that all people have equal access, free of barriers, equal participation and equal benefit from whatever an organization has to offer. Note that equal opportunity extends beyond employment.

Equal treatment: treatment that brings about an equality of results and that may, in some instances, require different treatment. For example, to give all students equal treatment in entering a building, it may be necessary to provide a ramp for a student who uses a wheelchair.

Equitable: just or characterized by fairness or equity. Equitable treatment can at times differ from same treatment.

Equity: fairness, impartiality, even-handedness. A distinct process of recognizing differences within groups of individuals, and using this understanding to achieve substantive equality in all aspects of a person's life.

Ethnicity: sharing a distinctive cultural and historical tradition often associated with race, place of origin, ancestry or creed.

Exclusion: denying access to a place, group, privilege, etc.

First Nation(s)/First Nations People: this term became common use in the 1970s to replace the word "Indian." Although the term First Nation is widely used, no legal definition exists. The term has also been adopted to replace the word "Band" in the naming of communities. Many people today prefer to be called "First Nations" or "First Nations People" instead of "Indians." Generally, "First Nations People" is used to describe both Status and Non-Status Indians. The term is rarely used as a synonym for "Aboriginal Peoples" because it usually does not include Inuit or Métis people.

Francophone (inclusive definition): people who have a particular knowledge of French as an Official Language and use French at home, including people whose mother tongue may not be French or English.

Gay: people whose enduring physical, romantic and/or emotional attractions are to people of the same sex. Also used as an umbrella term for the LGBT (lesbian, gay, bisexual and transgender) community.

Gender: the social classification of people as masculine and/or feminine.

Gender identity: a person's conscious sense of maleness and/or femaleness. This sense of self is separate and distinct from one's biological sex.

Harassment: engaging in a course of comments or actions that are known, or ought reasonably to be known, to be unwelcome. It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning or unwelcome. Harassment under the Ontario *Human Rights Code* is based on the prohibited/protected grounds (see definition).

Historical disadvantage: disadvantage resulting from historic patterns of institutionalized and other forms of systemic discrimination, sometimes legalized social, political, cultural, ethnic, religious and economic discrimination, as well as discrimination in employment. This also includes under-representation experienced by disadvantaged groups such as women, Aboriginal peoples, persons with disabilities, LGBT persons and racialized people.

Hate activity: comments or actions against a person or group motivated by bias, prejudice or hate based on race, ancestry, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, marital status, family status, sexual orientation or any other similar factor. Examples are: hate crime, hate propaganda, advocating genocide, telephone/electronic communication promoting hate, and publicly displaying hate in notices, signs, symbols and emblems.

Heterosexual: a person who has emotional, physical, spiritual and sexual attraction to persons of the opposite sex.

Heterosexism: the assumption that heterosexuality is superior and preferable, and is the only right, normal or moral expression of sexuality. This definition is often used when looking at discrimination against gay, lesbian or bisexual people that is less overt, and which may be unintentional and unrecognized by the person or organization responsible.

Homosexual: a person who has emotional, physical, spiritual and sexual attraction to persons of the “same sex.” More of a medical term, it is considered outdated and often insulting to many gay people or communities.

Homophobia: the irrational aversion to, fear or hatred of gay, lesbian or bisexual people and communities, or of behaviours stereotyped as “homosexual.”

Impairment: a physical, sensory, intellectual, learning or medical condition, including mental illness, that limits functioning and/or requires accommodation. Impairment may be apparent to others or hidden, inherited, self-inflicted or acquired, and may exist alone or in combination with other impairments. Impairment can affect anyone (whatever their gender, sex, race, culture, age, religion, creed, etc.).

Inclusion: appreciating and using our unique differences – strengths, talents, weaknesses and frailties – in a way that shows respect for the individual and ultimately creates a dynamic multi-dimensional organization.

Inclusive design: Taking into account differences among individuals and groups when designing something, to avoid creating barriers. Inclusive design can apply to systems, facilities, programs, policies, services, education, etc.

Indian: this term is used to identify people the Government of Canada recognizes as having Indian status – people who have an identifiable band, who live or were born on a reserve, and/or who are recognized under a complex set of rules under the *Indian Act (1985)*. The term does not include Inuit or Métis peoples. There are three categories of Indians in Canada: Status Indians; Non-Status Indians; and Treaty Indians. Note: The term “Indian” is considered outdated by many people, and “First Nation(s)” is typically used instead.

Indian Act: Canadian legislation first passed in 1876 and amended several times since, most recently in 1985. It sets out certain federal government obligations and regulates the management of reserve lands, Indian monies and other resources.

Indian status: a person's legal status as an "Indian," as defined by the *Indian Act* (see Status Indian).

Indigenous: generally used in the international context, refers to peoples who are original to a particular land or territory. This term is very similar to "Aboriginal" and has a positive connotation.

Intellectual disability: also called a developmental disability, involves significant limitations both in **intellectual functioning** (reasoning, learning, problem solving) and in **adaptive behavior**, which covers a range of everyday social and practical skills. Some people may be born without this disability, but develop it later in life due to an illness or accident.

Intergenerational: existing or occurring between different generations of people; involving more than one generation.

Intersex: People born with unidentified or misidentified genitals. Formerly inappropriately referred to as hermaphrodites, intersex people are not easily categorized as "male" or "female" because of ambiguous genitals. Most intersex people do not possess "both" sets of genitals, rather a blending, or a different appearance that is medically difficult to categorize for many doctors.

Inuit: the Aboriginal Peoples of Arctic Canada who live primarily in Nunavut, the Northwest Territories and northern parts of Labrador and Québec. The word Inuit means "people" in the Inuit language – Inuktitut. The singular of Inuit is Inuk. Their traditional languages, customs and cultures are distinctly different from those of the First Nations and Métis.

Lesbian: a woman who has emotional, physical, spiritual and/or sexual attraction to other women.

LGBT: short for Lesbian/Gay/Bisexual/Transgender. "GLBT" is also used. An acronym that also encompasses the diversity within the Trans and Queer community is LGBTQ2A – Lesbian, Gay, Bisexual, Transgender, Transsexual, Intersex, Queer, Questioning, 2-spirited and Allies.

Merit: picking a candidate for a position who meets job-related selection criteria, such as skills, knowledge, experience and ability, at the level required for a position or assignment. Merit-based criteria may also include unique diversity-related knowledge and experiences.

Métis: French term meaning "mixed blood." The Canadian Constitution recognizes Métis people as one of the three Aboriginal Peoples. The term is used broadly to describe people with mixed First Nations and European ancestry who identify themselves as Métis, distinct from First Nations people, Inuit or non-Aboriginal people.

Multiracial: a person whose heritage includes members of multiple racial groups.

Ontarians with Disabilities Act (ODA), 2001: requires government ministries, municipalities and public sector organizations such as transportation companies, hospitals and school boards to develop an annual accessibility plan to identify, remove and prevent barriers to accessibility in a number of areas.

Pay equity: the principle of equal pay for work of equal value. For example, the requirement to pay males and females within the same organization the same salary for work that is judged to be of equal value.

Person/people of colour: an inclusive term that encompasses a wide range of social identity groups, including Asians, Aboriginal Peoples, Latinas/Latinos and Blacks.

Persons with disabilities: persons with one or more long-term or recurring disability (see disability).

Poisoned work environment: a negative, hostile or unpleasant workplace due to comments or conduct that tend to demean a group identified by one or more prohibited grounds under the *Code*, even if not directed at a specific individual. A poisoned work environment may result from a serious single event, remark or action.

Power: access to privileges such as information/knowledge, connections, experience and expertise, resources and decision-making that enhance a person's chances of getting what they need to live a comfortable, safe, productive and profitable life.

Prejudice: negative prejudgment or preconceived feelings or notions about another person or group of persons based on perceived characteristics.

Pride (when used in reference to the LGBT community): not being ashamed of oneself and/or showing your pride to others by "coming out," marching in the Pride parade, etc., being honest and comfortable about who you are.

Privilege: unearned power, benefits, advantages, access and/or opportunities that exist for members of the dominant group(s) in society. Can also refer to the relative privilege of one group compared to another.

Prohibited/protected grounds: the Ontario *Human Rights Code* prohibits discrimination or harassment based on these personal characteristics. The specific protected grounds include: age, ancestry, citizenship, colour, creed, disability, ethnic origin, family status, gender identity and gender expression (recently added to the *Code*), marital status, place of origin, race, sex (including pregnancy), sexual orientation, receipt of public assistance (in housing) and record of offences (in employment).

Queer: formerly derogatory slang term used to identify LGBT people. Some members of the LGBT community have embraced and reinvented this term as a positive and proud political identifier when speaking among and about themselves.

Questioning: exploring one's own sexual and/or gender identity, looking at such things as upbringing, expectations from others (family, friends, church, employers, etc.) and inner motivation.

Race: There is no such thing as race – instead, it is a “social construct.” This means that society forms ideas of race based on geographic, historical, political, economic, social and cultural factors, as well as physical traits, even though none of these can legitimately be used to classify groups of people. See Racialization.

Racialization: the process by which societies construct races as real, different and unequal in ways that matter and affect economic, political and social life.

Racial profiling: any action that relies on stereotypes about race, colour, ethnicity, ancestry, religion or place of origin, or a combination of these, rather than on a reasonable suspicion to single out a person for greater scrutiny or different treatment.

Racism: a belief that one group is superior or inferior to others. Racism can be openly displayed in racial jokes, slurs or hate crimes. It can also be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases, people don't even realize they have these beliefs. Instead, they are assumptions that have evolved over time and have become part of systems and institutions.

Sexism: discrimination based on sex.

Sexual orientation: the direction of one's sexual interest or attraction. It is a personal characteristic that forms part of who you are. It covers the range of human sexuality from lesbian and gay, to bisexual and heterosexual.

South Asian: a native or inhabitant of the Indian subcontinent including countries such as India, Pakistan, Bangladesh, Sri Lanka and Nepal.

Status Indian: a person recognized by the federal government as being registered under the *Indian Act* is referred to as a Registered Indian (commonly referred to as a Status Indian).

Stereotype: incorrect assumption based on things like race, colour, ethnic origin, place of origin, religion, etc. Stereotyping typically involves attributing the same characteristics to all members of a group regardless of their individual differences. It is often based on misconceptions, incomplete information and/or false generalizations.

Straight: people whose enduring physical, romantic and/or emotional attraction is to people of the opposite sex. See Heterosexual.

Systemic barrier: a barrier embedded in the social or administrative structures of an organization, including the physical accessibility of an organization, organizational policies, practices and decision-making processes, or the culture of an organization. These may appear neutral on the surface but exclude members of groups protected by the *Human Rights Code*.

Systemic discrimination: patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for groups identified under the *Human Rights Code*.

Two-Spirit: according to ancient teachings, “two-spirited” people were considered gifted among all beings because they carried two spirits: that of male and female. It is told that women engaged in tribal warfare and married other women as there were men who married other men. These individuals were looked upon as a third gender in many cases and in almost all cultures they were honoured and revered. Today, the term refers to Aboriginal people who are gay, lesbian, bisexual, trans-gendered, other gendered, third/fourth gendered individuals that walk carefully between the worlds and between the genders.

Transgender or Trans: a person whose biological sex assigned at birth does not match their gender identity.

Transsexual: People who are identified at birth as one sex, but who identify themselves differently. They may seek or undergo one or more medical treatments to align their bodies with their internally felt identity, such as hormone therapy, sex-reassignment surgery or other procedures. While this term is embraced by some people as an identity, it is rejected by others and should be used with caution.

West Indian: a person from the West Indies or of West Indian descent from countries such as Barbados, Grenada, Guyana, Jamaica and Trinidad & Tobago.

White: people belonging to any of various peoples with light coloured skin, usually of European origin. The term has become an indicator less of skin colour and more of racialized characteristics.

Glossary sources

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- Public Service Alliance of Canada
- *The Inclusion Breakthrough: Unleashing the Real Power of Diversity*, by Frederick A. Miller and Judith H. Katz
- University of Rhode Island, Office of Affirmative Action, Equal Opportunity and Diversity
- Warry, W. (2008). *Ending Denial: Understanding Aboriginal Issues*. University of Toronto Press; p. 9.
- Wellington-Dufferin-Guelph Public Health
- World Health Organization (WHO)



Appendix 2 – Human rights: the historical context

Much of Canada's human rights legislation was developed in the 20th century. The *Constitution of the United States* deals in large part with human rights; however, the *British North America (BNA) Act* did not address the issue at all. It focused instead on the division of powers between the federal government and the provinces and territories.

In the early 1900s, Canadian women were not legally defined as “persons” under the *BNA Act* and therefore could not sit in government or in the Senate. In 1929, after years of court battles by Emily Murphy, Nellie McClung and others, the British Privy Council decided that women were in fact “persons” under the *Act*. In 1930, Cairine Wilson became Canada's first female senator.

One of Canada's most famous human rights cases, *Christie v. York* (1940), clearly emphasized the lack of human rights laws in this country. Mr. Christie and several friends went to the Montreal Forum to see a hockey game. In the bar at intermission, Mr. Christie was refused service because he was Black. He went to court over the issue and the judge awarded him \$200 for loss of dignity and worth. However, the business community appealed the ruling on the basis that under current legislation they were allowed the freedom to serve anyone they chose. The higher court agreed and overturned the original judgement, making it clear that there was no law to protect Mr. Christie's rights.

Universal Declaration of Human Rights

Following World War II, and as a direct result of the human rights atrocities that resulted, the United Nations was formed to protect human rights and stabilize international relations between countries. Its *Charter* made specific reference to protecting human rights. This was later expanded in the *Universal Declaration of Human Rights* signed by U.N. member states on December 10, 1948. Note that Professor John P. Humphrey, a Canadian, was a key player in drafting this historic document.

The Declaration is a common standard of conduct for all people and nations. It rises above differing ideologies and philosophies to ensure certain fundamental human rights. It recognizes that:

- “the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”
- “human rights should be protected by the rule of law”
- “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The Declaration has influenced the development of human rights in Canada. It is referred to in several of the provincial human rights acts (including Ontario's) that were passed within 30 years of the U.N. Declaration.

At the federal level, the government enshrined the principle of equality in the *Bill of Rights* in 1964. This was followed by the *Canadian Human Rights Act* in 1976, and the *Canadian Charter of Rights and Freedoms* in 1982.

Human rights In Ontario

It was not until near the end of the Second World War that modern human rights legislation developed. The Ontario *Racial Discrimination Act* was proclaimed in 1944.

It prohibited publishing or displaying symbols that expressed racial or religious discrimination.

Life in the 1940s/early 1950s

Restaurants, barbershops, hotels and stores in many Canadian towns continued to refuse service to Black people well into the 1950s.

Consider Viola Desmond, who was often called Canada's Rosa Parks. Desmond, who was Black, was visiting New Glasgow, Nova Scotia in November 1946 when her car broke down. While her car was being fixed, she decided to go the movies at Roseland Theatre.

The segregated theatre restricted seating for Black people to the balcony, so even though she asked for seating on the main floor, she was sold a balcony ticket. She took a seat downstairs and was told to go upstairs. After she refused, police were summoned and dragged her out of the theatre and drove her to the downtown lock-up.

She spent 12 hours in jail and at trial the next day paid a fine of \$26 including court costs for failing to pay the one cent difference in the provincial tax between an upstairs ticket and a downstairs ticket.

She was given a full pardon in 2010 – 45 years after she died.

“Real estate covenants” were another common form of discrimination. Until the Supreme Court abolished them in 1951, somebody wanting to buy a house often had to agree that their property “shall never be sold, assigned, transferred, leased to, and shall never be occupied by any person of the Jewish, Hebrew, Semitic, Negro or coloured race or blood.”

The Covenants didn't try to cover anything up. They made it clear their aim was to “restrict the ownership, use, occupation and enjoyment to persons of the White or Caucasian race not excluded by this clause.”

Challenging and changing the laws

A number of individual laws were passed in the 1950s as racial and ethnic groups began to challenge restrictive social practices. Developments included:

- (1951) – *Fair Employment Practices Act* which prohibited discrimination based on race and religion in employment
- (1954) – *Fair Accommodation Practices Act* which prohibited discrimination in public places on racial, religious or ethnic grounds
- (1958) – *Ontario Anti-Discrimination Commission Act* which created a commission to administer the above acts and develop educational programs
- (1961) – amendment to the *Fair Accommodation Practices Act* which prohibited discrimination in rental accommodation
- (1961) – amendment to the *Ontario Anti-Discrimination Commission Act*, to change the name of the province's human rights body to the Ontario Human Rights Commission.

Both the development of these laws and increasing social pressure led politicians to realize that comprehensive human rights legislation needed to be put into place to protect the rights of individuals.

The Ontario *Human Rights Code* is born

On June 15, 1962, Ontario became the first jurisdiction in Canada to formally recognize the moral, social and economic consequences of discrimination by enacting a *Human Rights Code* and establishing a human rights commission.

That first *Human Rights Code* reflected the thinking of the time. It prohibited discrimination in signs and notices, public accommodation, services and facilities, employment and trade union membership on the grounds of race, creed, colour, nationality, ancestry and place of origin.

In the years since then, our society has changed, and human rights grounds have changed as well. Disability, sex, sexual orientation and family status are just a few of the grounds that have been added to the *Code* over the years.

Another important advancement in human rights law was recognizing systemic discrimination. Systemic discrimination involves rules and practices that may seem fair, but actually have a negative impact on certain groups protected under the *Code*. In 1982, the *Code* was amended to tackle systemic discrimination and to try to deal with the impact of many years of disadvantage and inequality.

Bill 107 – the latest reform

On June 30, 2008, Bill 107 came into force. This major reform of Ontario's human rights system included:

- Changing the role of the Ontario Human Rights Commission to not have carriage of individual human rights complaints, focusing instead on working on systemic or root causes of discrimination
- Having people make complaints – called applications – directly to the Human Rights Tribunal of Ontario
- Creating a new organization – the Human Rights Legal Support Centre – to provide legal advice to people making complaints.



Appendix 3 – Human rights legislation in Canada

The federal government and all Canadian provinces and territories have human rights laws with agencies to enforce their legislation. However, not all offer the same human rights protections. For example, not all provinces protect people because of their political beliefs or social condition.

The *Canadian Charter of Rights and Freedoms*

All human rights legislation must follow the *Canadian Charter of Rights and Freedoms*, passed in 1982. Section 15(1) of the *Charter* states: “Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination...”

An individual can only use the *Charter* to challenge a governmental decision, action or law (such as the *Ontario Code*) on the grounds that it does not offer the protection to individuals provided by the *Charter*.

An example of a successful challenge of the *Ontario Code* occurred in 1992 in a case known as *Leshner v. Ontario*. The *Code* defined “marital status” as limited to persons “of the opposite sex.” This was found to violate Section 15(1) of the *Charter*. A tribunal ruling directed that, in future, the definition of “marital status” omit the words “of the opposite sex.”

Minority language educational rights

The *Charter* also provides that Canadian citizens whose first language of English or French is the minority language where they live, or who were educated in the primary grades in English or French in Canada and live in a province where that language is a minority, have the right (where numbers warrant) to have their children receive primary and secondary school instruction in their language and in minority language educational facilities. In Ontario, the *Education Act* further guarantees that minority language education will be provided regardless of whether numbers warrant or not.

In Canada, francophones have often experienced prejudice and discrimination in the workplace, in school and in their communities. Generally, human rights legislation has not offered protection explicitly based on language. Quebec and the Yukon Territory are the only Canadian jurisdictions that specifically identify language as a prohibited ground of discrimination in employment. The Human Rights Tribunal of Ontario has accepted language-based applications under the related grounds of “ancestry,” “ethnic origin” and “place of origin.”

The Canadian Human Rights Act

The *Canadian Human Rights Act* was passed in 1976. While its intent is similar to provincial legislation, its jurisdiction covers services, agencies and organizations regulated by the federal government, including those in the banking, communications and transportation sectors and crown corporations (such as the Canadian Broadcasting Corporation). It provides protection against discrimination on many of the same grounds as the *Ontario Code*.

The *Canadian Human Rights Act* is enforced by the Canadian Human Rights Commission, which has offices in all regions of the country.

The Ontario Human Rights Code

The Ontario *Human Rights Code* has primacy—or takes precedence—over all other legislation in Ontario unless that legislation specifically states that the *Code* does not apply. For example, if a requirement in the *Education Act* governing Ontario public schools is found to discriminate against individuals or groups protected under the *Code*, the *Code* would prevail if it could not objectively be proven that the requirement was necessary and would cause undue hardship if removed from the *Act*. The same would be true of conflicting requirements under the *Occupational Health and Safety Act*. An example of where the *Code* does not apply is when persons with certain disabilities (such as uncontrolled seizures) are prohibited from driving under the *Highway Traffic Act*.

What human rights legislation does

The main intent of human rights legislation is to remedy the situation for the person or group discriminated against and prevent further discrimination—the intent is not to punish the individual or company that has discriminated.

The Ontario *Human Rights Code* provides for civil remedies, not criminal penalties. Persons or companies found to have discriminated are not sent to jail but can be made to compensate an applicant or make changes in the way they operate.

One major difference between human rights legislation and criminal law lies in the different standards of proof applied to evidence at a tribunal hearing. In criminal law, allegations must be proven beyond a reasonable doubt. The standard of proof under the *Code*, as in civil law, is on the balance of probabilities. In other words, did the discrimination more likely occur than not? The applicant has the responsibility to prove the allegations. Once discrimination has been proven to have occurred, then the respondent must prove that there is a *bona fide* reason behind the actions and that to accommodate would result in undue hardship.



Appendix 4 – human rights in Ontario

Human rights are everybody's responsibility

In Ontario, we all have a responsibility to make sure that discrimination forbidden by the *Code* does not happen. Human rights legislation will only be effective when people take an active role in ensuring equality and preventing discrimination. All of us who live in Ontario must:

1. Not discriminate against or harass others
2. Address discrimination when we see it or experience it
3. Report incidents of discrimination, either to school authorities or to the Human Rights Tribunal of Ontario, and urge others who have been discriminated against to do so as well
4. Learn about human rights and teach them to others, to make sure that people know their rights and responsibilities under the *Code*.

The human rights system in Ontario has three independent agencies that work together:

1. The Ontario Human Rights Commission
2. The Human Rights Tribunal of Ontario
3. The Human Rights Legal Support Centre

The Ontario Human Rights Commission (OHRC)

The *Human Rights Code* recognizes that everyone should receive equal treatment and be free from discrimination. In recognition of this important “public interest,” the OHRC works to eliminate the root causes of discrimination in society.

The OHRC has does many different things to advance human rights in Ontario. Its work includes:

- Educating, empowering and mobilizing
- Developing and publicizing leading-edge human rights policy, to clarify law and promote effective public interest remedies
- Public interest inquiries to deal with emerging human rights issues and events
- Taking steps to reduce or resolve tension and conflict
- Outreach, publications and training
- Taking targeted legal action to clarify the law or enforce compliance with the *Code*
- Initiating applications at the Human Rights Tribunal of Ontario (the HRTTO) in the public interest, with a focus on mostly systemic issues
- Intervening in cases, when the OHRC thinks the outcome will affect a larger number of people
- Researching and monitoring what’s happening – reporting on the state of human rights in Ontario.

The OHRC is a statutory arms-length agency of the Government of Ontario and is headed by a Chief Commissioner. Several other commissioners (no fewer than seven), appointed by the Lieutenant Governor from the general public, meet regularly to direct human rights policy in Ontario.

The Human Rights Tribunal of Ontario

The Ontario *Human Rights Code* provides that individuals who believe that they have experienced discrimination under the *Human Rights Code* can file a complaint (called an application) with the Human Rights Tribunal of Ontario (HRTO) to have their case heard and judged by a qualified person called an “adjudicator.” The HRTO is independent from the Ontario Human Rights Commission and the Human Rights Legal Support Centre. It is similar in format to a trial in a court of law but the standard for the rules of evidence is on a “balance of probabilities,” where in court the standard is “beyond a reasonable doubt.”

Filing an application

To file an application, a person must cite a ground protected under the *Code* and a social area. For an explanation of the grounds and social areas protected by the *Code*, see [Fact sheet #1](#): The Ontario *Human Rights Code*.

Once an application is drafted, signed by the applicant and received by the HRTO, the application is filed. Once filed, it is served on the respondent(s) (the persons or organization alleged to have contravened the *Code*) who are asked to formally respond to the allegations. The applicant will have an opportunity to respond to any new issues raised by the respondent(s) by filing a “reply.”

Mediation

As part of the application process, parties to an application are asked whether they would consider taking part in mediation. Mediation provides an opportunity to discuss the issues and generate options to resolve the issues early in the process. It is intended to empower the parties to craft their own resolution and remedies, with the help of a mediator who facilitates the discussion.

Hearing

If the mediation does not result in a settlement, the case will go to a hearing. Once hearings start, the applicant has the opportunity to present evidence to support the application. The applicant may or may not be represented by a lawyer. All parties are given full opportunity to present their evidence and to make submissions at the hearing. Respondents are usually represented by a lawyer. Representatives of the applicant(s) and the respondent(s) examine and cross-examine witnesses.

The length of HRTO hearings varies greatly, but on average the length is four days. They are held across Ontario. A hearing room may be a regular court room or a meeting room

in a hotel. The proceedings are quasi-judicial in nature. People involved in the hearing are asked to swear or affirm their evidence. Hearings are open to the public and the media at the discretion of the adjudicator.

Decision

Once the hearings are finished, the adjudicator will issue a decision, and distribute it to all parties. Decisions are also sent to a number of reference, legal and public libraries throughout Ontario. Most decisions are also published online on Can-LII at www.canlii.org.

If the HRTO finds that discrimination has happened, it can order a number of possible solutions. The applicant's full rights to equality must be honoured. As well, respondents can be ordered to pay the applicant for any losses suffered in pay or benefits or for mental anguish.

An organization can be ordered to undertake special programs designed to relieve hardship or economic disadvantage experienced by an individual or a group, or to help disadvantaged groups to achieve or attempt to achieve equal opportunity in the organization. They can also be required to provide human rights and anti-discrimination training for employees, develop comprehensive anti-discrimination or anti-harassment policies or undertake other such remedies.

The Human Rights Legal Support Centre

The Human Rights Legal Support Centre helps people through the human rights process, such as completing an application or claim to the Tribunal.

The Human Rights Legal Support Centre offers human rights legal services to individuals throughout Ontario who have experienced discrimination contrary to the Ontario *Human Rights Code*. Services may include legal assistance in filing applications at the Human Rights Tribunal of Ontario, and legal representation at mediations and hearings.



Appendix 5 – Understanding discrimination in a social context – “social construction of disadvantage”

More often than not, disadvantage arises from the way in which society treats particular individuals, rather than from any characteristic inherent in those individuals.¹

This statement by Supreme Court of Canada Justice J. LaForest illustrates the key element of a new approach in human rights case law and policy to understand the dynamic of discrimination. A few years ago, human rights law began to change by recognizing that the effect or impact of discrimination on a person is of more importance to determining the presence of discrimination than whether there was any malice or intent to discriminate. Many courts then began to look at the myths, stereotypes and perceptions that exist in the minds and attitudes of people that cause them to exclude others based on certain characteristics such as race, disability, gender, age or religion.

For instance, the Supreme Court of Canada shed new light on the approach to be taken in understanding disability. In *Mercier*,² a case arising in Quebec (and featured as a case study in this package), the Supreme Court made it clear that disability must be interpreted to include its subjective component, since discrimination may be based as much on other people’s perceptions, myths and stereotypes, as on the existence of any actual functional limitations in the individual.

In the *Mercier* case, the applicant was denied employment or dismissed when the employer learned that she had certain medical conditions, even though the conditions might not posed any limitations. The employers argued that since the conditions did not have any impact on her ability to do the job, they could not be “disabilities” under Quebec’s human rights law. The Supreme Court of Canada disagreed.

The Supreme Court chose not to focus on whether the person actually had a disability or whether that disability actually impeded the person from doing their job. Instead, it looked at the situation from a socio-political dimension that emphasizes human dignity, respect and the right to equality. A disability may be the result of a physical limitation, an ailment, a perceived limitation or a combination of all these factors. But the focus is on the *effects* of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment.

¹ *Egan v. Canada*, [1995] 2 S.C.R. 513 at 551-2 (25 May 1995) online: Supreme Court of Canada www.lexum.umontreal.ca/csc-scc/en/index.html>.

² *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (3 May 2000),].

Another Supreme Court of Canada decision³ then confirmed that “social handicapping,” society’s response to a real or perceived disability, should be the main consideration when deciding if discrimination has occurred.

We must be very careful to test out the assumptions we make about people, whether they are applying for a job, a place to live or whether they simply buy a good or use a service. Is a person’s “failure to qualify” a result of actual limitations or is it society that imposes artificial limitations based on unfounded stereotypes or ignorance, or fails to prevent, remove or accommodate real or perceived differences? More scrutiny and awareness by courts, human rights tribunals, government and civil society in general will help to clarify and address this notion.

³ *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 S.C.C. 28 (18 May 2000)



Appendix 6 – The *Code* and the classroom: taking the human rights temperature of your school (for students)

Introduction

This activity is based on “Taking the Human Rights Temperature of Your School” which was adapted from the United Nations’ *Universal Declaration of Human Rights*.⁴

You can evaluate your school’s human rights climate using criteria derived from both the United Nations *Universal Declaration of Human Rights* (the *Declaration*) and the Ontario *Human Rights Code* (the *Code*). The questions here are adapted from both of these sources.

Universal Declaration of Human Rights:

The questions are related to the fundamental human right to education found in Article 26 of the *Declaration*, which states:

Everyone has the right to education... Education shall be directed to the full development of the human personality and to the strengthening of respect for human and fundamental freedoms.

Preamble of the *Code*:

The Preamble of the *Code* states that it recognizes:

...inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations ...

The Preamble also recognizes that it is:

public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law.

Objectives

- a. to assess human rights conditions in your school community
- b. to reflect critically on forces within the school community that affect the human rights climate
- c. to help you derive an action plan that improves human rights in your school community.

⁴ Source: Shiman, David. *Economic and Social Justice: A Human Rights Perspective*. Minneapolis, MN: Human Rights Resource Center, University of Minnesota, 1999.

Grade level: Students from grades 7 – 12, teachers, educators, parents and volunteers.

The score from your answers provides a general sense of the school's human rights climate, following the principles of the *Declaration* and the *Code*.

This assessment does not cover everything. It is meant to help you identify specific areas of concern in your school community that may need to be addressed.

How to take the temperature

Take the human rights temperature of your school. Read each statement, and in the blank next to it, write your thoughts of how accurately it describes your school community. When doing this, think about all members of your school: students, teachers, administrators, staff and the school community.

At the end, total your score to determine your overall assessment (out of 100) for your school.

Rating scale

- 1 – No/never
- 2 – Rarely
- 3 – Often
- 4 – Yes/always

- _____ 1. My school is a place where all students, teachers and staff feel safe and secure. (Art. 3 and 5 of the *Declaration*)
- _____ 2. My school is a discrimination-free and harassment-free zone where everyone – students, teachers, school staff, parents and volunteers – feels they have the right to equal treatment without discrimination because of a *Code* ground. (sections 1, 3, 5, 7(2), 7(3), 8 and 9 of the *Code*)
- _____ 3. My school environment recognizes and respects the dignity and worth of every student, no matter what their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender expression, gender identity, age, marital status, family status or disability when receiving services, in employment and accessing school facilities. (Preamble, sections 1, 5 and 7 of the *Code*)
- _____ 4. All students receive equal information and encouragement about academic and career opportunities. (Art. 2 of the *Declaration*)
- _____ 5. In every aspect of school life, all students have a right to equal treatment when receiving services – in education, extra-curricular activities, school community events, etc. – and with goods and facilities such as access to the gym, sports fields, bank instruments, etc. (s. 1 of the *Code*)

-
- _____ 6. Members of the school community are not discriminated against because of their lifestyle choices, such as manner of dress, associating with certain people, and choice of non-school activities. (Art. 2 and 16 of the *Declaration*)
- _____ 7. In accordance with the *Code*, members of the school community are treated equally and with dignity and respect no matter what their sexual orientation, gender, gender expression, gender identity or association. (sections 1, 3, 5, 7 and 9 of the *Code*)
- _____ 8. My school provides equal access, resources, activities and scheduling accommodations for all individuals. (Art. 7 of the *Declaration*)
- We accommodate the needs of students with disabilities with their education and in providing physical accessibility. My school also accommodates based on other *Code* grounds (for example, family status) and includes accessible facilities such as washroom or change rooms. (sections 1 and 17 of the *Code*)
- _____ 9. Members of my school community will oppose any discriminatory or demeaning actions, materials or slurs in the school. (Art. 2, 3, 7, 28, & 29 of the *Declaration*)
- Members of my school community understand that *Code* violations are not acceptable. This includes bullying, harassing conduct or comments, and reprisal (which means punishing) against anyone who tries to enforce a *Code* right. (sections 8, 9 and 10 of the *Code*)
- _____ 10. When someone demeans or violates the rights of another person, the violator is helped to change his or her behaviour. (Art. 26 of the *Declaration*)
- Our school provides human rights education. Our conflict resolution policies are consistent with the *Code*'s remedial rather than punitive nature.
- _____ 11. Members of my school community care about my full human rights, as well as academic development, and try to help me when I am in need. (Art. 3, 22, 26, & 29 of the *Declaration*)
- _____ 12. When conflicts arise, teachers help us try to resolve them through non-violent and collaborative ways (Art. 3, 28 of the *Declaration*), and have in place an effective dispute resolution mechanism. My school also recognizes and appreciates the need to balance competing human rights claims.
- _____ 13. My school board has policies and procedures that it follows when anyone has a complaint of harassment or discrimination (Art. 3 & 7 of the *Declaration*).
- My school has an effective anti-discrimination/harassment policy that has an internal process to address human rights issues.

-
- _____ 14. In matters related to discipline (including suspension and expulsion), all persons are assured of a fair hearing, and impartial treatment when determining guilt and assigning punishment. (Art. 6, 7, 8, 9, & 10 of the *Declaration*)
- _____ 15. Someone accused of wrongdoing is presumed innocent until proven guilty. (Art. 11 of the *Declaration*)
- _____ 16. Students' personal space and possessions are respected. (Art. 12 and 17 of the *Declaration*)
- _____ 17. My school community welcomes students, teachers, administrators and staff from diverse backgrounds and cultures, including people not born in Canada. (Art. 2, 6, 13, 14, & 15 of the *Declaration*)
- School staff, including educators and administrative staff, reflect the student community.
- _____ 18. Students have the freedom to express their beliefs and ideas (political, religious, cultural or other) without fear of discrimination (Art. 19 of the *Declaration*), and in doing so I understand that I must not expose a person or persons to discrimination, harassment or other forms of different treatment based on a *Code* ground.
- _____ 19. Members of my school can produce and disseminate publications without fear of censorship or punishment (Art. 19 of the *Declaration*), providing that the publication or display including any "notice, sign, symbol, emblem," etc. does not show an intention to infringe or incite the infringement of the *Code* right of another. (section 13 of the *Code*)
- _____ 20. Diverse voices and perspectives (for example, gender, race/ethnicity, ideological) are represented in courses, textbooks, assemblies, libraries and classroom instruction. (Art. 2, 19, & 27 of the *Declaration*)
- _____ 21. Students have the opportunity to express their culture through music, art and literary form. (Art. 19, 27, & 28 of the *Declaration*)
- _____ 22. Members of my school community have the opportunity to take part (individually and through associations) in democratic decision-making processes to develop school policies and rules. (Art. 20, 21, & 23 of the *Declaration*)
- _____ 23. Members of my school have the right to form associations within the school to advocate for their rights or the rights of others. (Art. 19, 20, & 23 of the *Declaration*)

_____ 24. Members of my school encourage each other to learn about societal and global problems related to justice, ecology, poverty and peace (Preamble and Art. 26 & 29 of the *Declaration*). Members of my school encourage each other to organize and take action to address societal and global problems related to justice, ecology, poverty and peace. (Preamble and Art. 20 & 29 of the *Declaration*).

For example, my school has these clubs:

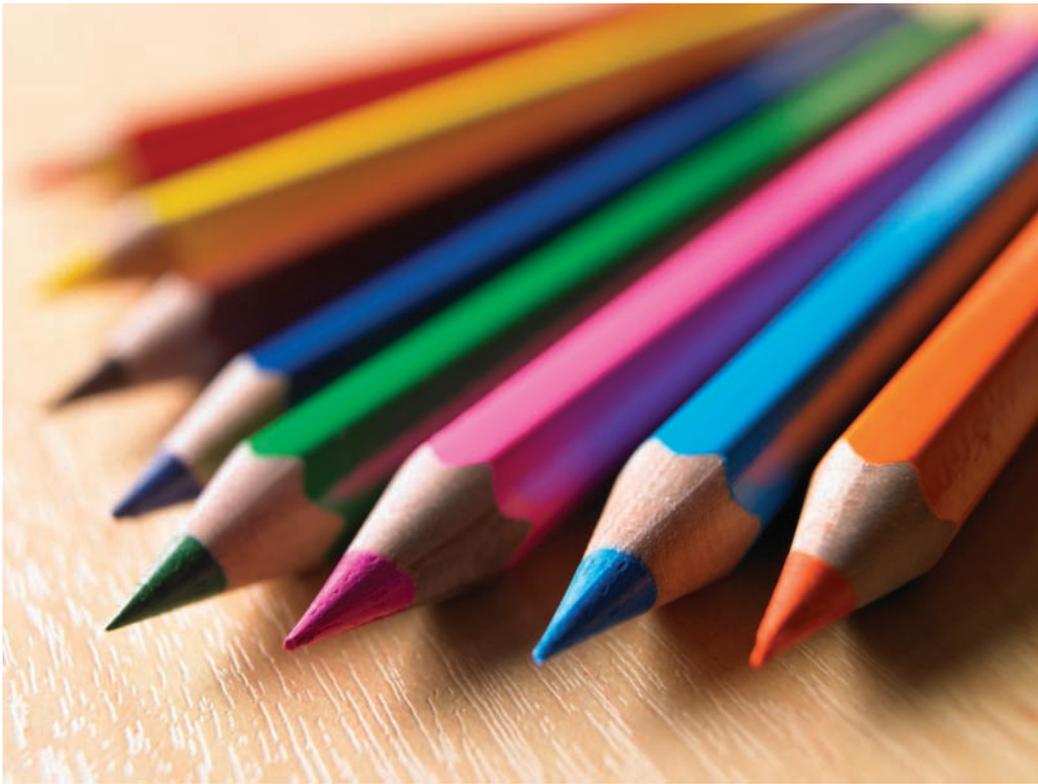
_____ 25. I proactively take responsibility in my school to make sure others do not discriminate, and that they behave in ways that promote the safety and well-being of my school community. (Art. 1 and 29 of the *Declaration* and section 46.3(1) of the *Code*)

Total score for your school: _____ (out of 100 Human Rights Degrees)

Adapted from the “Taking the Human Rights Temperature of your School”

D. Shiman & K. Rudelius-Palmer, *Economic and Social Justice: A Human Rights Perspective* (Minneapolis: Human Rights Resource Center, University of Minnesota, 1999), www.hrusa.org/hrmaterials/temperature/

Students' Handouts





Human rights quiz

How well do you know your rights? Read the following situations and answer the questions by circling Yes, No or Maybe.

1. Anthony, who is 18 years old, applies for a job as a clerk in a sporting goods store. The store manager is impressed with Anthony's maturity and ability and says that he would like to hire him, subject to reference checks. Later, the manager calls Anthony to say that he will not be hired. On checking his references with a former employer, the manager found out that Anthony was convicted of reckless driving several times when he was younger. Has the store manager violated Anthony's human rights by refusing to hire him?

Yes

No

Maybe

2. Naomi and several of her friends play in a women's hockey league at the local community centre. Whenever they play, the male rink attendants never give them their full allotted ice time. The attendants jeer every time one of the young women falls and there are often pin-up pictures of women in the dressing rooms. Naomi has complained but the manager has done nothing, saying that women should "stick to figure skating" and "leave hockey to the boys." Have the rink attendants violated the young women's human rights?

Yes

No

Maybe

3. After years of fighting, Yvon's parents are getting a divorce. Things are so tense that Yvon feels he must live on his own if he is to successfully complete his school year. He has been a good student and stayed out of trouble. At 16, he has qualified for social assistance and has put in an application at a rooming house near his school. The property manager refuses to rent Yvon a room, saying that he does not rent to "welfare kids." Has the property manager violated Yvon's human rights?

Yes

No

Maybe

4. Maya and several Black friends go to a local restaurant after school. They are laughing and carrying on like others in the restaurant. Things start to get out of hand between their group and several White students sitting at another table. Food is thrown and the groups exchange angry remarks. When the restaurant staff ask Maya and her friends to leave the restaurant, they feel angry and discriminated against. Have the restaurant staff violated the group's human rights?

Yes

No

Maybe

-
5. Last week, Meerai and her friend Sean organized a school group to raise funds for AIDS research. Yesterday, on their desks, they both found crudely-drawn cartoons making fun of people who are gay and lesbian. Last night, several students shouting anti-gay comments verbally attacked them on the street opposite the school yard. Their teacher saw the cartoons and has heard rumours of the verbal attack, but feels that nothing can be done because the attack took place off the school premises. Neither student has complained to school officials. Have the students violated Meerai and Sean's human rights?

Yes

No

Maybe

6. A local optician's office has an opening for a part-time receptionist. The position requires excellent communication skills, as the person will answer customers' telephone calls and receive patients who enter the clinic. Chantal, who was born and raised in Quebec City, applies for the job. The owner does not hire her, because she feels customers may not understand her because of her accent. Has the owner violated Chantal's human rights?

Yes

No

Maybe

7. Last Saturday, Michael and his friends attended a movie theatre they had never been to before. The theatre staff told Michael, who uses a motorized wheelchair because he has muscular dystrophy, that he would either have to transfer into a theatre seat or watch the movie from the only area available for the wheelchair—in front of the first row of seats. When he complained about this arrangement, the theatre staff told him he was entitled to the same service as everyone else—a ticket and a seat to watch the movie. Have the movie theatre staff violated Michael's human rights?

Yes

No

Maybe



Ontario *Human Rights Code Preamble*

Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;



Fact sheet #1: The Ontario *Human Rights Code*

The Ontario *Human Rights Code* (the *Code*) provides protection from discrimination in five areas of our lives. It states that every person has a right to freedom from discrimination in the following areas, known as social areas:

- **Services, goods and facilities** – including schools, hospitals, shops, restaurants, sports and recreation organizations and facilities
- **Housing** – the place where you live or want to live, whether you rent or own the premises
- **Contracts** – includes both written and oral agreements
- **Employment** – includes job ads, application forms, job interviews, work assignments, work environment, training, promotions, discipline, terminations, volunteer duties, etc.
- **Membership in vocational associations and trade unions** – such as the Ontario Secondary School Teachers' Federation or United Steelworkers.

Prohibited grounds of discrimination

The *Code* recognizes that discrimination occurs most often because of a person's membership in a particular group in society. In the five social areas above, the *Code* protects people based on the following grounds:

- **Age** – 18-65 years (employment); 16+ years (housing); 18+ years (all other areas)
- **Ancestry** – family descent
- **Citizenship** – membership in a state or nation
- **Colour** – associated with race
- **Creed** – religion or faith
- **Disability:** There are two common ways of looking at what disability is. One way is to see a disability as a medical condition that a person has. From this perspective, disability covers a broad range and degree of conditions, some visible and some not visible. A disability may have been present from birth, caused by an accident, or developed over time. There are physical, cognitive, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, and other conditions.

A newer way of looking at disability is that it is not something a person has. A person with a medical condition is not necessarily prevented (or disabled) from fully taking part in society. If society is designed to be accessible and include everyone, then people with medical conditions often don't have a problem taking part. From this point of view, disability is a problem that occurs when a person's environment is not designed to suit their abilities.

- **Ethnic origin** – social, cultural or religious practices drawn from a common past
- **Family status** – a parent/child relationship
- **Gender expression** – the external attributes, behaviour, appearance, dress, etc. by which people express themselves and through which others perceive that person's gender
- **Gender identity** – a person's conscious sense of maleness and/or femaleness; this sense of self is separate and distinct from biological sex
- **Marital status** – applies equally to common-law, same-sex and opposite-sex relationships; includes widowhood, separation, divorce
- **Place of origin** – country or region
- **Race** – common descent or external features such as skin colour, hair texture, facial characteristics
- **Receipt of public assistance** – in housing only
- **Record of offences** – provincial offences or pardoned federal offences (in employment only)
- **Sex** – discrimination can be sexual in nature, or because of pregnancy. This ground includes the right to breastfeed in public areas or in the workplace
- **Sexual orientation** – includes lesbian, gay, bisexual, heterosexual, two-spirited, questioning, etc.

It is possible for a person to experience discrimination based on multiple grounds (for example, sexual orientation *and* race). In some cases, a person may be exposed to a particular kind of discrimination or disadvantage because of a unique combination of identities. For example, there are assumptions and/or stereotypes associated with “young Black males” that are not necessarily made about “older Black males” or “young Black females.”

Exceptions to the prohibited grounds

There are some exceptions to these prohibited grounds in the area of employment, such as:

- An organization that serves a group protected by the Code, such as religious, educational or social institutions serving ethnic groups, people with disabilities, religious groups, etc., may choose to employ only members of that group
- An employer may choose to hire or not hire, or to promote or not promote his or her own spouse, child or parent or the spouse, child or parent of an employee
- An employer may discriminate based on age, sex, record of offences or marital status if these are genuine requirements of the job. For example, a shelter for abused women may choose to hire only women as counsellors; a club may hire only male attendants to work in the men's locker room; or a child care facility may refuse to hire someone convicted of child molesting on the ground that the hiring would pose a safety risk to the children. In such instances, the employer must consider whether any accommodation can be made to enable that person to work in the job.



Fact sheet #2: Harassment

Protected groups have the explicit right to be free from harassment in school, housing and employment. The *Code* defines harassment as “engaging in a course of vexatious [annoying or provoking] comment or conduct which is known or ought reasonably to be known to be unwelcome.”

The most important word in the definition is “unwelcome.” We do not have the right to impose our words or actions on someone if they are not wanted. It does not matter if the person has done this intentionally or unintentionally.

Some people may be shy or afraid to respond to unwelcome comments or actions. That is why the *Code* includes the words “ought reasonably to be known to be unwelcome.”

For example, everyone is expected to know that racial, ethnic or homophobic slurs or jokes are unwelcome—the speaker should not need to be told that the comment is unwelcome. However, sometimes it is necessary to point out that certain behaviours are causing discomfort.

“Engaging in a course of” means that a comment or action would usually have to occur more than once for it to be considered harassment. However, an employer need only make a comment such as “People like you have no business here” once to a racialized person or a woman, for the employee to believe that he or she will not get equal treatment. Comments like these create a poisoned environment for members of that group as well as others.

The principles of harassment also apply in the area of services such as schools. For instance, if students harass others because of their race, sex, sexual orientation, disability, religion, etc., this could be grounds to file a human rights complaint – called an application. Education is a “service” to which all are equally entitled.



Fact sheet #3: Sexual and gender-based harassment and your education

Sexual harassment is a type of discrimination that can interfere with a person's education, make them feel unsafe and stop them from reaching their full potential in life. Sexual harassment can include:

- Asking for sex in exchange for something, like offering to improve a test score
- Repeatedly asking for dates, and not taking "no" for an answer
- Demanding hugs
- Making unnecessary physical contact, including unwanted touching
- Using rude or insulting language or making comments that stereotype girls, women, boys and men
- Calling people unkind names that relate to their sex
- Making sex-related comments about a person's physical appearance or actions
- Saying or doing something because you think a person does not fit sex-role stereotypes
- Posting or sharing pornography, sexual pictures, cartoons, graffiti or other sexual images (including online)
- Making sexual jokes
- Bragging about sexual ability
- Bullying based on sex or gender
- Spreading sexual rumours or gossip (including online).

Sometimes when a person experiences these things, they don't realize it is sexual harassment, or don't realize the impact it is having on them. Students might back off from school work or school activities, skip or drop classes, or drop out of school completely.

If you are being sexually harassed you might find yourself feeling:

- Isolated and alone
- Embarrassed or ashamed
- Depressed, anxious and uncertain about yourself or your future
- Angry
- Unsafe at school or in your community.

Some people who are sexually harassed also lose their appetite, get stomach aches and find it hard to concentrate. In some cases, students have reported using drugs or drinking to cope. In extreme cases, they might think about or even try suicide.

All adults who are in contact with students must make sure schools are safe, secure environments for students, and are free from sexual harassment.

Sexually harassing or bullying someone because of their sexual orientation or gender is not acceptable. It is against the law.

Know your rights

As a student, you have the right to an education where you are not sexually harassed. This includes primary, secondary and post-secondary education, and school activities such as sports, arts and cultural activities, field trips and tutoring.

Sexual harassment, and harassment because of sexual orientation, can also occur as part of school rituals, like initiations.

Sexual solicitation from people who are in positions of power is prohibited under the Code. Sexual advances or comments might come from teachers or staff:

Example: The Ontario College of Teachers withdrew a 29-year-old teacher's licence because he sexually harassed a female student through email. The teacher used a false name and sent messages to the student that included information about what she had been wearing that day, what route she took to school, and sexual suggestions.

Or it can take the form of bullying from other students:

Example: To hurt a rival, a girl starts a rumour that another girl is sexually promiscuous and performs sex acts on boys behind the school.

Students who are seen as not fitting into gender norms can be left open to gender-based harassment.

Example: A grade 9 male student has many female friends and is more interested in the arts than athletics. A group of boys at his school repeatedly call him "fag," "homo," "queer" and other names.

What is homophobic and gender-based bullying?

At all levels of school, sexual harassment can be used to bully people because of their gender, gender identity, sexuality or sexual orientation. It can include name-calling, jokes, and isolating a person because they do not fit what other people want them to be. It is different from other kinds of bullying because the harassment focuses on a person's sexuality, sexual characteristics, sexual reputation, or gender and sexual stereotypes.

Homophobic and gender-based bullying can affect anyone. In many cases, targets are people who:

- Say they are gay, lesbian, bisexual or transgender
- Are thought by others to be gay, lesbian, bisexual or transgender
- Don't conform to male and female stereotypes
- Have same-sex parents or caregivers
- Have friends that are, or are thought to be, gay, lesbian, bisexual or transgender.

Anti-gay and homophobic comments and behaviour are discrimination, even if the target does not identify as lesbian, gay, bisexual, transgender (LGBT). Some cases of homophobic bullying are considered hate crimes.

What you can do

If you or someone you know is being harassed, you can ask the person to stop and you can ask someone in authority at your school to take steps to stop it from happening.

Schools, including colleges and universities, have a legal duty to act to prevent and respond to sexual harassment—and they must make sure they offer environments that respect human rights.

The Ontario Ministry of Education requires Ontario school boards to respond to homophobia, gender-based violence, sexual harassment and inappropriate sexual behaviour. To read more about these policies visit:
www.edu.gov.on.ca/eng/safeschools/bullying

If the harassment continues or is not being dealt with appropriately, you can file a human rights claim.

If you feel the harassing behaviour is getting worse, or that your safety is threatened, you can contact the police.



Fact sheet #4: Poisoned environment

A poisoned environment is created by comments or conduct that ridicule or insult a person or group protected under the *Code* and cause them to feel that the environment is hostile or unwelcoming. It violates their right to equal treatment with respect to services, goods and facilities, housing and employment. The actions or comments do not have to be directed specifically at individuals. For example, insulting jokes, slurs or cartoons about gay and lesbian people or racial groups, or pin-up photos that demean women, all contribute to a poisoned environment for members of those groups.

A poisoned environment can also be created even when the insults are not necessarily directed at a person. For example, a heterosexual male may be offended by homophobic jokes because some of his friends may be lesbian, gay or bisexual. Or a person belonging to a racialized group may believe because of insults that he or she will not be treated fairly.

It must be clearly evident that such behaviour is making people feel uncomfortable in a school or work situation. A single incident may or may not be enough to create a poisoned environment. Other factors, such as the seriousness of the behaviour, the relative positions of the persons involved (teacher to student, employer to employee, landlord to tenant, etc.), and/or the impact upon the individual's access (perceived or real) to equal treatment without discrimination would need to be considered.

Under the *Code*, the employer is responsible for making sure that a poisoned environment does not exist in the workplace. In the same way, the teacher and administration, who represent authority at the school, must make sure that a poisoned environment does not exist for students.



Fact sheet #5: Constructive discrimination

Constructive discrimination occurs when a seemingly neutral requirement has a discriminatory effect (or adverse impact) when applied to a group protected under the *Code*. For example, a requirement that all employees work on Saturdays could discriminate against people who must worship on that day as part of their religious practice. Or a height or weight requirement could in general exclude women and some ethnic or racialized groups from certain jobs.

In these cases, to avoid a finding of constructive discrimination, the employer or organization would need to prove that:

- The requirement is bona fide, that is, sincerely believed to be necessary, and in an objective sense, necessary for safety, efficiency or economy
- The person from a protected group cannot be accommodated without causing undue hardship to the service or employer. That is, it would alter the essential nature of the activity or business, affect its economic viability or pose a substantial health or safety risk.



Neutral requirement: a requirement that, on the surface, appears to be unbiased.

Adverse impact: having a harmful result. Sometimes treating everyone the same will have a negative effect on some people.

Accommodation (in employment, services and housing): to adapt, adjust or eliminate existing requirements or conditions, to enable a person or group to carry out the essential duties of an activity or job.





Fact sheet #6: Systemic discrimination

Systemic discrimination is discrimination that is part of the social or administrative structures of many organizations, whether a business, service organization or social institution, such as a school, hospital, government office, law court, etc. Systemic discrimination can be found in an organization's policies or practices, and it may be invisible. Even if unintended, it can deny whole groups of people their rights or exclude them from taking part. For example:

- Racism or prejudice by people in positions of authority may violate the rights of members of certain groups, such as when an organization hires or promotes only White males.
- Biases against groups may mean that they are treated differently. For example, an organization hires only women in clerical positions and only men in sales positions.
- A school may discriminate against people with disabilities in a way that is systemic. For example, they may insist that all exams must be done in writing, which could exclude some people with learning or visual disabilities. Or a school could only deal with parents through emails, which would make it difficult for newcomers who may not have Internet access and who may need assistance understanding English.

The Ontario *Human Rights Code* allows special programs to relieve disadvantage or achieve equal opportunity to counter the effects of systemic discrimination. Such programs include measures to remove barriers that discriminate against groups and make sure that disadvantaged groups have the same advantages that others take for granted.

Bias – an inaccurate and limited way of perceiving a group. Negative bias towards members of a group can be expressed through language, published materials and other communication practices.

Equal treatment: treatment that brings about an equality of results and that may, in some instances, require different treatment. For example, to give all students equal treatment in entering a building, it may be necessary to provide a ramp for a student who uses a wheelchair



Case study 1: Darlene

As part of a government program, Darlene, a grade 12 graduate, got a job with a local garden nursery. She was to help Mr. M., the owner, tend plants and shrubs, place orders and serve customers.

Mr. M's first review of Darlene's work showed that she was performing all her job duties exceedingly well. It was obvious that Darlene liked the work.

Over the next three months, Mr. M's behaviour toward Darlene began to change. As they worked, he would often put his hands on her shoulders and hips or lean over closer to her. At these times, she would quickly draw away from him. He then began to make offhand remarks about how he was sick of his wife and that he needed "satisfaction" from another woman.

Darlene did not encourage the comments or actions, nor did she say anything against them. However, she was becoming increasingly uncomfortable with the situation and tried to avoid the owner as much as possible. One day, Mr. M. asked her for a kiss. When she refused, he said "I know what's wrong with you. You're scared you're going to like it." A few days later, Mr. M. suggested that she come to his apartment to have sex with him. Darlene firmly refused, saying that she was seriously involved with her boyfriend. On several other occasions, the owner tried to get Darlene to come to his apartment.

In June, Mr. M. terminated Darlene's employment, saying he had no work for her, even though June is the busiest month of the year for the nursery.

Group discussion questions

1. Did the nursery owner violate the *Human Rights Code*? If so, how?
2. When Darlene first became uncomfortable with the nursery owner's behaviour, why wouldn't she have said something?
3. In this situation, would Darlene have had to say anything to the nursery owner for him to know that he might be violating the *Code*?
4. Is Darlene's termination a factor when assessing if her rights were violated?



Case study 2: Paramvir

In response to increased violence in its schools, a local school board adopted a policy prohibiting carrying weapons on school grounds. The following spring, the school administration learned that Paramvir, a Khalsa Sikh, was wearing a kirpan in school. The school wanted to implement its “no weapons” policy.

Of the estimated 250,000 Sikhs living in Canada at the time, more than 10% are Khalsa Sikhs—they have gone through the Amrit ceremony, symbolizing spiritual commitment. One of the duties of the Khalsa Sikh is to carry, at all times on his or her person, a kirpan, an article of faith symbolizing a spiritual commitment to law and morality, justice and order. A kirpan is a steel knife, encased and secured in a sheath, and generally worn out of sight under normal clothing.

After prolonged discussions with Paramvir's family and Sikh organizations, the school board amended its weapons policy to include kirpans. It forbade Sikh students to wear the kirpan to school—they could only wear a symbolic representation of the kirpan, provided it did not involve a metal blade that could be used as a weapon.

A Sikh teacher took the case to the Tribunal. At the hearing, it was argued that Sikh religious practices dictate that the kirpan must be made of iron or steel and worn at all times, otherwise the Khalsa would break their holy vows. It was shown that, while the kirpan has the appearance of a weapon, it has never been used in Canada as a weapon. Furthermore, it was argued that other school boards did not have a policy restricting kirpans.

The school board argued that:

- Education was not a service covered by the *Ontario Human Rights Code* but was instead under the jurisdiction of the *Education Act*
- The kirpan posed a risk as it looked like, and could be used as, a weapon
- Others could perceive the kirpan as an invitation to violence.

Group discussion questions

1. Does the *Code* prevail, or have “primacy,” over the *Education Act*?
2. Did the weapons policy discriminate against Khalsa Sikhs? How?
3. Was the policy reasonable? Suggest some ways the school board could accommodate Khalsa Sikhs without undue hardship – for example, posing a safety risk?



Case study 3: Danté

After months of searching for a weekend job, Danté, who is Black, finally got an interview with the owner of a busy car wash and gas station. The owner seemed reluctant to hire him, but Danté managed to win him over. The owner gave him the job, saying that he would be working on a weekend shift with seven other young men, all students from the local area. The shift manager would train him on the car wash equipment.

On Danté's first day, the shift manager gave him only a few minutes of instruction on the equipment. Danté watched what the other men were doing, but when he asked questions, they were not very helpful.

Over the next few weekends, Danté concentrated on his work but because of certain events, he increasingly began to stay by himself. A few co-workers invited him to join their little group for lunch or breaks, but others consistently cracked ethnic and racial jokes, often within hearing of the shift manager. One day Danté overheard the manager say that Black people were responsible for increased violence in the community. This statement encouraged some co-workers, who had previously eaten lunch with Danté, to tell a couple of jokes about Black people. When they glanced at him as they told their jokes, he got up and walked away.

One busy Saturday afternoon, a whole section of the car wash equipment broke down because someone had allowed the system to become overheated. Danté had worked on that section until his break, when a co-worker took over. The system had broken down at some point after that.

The shift manager was furious and accused Danté of negligence. Danté replied that he believed the system was fine when he left for his break. Although Danté insisted that the equipment failure was not his fault, the shift manager fired him. Danté believed he was discriminated against because he is Black, while his co-workers and managers are White.

Group discussion questions

1. Did the shift manager have good reason for firing Danté? Why?
2. What factors would a human rights tribunal take into consideration?



Case study 4: Tammy

By age 11, Tammy had bowled for five years in the local recreation league. She and several others qualified to enter a province-wide competition sponsored by the Youth Bowling Council.

Tammy has cerebral palsy and uses a wheelchair, but she has some movement and coordination. So she could bowl, her father built a wooden ramp, the top of which rests in Tammy's lap. She lines up the ramp towards the bowling pins and lets the ball roll down the ramp.

Just before the competition, the Council ruled that Tammy was ineligible to take part. While the Council's rules allowed persons with disabilities to use special equipment to assist them in recreational bowling (provided the equipment did not add force or speed to the ball), they prohibited the use of such equipment in competitions.

The Tribunal and later the Supreme Court of Ontario heard Tammy's application. The Youth Bowling Council argued that it had not violated her rights under the *Code*, because Tammy wasn't capable of the essential requirement of bowling—manually releasing the ball. The Council also contended that the use of special devices would make competition between the bowlers unfair, because the skills assessed would not be common to all competitors.

Tammy's lawyers argued that Tammy was bowling—she was using the ball to knock down pins. Also, the Youth Bowling Council had a duty to accommodate her under the *Code* by allowing her to use the ramp. Speed and accuracy tests showed that Tammy did not gain any advantage over other bowlers. Her ball speed was too low for maximum results and her accuracy no better than average.

Group discussion questions

1. Could Tammy perform the essential requirement of bowling? Should this argument have been a factor in determining whether a violation occurred?
2. Should the Council have to accommodate Tammy (for example, should they allow her to bowl in competitions with the ramp)?
3. Would the Council experience undue hardship if it accommodated her in competitions? Would it change the sport too much? Give your reasons.



Case study 5: Kyle

Kyle is a young man who went to The Barking Frog, a bar in London, Ontario. He went on a “Ladies” Night,” when women are charged a lower cover charge than men. Bars across Ontario (and indeed across Canada and parts of the United States) routinely hold what are commonly called ladies’ nights, where women are charged a lower cover charge or no cover charge to enter the bar or are given discounts on their drinks. This practice has been common in Ontario and elsewhere for decades.

Kyle went to The Barking Frog, where the doorman told him the cover charge was \$20 for the men but only \$10 for the women in the group. Kyle was upset and was unwilling to pay the \$20, so he did not enter the bar.

Kyle launched a human rights complaint claiming the different cover charges amounted to discrimination based on the ground of sex.

Group discussion questions

1. Did Kyle face discrimination? If so, what type?
2. What factors would be taken into account to determine if this differential treatment violated the *Code*?
3. How is substantive equality different from formal equality?



Case study 6: Rita

Rita and her family moved to the city from a remote community in the middle of the school year. Within a week, Rita was registered at the local high school and began attending classes. She travelled to and from school by school bus.

After two weeks at the new school, Rita was just beginning to settle into her classes. However, she was somewhat nervous about her history course. After her first class, the teacher made it clear that Rita had a lot of “catching up” to do, if she were to pass the course.

The following week, some students gave a presentation on Columbus' voyage in 1492 to the “New World.” There was lively discussion, and readings and prints were circulated depicting Columbus' arrival in various territories. There were several references made to “Indians and savages” that the colonists “had to defeat” to settle the New World.

As a member of the Cree Band, Rita was dismayed by the way the teacher portrayed Aboriginal persons in the presentation. She approached her teacher before class the next day to discuss the issue. As the class began, the teacher announced that Rita had concerns with the Columbus presentation. She then turned to Rita and asked her to give her version of the “Columbus discovery” from an Aboriginal point of view.

Caught off guard, Rita haltingly made several points, and then sat down quickly when several of the students began to snicker. Later that day on the bus ride home, some of the other students jeered at her, saying if she didn't like history the way it was taught, then she should drop out. She turned away and ignored them. The next day, the jeering continued in the hallway. When she went to her locker at lunch, someone had scrawled the words “gone hunting” on her locker door. Again, she ignored the curious students around her.

Rita told her parents about the incidents. They called the principal, who said she would give “hell” to the offenders. She also suggested that Rita should make more of an effort to fit in and get along with others.

Group discussion questions

1. How should the teacher have handled Rita's concern over the Columbus presentation?
2. Should the principal deal with the situation in a different way?



Case study 7: Cindy

Cindy, 19, applied for a job at a nursing home as a nursing aide. She had previously worked part-time as a kindergarten teacher's aide and had also cared for children with mental and physical disabilities during her high school years. In her initial interview, the assistant administrator told Cindy she was an ideal candidate and that she probably would be hired.

She was given a pre-employment medical examination for her family doctor to complete. He confirmed that she could meet the requirement of being able to lift patients.

At a second meeting, the interviewer reviewed the completed medical form and noticed Cindy's hand. During the initial interview, the assistant administrator had not observed her left hand, on which the index, middle and ring fingers were much shorter than those on most hands. Following this, the interviewer and another nursing director spent much time discussing Cindy's disability and the job requirements. Even though they both really wanted to hire Cindy, they didn't think she would be able to cope with the gripping or claspings that is needed to lift patients.

Although Cindy said she could perform the duties and had done similar tasks in her previous job with children with disabilities, she was not hired.

Group discussion questions

1. Did the interviewer have reasonable grounds to believe that Cindy could not do the job?
2. On what basis did the interviewers assess that Cindy could not meet a *bona fide* job requirement?
3. What do you think the interviewer and the nursing director should have decided? What are your reasons?



Case study 8: Maria

When Maria began working for the packaging company in 2003, her first name was Tony. She was hired as a general labourer on August 24, 2003. In 2008, she was accepted in the gender identity clinic and began transition from living as a man to living as a woman. She started the process of sex reassignment and developed female breasts as a result of hormone treatments. Maria says that she was harassed, subjected to a poisoned work environment and dismissed – all violations of the *Human Rights Code*.

Maria said that Gerry, a lead hand and machine operator, played a central role in the harassment and the incident that led to her dismissal. The packing company said the allegations never happened. The company argued that it treated the applicant appropriately, considering her a man and treating her like other men until it received medical or legal documentation that she was a woman. They say they fired her because of her attitude and being involved in workplace conflicts that were her fault, as well as insubordination.

Group discussion questions

1. In what ways do you think Maria might have experienced discrimination in her employment?
2. What reasons do you think Maria's supervisor would give for firing her? What do you think of these reasons?
3. What remedy do you think Maria should receive because she was discriminated against?



Case study 9: Tawney

Tawney worked as a forest firefighter for the Province of British Columbia and was a member of the Initial Attack Forest Firefighting crew for a small area in the forests of BC. The crew's job was to attack and suppress forest fires while they were small and could be easily contained. Her supervisors found her work satisfactory and had no reason to question her continuing ability to do the work safely and effectively.

After she had been successfully doing this job for three years, the government adopted a new series of fitness tests for forest firefighters. The tests were developed in response to a Coroner's Inquest Report that recommended that only physically fit employees be assigned as front-line forest firefighters for safety reasons. The tests required that forest firefighters weigh less than 200 lbs. (with their equipment) and complete a run, an upright rowing exercise, and a pump carrying/hose dragging exercise within stipulated times.

The running test was designed to test the forest firefighters' aerobic fitness. Subjects were required to run 2.5 kilometres in 11 minutes. After four attempts, Tawney failed to meet the aerobic standard, running the distance in 11 minutes and 49.4 seconds instead of the required 11 minutes. As a result, she was laid off.

Stating that the test unfairly discriminated against women, Tawney's union brought a grievance on her behalf.

Group discussion questions

1. What do you think about having different standards for men and women?
2. Do you think the test was a fair way of measuring a firefighter's ability to do the job?
3. If Tawney was passed, even though her running time was below what was required, is she being given preferential treatment over men?



Case study 10: Réjeanne

Based on Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City), [1999] 1 SCR 381 — 1999-02-24 Supreme Court of Canada — Canada (Federal) <http://canlii.ca/t/1fqmp>

Réjeanne lived in Montreal. Her career goal was to become a horticulturalist. She had successfully passed a college course and completed an apprenticeship as a gardener with the city's Botanical Gardens. When a suitable opening came up to work as a horticulturalist with the city, she immediately sent in her application.

Réjeanne was fully qualified for the position and was invited for an interview. She successfully passed the interview. However, she also had to undergo a physical check-up to confirm her suitability for the job. This check-up indicated she had a slight curvature of the spine called *scoliosis*. Réjeanne was surprised to learn this, as she had never experienced any symptoms from this relatively common condition. In fact, she had never experienced any pain, nor had she suffered any limitation on her because of her condition. A later evaluation showed that Réjeanne was able to perform all the duties of a gardener-horticulturalist in complete safety to herself and others, and that there was no need to limit her duties.

When it became aware of Réjeanne's condition, the city decided to hire another candidate who it thought would be less of a risk for back problems and therefore unlikely to incur increased health care costs later on. The city rationalized its decision saying that it had the right and even the responsibility to employ individuals who would pose the least potential cost to taxpayers.

Believing the city had rejected her application because of a handicap, Réjeanne made a complaint to the Human Rights Tribunal. Réjeanne alleged that the city acted in a discriminatory way that deprived her of unemployment insurance benefits, caused her a high level of stress and deeply humiliated her. The city responded that because Réjeanne had no functional limitations, it could not be said that she had a disability under Quebec's *Charter of Human Rights and Freedoms*.

Group discussion questions

1. Why do you think that the city should or should not have hired Réjeanne?
2. If it is possible that Réjeanne will develop back problems, do you think that the city did the right thing by not hiring her?
3. Do you think society's view towards persons with disabilities has a positive or negative impact on the barriers they face?



Case study 11: Alia and Ahmed

There are many people in Ontario who are deaf, deafened or hard of hearing. Some people may use sign language as their first language or preferred means of communication, and their inability in English will seriously impede their ability to communicate unless aided by interpretation. For these Ontarians, effective communication and getting fair access to services and employment is very hard.

Alia and Ahmed are parents who were both born deaf. They were expecting twins and would usually provide their own sign language interpreters for their medical visits. Unless an interpreter was present, communicating information was often frustrating for them. At the same time, any miscommunication about medical information could be dangerous.

Alia went into labour eight months into her pregnancy. She and her husband found themselves at the hospital without the aid of an interpreter. Neither the attending doctor nor the nurses could effectively communicate with the parents, who found this isolation difficult and frightening. After the babies were born, they were immediately taken away from the delivery room and put under observation in another area of the hospital. One nurse wrote on a piece of paper that the children were “fine.” Otherwise, no one gave any details about the twins’ condition to either Alia or Ahmed.

In their human rights complaint, Alia and Ahmed alleged that the hospital was providing unequal services because it did not accommodate their needs as deaf persons. The hospital replied that it was too hard to bring in interpreters on such short notice, and that it was too expensive to keep interpreters on call 24 hours a day.

Group discussion questions

1. How would you feel if you were in the same situation as Alia or Ahmed?
2. Whose responsibility is it to provide sign language interpreters in public service sectors?
3. How would this claim be covered under the *Code*?
4. Do you think it’s unreasonable for deaf people to expect interpreters to be available in emergency situations? What about in other non-emergency situations?



Case study 12: Marc

Marc is a gay 17-year-old student attending a publicly-funded Catholic high school. He wishes to go to the prom with a same-sex date. The prom is being held at a rental hall off school property.

The school principal and the Catholic School Board have said no on the grounds that this would be endorsing conduct contrary to the church's teachings. Marc believes that this is a violation of his human rights. He is considering seeking a court injunction because the prom is only weeks away.

Group discussion questions

1. What ground and social area does Marc's application fall under?
2. What competing rights are involved here?

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