

# Methodological tool: Case Study: Is this discriminative?<sup>1</sup>

|   |  |
|---|--|
| Number of methodological Tool                               | <b>EUPA_LO_102_M_002</b>   |
| Work Area Code and Title                                    | <b>WA 3: Communication and social, telephone handling, code of conduct, equal opportunities and relationships</b>  |
| Unit Code and Title   | <b>4.2 Address issues of equal opportunities</b>   |
| Learning Outcome Number and Title                           | <b>LO102. Explain how issues of equal opportunities, disability, gender, sexual orientation, ageism, sexual harassment and religion are applied by various institutions at local, regional, national, European and international levels. Describe how to access and address the above mentioned issues. Be able to recommend improvements in the organisation's policies to address the above mentioned issues</b>   |
| Objective of the methodological tool                        | After the completion of this activity, participants will be able to: <ol style="list-style-type: none"> <li>1. Assess and address issues of equal opportunities, disability, gender, sexual orientation, ageism, sexual harassment and religion</li> <li>2. Examine and challenge institutional practices that have presented barriers to some dimensions of diversity</li> <li>3. Evaluate the key issues of equal opportunities</li> </ol>   |
| Approximate Time needed for the completion of this exercise | 20 minutes   |
| Individual or group exercise                                | <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Group  |
| Type of methodological tool                                 | <input type="checkbox"/> Written exercise<br><input checked="" type="checkbox"/> Group exercise<br><input type="checkbox"/> Video analysis<br><input checked="" type="checkbox"/> Simulation<br><input type="checkbox"/> Multiple choice<br><input type="checkbox"/> Group exercise with cards<br><input type="checkbox"/> Exercise using ICT<br><input type="checkbox"/> Role play<br><input checked="" type="checkbox"/> Group discussion<br><input type="checkbox"/> Case study<br><input type="checkbox"/> Creative Group Work |

<sup>1</sup> Source: Ontario Human Rights Commission (<http://www.ohrc.on.ca/en/teachers%E2%80%99-package/activity-7-using-case-studies>)

|                                       |  |
|---------------------------------------|--|
| Description of the exercise/Procedure | <p>Instructions on how to implement the exercise for the trainer:</p> <p>Divide the class into groups of four or five. Give each group a separate case study for discussion and analysis. Have each group read its case and then discuss the questions that follow under each case. If learners have other questions, these should be noted and answered. Each group identifies one person as the representative for the feedback session.</p> <p>Set up a forum by arranging chairs in a circle (one for each representative), plus one for a group discussion facilitator (you or a learner). Include one empty chair, where others will sit when they wish to ask questions or challenge statements raised by the reporting students. The rest of the class should sit outside the circle of representatives.</p> <p>Each representative reports on her or his case study by explaining the scenario and sharing the group's answers to the questions. To challenge statements and/or raise other questions, a learner must sit in the empty chair, make their point and then vacate the chair. As each group reports its findings, provide input using relevant information from the discussion points included below.</p> <p>Pay special attention to:</p> <ul style="list-style-type: none"> <li>- The discriminative aspect of each particular case.</li> <li>- Ask learners to state if they believe the acts described in the scenarios are discriminative or not</li> <li>- legal issues</li> <li>- The identity elements that may be conflicting with the code of conduct in each case</li> <li>- The cultural elements that may be conflicting with the code of conduct in each case</li> <li>- The learners' opinions on each case</li> </ul> |
| Exercise is accompanied by            | <b><a href="#">EUPA_LO_102_M_001_Att1</a></b>  |
| Exercise solution                     | <p><b>CASE STUDY 1 Discussion points:</b></p> <p>Was Mr. M's behavior illegal? Yes, it was. Darlene's employer sexually harassed her. He repeatedly touched her. He said he was sick of his wife and needed satisfaction from another woman. And, he asked her to come to his apartment to have sex with him.</p> <p>Why didn't Darlene speak out when she first became uncomfortable</p>  |

|  |   |
|--|---|
|  | <p>with the owner's behaviour? Maybe she was too frightened, too shy, didn't know how to stop it, or didn't want to lose her job. These are all feelings that can happen when someone is being harassed by someone who is in a position of power over them, whether it be a boss, a landlord, a teacher, etc.</p> <p><b>Case study 2 Discussion points:</b></p> <p>Does the weapons policy discriminate against Khalsa Sikhs? Yes. On its face, the weapons policy violates their rights. Although they can attend school, they will not be able to fulfil one of the important requirements of their religion. However, to demand that a person choose between school or a job and his/her religion constitutes discrimination. Sikh organizations in Canada and high-level Sikh authorities from India verified the argument that the kirpan must be made of iron or steel and worn at all times.</p> <p>Was the policy discriminatory? Can the school board prove that providing Sikhs with the right to practise their religion (that is, to wear the kirpan) would cause the school undue hardship? Would it pose a substantial risk to student safety?</p> <p>The court based its decision on these main issues:</p> <ul style="list-style-type: none"><li>• There was no evidence that Khalsa Sikhs had ever misused a kirpan in any Canadian school</li><li>• The kirpan's similarity to a weapon (particularly when secured and worn under clothing) was irrelevant</li><li>• While others might well steal a kirpan to use as a weapon, a person bent on aggression could easily get other weapon-like objects on school premises, such as screwdrivers, knives, forks and baseball bats.</li></ul> <p>In its decision, the court ruled that sacrificing the rights of Sikhs to control non-Sikhs, who might be violent, was unacceptable, given the other measures available to curtail violence in schools.</p> <p>It found that the school board had not proven undue hardship and ordered the board to withdraw the amendment about the kirpan. Khalsa Sikhs would be entitled to wear real kirpans to school.</p> <p>To meet the concerns of both parties, the court stated that kirpans would have to be of reasonable size, worn under clothing and secured so that removing the kirpan would be difficult. Principals would also have the right to suspend the wearing of a kirpan if its wearer misused it.</p> <p><b>Case study 3 Discussion points:</b></p> <p>Did the shift manager have good reason for firing Danté? No, he</p> |
|--|---|

|  |  |
|--|--|
|  | <p>probably didn't. It would be difficult for the manager to show that it was Danté who caused the equipment failure, as he had already left for his break. It was not clear if the other employee had partial or total responsibility for the problem.</p> <p>Danté believed he was fired because he is a Black person. What additional factors would be taken into consideration in a human rights tribunal hearing? The owner promised Danté he would be trained on the equipment by the shift manager. Yet the manager only gave him a few minutes of instruction. Why? Is it possible that the manager did not want to work with him? Is that why the owner was reluctant to hire Danté in the first place?</p> <p>The shift manager was overheard to say that Black people were responsible for increased violence in the community. Could Danté reasonably expect to get equal treatment from a supervisor with that kind of attitude? The shift manager also contributed to the harassment and poisoned environment by sharing racist jokes with Danté's co-workers.</p> <p>Furthermore, some co-workers ignored and isolated Danté, possibly contributing to the harassment. This and the poisoned environment constituted discrimination.</p> <p><b>Case study 4 Discussion points:</b></p> <p>At the court, the adjudicator explained that the Ontario <i>Human Rights Code</i> is aimed at achieving substantive equality as opposed to formal equality. Substantive equality recognizes that not all differences in treatment lead to substantive discrimination under the <i>Code</i>. The Tribunal stated that in the societal and cultural context of Ontario, holding a “ladies’ night” could not be found to substantively discriminate against men.</p> <p>What kind of discrimination is Kyle claiming? He alleges discrimination based on sex. Charging different cover charges based on sex violated his right to freedom from discrimination in services.</p> <p>Kyle told the court that by charging men twice what was being charged to women, the Barking Frog supported the belief that men are less worthy than women. He also said that charging a higher cover charge for men discourages them from entering the bar. The court didn't accept either argument, noting that men hold a privileged position in our society.</p> <p>The court noted that Kyle may have felt that the difference in cover charges seemed unfair. “But whether or not something is unfair in some general sense does not mean it is discriminatory within the meaning and purpose of human rights</p> |
|--|--|

|                               |  |
|-------------------------------|--|
|                               | <p>legislation.” The case was dismissed by the court saying that a “ladies night” or setting a lower cover charge for women is not discrimination against men.</p> <p>In this scenario, are there different rules and conditions governing men and women in services? Is there a <i>bona fide</i> reason for the difference? Do you agree with the adjudicator’s reasoning for dismissing the application?</p> <p><b>Case study 5 Discussion points:</b></p> <p>What do you think the interviewer and the nursing director should have decided? What are your reasons? On what basis did the employers make their assessment of Cindy's physical ability? Did they have reasonable grounds to believe that Cindy could not do the job?</p> <p>It appears that the administrator and director had honest opinions, based on their medical and nursing home experience. Their opinion, however, contradicted both Cindy's doctor's assessment and her own belief. Having performed similar tasks before, Cindy felt she was able to meet the requirements.</p> <p>Their assumption that Cindy could not handle the essential duties of the job was based on the subjective “impression” that Cindy could not lift patients.</p> <p>The administrator didn’t contact Cindy's doctor or ask Cindy to take a test to show that she could perform the essential duties of the job.</p> <p>The Tribunal found that an “impression” is subjective in nature and that the respondent must establish an objective basis, through facts or evidence, that Cindy's alleged disability would preclude her from meeting the essential job requirements.</p> <p>While the employers made their decision in good faith without intent to discriminate, the effect of their actions on Cindy was, nevertheless, discriminatory.</p> |
| Other comments to the trainer | N/A  |