

CHAPTER NINE

Mediation, Negotiation, and Legislation

Key Expectations

- Recognize the benefits of teamwork and how to be an effective team member.
- Understand workplace etiquette.
- Understand the conflict cycle.
- Understand personal conflict style.
- Understand how to resolve conflict.
- Understand labour legislation and the role of unions.
- Understand the importance of human rights legislation.
- Determine what constitutes discrimination and harassment.
- Recognize techniques for preventing discrimination.
- Understand the concepts of pay equity and employment equity.

Key Terms

functional team
cross-functional team
repression
criticism
assertive
aggressive
passive
conflict
conflict resolution
negotiation
mediation
arbitration
labour legislation
human rights
discrimination
harassment
pay equity
employment equity



TEAMWORK

For many of the activities throughout this text, you have worked cooperatively in small groups with other students. This ability to work successfully as part of a team is a valuable skill in any occupation. A team could be members of the same department, people working together on a project, or a group of people assigned to a special task. A committee is also a form of team.

In the workplace there are two types of teams. A **functional team** is made up of members who have similar qualifications; for example, they are all members of the same department. A **cross-functional team** is made up of members with a variety of backgrounds; for example, there is one member from each department. The new way of working using the project-based method relies on all members having excellent teamwork skills—the job must be done quickly, effectively, and efficiently. Usually, a diverse group of people are called upon. Employees work together as a team to make decisions, complete projects, plan for the future, and negotiate better working conditions for all workers.

Taking part in group negotiation and problem solving helps to increase your understanding of differences among people. An effective group can usually accomplish more than individuals working in isolation. The power of working together is evident when people collectively solve problems to create change. For example, employers and employees can work together to encourage greater safety precautions in the workplace. Collective action can be informal, such as co-workers organizing a recycling program, or formal, such as organizing associations, federations, guilds, or unions. When a group of people work together, there can be positive gains for everyone concerned.

Attitude Counts!

The following list describes valuable attitudes and actions of a good team member.

- Make the team's goals your top priority.
- In meetings, listen actively and offer suggestions. Continue to communicate with team members outside meetings.
- Follow up on what you have been assigned to do.
- Build positive group dynamics, or a good relationship with team members.
- Try to inspire other team members to get the job done.

Rating Yourself as a Team Member

1. Reflect on a recent situation in which you had to work as part of a team. How would you rate yourself according to the points listed in the Attitude Counts! feature?
2. How can you improve your teamwork skills?



WORKPLACE ETIQUETTE

Getting along with others in the workplace is not limited to being a good team member. Working with others day after day requires a code of behaviour or workplace etiquette. The rules to follow are simple.

- **Be courteous.** Greet co-workers in a friendly manner, using their names.

- **Be considerate.** Do not interrupt or talk so loudly that you disturb those around you.
- **Share equipment and resources.**
- **Avoid workplace gossip.**
- **Respect privacy.** Keep all matters at work confidential. Do not read co-workers' faxes or computer screens. Do not open co-workers' files if you share a computer. Do not intrude in your co-workers' private spaces. Keep clients' or customers' business confidential as well.
- **Keep personal matters private.**

Career Connection

Dealing With a Co-Worker's Annoying Habit

Have you ever worked with someone who had an annoying habit? How did others react? Was anything done to improve the situation? If so, describe the incident and the outcome. Refer to the points made in Workplace Etiquette. Have you experienced one of these situations? How did you react? How did others react?

Handling Emotions

Sometimes emotions are so overwhelming that people cannot function effectively. Specifically, anger can be hard to handle at the workplace. Anger and other emotions can be either expressed or repressed. **Repression** is a defence mechanism people use to bury unacceptable or painful emotions or memories deep in their subconscious. Repressed feelings can actually lead to poor health and can lead to displays of uncontrolled anger, which may cause hurt feelings and damaged relationships. When a person becomes angry, he or she may express other repressed feelings. Common symptoms of repressed negative emotions include putting other people down, transferring anger from work to friends and family, and muscle tension.

People can manage and use their anger in constructive ways by understanding themselves and the situations that make them angry. Negative emotions signal a problem or challenge to be overcome, so careful analysis of a situation can lead to a solution. If you become angry, use these guidelines to manage your anger.

- **Try to calm down** Remove yourself from the situation by going outside or use creative visualization to defuse your anger. Emotion has a physical effect on your body, so you need to relax your tense muscles, slow your breathing, and return your body to normal. Afterward, you will be more relaxed and better able to tackle your work and the problem.
- **Avoid getting co-workers involved in a situation** Talking over a problem with a friend or family member may help you to feel better, but you should resolve the situation with the person with whom you are angry.

- **Identify the source of your anger** Consider the situation in order to determine what you want to accomplish, how you can accomplish it, and whether or not you are trying to dominate a situation.
- **Acknowledge responsibility for your emotions** No matter what another person has done to make you feel angry, you are responsible for your actions and feelings.
- **Express your feelings calmly and coherently** Avoid blaming or lecturing. Respond to an angry person with statements such as: "I am upset about this situation. Let's talk about the problem." Then you can help to defuse the situation. Try to offer suggestions to resolve the problem.

Recording Your Emotions

For one week, keep a record of the times when you experience extreme negative emotion or tension. Describe the physical signs. What time of day was it? What were you doing and with whom? How did the other person respond? What feelings and thoughts did you have at the time? How did you respond? What was the outcome? How would you handle this extreme emotion the next time?



Giving and Receiving Criticism

Everyone has ways in which they can improve, times when they do not perform to the best of their abilities, and moments when they make mistakes. Although criticism may not always be given in a constructive way, everyone can learn to accept and profit from it. **Criticism** is the act of making judgements about another person's behaviour or actions, and it may involve giving both positive and negative comments. Knowing how to give and receive criticism is a valuable skill and can help prevent conflict. Constructive criticism from someone such as your supervisor can help you to perform your job better and understand your supervisor's needs. The following chart outlines constructive and non-constructive criticism.

Comparing Constructive and Non-Constructive Criticism	
Constructive Criticism	Non-Constructive Criticism
• Addresses behaviour	• Addresses attitude
• Is specific	• Is general
• Is offered immediately	• Is not offered immediately
• Makes some mention of positive points	• Focusses exclusively on negative points
• Offers specific actions to solve the problem(s)	• Offers no solution to the problem(s)
• Is given in private	• Is announced in public

Assertive, Aggressive, and Passive Behaviour

Behaviour that is **assertive** expresses a person's feelings, preferences, needs, or opinions while still respecting others. Assertive people tend to be confident in their opinions. They can honestly express their feelings in a positive manner and encourage others to do the same. They use "I" statements to state calmly what they are feeling.

Aggressive behaviour is intended to achieve one's own goals at the expense of others, or to impose opinions on others. Many aggressive people express themselves without demonstrating respect and sensitivity toward other people. They will often use "you" statements, such as "You said. . ." or "You did this," with a belligerent tone of voice.

Passive behaviour, or not expressing oneself nor protecting one's rights, allows a person to be victimized. Passive people tend to have a poor self-concept and often think that everyone else is always right. They put themselves down, allow others to make choices and solve problems for them, and do not express their true feelings because they are afraid others will not agree with or like them if they do. Passive people are often taken advantage of by aggressive people, or they may encourage others to take on their decisions and work.

In the workplace, you will need to maintain a good working relationship with all kinds of people. When dealing with aggressive people, remain firm in your opinions without becoming aggressive. Rather than responding to hostility, calm the aggressive person by focussing on relevant information. For example, if a co-worker is complaining loudly about a mix-up, ask for an exact description of the problem. As the aggressive person goes into detail, hopefully he or she will vent the anger. Then you can discuss the problem more rationally. If an aggressive person demonstrates insensitivity, respectfully explain that you do not agree with this behaviour. When dealing with passive people, ask several open-ended questions to determine whether the person understands the situation and his or her true feelings. Give support to a passive person without taking on his or her tasks or problems. Be aware of how you respond to a passive person—be respectful and considerate.

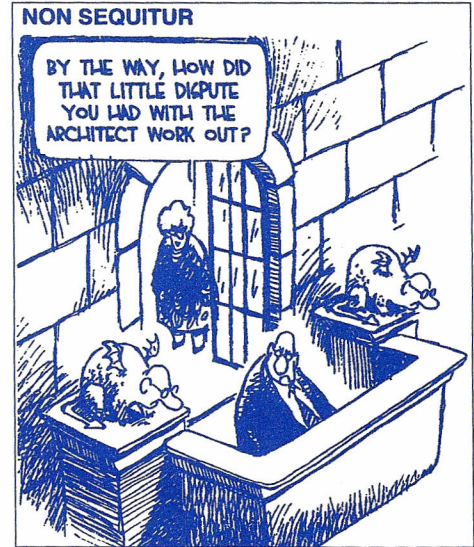
Activity 1

Role-Playing Behaviours

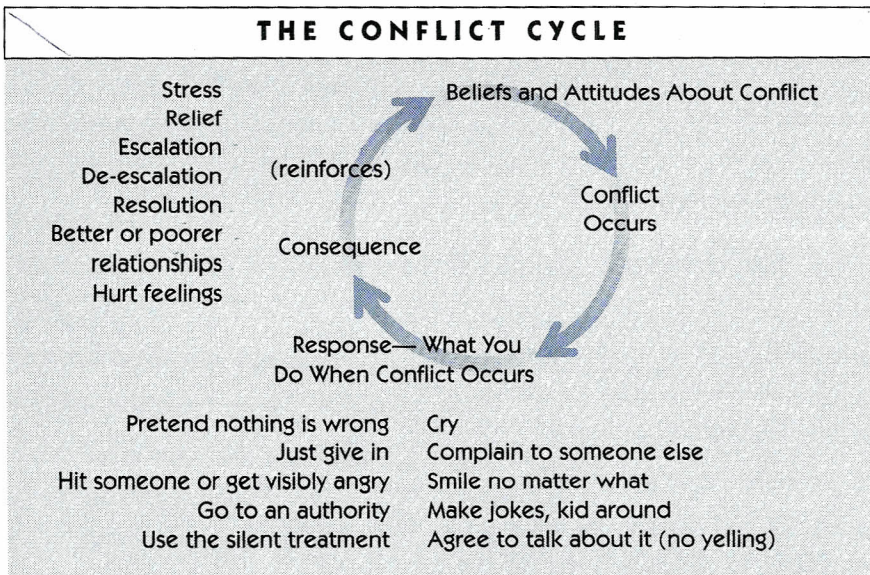
1. In groups of three, role-play three workplace situations that involve an assertive, an aggressive, and a passive person. Take turns playing each role. You may want to use the following situations.
 - The aggressive person criticizes the passive person for not standing up for him or her in a divisional meeting.
 - The three of you are a team working on this month's company newsletter. How will you divide the tasks?
 - You are pressed for time and the line-up to buy lunch in the cafeteria is long. The person ahead of you lets three friends join him or her in the line.
2. Reflect on how you felt playing each role. Which role felt most like you? Why?


CONFLICT

Throughout your life you receive messages about **conflict**, or a clash of opposing ideas, interests, or activities, from parents, teachers, peers, the media, literature, and your own experiences. These messages build a set of attitudes and beliefs about conflict that affect how you interact with others and how you respond in conflict situations. How you respond will lead to consequences that may be positive or negative. Yelling would be negative. Talking about the problem and coming to an increased understanding of the other person would be positive. Most people are conditioned, however, to think of conflict in a negative way. If you respond negatively by yelling, name-calling, physical violence, or walking away without solving the problem, this usually leads to a continuation of the conflict at a later time.



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 You may wish to file a copy of The Conflict Cycle diagram in your portfolio.

Activity 2

Examining Attitudes to Conflict

- The beginning of the conflict cycle is “Beliefs and Attitudes About Conflict.” Examine statements made by your parents, by television programs, by movies, and so on. For example:
 - *Don't get mad, get even.*
 - *Second place is loser's place.*
 - *Turn the other cheek.*
- How do your friends and family react to conflict? How has their behaviour had an impact on your response to conflict?
- Examine the “Consequence” section of the conflict cycle diagram. Select which items are a positive consequence and which ones are negative and are, therefore, likely to lead to more conflict.

Activity 3**Analyzing a Personal Conflict**

1. Analyze the past five conflicts you have had. For each one, describe who it was with, what it was about, and what you did or said. How did you feel before, during, and after the conflict? Do you see a pattern in your response to conflict?
2. From Question 1, select a conflict that ended with positive consequences and one that had negative consequences. Complete a conflict cycle diagram for each one.

CONFLICT RESOLUTION

Even when co-workers practise courtesy and respect, and team members are well chosen, it is rare that a workplace does not experience tensions from time to time. Whether two people are working close to each other or are part of a team, conflict can occur. Call it human nature. Resolving conflict healthily can be learned and is a necessary skill for all workers. **Conflict resolution** for the workplace is a problem-solving strategy for settling disputes.

At any time, but particularly in the workplace, the method used for resolving conflict should be one of problem solving. The conflict should end when a solution is developed and implemented. The communication skills featured in Chapter 5 are integral components of conflict resolution, particularly active listening and speaking. Conflict resolution is a process in which a specific sequence of steps must be followed.

The Informal Collaborative Process

This process is an informal form of negotiation in which two people in conflict attempt to express and resolve their differences. For the process to work, both people must be willing to co-operate and work together. The process has two major parts:

1. Personal time for each person to reflect and plan.
2. A meeting at which a problem-solving method is used to resolve the conflict.

During the reflecting and planning stage of the process, each individual must define his or her needs and feelings about the situation. By planning in advance, you may be better able to express yourself in a non-threatening way. Planning ahead allows time for both people to calm down, enabling them to listen and to express themselves more effectively.

During the reflecting and planning stage it is important to identify all of the issues related to the conflict. It is rare for conflicts to have a single cause. More often they involve multiple issues. Look beyond the more obvious issues to see what underlying factors may also be involved. If only the more obvious issues are addressed, the conflict will often re-emerge involving another superficial issue. If a lasting solution to a problem is to be found, it is essential to identify and address all the issues.

These questions can help you in the reflecting and planning stage.

- How does the situation affect me?
- What aspect of the conflict is important to me?

- What are my real needs in the situation?
- Are my personal values being challenged? Which ones?
- How do I view the other person?
- What do I most want this person to understand about me?
- What exactly would make the situation better for me?
- What do I want to change and what do I need for change to occur?
- Who can help bring about this change?

A problem-solving meeting follows the planning and reflection stage. To guide this discussion, it is helpful to follow a sequence of steps known as problem solving.

- 1. Set the tone** Begin by stating your positive intentions for the relationship and the current situation; for example, “I want to resolve this problem.” “Our relationship is important.” “I want to hear your point of view.”
- 2. Define and discuss the problem** If possible, come to a mutual agreement about what the conflict is exactly. Then, both of you outline your concerns and needs from the planning and reflection stage. Express both the surface and the underlying causes of the problem. During this time, do not interrupt the other person.
- 3. Summarize the progress** Take time to confirm that both you and the other person have heard and perceived the same information. Summarize by once again defining the problem and by going over the major points each person stated.
- 4. Explore alternative solutions** Brainstorm a variety of solutions and determine the advantages and disadvantages of each. The solution selected to try first should be:
 - acceptable to both parties,
 - specific, stating exactly what each person will do and how and when it will be done,
 - balanced, so that each person is contributing something to the resolution of the problem.
- 5. Follow up** Before leaving the meeting, agree on a time to meet in the near future. This will enable you to evaluate your solution and make some adjustments, if necessary. The follow-up meeting will also enable you to continue to build a positive relationship.

Examine the conflict cycle you created in Activity 3. Write a solution, using the five steps of the conflict resolution method described. What could have been done differently? Do you think the result would have been the same?



You may wish to file your example of the conflict resolution method in your portfolio.

Activity 4

Applying the Informal, Collaborative Process

racecar
radar
level
bob
boob
booby

Formal Negotiation Processes

The informal, collaborative conflict resolution process involves individuals. **Negotiation** often refers to a more formal conflict resolution process, usually between groups. In the workplace, it is most often associated with resolving problems between unions (the workers) and management (the bosses). Negotiation occurs in order to get both groups to agree. Each group usually assumes very specific positions. Negotiation usually involves compromise—each side “giving up” points of their position until they can come to agreement.

Sometimes, agreement cannot be reached. When this occurs, a third party is brought into the process. This is referred to as **mediation**, with the third party as the mediator. The mediator helps the two groups find a solution to their problem. If a solution is still not found, the process becomes one of **arbitration**. Both parties agree to abide by the decision of the third party, referred to as the arbitrator. The arbitrator studies both sides of the conflict and decides in favour of one group over the other.



Labour Legislation

Labour legislation outlines the rights and responsibilities of employers, unions, union employees, and non-union employees. The British North America Act of 1867 determined how the legislative powers would be divided between the federal and provincial governments. In terms of labour, the federal government has authority over certain industries, federal employees, and works that benefit all or part of Canada (as opposed to works for one province or territory only). Because provincial and territorial governments form laws concerning civil rights, labour legislation is largely a provincial or territorial matter.



Use the Internet to explore what labour legislation information is available from your province's web site on *government legislation for the workplace*. List the legislation and give a brief description of what it covers.

CASE STUDY**A Hunt for Dignity***by Valerie Lawton*

Debora De Angelis is a young clerk eager to sell the latest fashions. But she is also a woman with attitude. That spunk—plus her feeling that bosses at Suzy Shier did not respect workers—drove the 22-year-old to organize the first union at one of the clothing chain's stores. "I had to decide whether to leave or stay and make a difference," says De Angelis. "What we did not have and we have now is dignity and a voice."

The seven new union members at the store at North York, Ontario's, Sheridan Mall won raises of up to 3.25 percent. A part-time worker with a year's experience makes \$7 an hour. De Angelis's efforts may also rate the University of Toronto labour relations student a mention in the next edition of the Canadian labour history texts she studies.

Her union—the Union of Needletrades, Industrial and Textile Employees—does not know of any other clothing boutique workers who have won a collective agreement in Canada. Labour organizers hope it is another inroad in the largely non-unionized retail sector.

De Angelis started working at Suzy Shier at age 17. She quickly became frustrated with the way she and her co-workers were treated. She lists plenty of irritants. Downgraded Christmas treats. The selling bonus that disappeared—but not for managers. The clothes discount that was scaled back. "Insulting" store rules that made workers stand at least a metre apart—apparently to cut down on chit-chat. The worst thing, De Angelis says, was the feeling of powerlessness. The number of hours people worked seemed to be based on who was in the manager's good books, she says. "If you had a little dispute, she had total power over the schedule."

De Angelis—who started at \$4.25 an hour when she was hired five years ago—figures she asked seven managers to bump her salary up from minimum wage. "I became desperate enough to go to the operations manager and ask for a pay increase and she

told me I had received my pay increase when minimum wage went up. It was a moral slap in the face, an insult to my intelligence."

De Angelis said two things made her decide a union would make a difference. First was what she learned about workers' rights in her labour history classes. But she was also struck by the comparative "utopia" at the unionized Toronto Transit Commission, where her mechanic father works. Getting co-workers at her store to sign union cards was fairly easy. Everyone did, she says. Workers at two other Suzy Shier stores also seemed set to join the union. In the end—after individual heart-to-hearts with managers, says De Angelis—they changed their minds.

Organizing and then hammering out a contract took close to two years. The deal was signed in Spring 1997. "They have more respect for us now," De Angelis says of her bosses. "They think twice before they say something."

Labour officials say the retail sector is often very difficult to organize. "Some of the factors are the youth of workers, a high turn-over," said Pat Sullivan, Ontario director of the Union of Needletrades, Industrial and Textile Employees (UNITE). "By the time you can get through the whole certification process, people have changed quite a bit." That is what makes Suzy Shier such an important step, she said. "The significance of Susy Shier is that we got a collective agreement where others have failed," said Sullivan, who credits the company for sitting down with the union to negotiate. Sullivan said UNITE hopes its success at Suzy Shier will encourage other retail workers to unionize. Her union is already working on organizing other Ontario retail shops.

1. What factors or incidences made Debora feel frustrated by the way she and her co-workers were treated?
2. What were the two main reasons she decided to form a union?
3. Why might some workers be reluctant to sign on with a union?
4. Why is the retail sector difficult to unionize?

Activity 5**Discussing the Role of Unions**

As a class, list as many different reasons as you can to explain why unions were formed. How many of you would join a union? Would you form a union if one did not exist? Why or why not?

HUMAN RIGHTS ON THE JOB

Part of Canadian heritage includes the belief that everyone is born free and equal, although this belief is not always reflected in daily life. Canadian law guarantees basic **human rights**, including the right to be respected at all times. Canadians have the right not to be placed at a disadvantage based on factors such as race, place of origin, religion, age, gender, marital or family status, or disability. Everyone has the right to live and work in an environment that is free from such **discrimination**. The Canadian Human Rights Commission administers the Canadian Human Rights Act, which applies to industries under federal jurisdiction, such as air transport, radio and television broadcasting, banking, and telecommunications. Each province and territory also has similar human rights legislation to protect against discrimination for any person not covered under the federal legislation.

Basically, every person in Canada has the right to freedom from discrimination in the areas of: services, goods, and facilities; housing; contracts; membership in vocational associations and craft unions; employment.

Every individual has a responsibility to respect the rights of others. Every employer has a responsibility to stop or prevent discrimination in the workplace. Every employee has the right to lodge a complaint of discrimination, and the employer is expected to listen to and act on such complaints.¹ Human rights legislation incorporates many other aspects of employment, including recruiting, hiring, training, transferring, promoting, apprenticeship terms, dismissals, and layoffs. Terms and conditions of employment—for example, rates of pay, overtime, hours of work, vacation time, shift work, discipline procedures, and performance evaluations—might also be included in this legislation.

The Canadian Charter of Rights and Freedoms also protects human rights within Canada. Its purpose is to state the rights of every Canadian citizen clearly so that these rights can be understood and protected by the legal system. The Charter is entrenched in the Canadian constitution, which helps to protect these rights from being abolished by federal or provincial legislation. Among the rights included in the Charter are the right to freedom of conscience and religion; freedom of thought, belief, opinion, and expression (including the media); freedom of peaceful assembly; and freedom of association. Discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability is prohibited under the Charter.

Prohibited Grounds of Discrimination in Employment*

Jurisdiction	Federal	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	New Brunswick	Prince Edward Island	Nova Scotia	Newfoundland	Northwest Territories	Yukon
Age or colour	●	●	●	●	●	●	●	●	●	●	●	●	●
Religion or creed	●	●	●	●	●	●	●	●	●	●	●	●	●
Age	●	● (18-65)	● (18+)	● (18-64)	●	● (18-65)	●	●	●	●	● (19-65)	●	●
Sex (incl. pregnancy or childbirth)	●	●	●	●	● ¹	● ²	●	●	● ³	●	● ³	●	●
Marital status	●	●	●	●	●	●	● ⁴	●	●	●	●	●	●
Physical/Mental handicap or disability	●	●	●	●	●	●	●	●	●	●	●	●	●
Sexual orientation	●	●	●	●	●	●	●	●	●	● ³	●	●	●
National or ethnic origin (incl. linguistic background)	●	●	●	● ⁵	●	● ⁶	●	●	●	●	●	● ⁶	●
Family status	●	●	●	● ⁷	●	●	● ⁴	●	●	●	●	●	●
Dependence on alcohol or drug	●	● ³	● ³	● ³	● ³	● ³	●	● ^{3,8}	● ³	● ⁸	●	●	●
Ancestry or place of origin	●	●	●	●	●	●	●	●	●	●	●	●	●
Political belief	●	●	●	●	●	●	●	●	●	●	●	●	●
Based on association	●	●	●	●	●	●	●	●	●	●	●	●	●
Pardoned conviction	●	●	●	●	●	●	●	●	●	●	●	●	●
Record of criminal conviction	●	●	●	●	●	●	●	●	●	●	●	●	●
Source of income	●	●	● ⁹	●	●	●	●	●	●	●	●	●	●
Assignment, attachment or seizure of pay	●	●	●	●	●	●	●	●	●	●	●	●	●
Social condition/origin	●	●	●	●	●	●	●	●	●	●	●	●	●
Language	●	●	●	●	●	● ³	●	●	●	●	●	●	●

Harrassment on any of the prohibited grounds is considered a form of discrimination.

* Any limitation, exclusion, denial or preference may be permitted if a bona fide occupational requirement can be demonstrated.

- 1) Includes gender-determined characteristics
- 2) Ontario accepts complaints based on a policy related to female genital mutilation in all social areas on the grounds of sex, place of origin and/or handicap
- 3) complaints accepted based on policy
- 4) Quebec uses the term "civil status"
- 5) defined as nationality
- 6) Ontario's Code includes only "citizenship"
- 7) defined as being in a parent-child relationship
- 8) previous dependence only
- 9) defined as "receipt of public assistance"

Threatening, intimidating or discriminating against someone who has filed a complaint, or hampering a complaint investigation, is a violation of provincial human rights codes, and at the federal level is a criminal offence.

Activity 6

**Writing About Freedom
From Discrimination**

In small groups, write two examples of freedom from discrimination for each of the areas listed under human rights legislation—services, goods, and facilities; housing; contracts; membership in vocational associations and craft unions; and employment. For example, “All people have the right to eat in any restaurant they choose” is an example of freedom from discrimination in the area of services, goods, and facilities.

HARASSMENT AND DISCRIMINATION

Harassment is a form of discrimination and is defined as any unwelcome physical, verbal, or visual conduct. Offensive posters and derogatory comments, threats, actions, or jokes against a person are forms of harassment. Even an offensive attitude, leer, or other type of intimidating conduct may be considered harassment if the behaviour is known or ought to be known as unwelcome. Employers, people acting for employers, and co-workers are prohibited from harassing employees and prospective employees in some regions (see the chart on page 179). Ideally, employment decisions should be based on merit, and not on criteria that are unrelated to job performance.

Any unwelcome comment or action about colour, national or ethnic origin, or the adornments and rituals associated with cultural or religious beliefs is harassment. Teasing, taunting, or other actions against people who are older or younger as well as people with disabilities are also forms of harassment.

Unwelcome sexual advances made by a co-worker or a person in a position of authority, or a reprisal because a sexual advance has been refused, are forms of sexual harassment. One company defines sexual harassment as any conduct that includes unwelcome and repeated sexual advances, requests for sexual favours, and other sexually related verbal or physical conduct or visual display that interferes with an individual's work or creates an intimidating or unpleasant work environment. Examples of sexual harassment include:

- displaying sexually offensive material,
- insults or jokes of a sexual nature,
- inappropriate remarks about a person's physical appearance,
- sexually suggestive gestures,
- comments about an individual's sex life,
- unwelcome touching or leering.

It is important to note that sexual discrimination includes discriminating against women who are pregnant or have recently given birth, as well as paying women and men unequally for doing work of equal value. Companies and unions have complaint procedures for dealing with discrimination or harassment. Examples of actions taken against a discriminator include fines, reprimands, apologies to the victims, demotions, transfers, and terminations of employment. Both federal and provincial human rights commissions provide frameworks to protect workers' rights and dignity. If a situation is unresolved by management, the complaint may be lodged with the appropriate human rights authority.

CASE STUDY

Questions Employers Cannot Ask

by Fiona McNair

Eager college students desperate for a paycheque to cover the rent have been known to go more than an extra mile to break into a tough job market. So at Christmas, when a potential employer asked Claudia during an interview if she was married or had a boyfriend, she felt she was facing a double-edged sword. Fearing she would not have a hope of landing the job if she refused to answer, the 21-year-old Edmonton student—who asked that her name not be used—pushed aside her discomfort and apprehension and responded. It is a decision she says she deeply regrets.

“I wished I had the courage to say, ‘That is an inappropriate question and I am not going to answer you,’ and then walked out. Maybe he was worried I would not be committed enough to the job if I was married or something like that. I heard some alarm bells going off, but I told myself I was just being oversensitive or had misunderstood his intentions . . . so I took the job.”

Claudia’s new boss had immigrated from a Middle Eastern country so she reasoned cultural differences might have also played a role in the uncomfortable interview. Now a little embarrassed by her naiveté, she says she should have predicted the inappropriate question was actually a valuable clue she should have paid more attention to.

Initially, the problems were relatively minor—like her boss ignoring requests to call her by her given name, instead of choosing to use expressions like “girl,” “beauty,” and “dear.” The harassment continued, soon accelerating to questions about her sex life and romantic involvements. The college student had only been working for the communications consultant for about three weeks when he began professing his love for her, even making a physical overture. When she pushed him away, he tried to say something was wrong with her, blaming Claudia for “misunderstanding him.” “I thought he would listen if I just kept telling him to stop and the situation would improve. But it got to the point where I was mad all

the time and going home in tears every day so I had to quit.”

Claudia finally left and did not look back until she discovered he had recruited a 13-year-old girl to work part-time. Concerned for the girl, she contacted the Alberta Human Rights Commission and filed a formal complaint. Grounds for Claudia’s case are detailed in commission documents which allege the woman’s human rights were violated repeatedly during the job interview and her one-month employment. Sexual harassment and discrimination based on gender and marital status are also listed in the complaint. Her former employer has refused to respond to the allegations and the case worker involved says it could take up to one year to be resolved by the commission.

Although Claudia’s complaint seems extreme, it is actually not that uncommon, according to the director of the province’s human rights commission. More than three-quarters of the complaints received every year by the agency are job-related concerns involving sexual harassment and gender discrimination, says Manuel da Costa. “I think most employers know what is off-limits and what is not. They may not be experts on the legislation but will know what is right and wrong,” he adds.

Margaret Overland, a provincial government career-development adviser, says a job-hunter has several options, including refusing to respond to the illegal inquiry, making light of the question, or answering it directly. “You really have to listen to your own instincts and do what you think is right.” All of the sources contacted agreed it is very important to ask the employer why they are asking the question. “In some cases you might be able to turn the situation around by addressing their concerns, but you might also want to think about if you really want to work for someone like that,” says Overland.

1. What human rights were violated in Claudia’s case?
2. What forms of sexual harassment did Claudia experience?
3. What are the negative results for employees who are harassed?
4. What can happen to employers who ignore harassment issues?

PREVENTING DISCRIMINATION

It can be difficult to lodge a complaint of discrimination because of the fear of losing a job or making matters worse. But it is essential that cases of discrimination be reported. Effective complaints procedures and reporting of incidents are important components of prevention. If these cases are not reported, then discrimination will likely continue.

The keys to preventing discrimination are education and training. This may heighten awareness of discrimination and harassment in the workplace. As well, educating discriminators is essential. Employers can act to prevent harassment by ensuring that:

- derogatory or demeaning posters are removed from the workplace,
- discriminatory comments or jokes are known to be unacceptable,
- everyone understands what types of actions and comments are discriminatory,
- a policy against harassment is available and accessible, including the names of individuals who have been trained to handle complaints of discrimination,
- a complaint procedure is established.

ETHICS *in action*

You are a retail-store employee in a large mall. A group of five or six teenagers enters your store. Immediately, one of your co-workers says, "Here's trouble." He starts to follow them, asking if they are planning to buy anything. What do you do? Do you think his reaction would be the same if it were a group of senior citizens?

Portfolio



Collecting Policies and Procedures for Harassment

Make a copy of the five points for preventing harassment listed above. Take them to your supervisor and discuss the policies and procedures that have been developed at your placement or part-time job. Alternatively, investigate the policies and procedures for harassment in your school. Bring back to class any materials that have been developed that can serve as examples. Make copies of the best ones to file in your portfolio.



Confronting Discrimination

Complete one, several, or all of the following statements.

- I have been a victim of discrimination. Here is my story.
- I have been a victim of harassment. Here is my story.
- I will no longer behave in a discriminatory manner. In the past, I have . . .
- I have witnessed acts of discrimination or harassment. Here is my story.

PAY AND EMPLOYMENT EQUITY

Any two people performing the same job, or substantially the same job, should be paid the same wage without discrimination based on gender. Pay-equity legislation regulates equal pay for work of equal value. Broadly speaking, **pay equity** means that women should be paid the same as men for jobs that are different but of similar value. In order to make payment practices less discriminatory, the value of a job is calculated in terms of skill required, level of responsibility, effort required, and working conditions. Canadian economists have estimated that 20 to 30 percent of the wage gap is due to discriminatory attitudes toward women and the jobs they have traditionally held—attitudes that have, unfortunately, become part of the economic system. The underpayment of women workers has a direct effect on the financial well-being of many Canadian women and their families. For this reason, provincial and territorial governments have passed pay-equity legislation.

Pay-equity is determined by a comparison method. It is used to achieve fair payment for employees in low-paying jobs in predominantly female workplaces. The skills and responsibilities of the job are assessed and compared to general workplace standards and the general rate of pay.

The pay-equity comparison method is most often applied to careers that are predominantly female, such as daycare workers, health care aides, community and social services organizations, homemakers working with the elderly, and women working in shelters. Secretarial and office administration positions are also areas for pay-equity review. The method is designed to correct gender-based wage inequity.

Women, aboriginal people, people who are physically or mentally challenged, and visible minorities have at times been denied **employment equity**, or equal employment opportunity due to discriminatory practices. These groups should enjoy a representative share of employment opportunities in all occupations and at all levels. Legislation, including the Federal Employment Equity Act, exists to ensure employment equity. Such legislation requires employers to report what proportion of their employees belong to these four groups. Employers must then demonstrate that all groups are equally represented at all levels within their organizations.

Responding to Discrimination


Complete the statements below.

- At my placement or part-time job, I have observed these examples of discrimination . . .
- My reaction was . . .
- At my placement or part-time job, I have observed these examples of discrimination prevention . . .
- My reaction was . . .



EXPANDING YOUR LEARNING

Analyzing Key Concepts

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1. Why are good teamwork skills so critical to success in the workplace?
 2. Give an example of how technology affects workplace etiquette.
 3. Why are creative thinking and good communication skills important parts of conflict resolution?
 4. Why are respect, understanding, and communication especially important in a diverse workplace?
 5. Explain the components of the conflict cycle.
 6. Explain the five steps of the informal collaborative process of conflict resolution.
 7. Are unions an essential part of the workplace?
 8. What is the purpose of human rights legislation?
 9. What are an employer's responsibilities toward preventing discrimination in the workplace?
 10. What actions can you take if you are harassed or discriminated against at your workplace?

Developing Employability Skills

ACADEMIC SKILLS



1. Using a graphics computer program, create a poster that demonstrates one or more discriminatory behaviours that are unacceptable in the workplace, or one or more of your rights as a Canadian.

PERSONAL MANAGEMENT SKILLS



2. Write a one-page essay on why it is important to control emotions in the workplace. Discuss ways that emotions can be channeled properly to allow people to work together effectively. Within the essay, note the possible consequences of a lack of emotional control at work.

TEAMWORK SKILLS



3. Divide the class into teams of five or six. Pair two teams together. One team will present the "pro" argument; the other team will present the "con" argument. Select one of the following issues to debate or develop a new one. Research data and statistics to back up your arguments. Give concrete examples.
 - Should older people be hired when younger people are applying for the same job?

- What level of fluency in English should employees have?
 - Should students be hired when parents responsible for families need to work?
4. What would you do and how would you feel in a strike if you were:
- a striking worker who is replaced by a temporary worker?
 - unemployed and given the opportunity to be a replacement worker?

Career Connection

Contact the Human Rights Commission for your province and invite a member to speak to your class about your rights in the workplace. Alternatively, you may want to invite a union member, a manager of a non-unionized retail store, or other key people in your community who are involved in workplace rights to represent their points of view in a panel discussion.

Researching the World of Work

Using a variety of sources (books, newspapers, videos, the Internet), prepare a report on a case of discrimination, a strike, or a conflict that was part of work history. Describe the situation, the activities that took place, the processes followed, and the final result.

Problem-Solving Situation

Create a one-act play in which a group of workers rally to form a union. Divide the class into workers and management. Determine who will be the leaders or spokespersons for each group. You must also determine the type of company, the workers' occupations, the workers' reasons for wanting a union, and management's position on union organization.

Reflective Journal



In this chapter you learned about our Canadian laws and practices that prevent discrimination and implement pay and employment equity. Which rights are most important to you? Why?