

April 12, 2016.

Ontario Human Rights Commission

"Creed: Preventing Creed-Based
Discrimination."

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>> Good morning and welcome to
today's Live Webinar:

"Creed: Preventing Creed-Based
Discrimination."

My name is Nancy Maben, and I am
a member of the professional
development team at Human
Resources Professionals Association.

Before we begin the presentation
and to provide additional time for
individuals to log in...I'd like to alert
you to a few of our PD programs.

On Wednesday April 13th and -- on
Thursday, June 2, join Mike Mendal,
NLP, neurolinguistics, programming
expert along with a panel of
accomplished HR professionals, for
transforming HR summit. This one
day summit will explore the
evolution as a strategic business



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partner. Transforming from the transactional to the strategic. Business acumen with deep HR knowledge to create human capital strategies that get results. At the conclusion of the summit, all attendees will be entered into a draw to win air fare and accommodation for San Francisco, San Diego, Orlando, or Las Vegas. Register before April 22, earlier, \$325, and you will save \$100. Monday, April 25, HRPA will deliver a webcast defining disability under the Human Rights Code. Following a recent decision from the Ontario human rights a tribunal a miscarriage was deemed a disability under the Human Rights Code, this explores the definition of disability under the Code and looks the recent decisions to better understand what constitutes a disability, and HR professionals facing challenges,



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accommodating disability in the workplace. Wednesday and Thursday and Friday, April 27-29. Join HRPDA for a new certificate program entitled "LGBTQ Workplace Inclusion Certificate." The business case, lesbian, gay, transsexual, and right hand side gender inclusion is clear. Studies have proven that inclusion of LGBTQ people includes profitability for a business and organization and enhances the employee engagement. The three-day certificate program provides an introduction into the LGBTQ inclusion, how to create a positive workplace for LGBTQ staff, and customers and gives concrete examples for trans-inclusion. Look for the details on these and other PD program, visit our website at www.HRPADCA/professionaldevelopment.

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send an e-mail to HRP.A.CA, and or indicate on the QA panel throughout the screen. We'll try to get to as many questions in the time we have. You can upload the presentation by selecting the link that can be found in the resources panel on the screen. And finally, your feedback is important to us. Take a few minutes to complete the survey that will be resent. The recertification code for those individual whose require one will be provided on the last question of the survey. And now I am very pleased to welcome today's facilitator, Bob Sherman.

Bob Sherman is a senior policy analyst at the Ontario Human Rights Commission, with a focus on working with organizations to bring about human rights organizational change.

In his most recent jobs, he spent



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almost six years working on accessibility for people with disabilities at the Ontario Ministry of the Attorney General and the Accessibility Directorate of Ontario.

Prior to that, Bob worked as a human resources practitioner with a strong human rights component, including development of Ontario Public Service policies related to accommodation of employees with disabilities, as well as workplace discrimination and harassment prevention.

Bob also has experience in labour relations, recruitment and human resources planning.

He has provided extensive advice and training in all these areas to human resources practitioners and managers.

Dora Nipp is a Human Rights Education and Change Specialist with the Commission and will be



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joining Bob as the
moderator. Welcome.

>> Dora: Hello, everyone.

On behalf of the Ontario Human
Rights Commission we're pleased to
be co-sponsoring today's webinar on
preventing discrimination based on
creed.

Let's start with a quick poll ... which
will pop up on your screen shortly.

To submit your answer, just click on
the radio buttons and I'll broadcast
the results.

We thought it would be interesting
to get a sense of the group and who
is taking part today.

Are you attending today as:

An employee

An employer

A service provider

A housing provider

A Lawyer or paralegal

A student other or just appear

general interest?



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I'm going to show you the results in just a moment.

>> Bob: At the moment we're looking at 37% of people who call and identify themselves as employee. Employers, 37%. The numbers are changing a bit as we go along. 67% service providers, 5% lawyers and paralegals and 14% or other or general interest.

>> Dora: We have a good representation.

In today's webinar on "Preventing discrimination based on creed", Bob will cover the employer's responsibility to recognize, prevent and address creed-based discrimination in the workplace.

Bob will provide an overview of the Ontario Human Rights Commission's policy and will explain various forms of creed

discrimination, the duty to accommodate and Indigenous



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spirituality.

Following his presentation, Bob will answer your questions.

You can use the Q&A pod to submit your questions.

Bob, over to you.

>> Bob: Thanks, Dora. The Policy -- one moment please.

The Policy on preventing discrimination based on creed is a complete revision and update of the original 1996 policy.

From 2012 - 2015, the Ontario Human Rights Commission conducted province-wide consultation on creed human rights. This was our largest consultation ever.

We heard from over 2000 concerned individuals and groups through focus groups, community dialogues, workshops, and an online public survey.

Much of what we heard can be



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found in our 2014 Human Rights and Creed Research and Consultation Report, as well as in the many discussion papers that were submitted to us and published in 2012.

These are all available on the Ontario Human Rights Commission website.

We heard about a range of barriers people face based on their creed.

This often had to do with the failure of organizations to accommodate or inclusively design employment and services in ways that would allow people with diverse creed beliefs and practices to fully take part.

We also heard about more overt and direct forms of harassment and discrimination that were neither subtle nor inadvertent combination of faithism, racism, xenophobia were sometimes behind the negative treatment and



discrimination people experienced. The background section of the Policy helps us understand the social and historical factors that are currently shaping creed discrimination in Ontario.

The Ontario Human Rights Commission defines faithism as "any ideology that ascribes to people values, beliefs and behaviours, and constructs people as fundamentally different and unequal -- deserving or undeserving of dignity and respect -- based on their religion or belief."

Faithism differs from simple prejudice or intolerance in that it can operate at several levels, including individual, institutional, cultural and societal.

One of the developments we heard about in this respect was a growing tendency in some quarters to caricature all people of religious



faith as backward, bigoted, irrational and/or intolerant.

We also heard about an increasing prevalence and social acceptance of Islamophobia in Ontario, which sometimes helped to fuel such anti-religious sentiment.

This was consistent with our own research which found Muslims to be the most over-represented creed group in in creed discrimination complaints at the Human Rights Tribunal of Ontario ... where they accounted for over 30% of all applications, despite being less than 5% of Ontario's population. Differences in religion and creed were racializes - that is, attributed with racial meaning - including in ways that sometimes drew on thinly veiled racist and xenophobic stereotypes.

Generally, the more a person's creed practice differed from the



perceived "norm" -- for example by being publically expressed versus privately held - the more likely it was to meet with social disapproval.

Let's move onto the Policy.

The Policy reminds us of the longer history of creed discrimination in Ontario.

In the not so distant past, to be a "proper Canadian" -- was to be, quoting religious

In the not so distant past, to be a "proper Canadian" -- was to be, quoting religious studies scholar, David Seljak, "the right kind of Christian."

One of our goals with this Policy is to help to ensure that we do not repeat past mistakes; and that we do create and maintain an Ontario free of creed discrimination, so that persons with a creed - or no creed - do not feel forced to conceal their identities or



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contravene their core beliefs simply in order to take part equally in Ontario's society and institutions.

The Policy also sets out the legal framework for human rights protections based on creed.

This includes the rights and responsibilities set out in the Ontario Human Rights Code, which has primacy - or takes precedence - over all other provincial laws in Ontario.

The Policy looks at the impact of the Charter of Rights and Freedoms, and International human rights law, which set standards and obligations for human rights law and policy in Ontario.

Let's have a poll question.

>> Dora: Thanks, Bob.

Do you agree or disagree with this statement: creed may be defined in many ways."

>> Bob: So far the vast majority of



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people agreed with the statement.

96 or 97% of people who agree that
creed can be defined in many ways.

>> Dora: Bob, we'll let you explain.

Bob. Thank you, Dora. I'll be just
one second and we'll move on to the
next slide. So what is creed? The
Ontario Human Rights Commission
does not offer "once and for all"
definition of creed. In part, this is
in recognition of the diverse and
evolving nature of belief systems
and related forms of discrimination
in Ontario.

But the new policy does outline what
we consider to be some of the key
relevant hallmarks of a creed.

The Policy outlines 5 main
characteristics of a creed, some or
all of which may need to be present
for a belief system to be deemed a
creed under the Code.

A creed is sincerely, freely and
deeply held. The second one.



It is integrally linked to a person's identity, self-definition and sense of spiritual fulfilment. The third one, is a comprehensive and overarching system of belief that governs one's conduct and practices. Fourth: A creed usually has some "nexus" or connection to an organization or community that professes a shared system of belief, and finally, it addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a Creator and/or a higher or different order of existence.

Creed has equal protection alongside other human rights grounds like race, disability or sex, because it is so comprehensively defining and so deeply rooted as an element of a person's identity.

Although many people may think of religion and creed as simply a



"choice" that is easy for people to change, the Supreme Court of Canada has recognized that creed is "changeable only at unacceptable cost to personal identity." Indeed, for this reason, the court has described religion as being "constructively immutable." Not every is protected under the Code. For example, the Whatcott decision said that creed human rights protections do not extend to practices and observances that are hateful or incite hatred or violence against other individuals or groups, or that contravene criminal law. Ontario's Code also does not include a ground for political belief or conviction.

While no tribunal or court to date has found a political belief or opinion to be a creed, some decisions - and our policy - leave open the possibility that a comprehensive



political or philosophical belief system may be equivalent to, or intersect with, a creed under the Code.

Courts and tribunals have generally been hesitant to rule out belief systems as creeds at the very outset of proceedings. We similarly advise organizations to generally accept in good faith that a person practices a creed, unless there is a demonstrable reason to believe otherwise.

The Code protects the right of all Ontarians to free from discrimination on the ground of creed, whether or not they personally have a creed.

Creed need only be a factor in someone's negative treatment for a finding of discrimination to take place.

For example, a person may be treated unfairly, or face pressure to



conform, because they do not share a particular creed or lack any creed.

We have also seen cases where a person was targeted and harassed because they were wrongly perceived to belong to a particular creed community, simply based on outward appearances.

Discrimination based on creed can also happen between people of the same creed.

Creed discrimination can take many different forms.

It can be direct and overt, and include harassment, exclusion, pressure, profiling, or poisoning of the environment for people of a particular creed.

It may also take more subtle, indirect and systemic forms, such as when an organizational rule or requirement that appears neutral on the surface negatively affects people of a particular creed.



When assessing whether discrimination based on creed has occurred, the focus of the analysis is on the effect of a distinction, rule, or factor, not on the intention behind it.

The policy gives many examples to show these different forms of creed-based discrimination and sets out steps that organizations should take to prevent and address such issues.

The Code also provides organizations with certain defences that allow behaviour that would otherwise be discriminatory.

For example, it would not be discriminatory for a private religious school to restrict hiring to teachers of the same faith.

Many of these exceptions recognize and protect the associational rights of creed-based groups in certain circumstances to enact or abide by



creed-based standards and requirements.

With respect to religious services, the Human Rights Tribunal of Ontario has made clear that it is not the appropriate forum for challenging a religion's belief system, teachings, or core forms of worship.

Accordingly, the Tribunal has found that "purely religious services" are not covered under the Code.

The policy explains the relevant legal tests and principles associated with each of these defences, which organizations will need to show they have met in order to qualify.

These exceptions in the Code are for very specific activities - they do not give individuals and organizations a blank cheque to discriminate as they please.

Let's have another poll question

>> Dora:



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Before Bob explains the duty to accommodate, tell where you think the duty to accommodate applies ... with:

Unions, Service providers, employers or all of the above?

>> Bob: Again. We have most people coming in on the side of all of the above. 97 average 98% of people say all of the above.

>> Dora: Okay, Bob. Thank you. Back to you.

>> Bob: Where the beliefs have been negatively affected by a requirement, rule, or standard.

The duty to accommodate stems in part from the recognition of normal ways of doing things in organization and society are often not neutral but may inadvertently disadvantage some people, or into the meet the need, and majority of the population reals to others. Creed accommodations help to level the



playing field, ensuring all Ontarians, including people of the creed, are able to fully take part of, benefit from, and contribute to the Ontario workplaces, services, and housing when they would otherwise face barriers because of their creed.

The Policy sets out the analysis for determining whether an organization has a duty to accommodate, and how best to fulfill this.

Not every adverse impact on a person's belief will necessarily trigger the duty to accommodate.

Interference with creed practices or beliefs that are only marginally significant for, or peripherally connected to, a person's creed may not necessarily receive protection.

For example: An organization may not have a duty to accommodate social or communal activities connected to a religion or creed,



such as taking part in a
creed-related bake sale, or social
event.

Likewise, merely being exposed to
views and beliefs that contradict or
differ from one's own does not
necessarily violate one's rights or
trigger any duty to accommodate.

The Supreme Court of Canada has
said that exposure to diverse and
conflicting views is a quote, fact of
life in our multicultural society "and
it is precisely through such
exposure - and learning how to deal
with the "cognitive dissonance" that
this can create - that we learn what
tolerance involves; namely,
respecting the rights and dignity of
people with whom we may deeply
disagree.

The Supreme Court, in the 2002
decision of Chamberlain and Surrey
School District No. 36, has stated in
this respect:



"When we ask people to be tolerant of others, we do not ask them to abandon their personal convictions. We merely ask them to respect the rights, values and ways of being of those who may not share those convictions. The belief that others are entitled to equal respect depends, not on the belief that their values are right, but on the belief that they have a claim to equal respect regardless of whether they are right."

That's the end of the quote.

The duty to accommodate under the Code, as such, extends to creed beliefs and practices that may be deeply unpopular, or run directly against the grain of majority values and opinions, subject to reasonable limitations

The Policy elaborates on 3 core human rights principles that should inform how organizations handle



accommodation requests. These include:

Respect for individual dignity including autonomy, comfort, and confidentiality.

Responsiveness to a person's individualized needs. For example, just because a creed accommodation works for one person does not mean that it will work for the next. And

Integration and full participation.

Accommodations should seek to maximize integration and participation wherever possible, to the greatest extent possible, unless it can be shown that separation or non-participation is the best way to achieve equality in the circumstances.

The Policy discusses how each of these principles can be applied to identify the most appropriate creed accommodation in any given



situation.

The duty to accommodate is not just about providing the most appropriate accommodation. It is also about engaging in a meaningful, good-faith process to assess the nature of potential accommodation needs and explore appropriate solutions. Failure to conduct a proper process may itself be discriminatory, even where there may not be a duty to accommodate at the end of such a process.

The policy sets out this procedural component of the duty to accommodate, and explains what a good accommodation process should look like.

It also describes the appropriate roles and responsibilities of each party involved in the accommodation process. Finding appropriate solutions requires everyone to work together



cooperatively and respectfully.

The Policy also contains a new section that explains what kinds of information organizations may request from persons seeking creed accommodation - we heard lots of questions about this during our consultations.

As a general rule, accommodation requests should be accepted in good faith unless there is evidence to suggest otherwise. Where more information may be needed, the information requested should be the least intrusive of the person's privacy as is reasonably necessary to identify the nature and extent of accommodation needs and potential solutions.

You may need to probe further.

However, more information may sometimes be required, for example, to establish that a person's belief or practice is



sincerely held, connected to a creed,
and/or is negatively affected by an
organizational rule or requirement.

It is inappropriate to require an
expert opinion to show that a creed
practice or belief is "legitimate".

Creed beliefs need only be sincerely
held; they need not be consistent
with "official" teachings, or the
views or practices of co-religionists.

Nor need they be a "mandatory
requirement" of the creed in order
to warrant accommodation.

Inclusive design means designing
with the needs of everyone in mind.

Inclusive design is preferable to
removing barriers only after they
become apparent, or making
"one-off" accommodations.

Organizations must be aware of
creed differences between people
when making design choices to
avoid creating barriers from the
outset.



This proactive approach is more effective because it minimizes the need for individual accommodations and maximizes inclusivity by meeting the needs of a larger number of people, usually with much less ongoing effort.

A good example is a university that makes it a policy to avoid scheduling exams on major religious holidays.

This saves the administration significant time and resources that would otherwise be needed to reschedule and monitor alternate exam times for individual students.

It is not always possible to anticipate every accommodation need through inclusive design.

Where individual needs remain, there is still a duty to accommodate up to the point of undue hardship.

The duty to accommodate may sometimes be limited, including when this creates undue hardship



for an organization. The Policy explains how "undue hardship" is determined, which includes a consideration of: cost, including outside sources of funding, if any, and health and safety.

Sometimes, an organizational requirement that negatively affects a person based on their creed may be a legitimate and bona fide one in the circumstances. The policy sets out the analysis for determining this, and explains how the duty to accommodate may still apply in such situations.

Organizations also have a legal responsibility to take steps to prevent and respond to competing rights situations. No right is absolute. And every right - including the right to creed accommodation - may be limited, including where it negatively affects the equality rights of others.



Generally, where there is a competing rights situation, organizations should strive to maximize the fulfillment of both sets of rights, wherever possible and appropriate, through constructive compromises. The Commission's policy on competing rights provides a fuller analysis and guide for how to handle such situations.

The creed policy also sets out various inappropriate limitations on the duty to accommodate creed beliefs and practices, such as business inconvenience, employee morale, or third-party preferences. These are not factors that should be taken into account.

The fact that an organization is "secular" or operates in the "public sphere" is also no reason, on its own, to deny or limit a religious accommodation. The Supreme Court of Canada has stated in this respect,



and here I quote:

"The pursuit of secular values means respecting the right to hold and manifest different religious beliefs. A secular state respects religious differences, it does not seek to extinguish them."

The Human Rights Tribunal of Ontario has similarly said that banning creed from all public spaces is "contrary to Code values of diversity and inclusion." That was in respect to the R. C. versus district school board of Niagara.

The Ontario Human Rights Commission takes the position that it is generally preferable for organizations to achieve equality through universal design measures that recognize and include creed diversity rather than through universal exclusion, unless this can be shown to be the best way to achieve equality in the



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circumstances.

So for example, rather than ban Christmas, an organization may recognize and celebrate many days of significance for persons of diverse creeds including those with no creed, as long as they do so equally.

A creed belief or practice need not need meet any test of "reasonableness" or "correctness" to qualify for accommodation. Rather, it is the limitation of a creed right that must be proven to be "reasonable" in the circumstances.

The policy provides more detailed and specific guidance on how to handle some of the more common accommodation situations, including:

Creed-based holidays, leaves and ritual observances

Dress code and appearance standards

The display of creed-based symbols



Photos and biometrics

Exemptions from activities that contravene a person's creed; and

Creed-based food restrictions

The Policy also includes a new section that addresses the duty to accommodate and inclusively design for Indigenous spiritual beliefs and practices under the Code.

To help inform the new section, we conducted 6 focus groups with First Nation, Métis and Inuit participants across the Province.

We felt this was an area that required particular and focused policy attention, given the general public's relative unfamiliarity with Indigenous Spirituality and its connection to creed human rights protections under the Code.

The Policy makes it absolutely clear that Indigenous people's spiritual beliefs and practices are protected under the Code ground of creed.



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The section provides many examples to expand the public's understanding of the wide range of Indigenous spiritual beliefs and practices that may trigger creed protections under the Code.

These include not only ceremonial practices, but also customs and observances connected to the land, culture and identity of Indigenous peoples, particularly where these have spiritual significance.

The section also highlights, and was informed by, the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, which sets internationally recognized standards for Indigenous human rights.

It is ultimately an organizations' legal responsibility to maintain environments that are free from discrimination and harassment. This means taking steps to prevent and



respond to breaches of the Code.

The section on "Preventing and responding to discrimination" sets out concrete steps that organizations can take to ensure that they are meeting such human rights obligations. It emphasizes the importance of having a complete human rights organizational strategy that includes:

- Barrier prevention, review and removal
- Data collection and monitoring
- Human rights policies and procedures
- An internal complaints procedure;
- and
- Education and training

Taking this broader organizational approach will help to ensure that people feel safe and welcome to practice their creed and assert their creed-related accommodation needs, without fear of reprisal or



stigma.

In conclusion, we hope that this policy will provide you with the necessary guidance to help you assess, resolve and prevent human rights issues based on creed.

The 19th century American writer, H.L. Mencken, once famously said: "For every complex problem there is an answer that is clear, simple, and wrong."

We appreciate that applying our policy to real life situations may sometimes be difficult and require case by case assessment, drawing on the human rights principles and case law precedents set out in the policy.

Clear cut answers can be rare.

Dealing with creed human rights issues in all of their 21st century complexity, nevertheless, is well worth the effort.

For all of Ontario society benefits



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when people of diverse creed orientations are given equal opportunity to take part at all levels.-- to take part at all levels of society.

The "Policy on preventing discrimination based on creed" is available on the Ontario Human Rights Commission's web-site at www.Ontario Human Rights Commission.on.ca.

>> Moderator: Thank you, Bob.

We're now going to start the question and answer segment of the seminar. You can ask your questions in the Q and A pod.

Remember that we cannot provide legal advice. If you have a human rights complaint you may want to consult with the Human Rights Legal Support Centre. If you have a complaint filed against you and you are, for example, an employer or a service-provider, you may wish to



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consult your own legal counsel.

During the Questions and Answers we may pause - and there will be silence on our end. This is because we may need a few moments to consider the question. We'll try to get to as many questions as we can in the time that we have. I'll start with a question or two that frequently arises during public-education sessions of the Policy. And while Bob and I are discussing these question, if you have a question please enter it into the discussion questions pod. -- shouldn't religion be treated privately

>> Bob: Fundamental Human Rights in Ontario. Protected by the Human Rights Code and the Canadian charter of rights and freedoms based on core constitutional values and commitments to a free, democratic,



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and multicultural society. As a result of these right, people of Ontario are not forced to follow or not follow a creed or choose between taking part in public life, including services of employment and practicing their religion or creed. People should not have to choose between their creed in taking part in public life.

>> Dora: How are we doing for questions?

>> Bob: Well, I see at least one question there.

>> Dora: We'll give people a little bit more time. I'll pull up another question that -- received during the consultation.

>> Bob: Go ahead.

>> Dora: Okay. Earlier on you explained the definition of creed. Where does one draw the line with the definition?

>> Bob: Our policy outlines key



considerations. Ultimately, however, the line is drawn by courts and tribunals. For example, a group known as railans may not have originally been protected under the ground of creed but the devolving case law has added them and those changes keep on occurring in case law.

We have another question. Any other case examples that you can share that might assist employers. What I would like to do is call on an area that sometimes comes up in organizations, and that is prayer observance. We have for example when an employee, a student, a client in school, has prayer observances they wants to take part of and how does the employer deal with that? Time sensitive prayer services.

For example, a need to pray at a certain time of day can be



accommodated by a number of methods. For example, by modifying prayer [indiscernible] policies and hours of work, and participation in the service to allow for a flexible schedule. Modifying break policies and hours of work. For example, use of lunch time. Lunch times and break times in exchange for early departure. If you use a break, depart early, or have staggered hours so you can participate. And delayed arrival and departure times because of the prayer observance at the beginning or end of the day. And sometimes rescheduling [indiscernible] time, and people's beliefs don't allow them to be present during certain hours.

For example, a workplace could allow employees to take -- say a workplace normally allows the employee to take two 15 minutes



breaks. One in the morning, and one in the afternoon. Can use flexible scheduling option, to avoid undue hardship to allow the person to take off in order to observe their religious practices. Instead of taking a smoke break or some other kind of break or snack.

There's another question here. A question, I would like to know if an employee filed a complaint with Human Rights will that affect their future to find another job or will they be discriminated against because they filed a complaint?

Well, we can't predict the future, but there is a protection in the Human Rights Code against reprisal for filing complaint. If someone files a complaint, regardless if that complaint is found by the tribunal to be justified, to be discrimination, the employee feels they've had a reprisal taken against them can file



a second reprisal complaint. It's possible that reprisal complaint can be upheld against an employer, for instance, regardless if the original complaint was upheld. So there's that connection in the human rights code, and people use it, and people are successful using it some of the time.

Any other questions?

>> Dora: I have a question here, Bob.

>> Bob: Sure.

>> Dora: What about the rights of atheists and persons of nonreligious faith? What rights do they have?

>> Bob: This policy protects the rights of all Ontarians to be free from discrimination whether or not they have a creed. It's the first OHRC policy to recognize that creed may also include nonreligious belief systems. Now, which don't know whether nonreligious belief system,



political belief systems or something like that would be included, but we at least leave open the policy.

There's been a bit of comment in the media, in fact, because of some mention of veganism in our policy. And there's been some sense that maybe our policy is saying that veganism is covered now as a creed. We're not saying that. It's ultimately up to tribunals to determine what would constitute a creed. It's not a once and for all definition, as I said in the presentation, it depends on the circumstance, and the creed beliefs of the individual as well. Again, we have to go back to factors like is this is sincerely held belief, how central for the person's belief, the accommodation they are seeking and so on. And so it's not a straightforward question.

What we do allow in the Policy for



the fact that atheists are under the ground of creed. There have been Human Rights cases that determine that, and the possibility of [indiscernible] beliefs [indiscernible] creed. Another question has come in. The question is, if a company falls under continuous operation category that does not operate on a 9:00 to 5:00 Monday to Friday schedule, would it be violating the Code if the employee doesn't relieve in the company's schedule. I will interpret that a bit, and assume that -- asking for the question, would the religious beliefs make it difficult or impossible for them to meet a 9:00 to 5:00 or 24-hour continuous schedule that their needs might vary or religious beliefs may conflict so that the employee may not have as much scheduling flexibilities.

I suppose the answer to that is,



again, it's a case by case situation, but it's important for a 24-hour continuous operation organization to realize that being in that kind of operation is not automatically exempt you from the duty to accommodate. It's still important, as in every other case, to look at with the employee what options there might be to enable the employee's creed beliefs to be met, accommodated. It may be that it's a big change and no one can think of a way in which the organization's immediate needs can be met and still accommodate the individual but it may be that it's still not that big of a deal, and operational flexibilities which may not have been considered before may meet the needs. That's why it's so important to outline a full faith process where both parties sit down and talk together about what could be done.



The employer may need to think about something that's really outside the box but that meets its business operation.

There's one other question I see up here. And, of course, we're open to getting more questions that you have. Is it considered a bona fide occupational requirement for the retail industry to impose a requirement that the candidate be available on a religious day of observance? For example, a Saturday or a Sunday?

I think it's important, again, to think about what the nature of the operation is and [indiscernible] flexible. You may have, it'll depend in part -- my answers in all of these questions will be dependent. I'm not going to be black and white answers.

In a situation like that, it may depend on what the size is of the



operation, how many staff do you need available on a Saturday or Sunday, and will you be able to meet those needs with the other staff that you have available. How big is the operation? Does the operation have a lot of staff, and therefore have a lot of flexibility. And, again, what are available, and look at the operation, and look beyond what might be your first impression. For example, you might have a retail operation with a number of locations. Those locations have different schedules. The employees being considered to be hired in a particular location or you have a heavy requirement for people to work on Saturdays and Sundays, the days of a person's religious observance. But there may be other operations that don't require people to work on that schedule or where you have more



flexibility because you have more staff and you may [indiscernible] consider the person working in a different location where there's more flexibility. I hope that helps to answer that question.

The next question we've got. In the event the employer can not accommodate a religious accommodation, for the risk it may impose on others, is this -- in this situation, does safety triumph of over religion -- a really good and important question.

The duty to accommodate, as discussed during the presentation, is subject to a couple of factors. In particular, the most important, subject to undue hardship. What accommodating a person's creed related need, similar to a disability related need or a [indiscernible] need. Would accommodating that need impose undue hardship on the



organization. As I mentioned in the presentation, the risks that need to be considered, or the only risks that can be considered at looking at undue hardship are cost and health and safety. When looking at cost, you also look at whether there are outside sources of funding available. Focus on health and safety. [indiscernible] when assessing safety, it's possible, and there have been cases that have gone before tribunals and courts where -- I don't know if I would use the phrase safety triumphs over religious, but it was determined that accommodating a person's religious beliefs posed an undue risk. It's possible to be considered undue hardship. The risks associated with a particular accommodation could impose an undue health and safety [indiscernible]. But in the Code,



the Policy explains more, and similar to situations people with disabilities. In assessing risk, an organization needs to look at a number of factors. Factors such as, is this a real risk or merely a hypothetical risk. An organization can't simply say well, you know, this sounds risky. If we did that, there might be a problem with safety. That's not going to stand up. Sometimes organizations for very good reasons could be risk averse, and the moment that the safety risk comes up, the organization may say, no, we can't go near that, maybe because we got burned once before or sued once before, but that is not enough. You can't go on the basis of a subjective health and safety -- impressionistic, is the way it's been called -- view of a health and safety risk. You look at how likely the health and safety risk



occur. You have to look at data, what are the odds that a risk would occur, and a serious risk would occur if this particular accommodation is granted. You look at things like who might be affected by the risk, and how much might they be affected. So, for example, case law suggests that if there's a risk to the individual who is asking for the accommodation, they might be entitled to accept a certain degree of risk because the tradeoff for them is, accept a small risk or I give up my opportunity to have this job because I can't compromise my religion. They may say, I'm willing to take a certain risk, to myself, but what they can't do is say, well, I think someone else should have to undergo a significant risk in order to accommodate my religiousness.

Once threshold is lowered for



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someone else. They may say, sorry, we can't take a risk for someone else. We can't accept a risk for someone else. That would constitute undue hardship. Factors like looking at objective risks, quantifying them whenever possible, and one point I have not made. How can you arrange the accommodation in a way that might not be what strikes you at first so that you mitigate and minimize the risk in order to accommodate that person's need? So take a risk that at first seems like it might be significant and try to work around, find another way of doing it, so that that risk becomes manageable and acceptable. That's all part of what an organization would be expected to do when considering whether or not an accommodation can be made without undue hardship based on [indiscernible]. Back to the initial



question, yes, there have been cases when tribunals and courts have said that a particular situation could not be accommodated without creating undue health and safety [indiscernible].

Does anyone else have any questions? We're not seeing any others coming up. We're used to being flooded with question, so don't be shy if you have others.

If not, there are other issues we can raise. One question I know that can often come up is why we didn't provide a clear definition of creed. You know we offered a number of considerations. I outlined five considerations to determining what a creed is. Sometimes people feel those can be difficult to understand or difficult to assess. And we agree. We say this is not always easy. But the fact is, that the Code does not define creed. And courts



and tribunals avoided doing that as well, and for good reason. In part, it's because the understanding of what might be considered a creed changes over time. And that's really true with creed. As I mentioned, certain faiths that have not been considered in the path to be creeds or mainstream, if you will, creeds have been ruled by tribunals and courts to be creeds. So the understanding of what a creed is changes over time. The understanding of what discrimination based on creed also changes over time. Addressing and preventing discrimination based on creed requires a flexible approach. And taking a hard and fast approach to this is a creed, this is definitely not creed, rather than exploring it, will often lead you down the wrong path. Oh, some more questions. Good. How prevalent or frequent



or creed based [indiscernible] compared to other grounds. I don't have the statistics with me, but they're a relatively small number. 5% or less, if my memory serves me. The big three, in terms of grounds of discrimination that Human Rights applications tend to be filed on, in the Human Rights Tribunal of Ontario, disability, race, and sex. Creed is relatively small, but the cases can be very interesting [indiscernible]. Another question. Thank you. Thank you to Bob and Dora for a very informative session. It says I've learned more about tolerance that creed beliefs must only be sincerely held and don't have to be officially proved or proven. Thank you for that comment. That's almost the most important thing that people have to learn. It's different about this new policy and older



understandings of what a creed is. It's not something that you will get a religious leader saying, this is what you have to do. That's not what a creed is anymore. To be clearly held and related [indiscernible]. Can you look back at the slides for the factors? But the points you're making I would agree. Thank you for additional comments and we thank you. We'll just wait for a second to see if anyone has any additional comments. Would love to learn more about creed-based discriminations in seminars. [indiscernible] to HRP. What's the best way an employer can demonstrate good faith in an accommodation? Well, I am going to make an assumption on what is meant there. I did raise good faith earlier. Maybe I will spend a minute on that. During the



accommodation process, with respect to creed, it's important that oftentimes what can happen when an organization meets up with a creed, where say an employer comes in saying my creed is such and such, and the organization never heard of it, or a creed practice, and the person is asking to have an organization accommodate. The organization, again, said we have never had anyone come in who wants this particular kind of accommodation before. The way an employer can demonstrate good faith is listening with an open mind and considering the accommodation request they're getting rather than jumping to a quick conclusion or that this is not a legitimate creed, belief in not a legitimate creed. It's important to look at what they are saying and consider in light of these guidelines, rather than jumping to



conclusions. [indiscernible].
That's often what good faith involves in a creed situation. You can also very quickly involve making sure that the organization looks with good faith at a variety of possibilities in terms of types of conflicts [indiscernible] and rather than saying we're only looking.

>> Bob: We have a copy of your slide presentation.

>> Female Speaker: The slide presentation is available in the resources pane on your screen right now. Go ahead and download that if you want today's presentation.

>> Bob: Okay, good. Last question. If you are a private organization that provides services to a faith-based charity organization, are you able to withhold the religious requirements when hiring. That, I am a afraid to say, is a more complex question



than I have time to answer in the next minute. I would -- you know there are a variety of it exceptions for faith based organizations and their employment. But as a private organization that provides services to a faith-based charity, that falls between the lines and I would rather not go out on a limb for that.

>> Dora: That's about all the time we have. Thanks for sharing your experience.

>> Nancy: Thank you, Dora, and Bob, for delivering the webinar today. Very, very informative. You are seeing some of the comments coming from the individuals on the webcast. And I would like to thank everyone on the webcast today. An on demand version of today's webcast will be sent in about a week or so. And take a moment to fill out the survey. A recertification, for those who



require it, is provided on the last question of the survey. Thanks, again, everyone.

>> Dora: Thank you, everyone.

Enjoy the rest of your day.

>> Bob: Thank you.

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