

Competing Human Rights Training: Outline and Objectives

Module 1: Welcome and Introduction

Content:

- Welcome video
- How to navigate the course
- Course outline and objectives
- Short video – what are competing rights?
- Simplified flow chart for competing rights conciliation

Goals:

1. Understand how to navigate the Competing Human Rights course.
2. Determine which modules you will complete to meet your learning needs.
3. Gain a general understanding about what competing rights are.

Module 2: The Ontario *Human Rights Code* and Reducing the Potential for Conflict

Content:

- The Ontario *Human Rights Code*
- Definitions
- Reducing the potential for conflict
- Quiz

Goals:

1. Understand the OHRC's definition of competing rights.
2. Understand the difference between human rights, other legal entitlements, interests and values, and how these definitions can help us analyze competing rights issues.
3. Learn the Ontario *Human Rights Code's* grounds and social areas.
4. Understand how to reduce the potential for competing rights conflict.

Module 3: Examples of Competing Rights Situations

Content:

- Introduction
- Examples of competing rights scenarios, including current examples from the news
- Quiz

Goals:

1. Understand that there are different types of competing rights situations.
2. Through the examples and discussion questions, learn about different types of competing rights situations and how to analyze them.
3. Consider which types of competing rights situations may apply to you, in your employment, services, etc.
4. Differentiate between situations that are competing rights situations and those which are not (for example, duty to accommodate situations).

Module 4: Key Legal Principles

Content:

- The learner is introduced to a scenario. Each key legal principle is explained, and then applied to the scenario by the learner. At the end of the module, the real-life outcome of the scenario is revealed, prompting the learner to reflect on their analyses.

Goals:

1. Learn about the key legal principles that are applied in competing rights situations.
2. Apply the key legal principles to analyze a possible competing rights situation.

Module 5: Framework for resolving competing rights issues in organizations

Content:

- A walk-through of the framework, step-by-step, using a scenario as a guide. The learner is prompted to reflect on the scenario and provide possible outcomes throughout the module.

Goals:

1. Understand the quick resolution and full processes for addressing competing rights, and when each should be used.
2. Learn Alternative Dispute Resolution models for resolving competing rights issues.
3. Understand each step of the framework for addressing competing rights issues in organizations.
4. Ability to apply the framework for addressing competing rights issues in an organizational setting.

Reducing the potential for conflict

What steps can organizations take to reduce the potential for human rights conflict and competing rights?

- Be familiar with the Ontario *Human Rights Code* and your obligations under it
- Take steps to educate and train appropriate staff about competing human rights situations and the Ontario Human Rights Commission's *Policy on Competing Human Rights*.

Having this background knowledge will help organizations act quickly and responsibly when issues arise.

Next, develop a competing rights policy. This policy should:

- Set out the process for resolving competing rights situations
- Inform all parties about their rights, roles and responsibilities
- Commit the organization to deal with competing rights matters promptly and efficiently.

Taking these proactive steps to address competing human rights matters can help protect organizations from legal liability if a human rights complaint occurs.

For the suggested content of an internal competing human rights policy, select this link: [OHRC Policy on competing human rights: Suggested contents of an internal policy](#)

Module 3: Example 1

Code right v. Code right: Competing rights at the office

This example involves two *Code* rights, both on the ground of disability.



Mira works in an office with 25 other employees. She has been diagnosed with a chemical sensitivity disability. Perfumes and scented hand creams give her migraines, nausea and make her feel dizzy. Her manager is aware of her disability and has tried to make sure that the other employees don't wear perfumes or scented products to the office.



Recently Ramon, another employee at the office, was diagnosed with a severe skin condition. He has to use a medicated skin cream several times a day to treat his condition. The skin cream is scented, and causes Mira to react.

Mira told Ramon and their manager that Ramon's cream is giving her migraines, nausea and dizziness when she comes to work.

Ramon told the manager that he understands Mira's situation, but if he doesn't use the cream, his condition will get worse and it will be hard for him to work.

This is a competing rights situation, because both Mira and Ramon have a *Code* right to have their disability accommodated.

We'll talk more about how to resolve competing rights situations in Module 5 of this course, but not all competing rights situations are complicated. In fact, many can be resolved by talking. In this case, for example, a conversation with their manager might find that moving Mira or Ramon to cubicles on opposite sides of the office might solve the problem. Ramon could also see if there's an alternative or unscented cream, or one of them could work remotely until Ramon's condition has resolved.

Here are some discussion questions to think about:

1. In this case, do you think one right is more important than another? Why?
2. What do you think is the best way to resolve this competing rights situation?
3. Who will be affected by your solution?

Module 3: Example 2

Code right v. Code right: Visual fire alarms and epilepsy



Jan, a building manager, is updating the fire alarm system in his building. He installs audible alarms. He plans to also install visual alarms, to accommodate a resident who is deaf. A strobe light would be set off when fire alarms are activated, which alerts people with hearing impairments.

At the next building committee meeting, Jan presents his plans to the committee. One resident, Kelda, is pleased, because she is deaf and her disability is being accommodated.

But another resident, John, is concerned. He has epilepsy which could be triggered by the fire alarm's flashing strobe light.

This is a competing rights situation, because both Kelda and John have a *Code* right to be accommodated because of their disability.

Here are some discussion questions to think about:

- Do you think it's possible to accommodate both their rights?
- What other information would help to make this assessment?

Module 3: Example 3

Code right v. Code right: Muslim barber and woman denied service

Read the following excerpt from a news clipping about a competing rights case. This is an example involving two *Code* grounds – creed versus sex. When you're finished reading, answer the questions at the bottom of the page.

You can also watch this CTV news video about the case:

www.ctvnews.ca/video?clipId=807680&binId=1.810401&playlistPageNum=1

Excerpt from:

Toronto barber shop won't cut women's hair on religious grounds
TORONTO NEWS/Lesbian denied 'businessman's cut' launches complaint to OHRC
Andrea Houston / Xtra! / November 03, 2012

All she wanted was a haircut.

But when Faith McGregor walked into the Terminal Barber Shop at Bay and Dundas streets, she was shocked to hear from the owner that no barber at the shop would cut a woman's hair because it goes against their religious beliefs.

McGregor has since filed a complaint about the June incident with the Ontario Human Rights Commission (OHRC).

The shop wasn't busy that day, she says, and two barbers were standing at the back of the store. "I asked, 'Do you do a businessman's cut?' It's a basic haircut. They said they do."

After describing the cut, owner Omar Mahrouk stopped her. "He just looked at me and said, 'I can't do that. We don't cut women's hair here.'"

McGregor says she was shocked. "I just wanted the exact same cut as they would give a man. Nothing different."

...

Mahrouk told her “it’s against his religion” to cut a woman’s hair, she says. Mahrouk and two other barbers refused, all saying they practise Islam, which forbids them to touch strange women, she says.

For his part, Mahrouk admits that he denied McGregor service. “I can cut my wife’s hair, but not a strange lady. For me this is not discrimination. I explained that I have nothing against woman. This is my religion. She did not accept it.”

The Ontario Human Rights Code states that business owners can’t deny service based on sex.

“The law is the law, but this is my religion. But I am not discriminating against anyone,” Mahrouk insists. “It is against my religion.”

On the surface, the Human Rights Code says Terminal Barber Shop appears to have discriminated against McGregor based on her sex.

But it’s not that simple, says Pascale Demers, communications officer for the OHRC. This is a case of competing rights: the individual right of a person not to be discriminated against based on their sex or gender and the right of a person to hold religious beliefs.

“Generally speaking, services that are offered to the public should be made available to everyone without discrimination, based on sex, sexual orientation, race, religion, disability,” Demers says. “Each side will bring forward a defence that their rights trump the other.”

She says it’s a case that presents new terrain for the Tribunal. “We have been unable to find any cases like this. It’s unique. It will be looked at in an individual context, each with its own unique set of evidence. The tribunal will make a decision based on its set of facts presented to them.”

No rights are absolute, Demers says, and there is no hierarchy of rights.

“We look at cases individually,” she says. “We have to look at ways both sides can be accommodated.”

But, absolutely, there will be instances where one side will be dissatisfied, though they are claiming a right.”

Here are some discussion questions to think about:

1. Do you think one right should be treated as more important than the other? Why?
2. What do you think is the best way to resolve this competing rights situation?
3. Who will be affected by your solution?
4. Could your solution impact others in similar situations? For example: people in remote communities, women who want other types of services, Muslim, or other religious, service providers, etc.

Module 3: Example 4

Code right v. Charter right: Employer distributing Bibles and religious advice

Here is an example of a *Code* right (creed) versus a *Charter* right (freedom of religion and expression).

An employer often discusses his religion and his views on issues related to his religion with his employees. He encourages them to attend church meetings, gives each a Bible as a gift for Christmas and asks them if they share his opinions on a variety of matters. Employees have made it clear that they do not welcome or appreciate his comments and conduct in their workplace and that they plan to file a claim under the Ontario *Human Rights Code*. This could be argued as a competing rights situation because:

- The employees have a *Code* right to be free from discrimination and harassment based on creed (religion), which includes the right to be free from religion at work.
- The employer may try to argue that applying the *Human Rights Code* in a way that prevents him from expressing his religious views in the workplace violates his *Charter* rights to freedom of religion and expression.



Module 3: Example 5

Code right v. common law right: Temporary *sukkah* hut on condo balcony

Here is an example of a *Code* right (creed) versus a common law right (right to peaceful enjoyment of property).

In this example, a Jewish family is asked to remove a *sukkah* hut that they placed on their condominium balcony for religious celebration. The *sukkah* hut would normally stay up for nine days.

The *sukkah* hut does not comply with the condo's by-laws and the neighbours are complaining that it's interfering with their enjoyment of their property. They also claim that their property value will decrease.

The Jewish family claims that despite the condo's by-laws, they have a right to accommodation under the *Code* because of their religion (creed). The condominium co-owners argue that they have a common law right to peaceful enjoyment of property.



Here are some discussion questions to think about:

1. In this case, do you think one right should be treated as more important than the other? Why?

2. What do you think is the best way to deal with this situation?
3. Will anyone have to compromise? Why?

This example is based on a real case, *Syndicat Northcrest v. Amselem*. In this case, a Jewish family was asked to remove a *sukkah* because it did not comply with the condominium's by-laws and was interfering with the neighbours' enjoyment of their balcony. The Supreme Court refused to engage in a balancing process under section 1 of the *Charter* between freedom of religion as it affected the right to peaceful enjoyment and free disposition of property, since, in the Court's view, the effect on the Jewish family was substantial while the effect on the co-owners was "at best, minimal," and therefore limiting religious freedom could not be justified.

For a link to the court ruling on this case, [click here](#).

Module 3: Example 6

***Charter* right v. *Charter* right: Niqab case**

Read the following news clipping about a recent competing rights case. This is an example of *Charter* rights (creed and sex) versus another *Charter* right (right to a fair trial).

You can also watch a short Global news video about the case by clicking on this link: www.globalnews.ca/supreme+court+rules+niqab+may+have+to+be+removed+in+court/6442775890/story.html

CTVNews.ca Staff

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In a split decision, the Supreme Court of Canada has ruled that a woman can wear a religious veil across her face while testifying in court – but only in certain circumstances.

The justices were not able to make a definitive ruling, which pits religious freedom against a defendant's right to a fair trial. Instead, the top court produced a rare 4-2-1 split decision.

The case involved a Toronto woman -- identified only as "N.S." -- who accused her cousin and uncle of repeatedly sexually assaulting her over a four-year period when she was a child. She wanted to testify against them in court, but also wanted the right to wear her religious veil while doing so.

N.S. wears a niqab -- a veil that covers her face so that only the eyes can be seen through a slit. She said her Muslim faith dictates that she wear the veil in public and that she wouldn't testify without it.

The two defendants, meanwhile, claimed the Charter of Rights allows them to confront their accuser and observe her facial expressions. They said they needed to see the accused's face so they could assess her demeanour, which they said was key to defending themselves.

Writing for the majority, Chief Justice Beverley McLachlin said the decision on whether to allow the face-covering must be made on a case-by-case basis and that judges would have to consider four questions before deciding whether to order a witness to remove her veil.

One of those questions would be whether permitting the witness to wear the niqab while testifying would create a serious risk to trial fairness. They would also have to consider whether there was a way to accommodate both the rights of the witness and the rights of the accused to see their accuser, to avoid a conflict.

If there weren't, McLachlin said, a trial judge would be allowed to order a witness to remove his or her veil.

The Supreme Court said that in cases where the liberty of the accused is at stake, "the witness's evidence is central to the case and her credibility vital, the possibility of a wrongful conviction must weigh heavily in the balance, favouring removal of the niqab."

That decision leaves it open to a judge to allow witnesses whose credibility is not central to the case to continue to wear their veils.

The decision means the N.S. case will have to go back to the Ontario trial judge who started hearing the preliminary trial and who first ordered N.S. to remove her veil.

But two other justices, Marshall Rothstein and Louis LeBel, disagreed with McLachlin's take on the case. They said that the principle of openness of the trial process requires that niqabs never be worn on the witness stand.

Justice Rosalie Abella, meanwhile, dissented completely, saying forcing a witness to remove her niqab is "a significantly more harmful consequence than the accused not being able to see a witness's whole face."

She said such a requirement would likely result in witnesses refusing to testify or bring charges in the first place. It could also mean that she would be unable to testify in her own defence if she were the accused.

"Unless the witness's face is directly relevant to the case, such as where her identity is in issue, she should not be required to remove her niqab," Abella wrote.

David Butt, the lawyer who represented N.S. said his client is "thrilled with the fairness, and the balance the Supreme Court has shown."

Module 3: Example 7

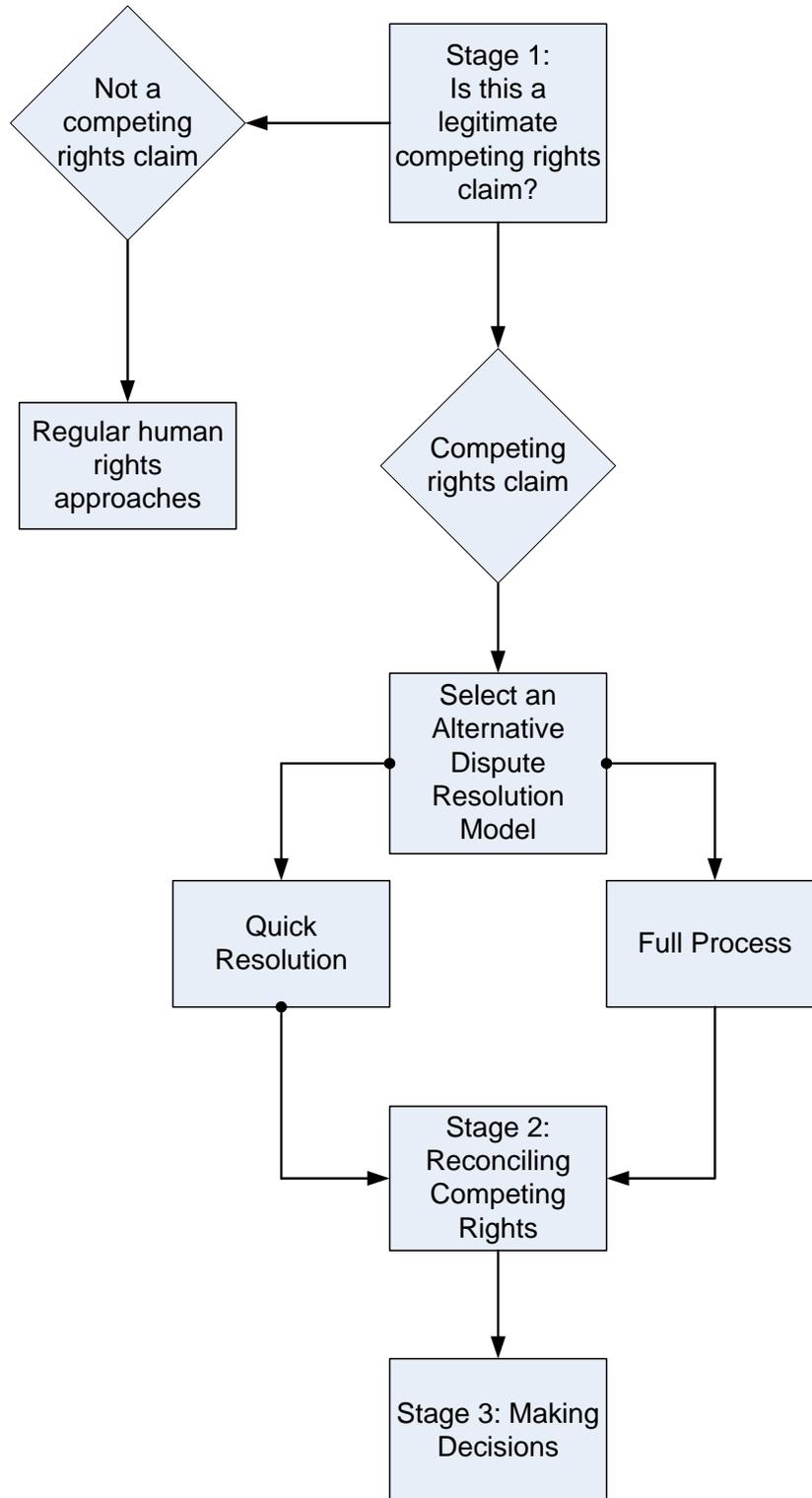
Code right v. Code right: Civil marriage commissioner and same-sex couple

A civil marriage commissioner objects to performing a marriage ceremony for a same-sex couple, claiming that it violates his religious beliefs. He claims that under the *Code*, he has the right to be free from discrimination based on religion in employment. The couple wishing to receive the service claims that their right under the *Code* to be free from discrimination because of sexual orientation in services is being breached.



Flow chart for competing rights conciliation

This is a simplified version of the “Flow chart for competing rights conciliation” found in the Policy. It will give you a general idea about the overall stages involved in reconciling competing rights situations. You might want to print it off and keep it handy as you go through the course, so that you can see how the information you’re learning fits into the process.



Process for addressing competing human rights situations

Stage One: Recognizing competing rights claims

Step 1: What are the claims about?

Step 2: Do claims connect to legitimate rights?

- a) Do claims involve individuals or groups rather than operational interests?
- b) Does at least one claim fall under a human right?
- c) Do claims fall within the scope of the right?

Step 3: Do claims amount to more than minimal interference with rights?

Stage Two: Reconciling competing rights claims

Step 4: Is there a solution that allows enjoyment of each right?

Step 5: If not, is there a “next best” solution?

Stage Three: Making decisions