Human Rights and Discrimination:

Human rights are those essential conditions for a person to be a free and full member of society. These rights include the right to equal treatment, the right to not be subjected to discrimination or harassment, and the right to have equal provision of needed services. In the modern western world to which Canada belongs, there is an expectation that government has a responsibility to guarantee basic human rights to citizens.

If people are denied any of these rights because of race, country of origin, ethnic identity, religion, age, gender, sexual orientation, marital status, or physical or mental disability, they have been subjected to discrimination.

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| Forms of Discrimination |

Legal Discrimination under the Law

There are times when it is reasonable for an employer to limit the eligibility for certain jobs. Obviously, a physical disability limiting mobility would make it impossible for a person to carry out the duties required of a firefighter, so there is a certain minimum level of physical requirement that a firefighter has to meet. As well, it is necessary for a person who wants to be a taxi driver to possess a valid driver's license. These are considered bona fide occupational requirements.

Employers can also use the principle of affirmative action to determine whom they will hire. Many police forces, for instance, are giving preference to women and the members of visible minority groups when hiring new recruits, because past hiring practices were strongly biased in favour of white males. As a result, some police forces, especially in large urban centres like Toronto, increasingly reflect the ethnic mix of the general population.

Constructive and Direct Discrimination

Constructive discrimination is not overt. Perhaps, instead of a fire department saying that women cannot be firefighters, they would instead have a minimum height requirement of six feet, which obviously most women would not be able to meet. Unless it can be demonstrated that the minimum height is essential to performing the tasks required in a job, this would be considered constructive discrimination.

Direct discrimination is when a woman is refused the opportunity to become a firefighter because she is a woman. It is obviously much easier to win a complaint on the grounds of direct discrimination because the reason itself is discriminatory. Whereas with constructive discrimination, the requirement could be open to the interpretation of the individual judge or arbitrator.

Duty to Accommodate

Employers are required to accommodate the individual needs of an employee, within reason. If employers can prove that they will suffer undue hardship by accommodating their employee's special needs, they can be exempted. This means that a small business does not have to install an elevator for one employee who cannot use the stairs, if it can prove that to do so would place an unreasonable financial burden upon the business. However, the owner might be expected to make alterations at the entrance to allow an employee using a wheelchair to enter easily, and make arrangements for that employee to be able to perform the requirements of his/her job without needing to use the stairs, by having everything necessary on the ground floor.

An employer must make an effort to accommodate the religious beliefs of an employee. This may include making special arrangements to permit a Jewish employee to take days off for religious observance, or altering the uniform requirements for some members of military or police forces to accommodate the religious expectations of Sikh males to wear turbans.

Harassment

There are no circumstances under which workplace harassment is acceptable. If someone is subjected to verbal slurs about their race, gender, religion, or sexual orientation, their rights are being contravened. Sexual harassment is uninvited physical contact, as are comments of a sexual nature, demands of a sexual nature, or posting sexually offensive pictures in the workplace. In all cases of harassment, it is the employer's responsibility to ensure that in the first place it does not occur, and if it does, appropriate preventative action is taken to ensure the harassment stops. If the employer does not take action when a case of harassment is reported, the employer and the harasser can be held responsible for damage inflicted. As well, if an employee is subjected to constant low-level unfriendly or derogatory comments and actions, a poisoned environment is created, and once again it is the duty of the employer to make sure that the workplace is a welcoming place for any employee.

Accommodation and Facilities

Accommodation can also apply to a person's place of residence, either permanent or temporary. People cannot be discriminated against by individuals or businesses selling or renting homes, apartments, university residences, or hotel rooms. It is considered unacceptable and it is grounds for discrimination if an individual is denied residence based upon race, gender, age, marital status, or source of income (including social assistance or welfare).

Facilities have to avoid discrimination as well. People cannot be refused admittance to a public facility on the basis of race, gender, age, marital status, or source of income (including social assistance or welfare). As well, use of the facilities must be fairly divided among various groups. They are expected to be accessible to people living with disabilities. For example, you may have noticed how fast food restaurants have constructed washroom facilities that accommodate people with physical handicaps. Not to do so would be considered a form of discrimination for a sizeable fast food chain, whereas installing the same facilities in a small privately owned restaurant might be considered an unreasonable financial burden.

Case History:

Turnbull et al. v. Famous Players

A group of five people, all confined to wheelchairs, brought a complaint against the Famous Players chain of movie theatres for restricting their right of access to the theatres. The complainants were discouraged from entering the theatre, refused admittance, or reduced to uncomfortable and embarrassing efforts to gain entry to the theatre for the purpose of watching a film. On one occasion, a woman had to crawl up and down a flight of stairs so that she could take her grandson to the movies. In 1995, Famous Players banned people in wheelchairs from theatres not designed to accommodate them, and argued in its defence before the Board of Inquiry that it would be “improvident” to spend money making older theatres wheelchair accessible when they were spending money on large new complexes that did allow wheelchairs. Famous Players was ordered to make the theatres accessible to persons with disabilities, and pay damages ranging from $8000 to $10000 to the five people who had brought the complaint forward. Following the ruling, Famous Players decided to close its older theatres rather than invest the money to make them wheelchair accessible.

Charter Analysis:

To help you become familiar with applying the various sections of the *Charter when addressing cases in which discrimination occurs* complete the questions in the Applying the *Charter* Worksheet. You will need to refer to the *Charter of Rights and Freedoms to assist you in answering the questions.*

1. Jennifer Adams, a law abiding Canadian citizen, decides to go on a trip to China. When she arrives at the airport, she is told that she is not allowed to leave Canada. No reason is given by the authorities.

*Charter* Section: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. Justin Trudeau decides that he wants to be Prime Minister for life and refuses to call an election.

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1. The government decides that all churches are to be closed down permanently.

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1. A judge orders that for a punishment, a person will receive 25 lashes.

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1. A recent immigrant who speaks little English is very confused at his criminal trial because he does not understand what is being said.

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1. You are arrested and thrown in jail. You are not told what the charges are for two weeks. With no reason given, you are denied bail for a minor shoplifting offence. Finally, after one year in prison, you get your day in court. Unfortunately, you are defending yourself because you are unable to pay for a lawyer.

*Charter* Sections: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. The government does not like comments written in the *London Free Press* because they are critical of the government’s actions. As a result, the newspaper is not allowed to publish any more.

*Charter* Section: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Sometimes situations arise when one right or freedom may be in conflict with another. Often when this happens, we look to the courts to resolve the conflict. the following two scenarios where there is a conflict of rights. Decide whose right is to be upheld.

Scenario I: The Locker Search

Facts: Rajiv was offended by Harvey's "paki" jokes and claimed Harvey was a racist. Later, a fight developed after Harvey told another joke and called Rajiv a "dumb raghead". Rajiv punched Harvey three times, hard. The fight was broken up by teachers and both boys were suspended for three days. Harvey's father met with the principal and complained that he was afraid for his son's life -noting that Rajiv wore a kirpan.



A **kirpan** is a small sword, worn in a sheath on a strap or belt. It is an article of faith that initiated Sikhs are supposed to wear at all times.

Students at the school were choosing sides, based partly on skin color. The principal responded to the increasing tensions at school by searching student lockers where she suspected there might be weapons, alcohol, or drugs. Under the province's Education Act, the principal has a legal duty to maintain order and discipline in the school.

Suppose one of the students whose locker was searched complained that the locker search was against the law.

Issue: Whether or not the locker search was justifiable in these circumstances.

Your Decision: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Scenario II: Prohibiting Kirpans

Facts: Rajiv was offended by Harvey's "paki" jokes and claimed Harvey was a racist. Later, a fight developed after Harvey told another joke and called Rajiv a "dumb raghead". Rajiv punched Harvey three times, hard. The fight was broken up by teachers and both boys were suspended for three days. Harvey's father met with the principal and complained that he was afraid for his son's life -noting that Rajiv wore a kirpan. Students at the school were choosing sides, based partly on skin color. The principal phoned Rajiv's home and told his parents that he could not come back to school wearing his kirpan. She told them she was relying on a government regulation which allows school officials to prohibit students from wearing kirpans on school grounds.

Suppose Rajiv's parents think the principal's order is against the law.

Issue: Whether or not the government regulation unjustifiably interferes with Rajiv's fundamental freedom to practice the Sikh religion.

Your Decision: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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