
RACE, COLOUR, NATIONAL
OR ETHNIC ORIGIN

ANTI-DISCRIMINATION CASEBOOK



CANADIAN HUMAN RIGHTS COMMISSION

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INTRODUCTION

The *Canadian Human Rights Act* and the Canadian Human Rights Commission

The *Canadian Human Rights Act* protects everyone within federal jurisdiction from discrimination and harassment both at work and when requesting a service. The Canadian Human Rights Commission looks into allegations of discrimination and helps to resolve them, redressing the rights of those who have been discriminated against. It helps educate people about the harm caused by discrimination, and works to stop discrimination before it occurs.

Under the *Canadian Human Rights Act*, it is against the law for any federally regulated employer or service provider to discriminate on the basis of:

- Race
- Colour
- National or ethnic origin
- Religion
- Age
- Sexual orientation
- Sex (including pregnancy and childbearing)
- Marital status
- Family status
- Physical or mental disability (including alcohol or drug dependence)
- Pardoned criminal conviction

The Act also requires that women and men receive equal pay for work of equal value.

The *Canadian Human Rights Act* protects employees and customers of federally regulated organizations, namely:

- Federal government departments, agencies, and Crown corporations
- Canada Post and other courier companies
- Chartered banks
- Airlines
- Television and radio stations
- Interprovincial communications and telephone companies
- Interprovincial buses, railways, and trucking companies
- Other federally regulated industries, such as certain mining operations

The Canadian Human Rights Commission can receive complaints based on the eleven grounds of discrimination as well as initiate complaints itself. For information on the Commission's complaint process, see Appendix A.



Canadian Human Rights Commission

The *Canadian Human Rights Act* gives the Commission the power to address discrimination by other means such as conducting public inquiries or studies; creating “standards of accessibility to services, facilities or premises”; approving special programs, plans or arrangements; reviewing federal regulations, rules, orders and by-laws; conducting special studies to be tabled in Parliament; and issuing guidelines interpreting the Act. As well, the Commission is mandated to promote awareness and understanding of human rights and to conduct research into human rights issues.

The Commission is also responsible for enforcing the *Employment Equity Act*. This Act requires federal employers to undertake steps to ensure that women, Aboriginal peoples, members of visible minorities and persons with disabilities are fully represented in their workforces.

The provinces and territories have separate human rights laws, which cover most situations involving housing, business, health care, and employers and service providers in other areas not governed by the federal law. Situations not covered in this booklet may be under provincial or territorial jurisdiction; the addresses for these human rights commissions can be found in the blue pages of local telephone directories.

What is discrimination?

Discrimination means to treat someone differently or unfairly because of a personal characteristic. The Supreme Court of Canada describes discrimination as a “distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to other members of society.” (*Andrews v. Law Society of British Columbia* [1989] 1 S.C.R. p. 144)

Discrimination includes not being hired, losing a job, being paid less, or not getting a promotion or some other work benefit. It also includes different or unfair treatment when requesting a service that is generally available to the public: getting a passport, for example, or travelling by train.

Discrimination encompasses harassment, which includes behaviour that demeans, humiliates or embarrasses a person if a reasonable person should have known it was unwelcome. Harassment involves actions (e.g. touching, pushing), comments (e.g. jokes, insults, name-calling) or displays (e.g. posters, cartoons). When this behaviour is directed at a person because of any ground covered by the *Canadian Human Rights Act*, including race, colour, or national or ethnic origin, then it is discrimination. Racial slurs or jokes can poison an environment, even if they are not directed towards a particular person. This is also a form of harassment.



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INFORMATION FOR EMPLOYEES AND CUSTOMERS

If you feel that you are being harassed or discriminated against, you can take your complaint to:

Your Employer. The organization should have a policy and procedures set up for dealing with harassment complaints, and these should include the name of a contact person.

Your Union. There may well be union grievance procedures for dealing with harassment complaints.

Service Provider. You can complain to the management of the organization that is responsible for the harasser(s).

The Police. Physical and sexual assault are offences under the *Criminal Code* and, in such cases, you can contact the police.

The Canadian Human Rights Commission. You have a legal right to file a human rights complaint if the harassment is based on your race, colour, national or ethnic origin, sex, religion, age, sexual orientation, disability, marital status, family status or conviction of which a pardon has been granted. You can get more information about how to do this by contacting the Commission using the phone numbers or addresses provided at the end of this section.

INFORMATION FOR EMPLOYERS AND SERVICE PROVIDERS

As an employer or provider of goods and services, you have a responsibility to provide an environment that is free of harassment and discrimination. You are also responsible for any act committed by any of your officers, directors, employees or agents in the course of their employment. If you have done everything possible to provide an environment free of harassment and discrimination and react quickly and appropriately to complaints, you will not be held responsible.

Prevention. You can act diligently to prevent harassment and discrimination by ensuring all staff are educated about what harassment and discrimination include. You should have a clear and well-publicized policy against harassment and discrimination which includes the names of the individuals in your organization who have been trained to handle complaints. As well, you need a procedure for dealing with complaints. All these actions will help convey the message that you will not tolerate discriminatory behaviour.



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Action. Your organization must investigate any allegation of harassment or discrimination to try to find out what happened. To establish that you did all you could to mitigate or avoid the effects of harassment or discrimination, you must ensure that corrective measures are taken.

The Canadian Human Rights Commission. If you have a question about anything in this booklet or about how to prevent harassment and discrimination in your workplace, the Canadian Human Rights Commission is there to help. Information on how to reach the Commission is provided below. You may also wish to contact the regional office in your area to inquire about information sessions on human rights issues.

HOW TO CONTACT THE CANADIAN HUMAN RIGHTS COMMISSION

The addresses and telephone numbers of our national and regional offices are listed below.

National Office:

344 Slater Street, 8th Floor
Ottawa, Ontario
K1A 1E1
Tel: (613) 995-1151
Toll Free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: (613) 996-9661

Quebec:

1253 McGill College Avenue, Suite 470
Montreal, Quebec
H3B 2Y5
Tel: (514) 283-5218
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (514) 283-5084

Atlantic:

5475 Spring Garden Road, Suite
203
Halifax, Nova Scotia
Tel: (902) 426-8380
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (902) 426-2685

Ontario:

175 Bloor Street East, Suite 1002
Toronto, Ontario
M4W 3R8
Tel: (416) 973-5527
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (416) 973-6184

Mailing Address:

P.O. Box 3545
Halifax South Postal Station
Halifax, Nova Scotia
B3J 3J2



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Prairies

**(Manitoba, Saskatchewan,
Northwestern Ontario):**

175 Hargrave Street, Suite 750
Winnipeg, Manitoba
R3C 3R8
Tel: (204) 983-2189
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (204) 983-6132

Alberta and Northwest Territories:

10010-106 Street, Suite 308
Edmonton, Alberta
T5J 3L8
Tel: (403) 495-4040
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (403) 495-4044

British Columbia and Yukon:

757 West Hastings Street, Suite 420
Vancouver, British Columbia
V6C 1A1
Tel: (604) 666-2251
Toll Free: 1-800-999-6899
TTY: 1-888-643-3304
Fax: (604) 666-2386

Internet Address: www.chrc-ccdp.ca

E-mail Address: info.com@chrc-ccdp.ca

The Commission's web site at www.chrc-ccdp.ca contains information on its publications. Employees and customers may wish to refer to the leaflets about the Commission (which are available in forty languages) and the pamphlets about harassment entitled *Harassment and the Canadian Human Rights Act* and *Harassment: What it is and what to do about it*. Employers may find *Anti-Harassment Policies for the Workplace: An Employer's Guide* helpful in ensuring that they are providing a harassment-free environment.



CASE SUMMARIES

The following case summaries describe cases of discrimination because of race, colour, or national or ethnic origin. These cases were selected to provide examples of discriminatory behaviour, what employers should do to fulfill their responsibilities under the *Canadian Human Rights Act*, and the types of remedies that are used to address discrimination.

Some of the cases discussed in this booklet were resolved through confidential settlements. Consequently, the parties' names have been omitted from these case summaries to protect their privacy. For cases that became public when they were heard by a human rights tribunal or the Federal Court, the parties' names are included.

We have separated the cases into five sections: discrimination that occurs during employment, discrimination that occurs when requesting a service, discrimination on more than one ground, employers' responsibilities, and remedies. Readers who are looking for guidance about a particular type of situation may find that these sections provide a useful framework. See Appendix B for information on the behaviours illustrated by the cases in each of the five sections.

DISCRIMINATION IN EMPLOYMENT

Discrimination in employment includes unfair treatment by co-workers or managers as well as by the individual employer or the company. Besides discrimination at work, it can include events that happen off the work site or outside of regular work hours if these events occur in the course of employment. It also includes discrimination that occurs in the hiring process. Unfair policies or practices by an employer or an employee organization are also discrimination when they target or have an adverse impact on individuals or groups on any ground included in the *Canadian Human Rights Act*.

Systemic racial discrimination was a factor in Department's treatment of employee (*Pitawanakwat v. Canada*, 19 C.H.R.R. D/110)

An employee with the Department of the Secretary of State in Regina claimed that she was harassed and experienced discrimination because of her Aboriginal ancestry. Mary Pitawanakwat, an Ojibway woman, worked as a Social Development Officer. At first, relationships in the workplace were good, and Ms. Pitawanakwat received good performance appraisals. After the first few years, the situation changed, relationships deteriorated, and Ms. Pitawanakwat's performance appraisals became increasingly negative. After seven years, Ms. Pitawanakwat was fired. She complained to the Canadian Human Rights Commission about harassment and discrimination; the Commission investigated the case and sent it to the Canadian Human Rights Tribunal for a hearing.



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Based on the evidence, the tribunal found that managers monitored Ms. Pitawanakwat's work differently from other employees' work, and that this difference may have been partly racially motivated. Although there might have been other causes behind what was happening in the workplace, such as poor management, the fact that race was part of the dynamic made this discrimination. The tribunal also found that there were racial slurs, jokes, and stereotyping in the workplace, which created a poisoned work environment and which the department repeatedly ignored, despite complaints from several employees. The tribunal was most concerned by the Department of the Secretary of State's "gross negligence" in not putting an end to the discrimination in the office. It said this failure directly contributed to Ms. Pitawanakwat's declining productivity and her ultimate dismissal.

It criticized the office's and the department's handling of the case on many levels. For example, management kept secret personnel files on Ms. Pitawanakwat and two other employees who supported her, and one of these employees was intimidated before testifying at a grievance hearing. It was unacceptable, wrote the tribunal, that the risks to employees "of taking a position contrary to that held by management ... are substantial."

As a remedy, Ms. Pitawanakwat received an amount for lost wages and benefits, a letter of apology, and the promise of a job comparable to the one she lost. Later, the Federal Court also ordered that she be given financial compensation for hurt feelings. The parties resolved the question of compensation in a confidential settlement.

Systemic discrimination was destructive (*Grover v. National Research Council of Canada*, 18 C.H.R.R. D/1)

An Indian-born research scientist with the National Research Council (NRC) experienced discrimination at work because of his race, colour and national origin. Dr. Chander Grover, a leading scientist in the field of optics, at first received excellent recommendations and regular promotions at the NRC. After a new director moved into his division, he began to experience a number of setbacks. His research funds and requests for summer assistants and participation in conferences were denied. His research group was disbanded. He was assigned to work under a junior scientist, denied a promotion, stripped of the former esteem and prestige he had held, suffered professional embarrassment, and was eventually fired.

According to the Canadian Human Rights Tribunal hearing the case, the new director and some other managers deliberately and systematically thwarted Dr. Grover's career and discriminated against him because of his race and colour. Staff of the NRC also intimidated witnesses to prevent them from testifying at the human rights hearing,



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which is a clear breach of the *Canadian Human Rights Act* and a criminal offence. The tribunal also criticized the NRC for the “grossly inappropriate” and prejudicial conduct of its human rights advisor, who heard Dr. Grover’s original complaints in confidence, yet later represented the NRC during the investigation and tribunal hearing of Dr. Grover’s complaint to the Canadian Human Rights Commission.

The tribunal emphasized that the discrimination “resulted not only in the destruction of Dr. Grover’s career but caused him undue distress and illness, disrupted his family and home life and put unnecessary stress on his family members.” It also mentioned that at the time of Dr. Grover’s complaint, no other NRC managers were members of a visible minority. The tribunal ordered the NRC to stop the discrimination, apologize to Dr. Grover, pay him for lost wages, correct inaccuracies in his personnel file, appoint him to a management position, and pay him \$5,000 for humiliation (the highest amount possible at the time under the *Canadian Human Rights Act*). Dr. Grover’s legal costs, and interest on the monetary awards, were also included in the order. This case is discussed again in the *Remedies* section.

Stereotypes and systemic discrimination were unacceptable (*National Capital Alliance on Race Relations v. Canada*, 28 C.H.R.R. D/179)

A Canadian Human Rights Tribunal found that Health Canada discriminated on a systemic basis against employees who were members of visible minorities, by failing to promote them on an equal basis to white employees into senior managerial positions.

In 1992, the National Capital Alliance on Race Relations (NCARR) filed a complaint with the Canadian Human Rights Commission to redress a lack of visible minority employees in management posts at Health Canada. Using the Supreme Court’s reasoning in *Action travail des femmes v. Canadian National Railway* in 1987, the Canadian Human Rights Tribunal concluded that the “essential element ... of systemic discrimination is that it results from the unintended consequences of established employment systems and practices. Its effect is to block employment opportunities and benefits for members of certain groups. Since the discrimination is not motivated by a conscious act, it is more subtle to detect and it is necessary to look at the consequences or the results of the particular employment system.”

The tribunal found that members of visible minorities were indeed significantly under-represented in senior management at Health Canada. They were “bottlenecked” at the lower levels of the Scientific and Professional category, “ghettoized” or stuck in particular types of jobs, and received less management-related training. Managers were less likely to tell visible minority employees about training opportunities or to encourage them to apply for promotion.



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Staffing decisions were often informal, with job qualifications not set out in advance and decisions made subjectively. Senior managers had biased views of the type of work for which visible minorities were suited, believing them unfit for management roles, and the resulting entrenched practices and attitudes affected visible minorities negatively. In short, visible minorities encountered systemic barriers at every point—from hiring, to staff development, to promotions.

As part of numerous corrective measures, the tribunal ordered Health Canada to eliminate discriminatory employment barriers for visible minorities in the department, to train all members of selection boards to conduct interviews free from racial bias, and to train all managers about human rights legislation. It ordered the department to give visible minority employees acting assignments in management roles. It also ordered that Health Canada clearly define and set out the qualifications needed for senior management positions, develop an inventory of interested employees, and begin to appoint visible minorities into these positions within six months. The tribunal set target levels over five years so that the percentage of visible minority managers would reflect the percentage of the available workforce, and required Health Canada to report regularly on its progress to the Canadian Human Rights Commission.

“Jokes” were harmful and discriminatory (*Swan v. Canadian Forces*, 25 C.H.R.R. D/333 - Federal Court decision. *Swan v. Canadian Forces*, 25 C.H.R.R. D/312 - Canadian Human Rights Tribunal decision)

A Saulteaux man, Melvin Swan, was a member of the Canadian Forces for 10 years. When he left, he alleged that during his military career he had experienced harassment because of his Aboriginal ancestry. He listed eight specific incidents of being treated differently or hearing negative comments about “Indians.” They included references to drunken Indians and comments such as “Indians aren’t so bright, eh Swan?” Mr. Swan alleged that he encountered racial comments, jokes and slurs throughout his career.

In the Canadian Human Rights Tribunal’s view, the evidence supported Mr. Swan’s allegations. Some of the witnesses insisted that the comments were meant to be jokes; the tribunal wrote that “the context or intention of the perpetrator [is not] the issue—the issue is the perception of the individual who is victimized. Lack of objection and even participation in the activity do not imply consent or cloak otherwise objectionable behaviour with propriety ... individuals may feel powerless to do anything but accept the behaviour because of their desire to fit into the peer group.”

The employer has a duty, said the tribunal, to respond promptly and effectively to complaints of harassment with a thorough investigation and with sensitivity to the person complaining. The Canadian Forces’ response, “glossing over” the complaint and not investigating, was “not good enough,” wrote the tribunal.



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By the time the tribunal heard the case, the Forces had changed its approach and was developing a 'zero tolerance' policy for harassment. Nevertheless, because of the way Mr. Swan's complaints were handled, the tribunal ordered the Forces to offer him a written apology, \$2,500 plus interest for hurt feelings and damage to his self-respect, and the amount of his legal costs. It also ordered the Forces to make some changes to its compassionate leave policy and to the harassment policy it was developing.

The tribunal believed it did not have the power, in this case, to award lost wages to Mr. Swan. The Federal Court later reversed that part of the decision, and sent the case back to the tribunal for it to award lost wages. But before the hearing reopened, the parties resolved the payment of lost wages in a confidential settlement.

Poisoned environment provoked harassed employee (*Gannon v. Canadian Pacific Ltd.*, 22 C.H.R.R. D/97)

During a period of six years, a man experienced harassment and differential treatment at CP Rail. Ken Gannon was the only person of colour working in his division; his foreman and some co-workers called him racially insulting names to his face and behind his back, and continually racially harassed him. As an example, Ken Gannon alleged that his foreman made statements such as "What does that nigger know about painting?" and started calling him Jackson, saying "Aren't all niggers called Jackson?" A co-worker asked Mr. Gannon for "nigger brown paint." He was also wrongfully disciplined and fired because of his race.

Although Mr. Gannon himself made racially and sexually offensive remarks to his co-workers, the tribunal found that, for the most part, he said these things in retaliation for derogatory comments made to him. The Canadian Human Rights Tribunal accepted expert evidence that a person who is subjected to racial name-calling may become victimized by such name-calling, eventually reacting and often perceived as a complainer and troublemaker. "We do not condone the language used by Mr. Gannon, but we are inclined to believe that his hostile attitude was a result of the racial slurs and the poisoned environment that he was working in."

Several times, Mr. Gannon was disciplined for incidents where his behaviour was provoked by racial slurs. Eventually, he accumulated the maximum number of demerit points allowed, and was fired. Because Mr. Gannon's behaviour on these occasions was provoked by "the racial harassment that he was continually subjected to," the tribunal concluded that "the discipline resulting in [his] dismissal was wrongly assessed. Mr. Gannon was singled out and subjected to unfair and differential treatment because of his race."



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Mr. Gannon had complained to management, but the company did nothing to stop the harassment, and was, therefore, liable for the discrimination. After the tribunal made its decision, the parties settled the question of an appropriate remedy between them.

Harassment through offensive comments

A financial manager with a federal government department alleged that her supervisor sexually and racially harassed her, and that the department failed in its duty to provide a workplace free of harassment. The supervisor, a white man, told the financial manager, a Mohawk woman, that whites are superior to other races, including "Indians." He made jokes about killing Mohawks to save money, and told the woman and a colleague that Aboriginal children "enjoyed" the sexual abuse they experienced in residential schools. The financial manager reported all these comments to a higher supervisor and filed a grievance; she claimed, however, that nothing was done and she was forced to take sick leave to cope with the emotional stress at work.

The government department countered that it had educated its employees about its anti-harassment policy, and that it did respond to her grievance. It agreed that one incident complained of met its definition of sexual harassment; as a result, personnel in the branch had watched a video on harassment and attended an anti-harassment workshop. It did not address the racial harassment. In trying to resolve the internal complaint, the department had ordered the supervisor to write a letter of apology, but he refused. Both he and the financial manager who complained took early retirement from the department.

In a conciliated settlement of the financial manager's human rights complaint, the department agreed to pay her \$40,200 in general damages.

Security clearance was unfairly denied

A man working as a technician on a three-month contract alleged that his national or ethnic origin was the only reason his employer refused to offer him a permanent position at the end of his term. The claimant, an immigrant originally from Pakistan, said that at the end of his work term, he was told that a two-week-old policy forbid the hiring of people from countries that posed a security threat or a nuclear threat to Canada. Since Pakistan had not signed the Nuclear Non-Proliferation Treaty, it was considered a security threat to Canada. As the claimant had been in Canada for only 20 months, he was told it was not possible for him to get the enhanced security clearance he would need; there was not enough information about him in Canada. Although he was let go, two temporary co-workers, both Canadian citizens hired at the same time as the complainant, were given permanent positions.



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The claimant maintained that, having done similar work in Pakistan, he was well-suited for the available jobs and, had he been a security risk, he would not have been permitted to enter Canada as an immigrant. He further pointed out that he had already done the job, with security restrictions, for three months with good results.

The Canadian Human Rights Commission's investigation showed that the claimant performed his job well, and that the only reason for his not being hired was that he was from Pakistan and thus posed a perceived security risk under the new policy. The Commission's investigation also showed that the employer did not explore any other approaches to determining whether the claimant actually posed a security risk. The employer had a policy of reviewing cases on an individual basis, but because the claimant had been in Canada a relatively short time, managers were confident that they would not be able to collect enough information to obtain an enhanced security clearance for him.

In a conciliated settlement, the claimant was hired for an 18-month term position, but with his duties restricted and supervised until sufficient information was available to obtain the necessary security clearance. If he satisfied the requirements for enhanced clearance, he would be offered a permanent position after 18 months.

Comments about spoken English led to complaint

An airline settled a complaint with a new employee, a dispatcher originally from Sri Lanka, following a Canadian Human Rights Commission investigation. Although a colleague had a formal training session of three weeks, the new dispatcher's training was simply to watch his supervisor, who gave him contradictory instructions and criticized him frequently. The training supervisor also told her superior that pilots and agents had difficulty understanding the dispatcher's English. The dispatcher, on the contrary, claimed to have no trouble communicating, saying no one had complained or asked for things to be repeated and that there had been no miscommunications on the flight data information sheets. Nonetheless, the dispatcher was fired; he then filed a complaint with the Commission alleging discrimination because of national or ethnic origin.

In the settlement, the airline agreed to pay \$2,000 for hurt feelings, although it did not admit liability for discrimination.

Racial remarks and insulting behaviour prompted complaint

A federal government department paid \$18,000 in general damages plus more than \$70,000 in early retirement, severance, and pension refund payments to an employee after a Canadian Human Rights Commission investigation showed that other



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employees made racially offensive remarks and subjected the employee and other Black personnel to racially motivated behaviour.

The employee, a Black man, worked as a records clerk in the department for thirteen years, enduring racial slurs and racist remarks that poisoned the work environment. Besides calling him and other Black employees names and accusing them of being liars, some co-workers asked if he sold drugs or stole cars on the side. White personnel were disrespectful to Black personnel in other ways: some white employees said they wanted anti-harassment training to be given by a white manager, not the Black Employment Equity Officer; other white managers walked out of a presentation by this same Employment Equity Officer.

The employee's complaint to the Commission alleged that the employer had not done enough to educate employees about harassment and racism. In addition to the above examples, he cited a statement signed by some employees, in which they objected to employment equity programs. He also maintained that the department had not implemented any of the strategies for resolving discrimination identified by an internal race relations committee.

In settling the complaint, the department agreed to the financial payments, a letter of reference, and a letter of apology; the employee agreed to retire from the department and to accept the terms of the settlement as full compensation.



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DISCRIMINATION IN SERVICES

This section gives examples of discrimination when a person has requested goods, services, facilities or accommodation ordinarily available to the general public. This discrimination may involve a straight denial of the service, unfair treatment when providing the service, or a rule that effectively denies the service to individuals or groups of people.

Immigration services denied when rule applied too strictly (*Canada v. Menghani*, 21 C.H.R.R. D/427; *Menghani v. Canada*, 17 C.H.R.R. D/236)

When Jawahar Menghani's brother was refused permanent resident status by an official at the Canadian Consulate in New York, Mr. Menghani, a Canadian citizen, filed a complaint with the Canadian Human Rights Commission. Mr. Menghani protested that he and his brother were asked to produce documents that were not available, to prove that they were brothers. The consular officer refused to accept the several documents they offered, including passports and affidavits. Instead, the officer insisted on certificates that were not consistently available in India, where the brothers were born.

The Canadian Human Rights Tribunal concluded that, because the rule applied had an adverse effect on one group of people, the consular officer should have accommodated the Menghani brothers by accepting and looking at other documentation. His failure to do so was discriminatory. When he did later look at other documents, the officer was satisfied that the men were in fact brothers. By this time, however, the negative impact had already been felt, and Mr. Menghani's business, for which he had needed his brother's help, had failed.

As a remedy, the tribunal ordered that Mr. Menghani's brother immediately be given permanent resident status, and that the Canada Employment and Immigration Commission apologize to Mr. Menghani and pay him \$2,500 for damage to his feelings and self-respect, as well as harm to his health, family, and business interests. (The Federal Court later reversed that part of the order which gave permanent resident status to Mr. Menghani's brother. The Court concluded that the tribunal did not have the power to make this order, although it did have the power to compensate Mr. Menghani for the discrimination.)

Demearing treatment when bus driver acted on stereotypes

A bus driver asked two Métis passengers who were boarding a long-distance bus whether they had been drinking. The driver also searched their hand baggage. There was no indication that the two men had been drinking, and white passengers were neither searched nor questioned similarly.



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The bus company agreed that the driver had used the wrong approach to guard against what he perceived as a situation of potential alcohol abuse on the bus. During an investigation of the complaint, the company offered a settlement that was accepted by the complainants and approved by the Canadian Human Rights Commission: it agreed to send letters of apology and travel vouchers to the two passengers, and to counsel the driver on company policy for dealing with passengers.

Banking personnel behaved inappropriately

A woman who wanted to open a bank account said the bank treated her differently from other customers because of her race, origin, and colour. The woman, a Canadian citizen originally from Morocco who described herself as brown-skinned, said she believed her origin and colour were the reasons the bank accused her of fraud and called the police when she tried to open her account.

Although she already had an account at another branch of the same bank, the woman had moved across town and wanted to open an account near her home. At the bank, she was asked for identification, and gave her citizenship card and Social Insurance card. The financial services manager, who had never seen a citizenship card before, believed this one looked suspicious. She consulted the branch manager, who also had limited experience with citizenship cards, but who agreed that the photograph on the card looked odd. They kept the cards, and asked the woman for more identification, which she provided. The branch manager then contacted the police; two officers arrived, agreed that the citizenship card looked suspicious, and detained the woman until they could check her identity. The officer most involved in the case had never seen a citizenship card before.

When her identification was returned to her and the account was opened, no one explained to the woman what had happened or whether her identification had been authenticated. Greatly distressed, she returned home and called the citizenship office and her social worker to find out if anything was wrong with her documents. Her brother went to the bank to ask for an explanation, but felt that the incident was brushed off.

The woman was greatly embarrassed by the incident, and her confidence was affected. She subsequently relied on her brother to do her banking and shopping. Because of her embarrassment, she also withdrew all her money from that bank and opened an account at a different bank, farther from her home.

The Canadian Human Rights Commission investigator interviewed a citizenship official, who said there was nothing wrong with the woman's card. He said that all cards go through a quality control process and must meet specific requirements, which this card met.



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The investigation showed that the bank teller and manager did not check with the bank's other branch or examine the three other pieces of identification the woman presented; they did not ask her to corroborate confidential information to prove her identity; they did not inform her of the outcome of the investigation or apologize for their suspicions. With the help of a Commission conciliator, the woman and the bank agreed that she would receive \$1,000 in damages.

Stereotyping demeans bank customer

A Black man filed a complaint about his treatment on two occasions by the bank with which he had been dealing for more than eight years. On the first occasion, a teller stated that he could not be the owner of the bank card he was using as the computer indicated that the owner was a doctor. The teller stated that "you do not look like a doctor." The teller also commented that he had problems of this nature with "people like you" all the time. The second occasion involved the same branch but another teller, who also stated that the bank card could not belong to the claimant because he could not be a doctor.

Without admitting liability, the bank agreed to a settlement which included payment to the claimant of \$1,400 for hurt feelings and \$800 for lost wages and travel expenses. It also agreed to continue to provide its Diversity in the Workplace training program to current and future employees.

Discrimination in prison not acceptable

A Black man filed a complaint with the Canadian Human Rights Commission because of two instances of ridicule and name-calling by guards while he was in prison. On the first occasion, the guards called the man into the office and laughed about the face of a black Santa Claus that someone had painted on the office window. With other prisoners present, they ridiculed the man about this image. In his human rights complaint, the man said his repeated requests to the administration and the warden that some kind of disciplinary action take place were ignored.

During the Commission's investigation, the employer acknowledged that the incident happened, that the guard responsible for the incident immediately realized the man did not take this laughter about the black Santa Claus as a joke, and that the guard apologized on the spot. All guards present at the time were later given harassment awareness and cultural diversity training.

Nevertheless, the employer agreed to a settlement, without admitting liability, and said it would provide further cultural awareness training to all the officers involved in the incident. It also agreed to compensate the claimant \$1,500 in general damages and to pay up to \$1,000 in counselling services for him.



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DISCRIMINATION ON MORE THAN ONE GROUND

Not uncommonly, a person might find herself or himself to be the victim of discrimination on several grounds. In addition to race, colour, or national or ethnic origin, a person may experience discrimination because of religion, age, sex, sexual orientation, marital status, family status, physical or mental disability, or pardoned criminal conviction. For example, as one case below illustrates, both women and Black people traditionally are under-represented in corporate decision-making positions. A Black woman may well find that racism and sexism combine to make it especially difficult for her to rise to a position where she can truly use her talents. The following cases give examples of multiple discrimination.

Age, sex, race, and colour

The complainant, a 47-year-old Black woman, had been an employee of the respondent bank for 22 years with good performance appraisals, and had been promoted several times until her position was just below senior management. Supervisors gave her an above average performance rating in this new job. When a new department head arrived, her situation began to change. He lowered her performance rating and later assigned the task of rating her performance to managers who did not know her work. Eventually, she was told her position was being eliminated, and she was forced to accept a lower level, temporary position; she later learned that a job similar to her 'eliminated' job was filled by someone who was younger and white.

She was not able to get another permanent assignment with the bank. Although jobs were available and she applied, all the jobs were filled by younger, white people. She was eventually fired. All of this, she believed, had a negative impact on her ability to get work outside of the bank, and was solely motivated by bias against her for reasons of age, race, colour, and sex.

In her complaint to the Canadian Human Rights Commission, the employee pointed out that the bank already knew it had a problem of racial bias. It had created a task force on job equality to determine why women and visible minorities were being left out of management positions. At the same time, she said, the bank was quietly firing managers in their forties and fifties to make way for a younger group. Consequently, she maintained, the bank knew it would be difficult for a Black, female middle manager to find a position comparable to her previous one, no matter her qualifications.



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Sensitivity sessions at the bank had shown that senior managers held stereotypical views of Blacks, considering them lazy and unintelligent. These attitudes, and managers' tendencies to hire people "... like themselves," said the chairperson of the task force on job equality, created a systemic barrier against the hiring and promotion of visible minorities in the bank.

Although the bank maintained that the claimant was not qualified for the positions she applied for, the Commission's investigation revealed the opposite was the case. In fact, one of her managers had recommended her for a job that was given to a white employee instead. The Commission helped the parties reach a settlement of the complaint. The complainant agreed to retire from the bank, and the bank agreed to provide a retirement allowance and the full monthly pension package given to all other bank retirees. As compensation for general damages, the bank agreed to pay the woman \$43,500.

Sex, age, and national or ethnic origin

While working for a telecommunications company, a 50-year-old woman of Japanese descent had a successful career. After a new supervisor was appointed to her unit, she claimed that the work environment became poisoned, and that sexist and racist jokes were freely exchanged between the manager and workers in her unit. The new supervisor and other workers also made insulting comments about older workers; as the oldest and most senior employee in the unit, the claimant believed these comments were directed at her.

She told the employer about the situation, and although there was an investigation, the claimant did not feel it was fair or that she was taken seriously. Later that same year she was moved into another job, which she considered an unjustified demotion.

The employer protested that it took the complaint seriously, and that a manager and human rights personnel held individual and group meetings with the new supervisor and the employees to improve the work environment. The new supervisor was put into another job, and later left the company.

An investigation by the Canadian Human Rights Commission showed that the company had a formal anti-harassment policy and that it did try to improve the work environment, although it did not succeed. In a conciliated settlement, the company agreed to pay \$7,000 to the claimant in general damages.



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Disability, sex, and colour

In another bank case, an employee claimed that she experienced discrimination when she was harassed, denied sick leave benefits, and fired, in part because co-workers believed she had a mental disability, and in part because of her sex and race.

Following her good performance in a temporary position, the employee was hired for a permanent job. She was the only non-white employee in her department, and after a month there, began to experience harassment from her white supervisor. The supervisor imitated the employee's accent, made faces at her, hid work from her, and went behind the employee's back to introduce mistakes into her computer work. The supervisor did not let the employee take breaks at the same time as her white colleagues, and asked where she had been when the employee came back from the bathroom.

In an effort to resolve the situation, the employee tried to speak to the supervisor. When that didn't work, she spoke to the department manager, who told her to give the supervisor another chance. The harassment worsened.

A new male colleague began to ask the employee on dates, which she refused. Later, when he became the department manager, he was rude and humiliated her in front of co-workers. The atmosphere at work deteriorated until all her white colleagues were imitating the employee's accent and mannerisms. One co-worker, who called her names, told her that she was being treated this way because she was not white.

The head of the personnel department told the employee that the "bullies" in her department would not change, and that she, an "outcast" in the department, would either have to find a way to stand up to them, or quit. He told her to get counselling. The stress took its toll, and the employee's doctor finally prescribed a month off work. For at least a month before she took her leave, co-workers ostracized her and refused to speak to her because they believed she had a mental disability. The employer refused to pay the short-term disability benefits normally available to employees on sick leave, claiming this employee had not provided enough medical evidence of her need for leave, despite her doctor's certificate. When she took the leave, she was fired for being absent from work.

The bank said it treated the employee fairly and fired her only because she was absent without leave and, despite warnings, refused to return to her duties. The Canadian Human Rights Commission's investigation supported the employee's allegations, and through the conciliation process, the bank and the employee agreed to a settlement. The bank gave the employee a letter of apology and \$5,000 severance pay instead of notice for firing her.



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Disability and national or ethnic origin

An employee of Italian origin who was injured on the job while working with a railway company said his new supervisor harassed him and that the railway fired him unfairly.

The supervisor made racial slurs and comments about Italians, and treated the employee differently from other employees. During a meeting with the employee and the union president, the supervisor admitted to the harassment, claiming it was “only a joke” and that he would stop. Instead, the harassment worsened. The supervisor refused to let the employee take coffee breaks with other workers, refused to let him use the telephone, refused to let him enter the office, and threatened to fire him if he did any of these things. No other employees worked under these restrictions. The supervisor also seemed to enjoy taunting the employee about his back pain, driving over bumps when they were in a truck together and laughing about it.

When the employee’s one-year term was up, the company fired him, saying that the person he had been replacing was returning to the job. The employee claimed that this wasn’t true, and that other people are still filling this job on a temporary basis.

The railway denied some of the employee’s version of events. It said it did not fire him, and that the one-year position was supposed to help him develop new skills, but that he did not take advantage of the opportunity. It acknowledged, however, that it didn’t make any attempt to accommodate his disability by finding him appropriate employment.

Through conciliation with Canadian Human Rights Commission staff, the employee and the railway agreed to a settlement. Among other things, the railway agreed to support the employee in applying for a disability pension, and to pay him \$2,000 in general damages. If he did not apply or was not eligible for the pension, his employment with the railway would end, and the railway would pay \$44,300 in general damages. In that case, it would also pay \$1,500 toward the cost of career counselling for the employee.



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EMPLOYERS' RESPONSIBILITIES

Employers and service providers are responsible for discrimination that occurs in their establishments whenever they know, or should have known, about it. As the following cases show, employers and service providers have a responsibility to do what they can to prevent discrimination by implementing and publicizing workplace anti-discrimination policies and procedures, and by training staff about human rights. If discrimination does occur, employers and service providers can continue to fulfill their responsibilities under the *Canadian Human Rights Act* by responding promptly and effectively to the situation.

Pay attention to workplace behaviour

Racist jokes, name-calling, and differential treatment were commonplace at a work site of a federal government department. When a member of the department complained to the Canadian Human Rights Commission about the way he was treated because of his race, colour, and origin, the employer acknowledged that there was a serious problem at that work site and indicated that action was being taken to ensure a work environment free from harassment.

The employee who filed the complaint, a Canadian citizen of East Indian origin, had been with the department for three-and-a-half years. He was continually harassed about his skin colour and race. Some comments were subtle and others overt; sometimes the treatment was public and demeaning. Co-workers said that he "couldn't take a joke" and was oversensitive; the employee argued that he should not have to put up with racist jokes. His immediate supervisor, who completed his performance appraisals, was one of his most consistent harassers. His performance appraisals were negative, and he was eventually transferred out of the region.

After the employee filed his complaint, the department sent several employees from that region for anti-harassment training. In a conciliated settlement of the complaint, the department agreed to send the remaining staff for training, to remove negative performance appraisals from the employee's file, and to give the employee a letter of apology. It also agreed to pay him \$10,000 in general damages.

Make sure employees know about policies (*Rodovanovic v. VIA Rail Canada Inc.*, 26 C.H.R.R. D/149)

When two VIA Rail employees became involved in an altercation, one pushed and shouted at the other, a Yugoslavian immigrant, saying he was a "... damned deportee who should go back where he came from," and other racially based insults. Both men were given demerit points and fired because of the incident. Bozidar Rodovanovic



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complained of his co-worker's racist comments to him, but the company took no action. When the Canadian Human Rights Tribunal heard the case, the members concluded that Mr. Rodovanovic had indeed been discriminated against by being subjected to derogatory comments related to his national origin, and that the employer did not take reasonable steps to prevent the act or to mitigate its effect. Although VIA Rail had an anti-discrimination and anti-harassment policy, it did not make sure that employees were aware of the policy. And management essentially ignored Mr. Rodovanovic's report of the racist comments made to him, because the company was focusing on discipline for the physical altercation between the workers. These failings meant that VIA Rail had not exercised due diligence to prevent the discrimination or to mitigate its effects.

VIA Rail paid \$1,500, with interest, to Mr. Rodovanovic as compensation for humiliation, and apologized to him for the discrimination. Through an internal grievance, it had already decided to change his punishment from "dismissal" to "suspension." The tribunal also encouraged VIA to be vigilant and attentive in the future when employees are accused of discriminatory acts.

Investigate promptly and properly (*François v. Canadian Pacific Rail Ltd.*, 9 C.H.R.R. D/4724)

Phil François, a Black employee of Canadian Pacific Rail, filed a complaint with the Canadian Human Rights Commission alleging harassment because of his race and colour. Among the incidents he reported was one in which his locker and its contents were destroyed with black paint.

When CP Rail became aware of the incident, Mr. François' immediate supervisor was told to find out who was responsible. He was unable to identify the perpetrator, so he asked the CP police to investigate. The police were prepared to lay criminal charges, but were unable to discover the culprit. However, two employees, who were responsible for similar racially motivated incidents that were discovered during the investigation, were warned that the company would not tolerate such actions in the future.

The Canadian Human Rights Tribunal that heard the complaint concluded that CP Rail had met the requirements of the Act and had done everything possible, so it could not be held liable for the incident. The Tribunal did not order any further remedy. Among the evidence for its conclusion:

CP Rail did not consent to or condone the incident. It "... acknowledged throughout that it was reprehensible and unacceptable to the Company," which saw the incident "as criminal behaviour."



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CP Rail did everything it could to prevent discrimination. It “had a clear policy to prevent discrimination ... [which was] communicated to its employees and [was] to be acknowledged in writing from time to time by supervisory personnel ...”

The employer also did everything possible after the discrimination occurred to lessen its effect, by undertaking a thorough investigation and reprimanding employees who participated in other incidents that were discovered during the investigation. The company also compensated Mr. François for damage to his property.

The employer’s attempts to deal with the harassment apparently worked: “... similar incidents have not occurred since.”

Take prompt and effective action (*Hinds v. Canada*, 10 C.H.R.R. D/5683)

Leon Hinds was a Black employee of the Canada Employment and Immigration Commission (CEIC). Through the department’s internal mail, Mr. Hinds received an anonymous form entitled “Employment Application for Niggers.” The form contained questions that Mr. Hinds found offensive, humiliating, vicious and discriminatory. He complained to his supervisor, and was led to believe that CEIC was conducting an investigation of the incident. Later, after filing a complaint with the Canadian Human Rights Commission, he learned that no investigation had taken place. This single incident was enough for the Canadian Human Rights Tribunal that heard the case to conclude that Mr. Hinds experienced harassment because of his race.

The tribunal members wrote that employers have a duty to take prompt and effective action when they know, or should know, of possible harassment in the workplace:

The employer’s response should bear some relationship to the seriousness of the incident itself.... To avoid liability, the employer is obliged to take reasonable steps to alleviate, as best it can, the distress arising within the work environment and to reassure those concerned that it is committed to the maintenance of a workplace free of harassment.

The tribunal members found that the employer had not fulfilled its duty to react quickly and appropriately to a harassment complaint. Nor had it done everything it could to prevent the act or to lessen the effects of the harassment after the fact; it failed to carry out a real investigation and failed to deal sensitively with the effects of the incident on Mr. Hinds. In addition, although Mr. Hinds had written to the Minister of the department, she did not reply. The Minister and Deputy Minister, as well as the supervisor, were found to be at fault in their handling of the case. The tribunal noted:



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Unfortunately, CEIC's inaction did more damage since it left the impression with those concerned that this form of harassment was not even worthy of the commitment of investigative resources in the absence of any readily apparent clues. One gets the sense that the matter was treated as though it was considered a harmless joke to which Mr. Hinds overreacted and that it would be best if the whole thing was simply forgotten.

In compensation for the harassment, Mr. Hinds received \$4,000 for hurt feelings and loss of self-respect, interest on this amount, and a letter of apology from the CEIC.

Act quickly to end discrimination

An employer that acts quickly and effectively to end discrimination and prevent it from happening again is likely fulfilling its responsibility under the *Canadian Human Rights Act*. In one Canadian Human Rights Commission investigation, evidence showed that as soon as the claimant told her manager that her supervisor had made unacceptable comments about her colour (Black), origin (African) and religion (Muslim), the manager stepped in. The manager told the supervisor that the company would not tolerate these comments; she told the claimant to come directly to her with any work difficulties; and she offered to conduct a formal mediation between the two employees. The claimant refused mediation, saying she did not think it would do any good.

When the claimant filed her human rights complaint with the Commission, the company agreed to give her a letter of apology, which it had not yet done. Because it had already dealt seriously with the complaint, it did not pay any damages, costs, or other financial compensation.

Prevent future discrimination

In settling a human rights complaint, an airline agreed to take several steps to prevent future discrimination in the workplace. One of the airline's security personnel filed a complaint with the Canadian Human Rights Commission after several instances of derogatory comments and differential treatment at work. White colleagues made remarks about "damned immigrants" in front of the claimant, who is Black, and other Black colleagues. They made fun of various immigrants' accents, and commented on the smell of the food that Black colleagues brought to work. Managers were aware of these things happening, but did nothing.

On one occasion, the claimant was disciplined differently from a white co-worker. The two guards were screening and checking bags at the x-ray machine when a toy gun went through, unnoticed by the guards. The claimant was sent for re-training, but his colleague was not.



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The airline denied harassing the claimant, and said it had held several meetings to address the allegations of racial harassment. Still, under the settlement it agreed to distribute brochures on harassment and human rights to all employees, and to send all managers for human rights training. It also agreed to pay the claimant \$2,500 for hurt feelings, and to give him a letter of apology.



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REMEDIES

The purpose of the *Canadian Human Rights Act* is not to punish people who have discriminated, but to end discrimination, and to restore people who have suffered from discrimination to the position they would have been in without the discrimination. Awards ordered by the Canadian Human Rights Tribunal or arrived at in conciliated settlements are designed to right the wrongs that have been done, and they take various forms, reflecting the damage suffered and whether the employer responded appropriately to the situation.

Examples of the remedies that have been provided to victims of discrimination include:

- an oral or written apology from the harasser and/or organization;
- provision of a letter of reference;
- removal of negative performance appraisals from the employer's file;
- correction of inaccuracies in the personnel file of the claimant;
- compensation for lost wages;
- severance pay;
- provision of a retirement allowance and/or pension package;
- support in applying for a disability pension;
- provision of goods or services which were denied;
- provision of a job or promotion which was denied;
- payment of legal costs incurred by the claimant;
- payment for personal or career counselling;
- compensation for lost benefits such as sick leave; and
- compensation for hurt feelings.

End discrimination, make a public apology (*Grover v. National Research Council of Canada*, 18 C.H.R.R. D/1)

In Dr. Chander Grover's human rights complaint against the National Research Council (NRC), discussed earlier, the discrimination did not stop when Dr. Grover filed his complaint. In fact, it seemed to get worse. In prescribing a remedy, one of the first things the tribunal ordered the NRC to do was to stop the discrimination against Dr. Grover. To ensure that such discrimination would not happen again, the tribunal ordered the NRC to consult with the Canadian Human Rights Commission for a thorough review of its human rights program and policy.

A formal, written apology was also necessary, said the tribunal, for the "demeaning and devastating" treatment Dr. Grover had suffered. The tribunal hoped this apology, to be published in the NRC's *Sphere* magazine, might reassure Dr. Grover and other employees that the kind of treatment he endured would no longer be tolerated in the



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workplace. The NRC was ordered to apologize to the organizers of a conference who had invited Dr. Grover to present a paper (his managers had cancelled his trip and embarrassed him greatly). The aim of these measures was not to punish those who had discriminated, but to fulfill the purpose of the *Canadian Human Rights Act* to end discrimination and provide relief to its victims. Without these remedies, as well as a management appointment and financial compensation, the tribunal felt that the goals of the Act would not be realized in this case.

Promote an employee whose career was damaged by racism (*Canada v. Uzoaba*, 26 C.H.R.R. D/428; *Uzoaba v. Canada*, 26 C.H.R.R. D/361)

A Classification Officer with the Correctional Service of Canada (CSC), Dr. Julius Uzoaba, was discriminated against because of his race and colour. Dr. Uzoaba worked with inmates to develop and recommend programs for them and to prepare reports for the National Parole Board, among others. He was one of the first Black Classification Officers in the CSC.

Certain inmates, including some who had never met him, made negative comments about his work and signed a petition asking that he be taken off the job. A series of anonymous calls began, with the caller using racist names and swearing at Dr. Uzoaba. CSC officials knew that there were groups among the inmates who held overtly racist views. They heard that a threat had been made against Dr. Uzoaba, but did not inform him of it, a choice that the Canadian Human Rights Tribunal later called "shocking." The day after the threat, an inmate assaulted Dr. Uzoaba.

In evaluating Dr. Uzoaba's work, his managers relied on the statements and actions by inmates, which were partly motivated by racial bias; managers used this material in giving him negative evaluations, and insisted that he no longer work with inmates. He was unable to find other suitable employment, and was without a job for several years. After an investigation, the case was heard by a Canadian Human Rights Tribunal, which found the CSC had discriminated against Dr. Uzoaba. CSC managers should not have relied on racist comments by inmates or used these comments as evidence of poor work performance. By relying on these comments in his official performance evaluation, the CSC itself discriminated against Dr. Uzoaba. This tainted evaluation then followed Dr. Uzoaba and interfered with his securing new work, thus perpetuating the discrimination. The tribunal said that CSC management did not take effective action to protect its employees from racial harassment by inmates or staff members; it should have investigated and supported Dr. Uzoaba. Management's response was "wholly inadequate" and unfair.

As a remedy, the tribunal ordered that Dr. Uzoaba be rehired, but at a level higher than his previous job. Based on the evidence, it was reasonable to conclude that he would



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have been promoted if the racism had not been a factor. It also ordered that the CSC apologize in writing, that Dr. Uzoaba receive three years' lost wages, and that he receive \$5,000 (at the time, the top amount allowed by the *Canadian Human Rights Act*) for injury to his feelings and self-respect.

In reviewing the case, a Federal Court judge agreed with the tribunal that Dr. Uzoaba be awarded a job at the higher level. The Attorney General had argued that this remedy conflicted with the *Public Service Employment Act*, which contains specific provisions for promotions. The Court ruled that the *Canadian Human Rights Act* takes precedence over the *Public Service Employment Act* and other legislation, and allows the tribunal to make such an award when the evidence supports it, which it did in this case.

Reimburse lost wages

Lost wages made up the bulk of the settlement to the supervisor of a cleaning service hired by a federal government department. The cleaning service supervisor, of El Salvadoran origin, said that a manager with the department harassed him. The manager, who was his contact in the department, continually made fun of his accented English, verbally abused him, and swore at him, often in front of the cleaning staff. This public abuse humiliated him. In a final humiliation, the cleaning service fired the supervisor because the manager complained that he did not speak fluent English.

Along with more than \$45,000 for lost wages and interest, the supervisor received \$2,485 for injury to his self-esteem and a letter of apology. Following the complaint, the department pledged to post its anti-harassment policy in a prominent place, and to send the manager accused of harassment on a human rights training course.

In addition to the settlement with the government department, the supervisor received \$500 and a letter of regret directly from the manager who had harassed him.



APPENDIX A

THE COMMISSION'S COMPLAINT PROCESS

The following chart describes the process which is followed when an individual contacts the Commission to inquire about filing a complaint.

When the Commission receives an inquiry:

- Information is provided on the Commission and the *Canadian Human Rights Act*.
- The person may be directed to another agency if the matter is not within the Commission's jurisdiction.
- If the matter is within the Commission's jurisdiction, an officer reviews the situation with the complainant in greater detail and explains the complaint process.
- If the complainant wishes to pursue the matter, a complaint form is prepared.

After the Commission accepts a complaint:

- The respondent is advised of the complaint as soon as it is filed with the Commission.
- When appropriate, the Commission will refer the complainant to another redress mechanism (such as a grievance process, or a procedure under other legislation).
- Mediation may be offered as an option to both parties. Mediation is a voluntary process whereby the people involved in a complaint meet with a neutral third party (mediator) who is trained to help them agree to a solution with which they are both comfortable.
- If the matter remains unresolved, an officer investigate the allegations and prepares a report to the Commissioners on the investigation findings.
- The parties are given an opportunity to comment on the investigation report before it is submitted to the Commissioners.



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When the Commissioners make a decision:

- All complaints are reviewed by the Commissioners.
- The Commissioners can:
 - refuse to deal with complaints received more than one year after the alleged acts, or which are beyond the Commission's jurisdiction;
 - approve a settlement between the parties or appoint a conciliator to help the parties arrive at a settlement;
 - refer the matter to the Canadian Human Rights Tribunal for further inquiry;
 - dismiss the complaint for lack of evidence.

Canadian Human Rights Tribunal

- On referral by the Commission, the Tribunal will conduct hearings into the complaint.
- After weighing the evidence that is presented, the Tribunal will make decision on the merits of the complaint and order an appropriate remedy.

Federal Court of Canada

- The Federal Court can be asked by either party to review a decision of the Commission.
- The Court can also review a decision or order of the Canadian Human Rights Tribunal.



APPENDIX B

CASE INDEX

Discrimination in employment

- An Aboriginal woman was subjected to racially motivated monitoring by managers, the retention of secret files on her, racial slurs, jokes and stereotyping (*Pitawanakwat v. Canada*)
- An India-born research scientist endured differential treatment, denial of promotion, denial of participation in conferences, refusal of requests for funds and summer assistants (*Grover v. National Research Council of Canada*)
- “Ghettoizing” visible minorities in a government department into lower level jobs and particular types of jobs, and failing to provide visible minorities with management-related training (*National Capital Alliance on Race Relations v. Canada*)
- An Aboriginal man endured differential treatment, racial comments, jokes and slurs over the duration of his career (*Swan v. Canadian Forces*)
- Racial harassment by managers and co-workers of only visible minority man in the division and differential treatment by singling him out for discipline and eventually termination (*Gannon v. Canadian Pacific Ltd.*)
- Mohawk woman sexually and racially harassed by supervisor, forcing her to take sick leave (“Harassment through offensive comments”)
- Refusal of employer to offer complainant, who could not obtain security clearance, a permanent job because of a policy that forbade hiring people from countries posing a threat to Canada (“Security clearance was unfairly denied”)
- Termination of employment on the basis that pilots and agents had difficulty understanding claimant’s English (“Comments about spoken English led to complaint”)
- Claimant and other Black employees subjected to racially offensive remarks, name-calling and accusations of being a liar (“Racial remarks and insulting behaviour prompted complaint”)



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Discrimination in services

- Refusal of permanent resident status by the Canadian Consulate officer, who insisted that certificates not available in India be provided (*Canada v. Menghani*)
- Luggage of Métis passengers searched by a bus driver who asked if they had been drinking (“Demeaning treatment when bus driver acted on stereotypes”)
- A visible minority woman was accused of fraud, had her citizenship questioned and the police were called when she tried to open a bank account (“Banking personnel behaved inappropriately”)
- Bank customer subjected to demeaning comments based on negative stereotypes about blacks (“Stereotypes demean bank customer”)
- A Black man in prison was ridiculed by prison guards about the image of a black Santa Claus painted in an office window (“Discrimination in prison not acceptable”)

Discrimination on more than one ground

- Termination of a 47-year-old Black woman after her position was eliminated, forcing her to accept a lower-level position. A job similar to the complainant’s eliminated job was filled by someone younger and white, as were other jobs for which she applied (“Age, sex, race and colour”)
- A 50-year-old woman of Japanese descent was subjected to racist and sexist jokes as well as insulting comments about older workers (“Sex, age and national or ethnic origin”)
- Only non-white woman in her area was harassed, denied sick leave benefits and fired because of her sex and race and because of a perceived mental disability. Supervisor imitated employee’s accent, made faces at her, hid work from her, and introduced mistakes into her computer work. Employee was not allowed to take breaks at the same time as white colleagues (“Disability, sex, and colour”)
- Racial slurs and comments about Italians were made by the supervisor. The employee was unfairly fired after being refused coffee breaks, use of the telephone and entrance into the office. No attempt was made to accommodate the claimant’s disability which resulted from an injury received on the job. (“Disability and national or ethnic origin”)



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Employers' responsibilities

- Only after a complaint was filed did the employer acknowledge problem in workplace and take action to ensure a harassment-free work environment by providing employee anti-harassment training ("Pay attention to workplace behaviour")
- Company failed to take action against racist comments, prevent discrimination or mitigate its effects, and inform employees of its anti-discrimination and anti-harassment policies (*Rodovanovic v. VIA Rail Canada Inc.*)
- Company took necessary steps to prevent discrimination, such as having in place a policy that was communicated to employees, quickly investigating complaints and reprimanding employees involved in discriminatory acts (*François v. Canadian Pacific Rail Ltd.*)
- Employer failed to carry out a real investigation and to deal sensitively with the effects of the incident of racism. Instead, the matter was treated as a harmless joke (*Hinds v. Canada*)
- Manager took immediate steps to deal with an employee's complaint but did not provide a letter of apology ("Act quickly to end the discrimination")
- Managers were aware of harassment of Black staff members by white staff but did nothing to stop it ("Prevent future discrimination")

Remedies

- The National Research Council was ordered to prevent future discrimination, publish a public letter of apology and appoint the claimant to a management position with financial compensation (*Grover v. National Research Council of Canada*)
- The Correctional Service was ordered to rehire claimant at a higher level, apologize in writing, pay three years lost wages and compensate for injury to feelings and self-respect (*Uzoaba v. Canada*)
- A government department was ordered to pay for lost wages with interest and for injury to self-esteem and to write a letter of apology ("Reimburse lost wages")