



Dealing with difficult questions and comments

Introductory notes

Legal life skills outcomes

Knowledge:

- Learning what questions employers might not legally be able to ask you
- Learning when to assert your rights
- Understanding possible negative implications of asserting your rights

Skills:

- Preparing for a job interview

Personal capabilities and circumstances

- Assertiveness or being able to express yourself with confidence
- Knowing when and how to respond to comments



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Preparing for a job interview

Talk to your instructor

Your instructor can help put you in touch with information about how to prepare for a job interview – or, depending on their training, maybe even help you prepare directly.

Do some research in advance

There is a lot of information available online to help you prepare for a job interview. A good starting place to find information: go to *settlement.org* and enter “job interview” in the search area on the site.

What kinds of questions can they ask me at a job interview?

There are some general types of questions that you can expect to hear at most job interviews. In general, the law says that employers should only ask you questions about whether you are qualified for the job and able to do the job.

General questions

Some general types of questions you can expect might be:

- questions about your past work experience
- questions about your educational background (if the job requires you to have a certain level of education)
- questions about your personal qualities, for example, how you have dealt with a stressful situation at work in the past

Questions about crimes and criminal records

Employers are allowed to ask you to get a “criminal record check” from the police. This shows only crimes that you were convicted of in court.

Employers can also ask you directly if you have been convicted of a crime. In most cases, if you were convicted of a crime but got a record suspension (which used to be called a “pardon”) for the crime or crimes, you can honestly say to an employer that you don’t have a criminal record.

TIP

Some employers might ask you to get a police record check that gives more information than your criminal record check. Different police services use different names for these kinds of police checks, for example:

- police information check
- police background check
- criminal reference check

A police record check may include information about contact you had with the police even if it didn't lead to you being convicted of a crime. For example, if you were suspected of a crime but didn't get charged, there might be information about this on a police record check.

The law does **not say** that employers can't ask for this information. And it does **not say** they **can't use it** in deciding if they will hire you. But if they don't hire you because of this information, they **might** be going against your human rights.

And there might be a risk to telling a future employer that you do not want to get a police record check. They may think you are trying to hide something and decide not to hire you.

It's hard to know how best to answer this type of question. If you're put in this position, you will have to make a personal decision about what to say. If you get this type of question in a job interview, you can contact the Human Rights Legal Support Centre at 416-597-5804 or toll free 1-866-625-5179 for free advice.

Are there questions they can't ask me at a job interview?

There are laws about what employers can and can't ask you in an interview.

Human rights

Employers are not allowed to discriminate against you for reasons that go against your human rights. This means that, in most cases, employers are not allowed to ask you questions like:

- Do you have children or plan to have children?
- Are you married?
- How old are you?
- Where were you born?
- What is your ethnic background?
- Which religion do you belong to?
- Do you have a disability?
- What gender do you identify with?
- Are you gay?

Sometimes employers might ask personal questions as an icebreaker without meaning any harm. Or, they might do so to get a sense of your personality.

But if you believe that an employer hasn't hired you because of a reason that goes against your human rights, or if the employer says they can't hire you for one of these reasons, you might be able to make a human rights claim. You can find more information about this in the next section.

Job experience in Canada

If you are a newcomer to Canada, it's important to know that, according to the Ontario Human Rights Commission, employers are not supposed to ask if you have "Canadian experience", unless they can show that you need job experience in Canada to do the job. According to the Ontario Human Rights Commission, for most jobs, it's hard for an employer to show that Canadian work experience is necessary.

It's hard to know how best to answer a question about your Canadian work experience. If you're put in this position, you will have to make a personal decision about what to say.

And, if they refuse to hire you only because you don't have experience working in Canada, you might be able to make a human rights claim at the Ontario Human Rights Tribunal. You can find more information about this in the next section.

What can I do if they ask me an illegal question?

If an employer asks you a question that they should not ask, you can:

- answer the question
 - *I was born in Nicaragua but came to Canada when I was 12.*
 - *I am married and have two small children.*
- tell the employer that the law says they can't ask you that
 - *The Human Rights Code says that you're not allowed to ask me that type of question.*
- refuse to answer the question
 - *I'd prefer not to answer that question, as I don't think it has anything to do with my ability to do the job.*

TIP

Another way to respond to an inappropriate question, if you can, is to try to redirect the conversation to focus it more on the skills and abilities that you will bring to the job.

For example, if you are asked “How old are you?”, you could answer, *I wonder if your question comes from thinking that I might be older than other candidates for this job. I have many years of experience developing the skills I need to succeed in this position. I believe that this experience will benefit the company.*

How you answer is your own choice. But if you refuse to answer, or if you tell them that the law says that they can’t ask you that, you might not get the job.

If you are asked a question that you think is inappropriate, whether you get the job or not, it’s a good idea to make a note about this and keep it somewhere that you will remember to find it if you need it. Write down:

- the date and time of the interview, and who it was with
- the inappropriate question that you were asked, and what your answer was
- any other information about the interview that might seem important

And if an employer asks you questions that they should not ask and you don’t get the job, you might be able to make a human rights claim based on discrimination. You should get advice before you do this, as it can be hard in some cases to prove that you were discriminated against.

TIP

You can get legal advice about making a human rights claim based on discrimination from the Human Rights Legal Support Centre:

- hrlsc.on.ca/en/contact-hrlsc/contact-information

And you can get more information about this issue on CLEO’s Steps to Justice website:

- Visit stepstojustice.ca and enter “job interview” in the search box on the site.

Activity: Finding sample job interview questions

Do an online search for job interview questions, and have a look at two or three of the hits that come up. Are there any questions you think would be hard to answer if you were asked them? Write two or three of them in the space below.

1.

2.

3.

Now, think about and write some sample answers to the questions above, focusing on your skills, experience, and interests.

1.

2.

3.

Activity: Responding to inappropriate questions

Think about a question that an employer might ask you that you would feel was inappropriate to be asked at a job interview. Then answer the following questions:

1. If you were asked one of these questions, how would you reply? Why would you give that reply?

2. Who could you go to to help you prepare for an interview?

Dealing with inappropriate comments at work

Getting inappropriate comments at work can make you feel upset, and can affect your ability to work well. In the next sections, you can read some information about what to think about and what to do if this happens to you.

When are inappropriate comments against the law?

If someone at work is trying to make you afraid, uncomfortable, or angry, they may be harassing you.

Workplace harassment under the *Occupational Health and Safety Act*

Workplace harassment is a series of comments or actions that the person knows you don't like. This type of harassment is against the law under Ontario's *Occupational Health and Safety Act* (the OHSA).

It can also include things they should know that you don't like, even if you have not told them. For example, they should know not to call you rude names, even if you haven't complained about it.

The OHSA says that harassment is usually 2 or more events with the same person. One event is not usually harassment.

Here are some examples of behaviour that could be harassment:

- making jokes or comments that insult, intimidate, or offend you
- showing offensive pictures or other materials at work
- phone calls or emails that scare or offend you
- sexual behaviour that you don't want
- making sexual suggestions
- doing things to embarrass you
- saying things that discriminate against you

It does not matter who is harassing you. It could be a client, a customer, a co-worker, an employer, or anyone else at your workplace.

If someone is harassing you at work, your employer must try to protect you.

TIP

You can get more information about this issue on CLEO's Steps to Justice website. Visit stepstojustice.ca and enter "job interview" in the search box on the site.

And if you're not sure whether inappropriate comments made to you at work are actually "harassment" or violating your rights under the OHSA, you can try calling the Workers' Rights Info Line at (416) 531-0778 for more information.

Workplace harassment that goes against your human rights

All workplace harassment is against the law in the *Occupational Health and Safety Act*. But some kinds are also against the law in the Ontario Human Rights Code.

Harassment that goes against your human rights is a kind of discrimination. This includes harassment because of:

- your race, colour, ancestry, ethnic origin, citizenship, or where you were born
- your religious beliefs
- a physical or mental disability, including an addiction
- your sex or gender
- your sexual orientation, gender identity, or gender expression

Human rights laws say that employers must not discriminate against you. And if other workers discriminate against you, your employer must take steps to make them stop.

TIP

If you think that you have been discriminated against at the workplace or at other places, you can contact the Human Rights Legal Support Centre at 416-597-5804 or toll free 1-866-625-5179 for free advice. They also have legal information in several languages on their website: hrlsc.on.ca/en/welcome

There are also less direct types of comments that can lead to workers feeling uncomfortable and creating a negative work culture. These types of comments may or may not be considered "harassment" under the law – it will depend on your facts. Here are some examples:

- an employer asking often when an older employee plans to retire
- often making comments about hairstyle or dress that are specific to someone's race, ethnicity, religion, or gender
- often making "positive" general statements about an ethnic group or race, such as "You people are really hard workers."

You have different options for dealing with harassment if it goes against your human rights.

TIP

CLEO's Steps to Justice has more information about this, including:

- examples of this type of harassment
- details about steps you can take, including how to make a complaint to the Human Rights Tribunal of Ontario
- where you can get help with making a complaint to the Human Rights Tribunal of Ontario

Visit stepstojustice.ca and enter "harassment human rights work" in the search box on the site.

The Ontario Human Rights Code also says that your employer can't punish you for complaining about harassment.

What can I do to deal with harassment from co-workers or supervisors?

Talk to the co-worker or direct supervisor

You can choose to talk to your co-worker about the problem sometime after they made the comment. This is a very personal choice, and you may or may not feel comfortable doing this. Sometimes, especially if the comments are very obviously offensive, people might choose to tell the person making them on the spot that they are offensive.

For example, if someone calls you a bad name related to your race, you might choose to tell them right away, "That's racist." But sometimes being direct can escalate the situation. Saying direct things such as "That's racist" or "You're being sexist" can make people defensive, and could make the situation worse for you.

If you choose to talk to your co-worker or supervisor directly, here are some things to keep in mind:

- Think about how the person usually behaves. Do you think that they usually mean well? Or might they get defensive or aggressive?
- Some people in this situation might dismiss what you have to say (for example, they might say things like "Oh, stop overreacting" or "Can't you take a joke?") This might end up being more upsetting for you.
- If the person is your supervisor, and they react badly to what you have to say, they could try to punish you or make your life worse at work.

And here are some strategies on how to talk to your co-worker or direct supervisor if you don't wish to point out their inappropriate comments:

- **Explain how the comments made you feel.** Instead of using accusing language, say something like: “You might not have meant it, but that made me feel uncomfortable.”
- **Ask a question.** Depending on the type of comment they made, you could try to open a conversation with them about it. Ask them what they meant by the comments, or what information they are basing the comments on. This might help them think more about what they said, and possibly take it back.

Talk to your employer or someone higher up

There are steps you can take to try to get your employer to deal with harassment. Here are some suggestions:

- make notes about the harassment, including the dates and times that they took place, and who made them
- ask your supervisor or employer for a copy of the workplace human rights or discrimination policy at work
- talk to your supervisor or employer or write them a letter or email to tell them about your concerns – be as specific about your situation as possible, and set a deadline to follow up with you about what steps they’ve taken

If the person who harassed you is your boss, or the most senior person at your workplace, it’s a good idea to get legal advice from the Human Rights Legal Support Centre before making a complaint. See the Tip on page 9 for their contact information. They can give you more information about your options on how to deal with this, and talk to you about any risks you might face.

What should I think about when deciding whether to complain to my employer I have been harassed at work?

Although people have the right not to be harassed at the workplace, in reality, many employees get punished or fired for making a complaint. And, although you might be entitled legally to compensation or to get your job back, it can take a long time to go through the complaints process. This can also be very stressful and hard on you emotionally.

This makes it important to get legal information or advice from the Human Rights Legal Support Centre before trying to deal with a problem at the workplace, especially if the problem is with your supervisor or employer. A legal professional like a lawyer or paralegal can give you information based on your situation on what your options are, and things that could happen to you if your employer reacts badly to a complaint.

Adilah's story

A. Some background about the story

The story you are about to read is about someone who is trying to deal with a problem she is having in a temporary work placement.

When you are reading the story, start to think about the different types of choices that Adilah could make to try to deal with the problem. Also, think about ways that she could respond directly to the person making the offensive comments. You will be asked to write down some ideas about these two things after you read the story.

B. Read the story

Adilah has been working in the rental office of an apartment building for just over a year. She started as a temporary worker on a placement, but the property management company hired her directly three months ago. That made her happy, as she had spent a couple of years as a temp bouncing from place to place – and she got a small pay increase as well.

Until recently, Adilah really liked her job. In this job, she gets to meet and help a lot of different people, and she gets to do many different things.

However, a couple of weeks ago, things started to change. Adilah made a decision to start wearing a hijab in order to show her pride about being a Muslim woman. This made her feel empowered, and her parents and extended family were also very happy and supportive of her.

During the first week, she noticed that some of the tenants and tradespeople that came to the rental office gave her funny looks. She didn't think too much about this at first, because she was used to getting some stares and looks in public places. But then some tenants started muttering things like "why don't you just go back to where you came from?" She tried saying to one of them, "Go back where? Scarborough?" to try to laugh it off but he then started swearing at her and calling her racist names.

When one of the building superintendents started making similar comments to her when he came back from vacation, Adilah finally had enough. She made an appointment to see the office manager, Josefina, to talk about this problem.

When they met, Adilah shared her complaints about what people had said with Josefina. Josefina said, "Well, I'm sorry that this is happening. But, actually, I need to talk to you about the office dress code that you got when you first started working here. I had hoped to

avoid this.” She handed her a copy of the “Company Dress Code” with the following points highlighted:

- All staff members shall keep their hair neatly trimmed and groomed.
- No headgear of any kind shall be permitted to be worn by any staff member.
- Any violations of the Dress Code shall lead to the staff member in violation of the Dress Code being disciplined, suspended, or fired in accordance with the Staff Discipline Policy.

Adilah said “But... but... this is part of my religion. I need to wear it.” Josefina answered, “Well, if that’s the case, why have you just started wearing it now? Can’t you just leave it at home when you come to work? Your life would be a lot easier. Don’t get me wrong, I feel for you – but I’m also getting lots of complaints.”

Adilah was speechless. Josefina looked sympathetic and said, “Look, I can’t do anything to help you because of the company dress code policy. The head office makes these decisions. I’m not going to enforce the Dress Code for now, because you’re a really good worker. But I hope you make the right decision.”

Adilah left the office in tears. She was torn. She knew from friends and family members that she has every right to wear the hijab, and that her workplace must allow her to do so. She wondered if she should complain to the head office. But the negative comments and slurs she was getting every day at work were making her sad and depressed, so maybe it would be easier to stop wearing the hijab at work.

C. Small group activity: Discuss the story

Pick one member of your group to write down the answers for the whole group.

1. What kinds of things could Adilah say to the people who come into the office and make inappropriate comments to her? What benefits would she get out of this? What risks would she face?

2. What could Adilah go back and say or write to Josefina?

3. What other steps could Adilah take?

Teaching notes and answer keys

Teaching notes

You'll find below some additional information to share with your students in case they have questions about exceptions to some of the situations covered.

Preparing for a job interview

Questions about crimes and criminal records

"In most cases, if you were convicted of a crime but got a record suspension (which used to be called a "pardon") for the crime or crimes, you can honestly say to an employer that you don't have a criminal record."

Tip for Instructors

A record suspension used to be called a pardon, and some people might still use the word "pardon" when referring to it. People who have criminal records may be able to apply to the Parole Board of Canada for a record suspension. If they get a record suspension, their criminal record is not erased. But it is set aside and they can say they don't have one.

If someone was convicted of a crime many years ago, they might wish to consider applying for a record suspension. There are rules about how long they would have to wait to apply and what they would need to show for their application to be successful.

If any of your students ask you for more information about record suspensions after this module, you can refer them to CLEO's Steps to Justice information about applying for a record suspension: stepstojustice.ca/common-question-step/5-apply-record-suspension

One major exception to the general rules on what employers can ask for: if a person is applying for a job where they will be working with seniors, children, or others who may be vulnerable, employers can ask for what is called a "vulnerable sector check". This type of check lists certain types of crimes even if someone has gotten a record suspension for them (one example: sexual assaults).

Also, **in most cases** employers can't ask if a person has been convicted of breaking a provincial law. And provincial law convictions are not registered on criminal records.

Some examples of provincial offences are:

- speeding
- careless driving

However, people can ask about provincial offences if they are directly relevant to the type of job that they are applying for. For example, the information about provincial offences might be good to share if people in your class are looking for work as drivers, as it's in that context that this information is most likely to be asked for by employers.

More about “police record checks”

“The law does not say that employers can’t ask for this information. And it does not say they can’t use it in deciding if they will hire you. But if they don’t hire you because of this information, they might be going against your human rights.”

The law does not specify whether employers can or can’t ask for “police record check” information, nor what they can do with that information for the most part. However, if you encounter a student who thinks that an employer refused to hire them because of some information found in their police record check, the student could contact the *Human Rights Legal Support Centre* to learn whether, on their facts, they could try to prove a human rights violation.

You’ll also find more information on criminal records on CLEO’s Steps to Justice site: stepstojustice.ca/common-question-plus/human-rights/can-employer-ask-me-if-i-have-police-record-1

Are there questions they can’t ask me at a job interview?

For more general information about this, see:

- CLEO’s Steps to Justice site: stepstojustice.ca/common-question-plus/employment-and-work/when-i-apply-job-what-can-employer-ask-me
- Settlement.org: settlement.org/ontario/employment/find-a-job/job-interviews/how-do-i-respond-to-inappropriate-questions-in-a-job-interview/

Human rights

“Employers are not allowed to discriminate against you for reasons that go against your human rights. This means that, in most cases, employers are not allowed to ask you questions like:

- *Do you have children or plan to have children?*
- *Are you married?*
- *How old are you?*
- *Where were you born?*
- *What is your ethnic background?*
- *Which religion do you belong to?*
- *Do you have a disability?*
- *What gender do you identify with?*
- *Are you gay?”*

Here is a full list of prohibited grounds of discrimination under the Ontario Human Rights Code (reproduced from this factsheet by the Ontario Human Rights Commission: ohrc.on.ca/en/students%E2%80%99-handouts/fact-sheet-1-ontario-human-rights-code):

- **Age** – 18-65 years (employment); 16+ years (housing); 18+ years (all other areas)
- **Ancestry** – family descent
- **Citizenship** – membership in a state or nation
- **Colour** – associated with race
- **Creed** – religion or faith
- **Disability**: There are two common ways of looking at what disability is. One way is to see a disability as a medical condition that a person has. From this perspective, disability covers a broad range and degree of conditions, some visible and some not visible. A disability may have been present from birth, caused by an accident, or developed over time. There are physical, cognitive, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, and other conditions.

A newer way of looking at disability is that it is not something a person has. A person with a medical condition is not necessarily prevented (or disabled) from fully taking part in society. If society is designed to be accessible and include everyone, then people with medical conditions often don't have a problem taking part. From this point of view, disability is a problem that occurs when a person's environment is not designed to suit their abilities.
- **Ethnic origin** – social, cultural or religious practices drawn from a common past
- **Family status** – a parent/child relationship
- **Gender expression** – the external attributes, behaviour, appearance, dress, etc. by which people express themselves and through which others perceive that person's gender
- **Gender identity** – a person's conscious sense of maleness and/or femaleness; this sense of self is separate and distinct from biological sex
- **Marital status** – applies equally to common-law, same-sex and opposite-sex relationships; includes widowhood, separation, divorce
- **Place of origin** – country or region
- **Race** – common descent or external features such as skin colour, hair texture, facial characteristics
- **Receipt of public assistance** – in housing only
- **Record of offences** – provincial offences or pardoned federal offences (in employment only)
- **Sex** – discrimination can be sexual in nature, or because of pregnancy. This ground includes the right to breastfeed in public areas or in the workplace
- **Sexual orientation** – includes lesbian, gay, bisexual, heterosexual, two-spirited, questioning, etc.

In some cases, employers are allowed to ask questions that may seem discriminatory. If the question is related to a "reasonable and bona fide qualification because of the nature of the employment, it might be allowed. A classic example: an airline can ask about your eyesight if you are applying to be a pilot, as you must have good eyesight to perform that job safely.

Job experience in Canada

*“If you are a newcomer to Canada, it’s important to know that, according to the Ontario Human Rights Commission, employers are not supposed to ask if you have “Canadian experience”, unless they can show that you need job experience in Canada to do the job. According to the Ontario Human Rights Commission, **for most jobs**, it’s hard for an employer to show that Canadian work experience is necessary.”*

The Ontario Human Rights Commission policy states: “The OHRC’s position is that a strict requirement for “Canadian experience” is *prima facie* discrimination (discrimination on its face) and can only be used in very limited circumstances.”

However, the policy does not give examples of exemptions to this position. And it should be noted that we are not aware of any cases in which interview questions asking generally about “Canadian experience” were found to be acceptable. Nor does there appear to be any blanket prohibition against this in the caselaw.

It’s also important to note that in some cases, an employer can ask if someone has the provincial or Canadian credentials they need to perform the job. For example, foreign trained professionals such as lawyers and doctors usually need to take steps such as additional study or work placements in Canada before they can become licenced to practice their professions in Canada.

Answers

Activity: Finding sample job interview questions

You can give the students some time to do an online search for sample questions they might be asked at a job interview. You might wish to prompt them that the *Settlement.org* website has some good content about this. Do an online search for job interview questions. We have posed two questions for the students to consider:

- Do an online search for job interview questions, and have a look at two or three of the hits that come up. Are there any questions you think would be hard to answer if you were asked them?
- Now, think about and write some sample answers, focusing on your skills, experience, and interests.

Activity: Responding to inappropriate questions

Think about a question based on your own situation that you would find it inappropriate to ask you, based on the human rights categories you read about above. Then answer the following questions:

- If you were asked one of these questions, how would you reply? What factors would inform your decision on how to reply?

[Answers will be subjective depending on the student. Or, you could consider leading a larger group exercise asking people to share general thoughts on what types of questions might be problematic from the floor.]

- Who could you go to to help you prepare for an interview?

Some suggestions:

- Settlement.org
- Employment services
- Cultural or community agencies in their neighbourhood

Extension activity: If your class will be practicing interview skills using role-play techniques, you could consider adding an inappropriate question to the roleplay exercise to allow people to practice responses.

Dealing with inappropriate comments at work

The information and activities in this section clearly give rise to highly subjective and personal choices. As such, we do not offer sample answers over and above the core content in the activity kit. You will see extensive information about various challenges in the students' notes. We welcome your feedback as instructors on how you might approach teaching this type of content for future versions of this activity kit.

Legal information for learners:

CLEO Steps to Justice website:
stepstojustice.ca/category/legal-topic/employment-and-work

CLEO "Your Rights at Work" — cleo.on.ca/en/publications/rightswrk

To order free copies of "Your rights at work" for your class, you can use the online order form at cleo.on.ca or call 416-408-4420.