**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?

**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 Canada *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. 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?

**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 Canada 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 Canada 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**

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, Canada. He went on a “Ladies” Night,” when women are charged a lower cover charge than men. Bars across Canada (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 Canada 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?

**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?

**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 clasping 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?

**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?

**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 Canada, 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 Canada.

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**

*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 Canada, 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?

**Case study 11: Alia and Ahmed**

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

There are many people in Canada 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?

**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.

**1. What rights and/or interests, if any, are the claims linked to?**

**a. 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 Canada *Human Rights Code* s.1 and *Chart*er 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 Canada’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 Canada’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 Curt 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 Canada.

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](http://www.ohrc.on.ca/en/policy--competing--human--rights); or the special issue of Canadian Diversity on