

Discrimination:

Who is protected under the new Human Rights Code?

By SHAYNA B. KRAVETZ L.L.B.

In 1981, the Ontario Legislature passed "An Act to revise and extend Protection of Human Rights in Ontario". This created a new Human Rights Code for Ontario, to protect Ontarians from discrimination.

The word "discrimination" simply means seeing a difference between one thing and another; however, "discrimination" in the Code means letting your ideas about a group affect your assessment of an individual. It has never been a breach of the Code to choose the smarter of two people, or to hire someone because he or she is more competent than someone else. However, it is an offence under both the new and old Code to choose an Anglican in

preference to a Catholic just because of his or her religion. Creed is a prohibited ground of discrimination.

The new Human Rights Code takes a new approach. It sets out what everyone is entitled to, not what is forbidden for someone to do. The new Code creates rights rather than offences. Generally, when courts consider how to interpret a new law, they take into account whether rights are to be given or taken away. If it seems that the law is intended to give more rights to people, as the new Code is, the courts will try to give the broadest meaning possible to the words of the law. The courts will use the Code to compensate people who have been discriminated against.

In addition to rights



against direct discrimination, the new Code creates some broader rights. The new Code forbids disguised discrimination—creating qualifications that have the practical effect of discriminating on prohibited grounds, even if not apparently doing so. For example, the height restrictions that many police forces have are a practical discrimination against women, who are generally smaller than men. In addition, the Code forbids discrimination by association - i.e. against someone who is related to or deals with a member of a group against whom

discrimination is forbidden.

The new Code defines "age" as being any age over eighteen, (except in employment where people are protected from ages 18 to 65), "handicap" to include any physical illness or deformity or mental illness or mental retardation, "family status" as being someone's parent or child, and "marital status", in addition to its usual meaning, to include living with someone outside of marriage.

The new Code gives you the right to be considered as a person on your own merits, without having any prohibited ground of discrimination taken into consideration as well.

The information in this article is accurate as of July 1982. For more

information on this and other topics contact Community Legal Education Ontario, 62 Noble Street, Toronto, Ontario, M6K 2C9. For legal advice

contact your local lawyer or the Halton Hills Community Legal Aid Clinic at 5 Wesleyan St., Georgetown, 877-5256.

Acton home robbed

A Park Avenue home in Acton was broken into Friday after 12:30 a.m. while the family was at home sleeping. Halton regional police said there was no sign of forced entry by thieves, who removed \$135 from a purse left in the kitchen.

At home, at work, in contracts - when does the new code apply?

By SHAYNA B. KRAVETZ L.L.B.

You can rely on the Code when you are: (1) working or looking for work; (2) looking for or using housing; (3) looking for or using services, goods or facilities; (4) making a contract; or, (5) being harassed. This part of Article 2 will deal with working and housing.

(1) Working: Everyone has the right to work or look for work without discrimination on the basis of any of the prohibited grounds of discrimination. For example, you cannot legally be hired, fired, promoted, demoted, transferred, or otherwise affected simply because of your race. No one can refuse to hire you, just because you have a criminal record (for which you have been pardoned) or a record of provincial offences.

When you apply for a job, the interviewer cannot legally ask you questions concerning the prohibited grounds of discrimination or refer to them in the application form or the advertisement for the job. You cannot legally be discriminated against in applying to join a trade union, either. An employer

cannot legally try to discourage you from working by forcing you to apply for a pension or insurance plan that discriminates against you.

But this right is subject to some important exceptions:

(a) You may still be forced to retire at age 65.

(b) An employer may discriminate on the basis of age, sex, record of offences, or marital status if the particular ground of discrimination is a reasonable and genuine qualification for the employment. So, for a job involving the handling of money, such as a bank teller, it might be reasonable that the bank should inquire whether you had ever been convicted of a charge of theft or fraud; honesty is a necessary and reasonable qualification for the job, and previous convictions of the crimes mentioned could reasonably be taken into account by the employer in deciding whether or not to hire you for such a job.

(c) Organizations defined by a prohibited ground of discrimination (such as churches, which are defined by creed) can choose to hire only people who belong to that particular

group, provided that such a restriction is required by the nature of the job. For example, a Baptist church may insist on hiring only a Baptist teacher for its Sunday School because the church relies on the teacher to instill religious values in the students.

(d) A company's pension plans and benefits plans can still discriminate on the basis of age, sex, marital status, or family status, so long as they comply with the Employment Standards Act of Ontario. They can also discriminate on the basis of a handicap, but only if there is a good reason to do so; however, the company can't refuse to hire a handicapped person just

because he or she doesn't qualify for a pension or benefit plan. Nepotism—special treatment for rela-

tives—is still allowed under the Code. So is anti-nepotism; for example, a

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