

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.”