### Business Law Case Study Assignment: Human Rights

Instructions: Read the four case studies below based on actual cases. Then answer the questions after each case.

Due: Last Day of scheduled class

### Case study 1: Darlene

This scenario is based on the real-life human rights case of *Noffke* v. *McClaskin Hot House*.

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.

#### Questions:

1. Did the nursery owner violate the *Human Rights Code*? If so, how?
2. When Darlene first became uncomfortable with the nursery owner's behaviour, why wouldn't she have said something?
3. In this situation, would Darlene have had to say anything to the nursery owner for him to know that he might be violating the *Code*?
4. Is Darlene's termination a factor when assessing if her rights were violated?

### Case study 2: Paramvir

This was real-life case: *Pandori v*. *Peel Board of Education*

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 in 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 Tribunal. 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:

* Education was not a service covered by the Ontario *Human Rights Code* but was instead under the jurisdiction of the *Education Act*
* 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.

#### Questions:

1. Does the *Code* prevail, or have “primacy,” over the *Education Act*?
2. Did the weapons policy discriminate against Khalsa Sikhs? How?
3. 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. Dante 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.

#### Questions:

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

### Case study 4: Tammy

This case, *Youth Bowling Council v*. *McLeod,* was heard by a Tribunal and was then appealed to Divisional Court which dismissed the appeal. The Ontario Court of Appeal later endorsed the Divisional Court decision.

By age 11, Tammy had bowled for five years in the local recreation league. She and several others qualified to enter a province‑wide competition sponsored by the Youth Bowling Council.

Tammy has cerebral palsy and uses a wheelchair, but she has some movement and coordination. So she could bowl, her father built a wooden ramp, the top of which rests in Tammy's lap. She lines up the ramp towards the bowling pins and lets the ball roll down the ramp.

Just before the competition, the Council ruled that Tammy was ineligible to take part. While the Council's rules allowed persons with disabilities to use special equipment to assist them in recreational bowling (provided the equipment did not add force or speed to the ball), they prohibited the use of such equipment in competitions.

The Tribunal and later the Supreme Court of Ontario heard Tammy’s application. The Youth Bowling Council argued that it had not violated her rights under the *Code*, because Tammy wasn’t capable of the essential requirement of bowling—manually releasing the ball. The Council also contended that the use of special devices would make competition between the bowlers unfair, because the skills assessed would not be common to all competitors.

Tammy's lawyers argued that Tammy was bowling—she was using the ball to knock down pins. Also, the Youth Bowling Council had a duty to accommodate her under the *Code* by allowing her to use the ramp. Speed and accuracy tests showed that Tammy did not gain any advantage over other bowlers. Her ball speed was too low for maximum results and her accuracy no better than average.

#### Questions:

1. Could Tammy perform the essential requirement of bowling? Should this |argument have been a factor in determining whether a violation occurred?
2. Should the Council have to accommodate Tammy (for example, should they allow her to bowl in competitions with the ramp)?
3. Would the Council experience undue hardship if it accommodated her in competitions? Would it change the sport too much? Give your reasons.