

Case Study A: Darlene

As part of a government program, Darlene, a grade 12 graduate, obtained a job with a local garden nursery. She was to assist Mr. M., the owner, in tending plants and shrubs, placing orders and serving customers.

Mr. M.'s first review of Darlene's work showed that Darlene was performing all duties of her job 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.

Questions for group discussion

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 whether her rights were violated?

Case Study B: Paramvir

In response to increased violence in its schools, a local Board of Education 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, more than 10 per cent are Khalsa Sikhs—they have gone through the Amrit ceremony, a 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 Board of Education 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 and the Ontario Human Rights Commission took the case to a Board of Inquiry. In summary, the Commission 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. Also, it was shown that, while the kirpan has the appearance of a weapon, it has never been used in Canada as a weapon. Furthermore, the Commission argued that other school boards did not have a policy restricting kirpans.

For its part, the Board of Education 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; and
- others could perceive the kirpan as an invitation to violence.

On the basis of the evidence provided, the Board of Inquiry made its decision.

Questions for group discussion

1. Does the Code prevail over the Education Act?
2. Did the weapons policy discriminate against Khalsa Sikhs? How?
3. Was the policy reasonable? Suggest some ways the Board of Education could accommodate Khalsa Sikhs without undue hardship—for example, posing a safety risk?

Case Study C: Dan

After months of searching for a weekend job, Dan, who is a Black person, finally got an interview with the owner of a busy car wash and gas station. The owner seemed reluctant to hire him, but Dan 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 Dan's first day, the shift manager gave him only a few minutes of instruction on the equipment. Dan watched what the other men were doing, but when he asked questions, they were not very helpful.

Over the next few weekends, Dan 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 Dan overheard the manager say that blacks were responsible for increased violence in the community. This statement encouraged some co-workers, who had previously eaten lunch with Dan, 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. Dan 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 Dan of negligence. Dan replied that he believed the system was fine when he left for his break. Although Dan continued to insist that the equipment failure was not his fault, the shift manager fired him. Dan believed he was discriminated against because he is a Black person, while his co-workers and managers are White.

Questions for group discussion

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

Case Study D: 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.

Because she has cerebral palsy, Tammy needs to use a wheelchair and has limited movement and coordination. To enable her to 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 participate. 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.

A Board of Inquiry and later the Supreme Court of Ontario heard a complaint filed on behalf of Tammy and the Ontario Human Rights Commission. The Youth Bowling Council argued that Tammy could not perform the essential feature of bowling-manual release of the ball.

Thus, the Council argued, it had not violated her rights under the Code, because Tammy was incapable of the essential requirement of bowling. Also, the Council 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 in fact 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.

On appeal, the Court heard all the evidence and made its decision.

Questions for group discussion

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 E: Karen

Karen had joined a manufacturing company that sold goods such as Styrofoam cups to retail and industrial customers. Hoping to build a career, she entered the company as a packer.

After a time, Karen learned from female co-workers that when women joined the company, they were hired as "packers." Men were hired as "service persons" and earned more than the women.

Later she learned that if she wanted to advance in the company, she would have to become a "service person." This meant that, under the union rules, she would lose the seniority she gained while working as a packer. Because of her lost seniority she could be laid off before men who joined the company at the same time as her and she would be recalled from any layoff after them. The loss of seniority would also mean that she would fare less favourably than them in competitions for higher-paying jobs.

In addition, the company required her to complete a mechanical aptitude test in order to become a service person or be promoted. She heard that at least a third of the test involved the use of different tools, none of which are actually used in the service position.

Karen noted that only two women had advanced into the 40 higher positions available in the plant, despite the fact that there were an equal number of men and women working in the entry-level positions.

When Karen went to her supervisors to discuss her interest in advancement, they refused to help her. In the following weeks, they denied her overtime work and refused her request for a shift transfer. Her supervisor believed that women should stay at home and not work. He also tried to stop her from taking telephone calls from a boyfriend who worked on another shift, even though the calls were made on her breaks.

Karen filed a complaint against the company for discrimination.

Questions for group discussion

1. Did Karen face discrimination? If so, what type?
2. What factors would be taken into account to determine if there were other violations of the Code?
3. What would need to be done to ensure that women had equal opportunity at this company?