

Attachment: Case Studies: Is this discriminative?

Number of methodological Tool	EUPA_LO_102_M_002
Number of attachment	EUPA_LO_102_M_002_Att_1

Case study 1: Darlene

As part of a government program, Darlene, a grade 12 graduate, got a job with a local garden nursery. She was to help Mr. M., the owner, tend plants and shrubs, place orders and serve customers.

Mr. M's first review of Darlene's work showed that she was performing all her job duties exceedingly well. It was obvious that Darlene liked the work.

Over the next three months, Mr. M's behaviour toward Darlene began to change. As they worked, he would often put his hands on her shoulders and hips or lean over closer to her. At these times, she would quickly draw away from him. He then began to make offhand remarks about how he was sick of his wife and that he needed "satisfaction" from another woman.

Darlene did not encourage the comments or actions, nor did she say anything against them. However, she was becoming increasingly uncomfortable with the situation and tried to avoid the owner as much as possible. One day, Mr. M. asked her for a kiss. When she refused, he said "I know what's wrong with you. You're scared you're going to like it." A few days later, Mr. M. suggested that she come to his apartment to have sex with him. Darlene firmly refused, saying that she was seriously involved with her boyfriend. On several other occasions, the owner tried to get Darlene to come to his apartment.

In June, Mr. M. terminated Darlene's employment, saying he had no work for her, even though June is the busiest month of the year for the nursery.

Group discussion questions

1. Did the nursery owner act illegally? If so, how?

2. When Darlene first became uncomfortable with the nursery owner's behaviour, why wouldn't she have said something?
3. Is Darlene's termination a factor when assessing if her rights were violated?

Case study 2: Paramvir

In response to increased violence in its schools, a local school board adopted a policy prohibiting carrying weapons on school grounds. The following spring, the school administration learned that Paramvir, a Khalsa Sikh, was wearing a kirpan in school. The school wanted to implement its “no weapons” policy.

Of the estimated 250,000 Sikhs living in Canada at the time, more than 10% are Khalsa Sikhs—they have gone through the Amrit ceremony, symbolizing spiritual commitment. One of the duties of the Khalsa Sikh is to carry, at all times on his or her person, a kirpan, an article of faith symbolizing a spiritual commitment to law and morality, justice and order. A kirpan is a steel knife, encased and secured in a sheath, and generally worn out of sight under normal clothing.

After prolonged discussions with Paramvir's family and Sikh organizations, the school board amended its weapons policy to include kirpans. It forbade Sikh students to wear the kirpan to school—they could only wear a symbolic representation of the kirpan, provided it did not involve a metal blade that could be used as a weapon.

A Sikh teacher took the case to the court. At the hearing, it was argued that Sikh religious practices dictate that the kirpan must be made of iron or steel and worn at all times, otherwise the Khalsa would break their holy vows. It was shown that, while the kirpan has the appearance of a weapon, it has never been used in Canada as a weapon. Furthermore, it was argued that other school boards did not have a policy restricting kirpans.

The school board argued that:

- The kirpan posed a risk as it looked like, and could be used as, a weapon
- Others could perceive the kirpan as an invitation to violence.

Group discussion questions

1. Did the weapons policy discriminate against Khalsa Sikhs? How?
2. Was the policy reasonable? Suggest some ways the school board could accommodate Khalsa Sikhs without undue hardship – for example, posing a safety risk?

Case study 3: Danté

After months of searching for a weekend job, Danté, who is Black, finally got an interview with the owner of a busy car wash and gas station. The owner seemed reluctant to hire him, but Danté managed to win him over. The owner gave him the job, saying that he would be working on a weekend shift with seven other young men, all students from the local area. The shift manager would train him on the car wash equipment.

On Danté's first day, the shift manager gave him only a few minutes of instruction on the equipment. Danté watched what the other men were doing, but when he asked questions, they were not very helpful.

Over the next few weekends, Danté concentrated on his work but because of certain events, he increasingly began to stay by himself. A few co-workers invited him to join their little group for lunch or breaks, but others consistently cracked ethnic and racial jokes, often within hearing of the shift manager. One day Danté overheard the manager say that Black people were responsible for increased violence in the community. This statement encouraged some co-workers, who had previously eaten lunch with Danté, to tell a couple of jokes about Black people. When they glanced at him as they told their jokes, he got up and walked away.

One busy Saturday afternoon, a whole section of the car wash equipment broke down because someone had allowed the system to become overheated. Danté had worked on that section until his break, when a co-worker took over. The system had broken down at some point after that.

The shift manager was furious and accused Danté of negligence. Danté replied that he believed the system was fine when he left for his break. Although Danté insisted that the equipment failure was not his fault, the shift manager fired him. Danté believed he was discriminated against because he is Black, while his co-workers and managers are White.

Group discussion questions

1. Did the shift manager have good reason for firing Danté? Why?
2. What factors would a human rights court take into consideration?

Case study 4: Kyle

Kyle is a young man who went to The Barking Frog, a bar in London, Ontario. He went on a “Ladies” Night,” when women are charged a lower cover charge than men. Bars across Ontario (and indeed

Methodological Tool: < EUPA_LO_102_M_002_Att_1< **Case Studies: Is this discriminative?**> Page | 3

across Canada and parts of the United States) routinely hold what are commonly called ladies' nights, where women are charged a lower cover charge or no cover charge to enter the bar or are given discounts on their drinks. This practice has been common in Ontario and elsewhere for decades.

Kyle went to The Barking Frog, where the doorman told him the cover charge was \$20 for the men but only \$10 for the women in the group. Kyle was upset and was unwilling to pay the \$20, so he did not enter the bar.

Kyle launched a human rights complaint claiming the different cover charges amounted to discrimination based on the ground of sex.

Group discussion questions

1. Did Kyle face discrimination? If so, what type?
2. What factors would be taken into account to determine if this differential treatment violated the law?

Case study 5: Cindy

Cindy, 19, applied for a job at a nursing home as a nursing aide. She had previously worked part-time as a kindergarten teacher's aide and had also cared for children with mental and physical disabilities during her high school years. In her initial interview, the assistant administrator told Cindy she was an ideal candidate and that she probably would be hired.

She was given a pre-employment medical examination for her family doctor to complete. He confirmed that she could meet the requirement of being able to lift patients.

At a second meeting, the interviewer reviewed the completed medical form and noticed Cindy's hand. During the initial interview, the assistant administrator had not observed her left hand, on which the index, middle and ring fingers were much shorter than those on most hands. Following this, the interviewer and another nursing director spent much time discussing Cindy's disability and the job requirements. Even though they both really wanted to hire Cindy, they didn't think she would be able to cope with the gripping or clasping that is needed to lift patients.

Although Cindy said she could perform the duties and had done similar tasks in her previous job with children with disabilities, she was not hired.

Group discussion questions

1. Did the interviewer have reasonable grounds to believe that Cindy could not do the job?
2. On what basis did the interviewers assess that Cindy could not meet a *bona fide* job requirement?
3. What do you think the interviewer and the nursing director should have decided? What are your reasons?

