



High School Law Project

This program is funded by the Law Foundation of Ontario

Human Rights in Ontario

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A. To Be Completed Before the Lesson

Student Coordinators:

- Read detailed lesson plan
- Provide handouts to teachers in advance for copying

Student Facilitators:

- Read detailed lesson plan and case studies
- Attend Training

Students:

- None

Teachers:

- None

Handouts to be Provided:

- #1 Resolving Complaints
- #2 Case Study
- #3 Mediation Preparation (David Groups)
- #4 Mediation Preparation (GoldCity Groups)



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B. Lesson Plan Summary - Day 1

1. **Short Lecture** – Led by Student Coordinators
 - Introduction to discrimination in our society and the role of human rights laws in Ontario
 - Overview of Canadian Human Rights Act and Ontario Human Rights Code
 - Example of claims and decisions made under the Ontario Human Rights Code
2. **Small Group Discussion (4 Groups)**
 - Led by Student Facilitators
 - Overview of Ontario Human Rights Commission Complaints Process
3. **Small Group Mediation Preparation (4 Groups)**
 - Led by Student Facilitators
 - Read Case Study
 - Answer questions in Group
 - Prepare for mediation

Lesson Plan Summary - Day 2

1. **Introduction** – Led by Student Coordinator
4. **Small Group Mediation Preparation** – Led by Student Facilitators
 - Review Case Study and final preparation for mediation
5. **Mediation Session** – Led by 2 DRC Mediators (2 separate mediation sessions)

**** Please see separate instructions for DRC Mediators ****

6. **Wrap Up** – led by Student Coordinators
 - Large group discussion

C. Lesson Plan - Day 1 - Detailed Summary

1. Short Lecture

The following is background information for use by the Student Facilitators and Coordinators. It provides a brief overview of discrimination and the laws in Ontario used to combat it in housing, employment, schools and other public settings. For the lecture, the Student Coordinators should explain the definitions of discrimination provide some examples and briefly explain how those who have faced adverse treatment can use the Code and Act.

a) What is Discrimination?

Discrimination can be defined as treating individuals and/or groups differently, negatively or adversely based on pre-determined stereotypes.

b) Examples of Discrimination

Clive Stevens and Robert Symisterv. Lynx Industries Inc., Mark Schram, Marjorie Morris

- The complainants Clive Stevens and Robert Symister, two black men from Jamaica, claimed that they were fired from Lynx Industries Ltd. on the basis of race.
- The complainants also stated that they were subjected to racial slurs by the respondents and that there was racial graffiti on the bathroom walls.
- The respondents denied that they dismissed the complainants on the basis of race or that race was a factor in their decision.
- The respondents argued that the dismissal of the complainants was based on their poor performance and attitude.
- The Tribunal found that the testimony of the complainants was not credible and therefore dismissed the complaint.

Lucy Farias v. David Chuang c.o.b. Queenstate Dental Care

- Lucy Farias worked as a dental assistant at Queenstate Dental Care, run by Dr. Chuang.
- The Tribunal found that Dr. Chuang made sexual advances towards Ms Farias, that she eventually told him that his advances were unwelcome, and that Ms. Farias was forced to quit because Dr. Chuang did not stop with the advances.
- The tribunal ruled that Dr. Chuang violated the Ontario Human Rights Code by continuing to make sexual advances towards Ms Farias after she told him to stop.
- In addition, the tribunal ruled that Dr. Chuang became unduly harsh against Ms. Farias because she did not consent or enjoy his sexual advances.
- The Tribunal awarded Ms. Farias \$32,000 for general damages and mental suffering and \$4,354 for 14 weeks' wages, and ordered that Dr. Chuang attend anti-discrimination training.

c) The Relevant Laws

i) Canadian Human Rights Act

The Canadian Human Rights Act, was enacted by the Canadian federal government, which came into affect in 1978.

The Canadian Human Rights Act, protects anyone living in Canada against discrimination by the following federally regulated employers or service providers:

- Federal departments, agencies and Crown Corporations.
- Chartered banks
- Airlines
- Television and radio stations
- Interprovincial communications and telephone companies
- Buses and railways that travel between provinces
- First Nations
- Other federally regulated industries, such as certain mining operations

ii) Ontario Human Rights Code

The Ontario Human Rights Code is a provincial law that gives everybody equal rights and opportunities without discrimination with respect to services, goods

and facilities as well as housing, employment and schooling. It applies in cases not covered by the Canadian Human Rights Act.

iii) Prohibited Grounds of Discrimination

While there are minor differences between the Act and the Code, the prohibited grounds of discrimination are similar and cover the following:

- **Race**
 - A race is defined as a group of individuals sharing common genetic attribute, which determine that group's physical appearance.
- **National or Ethnic Origin**
 - Nationality is a relationship between a person and their state of origin.
 - Ethnicity is defined as the groupings of individuals based on common traditions, languages, art forms, attitudes etc.
- **Colour**
 - Skin Colour.
- **Religion**
 - The central issue is whether the belief is sincerely held and if it is religious.
- **Age**
 - Individuals at both ends of the age spectrum are potential victims of discrimination.
 - Making generalized assumptions about the ability of individuals because of their age is a form of discrimination.
- **Sex**
 - "Sex" refers to the condition of being male or female.
- **Sexual Orientation**
 - The term "sexual orientation" refers to:
 - Heterosexuality (sexual attraction to members of the opposite sex)
 - Homosexuality (sexual attraction to members of the same sex)
 - Bisexuality (sexual attraction to members of both sexes).
- **Marital Status**
 - "Marital Status" refers to the condition of being:
 - Single;
 - Legally married;
 - Common-law spouses (whether opposite-sex or same-sex);
 - Widowed; or
 - Divorced.
- **Family Status**

- The inter-relationship that arises from:
 - Marriage
 - Adoption
 - Ancestral Relationships
 - Relationships between spouses
 - Relationships between siblings
 - In-laws
 - Uncles and Aunts
 - Nephews, Nieces, Cousins etc.
- **Physical or Mental Disability** (including dependence on alcohol or drugs)
 - A disability can be either permanent or temporary.
- **Pardoned Criminal Conviction**
 - Once a pardon has been granted, one can not be treated differently based on their conviction for that crime.

2. Small Group Discussion

- To be led by the Student Facilitators
- The class is divided into 4 groups for the small group work

The Student Facilitators should review the background information outlined below. They should not go into too much detail, as all the students need is an overview of the complaint process. Emphasis should be placed on the mediation process, as that will form the basis of the small group discussions and activities on Day 2.

The Student Facilitators will distribute Handout # 1 (Resolving Complaints) at the end of the discussion to the students so they have a summary of the process discussed.

Resolving Complaints under the Ontario Human Rights Code

Inquiry

- An inquiry is any contact by an individual, group or organization with the Commission. (e.g. asking broad questions, or asking what services the commission provides).
- Inquiries made by mail, e-mail or fax will be responded to within 21 days from receipt of the letter.

Intake

- A Complaint Form is a written statement of an allegation that a person has been discriminated against based on one or more of the grounds of discrimination covered under the Ontario Human Rights Code.
- The Complaint Form is a legal document that will give the respondent (person who committed the allegations) notice that there is a claim against them, and will set out the argument for the Commission to review.
- The completed Complaint Form is then given to an Intake Officer for assessment.
- The Commission will “serve” the complaint by sending the Complaint Form to the respondent(s).
- The respondent will be asked to respond in writing within 30 days of receiving the complaint.

Dealing with the Complaint

- The Commission is not required to deal with all complaints. The Commission can decide to not deal with a complaint if it appears that it:
 - Could be more appropriately dealt with under another legislation;
 - Is trivial, frivolous, or made in bad faith;
 - Is not within the Commission’s jurisdiction; or,
 - Is based on events that are more than 6 months old without a reasonable explanation as to why a complaint was not filed earlier.

Resolving Complaints

- The Commission resolves complaints through:
 - Mediation and
 - Investigation.
- When the complaint is served to the respondent, the claimant and respondent are given both a mediation date and a Fact-Finding Meeting date.

Mediation

- At the Mediation meeting, a mediation officer will meet both parties.

- Each party will briefly set out their position about the complaint.
- Mediation allows both sides to a complaint to check their facts and assumptions, exchange perceptions and ideas and work towards an agreeable settlement.
- Mediation allows each party an opportunity to understand the other person's position and it allows each person to be directly involved in the process.
- The mediation officer will then discuss settlement possibilities.
- Mediation allows both sides to try and brainstorm alternative solutions, which would benefit both parties.
- Each party has the right to have representation at the Mediation meeting. Such representation can be in the form of a lawyer or advisor.
- A party can also bring a family member or friend for support; however, in most cases the support person will not be allowed to speak at the meeting.

Advantages of Mediation

- Control over the process
 - Since mediation is voluntary, neither party is forced to reach a settlement.
- Fast
- Effective
- No cost
- No pressure to settle
- No delays
- Less adversarial
 - It is in both parties interest to perform the negotiations amicably as neither party wants to go forward to an investigation and/or a hearing.
- Less time consuming
- Confidential
 - If a settlement is not reached, no information that was discussed during the mediation meeting will be passed on.

Settlement

- At the Mediation meeting there can be two possible outcomes:
 - An agreement to settle.
 - Both the complainant and respondent will be required to sign a written agreement and to adhere to the terms of the agreement. As a result the file is closed and no further action is necessary.
 - No Settlement agreement.

Further Steps

- If a settlement cannot be reached, the complaint is further investigated by the Commission and a decision is made as to whether it should be referred to the Human Rights tribunal of Ontario

3. Small Group Mediation Preparation

- led by Student Facilitators

a) Review of Case Study

The Student Facilitators should distribute Handout #2 (Case Study) and allow the student a chance to read it carefully. They should then lead the students through a discussion, which includes:

- a) Identification of the discrimination involved;
- b) The areas of protection involved;
- c) The complaint process which need to be followed (David) or the response expected from Gold City as they defend their actions.

Case Study: David v. Gold City

John and David are two friends who attend Saunders Secondary High School (we should change this to the current school) and are currently in Grade 11. The two friends notice a job advertisement in the London Free Press, for two usher positions at the local “GoldCity” movie theatre. Both teenagers decide to apply for the positions in order to make some pocket money on the weekends.

John and David’s resumes are practically identical. Both applicants have no prior work experience, however, volunteer once a week together at the daily food

bank. Both students have been on the honour role at school since Grade 9. John is Caucasian and David is Asian. The only other noticeable difference between the two applicants is that John, who is 19 years old, is 3 months older than David who is currently 18 years old.

After submitting their applications and attending two interview sessions, both John and David are thrilled to learn that they have both been offered a contract with GoldCity in the capacity of an usher.

Both John and David sign their contracts individually and return them to their employer. After their second week of employment, both John and David are presented with their first pay cheque. Upon opening their pay cheques, David notices that his two-week sum is considerably less than John's pay, and upon further inspection realizes that he is being paid \$7.50/hr while John is making \$9/hr.

Through the grapevine it comes to David's attention that GoldCity had recently fired an Asian employee because he was late for his shift because he was writing a final exam.

David decides to approach his manager at GoldCity to inquire about the discrepancy between his and John's pay cheques. The reasoning given by David's manager is that since John is older, GoldCity felt it was appropriate to pay him more.

b) Small Group Mediation Preparation

- led by Student Facilitators

- Each group will be required to take on the role of either "David" or "Gold City Management."
- Create a Mediation/Negotiation Plan.
- Two students per group must be chosen to represent the group on the second day of the module in the mediation process.

i) David Groups

David has filed a claim against GoldCity with the Ontario Human Rights Commission, and both sides have been served with a date to attend a Mediation meeting. Prepare your arguments and position that you will present at the meeting.

Below are some points to consider:

David:

- Can David claim discrimination under the application of the Ontario Human Rights Code?
- If so, upon which ground(s) would David claim he was discriminated against?
- In terms of compensation what is David seeking at the Mediation Meeting?
- Make a list prioritizing David's goals at the meeting.
- What is David willing to settle for at the meeting?
- What arguments will GoldCity present at the meeting?
- What counter arguments can David prepare in response to GoldCity's arguments?
- What does David think GoldCity might be willing to offer in terms of compensation?

ii) Gold City Groups

David has filed a claim against GoldCity with the Ontario Human Rights Commission, and both sides have been served with a date to attend a Mediation meeting. Prepare your arguments and position that you will present at the meeting.

Below are some points to consider:

GoldCity Management:

- How can GoldCity justify the alleged discrimination claimed by David?
- Can David claim discrimination under the application of the Ontario Human Rights Code?
- If so, upon which ground(s) would David claim he was discriminated against?
- Make a list prioritizing GoldCity's goals at the meeting.
- What is GoldCity willing to settle for at the meeting?
- What arguments will David present at the meeting?
- What counter arguments can GoldCity prepare in response to David's arguments?
- What does GoldCity think David might be willing to offer in terms of compensation?



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D. Lesson Plan - Day 2 - Detailed Summary

1. Introduction – Led by Student Coordinator

- Remind each group that they must select two representatives who will participate in the mediation process.
- Allocate time for groups to prepare for mediation process.

2. Small Group Mediation Preparation – Led by Student Facilitators

- Review case analysis and final preparation for mediation.
- Review mediation plan.
- Assign two students per group to participate and represent the group in the mediation process.

3. Mediation Session – Led by 2 DRC Mediators (2 separate mediation sessions)

****** Please see separate instructions for DRC Mediators ******

4. Wrap Up – led by Student Coordinators

- Large group discussion
- Compare results from both mediation sessions
- Evaluation by students



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Handout #1 – Resolving Complaints

- The Commission resolves complaints through:
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 - Investigation.
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Mediation

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- A party can also bring a family member or friend for support; however, in most cases the support person will not be allowed to speak at the meeting.

Advantages of Mediation

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- Confidential
 - If a settlement is not reached, no information that was discussed during the mediation meeting will be passed on.

Settlement

- At the Mediation meeting there can be two possible outcomes:
 - An agreement to settle.
 - Both the complainant and respondent will be required to sign a written agreement and to adhere to the terms of the agreement. As a result the file is closed and no further action is necessary.
 - No Settlement agreement.

Investigation

- If a settlement is not reached at the mediation meeting a fact-finding meeting is scheduled for 6-8 weeks after the mediation meeting. An investigation officer (“investigator”) is assigned to handle the complaint.
- The investigator will ask both parties questions at the fact-finding meeting about the complaint in an attempt to obtain evidence.
- The investigator will take notes. The notes could be used later to help the Commission make a decision or be used as evidence at a hearing before the Human Rights Tribunal of Ontario (“Tribunal”) or in a court of law.
- Both parties will be asked to submit documents as evidence as well as bring witnesses forward or any other forms of evidence, which would support their case.

Conciliation

- At the end of the Fact Finding Meeting, there is another opportunity for both parties to try and resolve the complaint.
- After seeing the evidence brought forward by the each party, the parties might be more inclined to try and reach a settlement.

- The investigator may assist the parties to negotiate a settlement by discussing:
 - a. Positions of the parties and the evidence to date.
 - b. Settlement proposals.
 - c. Public interest remedies.
 - d. The Policies of the Ontario Human Rights Commission.
 - e. Decisions and settlements achieved at the Human Rights Tribunal of Ontario and other legal cases that might affect the current complaint.

- If a settlement is reached between both parties then the complainant and respondent will be required to sign a written agreement and adhere to the terms of the agreement.

Disclosure

- If a settlement is not reached then the commission has the authority and discretion to refer the claim to the Human Rights Tribunal of Ontario.
- The Human Rights Tribunal hears evidence and decides whether or not the case involves discrimination and what needs to be done to remedy the situation and prevent further discrimination.
- The Tribunal is independent from the Commission.
- The Commission, the respondent and the complainant are each separate parties before the Tribunal.



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Handout #2 Case Study

John and David are two friends who attend Saunders Secondary High School and are currently in Grade 11. The two friends notice a job advertisement in the London Free Press, for two usher positions at the local “GoldCity” movie theatre. Both teenagers decide to apply for the positions in order to make some pocket money on the weekends.

John and David’s resumes are practically identical. Both applicants have no prior work experience, however, volunteer once a week together at the daily food bank. Both students have been on the honour role at school since Grade 9. John is Caucasian and David is Asian. The only other noticeable difference between the two applicants is that John, who is 19 years old, is 3 months older than David who is currently 18 years old.

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Both John and David sign their contracts individually and return them to their employer. After their second week of employment, both John and David are presented with their first pay cheque. Upon opening their pay cheques, David notices that his two week sum is considerably less than John’s pay, and upon further inspection realizes that he is being paid \$7.50/hr while John is making \$9/hr.

Through the grapevine it comes to David’s attention that GoldCity had recently fired an Asian employee because he was late for his shift because he was writing a final exam.

David decides to approach his manager at GoldCity to inquire about the discrepancy between his and John's pay cheques. The reasoning given by David's manager is that since John is older, GoldCity felt it was appropriate to pay him more.



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Handout #3 – Preparation for Mediation (David Groups)

David has filed a claim against GoldCity with the Ontario Human Rights Commission, and both sides have been served with a date to attend a Mediation meeting. Prepare your arguments and position that you will present at the meeting.

Below are some points to consider:

David:

- Can David claim discrimination under the application of the Ontario Human Rights Code?
- If so, upon which ground(s) would David claim he was discriminated against?
- In terms of compensation what is David seeking at the Mediation Meeting?
- Make a list prioritizing David's goals at the meeting.
- What is David willing to settle for at the meeting?
- What arguments will GoldCity present at the meeting?
- What counter arguments can David prepare in response to GoldCity's arguments?
- What does David think GoldCity might be willing to offer in terms of compensation?



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Handout #4 – Preparation for Mediation (Gold City Groups)

David has filed a claim against GoldCity with the Ontario Human Rights Commission, and both sides have been served with a date to attend a Mediation meeting. Prepare your arguments and position that you will present at the meeting.

Below are some points to consider:

GoldCity Management:

- How can GoldCity justify the alleged discrimination claimed by David?
- Can David claim discrimination under the application of the Ontario Human Rights Code?
- If so, upon which ground(s) would David claim he was discriminated against?
- Make a list prioritizing GoldCity's goals at the meeting.
- What is GoldCity willing to settle for at the meeting?
- What arguments will David present at the meeting?
- What counter arguments can GoldCity prepare in response to David's arguments?
- What does GoldCity think David might be willing to offer in terms of compensation?