

## 2. The University and the General Law

[In this part of the Report, the Committee engages in an extensive review of how external law and legislation bear on the University and members of its community. The Report discusses the applicability and actionability of Human Rights legislation in the context of the University.]

The University does not confer any special legal privileges on its members. This means that all federal, provincial and municipal laws apply equally on campus as off. However, the University may decide to establish certain regulations and procedures designed to govern behaviour or resolve disputes on campus. Nevertheless, a person always retains his or her right to have legal cause of action decided by a court of law.

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Canada is a signatory to the *Universal Declaration of Human Rights* and a party to the *International Covenant on Civil and Political Rights* and its Protocol. While there is some difficulty in enforcing these international obligations due to the division of powers between the federal and provincial levels, international law has been cited in Canadian cases. It remains a useful standard and guide to interpreting and adopting principles of human rights.

As to internal legislation, in contrast to the American Constitution, the *Constitution Act, 1867*, did not initially include a Bill of Rights. Civil rights cases were therefore decided on the grounds that civil liberties are almost exclusively under provincial jurisdiction. It was generally accepted that Parliament and the provincial legislatures were supreme within their respective spheres of jurisdiction. In 1960, the *Canadian Bill of Rights* was passed as a law by Parliament. While this provided a measure of protection, the fact that it is a law and not a constitutional amendment meant that it applied only to the federal sphere, that it could be repealed at any time, and that it did not clearly override other federal laws.

Meanwhile, and as it pertains to Ontario, the law emerging from court decisions is that no tort of racial discrimination exists. Instead, protection is provided through the Ontario and the Canadian Human Rights Commissions, depending on which body has jurisdiction. Other decisions have concluded, under the *Ontario Human Rights Code* as it existed prior to 1981, that racial harassment is contrary to the code and that victims can be compensated for pain and suffering.

The *Ontario Human Rights Code, 1981*, includes the guarantee that all individuals have the right to be free from discrimination

on the basis of race, ancestry, colour, nationality, and place of origin with respect to services, goods, facilities, and accommodation, in employment, in respect of the capacity to enter into contracts, and to become a member of a vocational association such as a trade union.

The *Code* now specifically protects individuals from racial harassment, whether in the workplace or the residence. Employers and landlords are responsible for the conduct of other employees and other residents if these individuals racially harass another employee or resident.

"Harassment" is defined in paragraph 9(f) of the *Code* as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome." This definition of harassment guarantees individuals the right not to be the subject of racial slurs, through name-calling, posters, signs or racist graffiti. As well, under the *Code*, it is not necessary for the person responsible for the harassment to know that the vexatious comments or conduct were unwelcome. If the person should reasonably have known the activity was unwelcome, he or she may be liable for it. Everyone must use common sense and cannot excuse their own racist behaviour by pleading insensitivity or ignorance.

The *Ontario Human Rights Code, 1981* applies to students of York University, and indeed, to all members of the York community. Any racial name-calling by a representative of the University as landlord, or by other tenants in residence, in circumstances where a University official should reasonably have known about and put an end to the name-calling, would be covered by the *Code*. Similarly, the conduct of University officers towards its employees is covered. It is not entirely certain if racial harassment between students or between faculty members and students in situations which do not involve housing, employment or services or facilities, are affected by the *Code*. However, it seems probable that if any harassment took place in such circumstances and was known, or should reasonably have been known, to university officials who did nothing about it, there would be a breach of the *Code*, inasmuch as there was discrimination because of a prohibited ground in the provision of educational services.

Racial harassment by one student towards another, by a faculty member towards a student, between staff and faculty or between staff and students tends to lower the self-esteem of the victim and once that happens, an injury has been done which involves a cost both to society and to the

***"York University's position with respect to the on-campus behaviour of its members has been characterized by a relative absence of regulations and by the guiding principle that citizens of the York community should be free to speak, write, publish, create, study, teach, learn, engage in research, and associate as they see fit. These freedoms are limited at York only by the law of the land and by the requirement that all persons have a sufficient sense of responsibility to respect the exercise of those same freedoms by others. Inherent in this attitude of York University is a rejection of intolerance of the views, religion, colour, or nationality of others. We consider it a wrong to engage in such intolerance, in a university community above all others, and will continue to firmly proclaim against wrongs and to correct or discipline them when it is in our power to do so."***

(From University Statement, 15 April 1983)

particular individual at hand. While some individuals are less sensitive to racial insults than others, most people depend in part upon the opinions of other people for self-appraisal. Persons humiliated because of some arbitrary judgment made by others about them on the basis of a prohibited ground may suffer from feelings of self-doubt, resentment, injustice, mistrust and cynicism. A once productive student who might otherwise have made a valuable contribution to society may be psychologically disabled by these feelings. The *Code* seeks to

enhance every individual's feeling of self-worth and provide him or her with respect for his or her inherent dignity. As well, the *Code* strives to assure that everyone will have equality of opportunity within society, by precluding a person being judged on the irrelevant criterion of race, place of origin, colour, or ancestry. Every individual should be able to realize self-fulfilment on his or her merits.

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The *Canadian Charter of Rights and Freedoms*, which became part of the Constitution of 1982, provides individuals with constitutional guarantees or rights, regardless of jurisdiction. The courts may now invalidate laws at any level which encroach upon these rights.

Section 15 of the *Charter* prohibits discrimination against individuals on the grounds of race, religion, colour, national or ethnic origin, sex, age and mental or physical disability. Every individual is proclaimed equal before and under the law and has the right to the equal protection and equal benefit of the law. This protection is in respect of both intentional discrimination and systemic or institutional discrimination.

Apart from the actual entrenchment of human rights in the Canadian Constitution, the *Charter* provides a symbolic value to inspire greater respect amongst individuals for the dignity of the individual. Furthermore, the *Charter* brings Canada's Constitution into greater accord with international human rights instruments. The similarity in wording between the *Charter* provisions and those of international human rights documents makes it all the more likely that human rights standards recognized the world over are truly realized in Canada. As we have emphasized, York University (and all universities) should serve as a model institution for society in giving effect to the realization and enhancement of human rights, including equality rights.

