

Policy on Racial Slurs & Harassment & Racial Jokes

Equality Rights: “Poisoned Environment”

The Ontario Human Rights Commission

Although a single instance of racial harassment or a single racial slur may not fall within the definition of harassment under the Human Rights Code, it is the Commission's view that there are circumstances in which the differential treatment need not occur continuously or repeatedly in order for there to be a violation of the *Code*.

Sections 1, 2, 3, 5 and 6 of the *Code* may provide the basis for a claim that a single incident or racially based comment or conduct can create a "poisoned environment" for the persons affected.

A consequence of creating a "poisoned environment" is that certain individuals are subjected to terms and conditions of employment, tenancy, services etc. that are quite different from those experienced by individuals who are not subjected to these comments or conduct. In such instances, the right to equal treatment may have been violated.

1. Creating a "Poisoned Environment" ¹

Even though the statement or action may be made or committed only once, the individual or members of the group singled out will legitimately have concerns about their long term prospects in a workplace or rental unit. For example, other employees or tenants who are not members of that racial group will not experience the same concern and anxiety.

Examples of a situation which could be viewed as a violation of the Code by creating a "poisoned environment" include the following:

- I. A supervisor or a landlord says to an employee or tenant who is a member of a racial minority community, "I don't know why you people don't go back to where you came from, because you sure don't belong here".
- II. Comments, signs, caricatures, or cartoons displayed in a service environment such as a store, restaurant, etc. or in a work or tenancy situation show racial or

¹ Wei Fu v. Ontario Government Protective Services (1985), 3 C.H.R.R. D/742 (Ont. Bd. of Inq.)

religious groups etc., in a demeaning manner may create a "poisoned environment" in violation of the *Code*.

- III. Graffiti which is tolerated by a service provider, employer, or landlord who does nothing to have the racial slurs removed may create a "poisoned environment". Depending on the particular circumstances, some persons may be humiliated or may experience feelings of hurt, anger and resentment because of their race that are not experienced by others in that setting.

2. Further Examples of Creating a "Poisoned Environment"

The conduct at issue must be objectively evaluated. It must be of such a nature and degree so as to amount to a denial of equality through the creation of a "poisoned environment".

The following are further examples of statements or actions that can lead to the creation of a "poison environment":

- I. Demeaning racial remarks, jokes or innuendo about an employee, client or customer, or tenant told to other employees, tenants, clients or customers may deny the right of those persons who are the subject of the comments, to be viewed as equals.
- II. Racial remarks, jokes or innuendo made about other racial groups in the presence of an employee, tenant or client may create an apprehension on the part of members of other racial minority groups that they are also targeted when they are not present.
- III. The display of racist, derogatory or offensive pictures, graffiti or materials is humiliating and also impairs the right of those persons who are members of the targeted racial group to be viewed as equals.
- IV. Racial remarks, jokes or innuendo do not only poison the environment for racial minority groups.

They affect everyone's environment and are disruptive.

3. Comments or Actions Not Directed Toward An Individual ²

Not a member of targeted group

Members of a group protected under the Code who are not the specific targets of a discriminatory comment or action may nevertheless have a right to bring a complaint in circumstances similar to those described above. Exposure to a negative or hostile

² Lee v. T.J. Applebee's Food Conglomeration (1988), 9 C.H.R.R. D/4781 (Ont. Bd. of Inq.).

treatment that is racially motivated has a negative impact upon the sensibilities of an individual and is a human rights violation.

Example:

- A Chinese woman worked in a bakery where racial slurs and stereotypical language were common in the kitchen. Although none of these remarks were directed specifically to her but were directed to her black co-workers, a board of inquiry found that she had also been subjected to a racially -"poisoned environment" ³

Because of Association⁴

Persons who are not members of a particular group protected under the *Code*, but who are harassed because of their association with that group, may also be in a position to file a complaint based on s. 12 of the *Code*, which protects against "discrimination because of association".

Example:

- A white tenant of an apartment was derided and ridiculed because of her friendship with a black person. Although the white person was not harassed based on her race, she was subject to harassment because of her relationship with someone identified by a prohibited ground of discrimination.

Source:

1. Ontario Human Rights Commission. Retrieved from <http://www.ohrc.on.ca>

³ Ibid.

⁴ Jahn v. Johnstone (Sept. 16, 1977), unreported, Eberts, M. (Ont. Bd. of Inq.).