

# HUMAN RIGHTS TRIBUNAL OF ONTARIO MOCK HEARING



| SCENARIO:                                                       | PAGE    |
|-----------------------------------------------------------------|---------|
| List of participants                                            | 2       |
| Fact scenario                                                   | 3 - 4   |
| Relevant law                                                    | 5 - 8   |
| Time chart                                                      | 9-10    |
| Background for witnesses                                        | 11 - 24 |
| Tribunal member information                                     | 25 - 29 |
| Documentary evidence                                            | 30 - 35 |
| Human Rights Tribunal of Ontario forms                          | 36 - 39 |
| Sample order                                                    | 40 - 42 |
| ROLE PREPARATION:                                               | PAGE    |
| Information about the Human Rights Tribunal of Ontario Hearings | 1 - 3   |
| Etiquette and Protocol at the Hearing                           | 4       |
| Time Chart                                                      | 6 - 7   |
| Role Preparation for:                                           |         |
| Witness(es)                                                     | 8 - 9   |
| Representatives                                                 | 10 - 12 |
| Tribunal Adjudicator                                            | 13 - 16 |
| JUSTICE SECTOR VOLUNTEER PACKAGE                                | PAGE    |
| Purpose of a Mock Hearing                                       | 1       |
| Time Chart                                                      | 2 - 3   |
| Information for:                                                |         |
| Lawyer Coaches                                                  | 4       |
| Mock Hearing Adjudicators                                       | 5 - 6   |



For each OJEN Human Rights Tribunal of Ontario Mock Hearing, there are three packages:

- » **OJEN Human Rights Tribunal of Ontario Mock Hearing**  
**Scenario**
- » **OJEN Human Rights Tribunal of Ontario Mock Hearing**  
**Role Preparation Package**
- » **OJEN Human Rights Tribunal of Ontario Mock Hearing**  
**Justice Sector Volunteer Package**

Students need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers, teachers, and/or organizers need all **three packages**.

# HUMAN RIGHTS TRIBUNAL OF ONTARIO MOCK HEARING SCENARIO



| THIS PACKAGE<br>CONTAINS:                  | PAGE    |
|--------------------------------------------|---------|
| List of participants                       | 2       |
| Fact scenario                              | 3 - 4   |
| Relevant law                               | 5 - 8   |
| Time chart                                 | 9-10    |
| Background<br>information for<br>witnesses | 11 - 24 |
| Tribunal member<br>information             | 25 - 29 |
| Documentary evidence                       | 30 - 35 |
| Human Rights Tribunal<br>of Ontario forms  | 36 - 39 |
| Sample order                               | 40 - 42 |

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## **HUMAN RIGHTS TRIBUNAL OF ONTARIO MOCK HEARING**

In the matter of: **214 UNIVERSAL CRESCENT,  
BRAMPTON, ON, L7A 9V1**

Between: **CHLOE JAFFER  
[APPLICANT]**

and

**NEWCOMERS CAN CENTRE and  
AMKE MARTINEZ [RESPONDENTS]**

## LIST OF PARTICIPANTS

- **Tribunal Member x 1** (may be played by a student, teacher or justice sector volunteer)
- **Representatives (Human Rights Lawyer/Paralegal/Agent) x 2 (at least) (max. 8)**
  - Representative for the Applicant, Chloe Jaffer (at least 1, up to max. 4)
  - Representative for the Respondents, Amke Martinez and Newcomers Can Centre (at least 1, up to max. 4)
- **Witnesses for the Applicant x 2**
  - Chloe Jaffer (the Applicant; new employee of Newcomers Can Centre)
  - Tory Liu (employee of Newcomers Can Centre)
- **Witnesses for the Respondents x 2**
  - Amke Martinez (the Respondent; Director of Newcomers Can Centre)
  - Drew MacDonald (Human Resource Manager of Newcomers Can Centre)

**Minimum Number of Participants Required: 7**

**Maximum Number of Participants Possible: 13**

(more participants may be added by dividing up the Representatives' speaking roles on either side between up to four people per side: opening statement x 1, direct examination x 1, cross-examination x 1, closing submissions x 1)

## WHAT HAPPENED?

Chloe Jaffer applied for a job at the Newcomers Can Centre (NCC), an organization that helps recent immigrants to Canada find work. After a good interview with Mr. Amke Martinez, NCC's Director, Ms. Jaffer was hired as an Employment Counsellor starting on May 1, 20xx. Her new position involved running job skills workshops for newcomers in nearby towns and cities.

Shortly after being hired, Ms. Jaffer participated in a mandatory orientation session held by Mr. Martinez. She was given the NCC dress code, which required employees to dress in 'business attire' at all times. During Ms. Jaffer's first week at work, she wore 'Western-style' business suits on some days and elegant saris on other days. Ms. Jaffer's saris fully covered her legs, but sometimes exposed her shoulders and/or midriff. Some of her co-workers complimented her on the saris, but she noticed that Mr. Martinez made a few comments about 'the importance of dressing professionally within the office'. By the end of the week, Mr. Martinez had even suggested that Ms. Jaffer wear a blazer over her saris to ensure they meet the dress code.

On June 12, 20xx, Mr. Martinez was having lunch in the staff room with two other employees, Tory Liu and Drew MacDonald. Ms. Jaffer entered in the middle of their conversation and overheard Mr. Martinez telling 'joking' stories that mentioned South Asians, brown people, and security risks. She later spoke to Mr. MacDonald about her discomfort with these comments, but Mr. MacDonald's response was "... it's just a joke, Mr. Martinez does that all the time."

On July 1, 20xx, Mr. Martinez told Ms. Jaffer that a new, more secure procedure for accessing client files would be required. Previously, Ms. Jaffer was allowed to access client files on her own, but now she would need permission from either Mr. Martinez or Ms. Liu before accessing these files. Ms. Jaffer and Mr. Martinez spoke about the reasons for the change. Mr. Martinez explained that several files had gone missing since Ms. Jaffer started working at NCC, and he was concerned that she was being careless with the files.

Later that month, on July 28<sup>th</sup>, Mr. Martinez spoke with Mr. MacDonald, the Human Resources Manager, to discuss Ms. Jaffer's employment status since her

three-month probation period was coming to an end. On July 31<sup>st</sup>, Mr. Martinez explained to Ms. Jaffer that she could not continue as an Employment Counsellor because she had not met the dress code and had trouble handling files. He informed her that her employment was terminated because she was not a good organizational fit and because of issues with dress code compliance and mishandling client files.

Ms. Jaffer hired a paralegal to assist her in filing an application with the Human Rights Tribunal of Ontario (HRTO). Mr. Martinez has provided his response. Both parties agreed to try to address the issue through mediation, but this proved to be unsuccessful in resolving the complaint. As a result, a hearing before the Tribunal is scheduled for next month.

## RELEVANT LAW AND PROCESS

The following information can be found in the *Human Rights Code*, RSO 1990, c. H. 19, available online at: [www.ontario.ca/laws/statute/90h19](http://www.ontario.ca/laws/statute/90h19)

The full version of the information on the practices and procedures of the Human Rights Tribunal of Ontario are available within the *Rules of Procedure* at: <https://tribunalsontario.ca/hrto/rules-and-practice-directions>

### What section of the *Code* does this scenario fall under?

5. (1) Every person has a right to equal treatment with respect to **employment** without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

### How may an Applicant bring an application to the Human Rights Tribunal of Ontario?

According to section 34(1) the *Code*, an application can be made:

34. (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

- (a) within one year after the incident to which the application relates; or
- (b) if there was a series of incidents, within one year after the last incident in the series.

### Who can be a party included in an application to the Human Rights Tribunal of Ontario?

According to section 36 the *Code*,

36. The parties to an application under section 34 or 35 are the following:

- 1. In the case of an application under subsection 34 (1), the person who made the application.

2. In the case of an application under subsection 34 (5), the person on behalf of whom the application is made.
3. In the case of an application under section 35, the Commission.
4. Any person against whom an order is sought in the application.
5. Any other person or the Commission, if they are added as a party by the Tribunal.

According to section 46.3 of the *Code*,

THE LAW AND  
TIME CHART

46.3 (1) For the purposes of this *Act*, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization. 2006, c. 30, s. 8.]

## What are the Tribunal's powers?

According to section 43 of the *Code*, and rules 13-17 of the *Rules of Procedure*, the following Rules apply to the Tribunal process:

13. In any proceeding to which the Rules apply, the Tribunal will conduct its process, and will apply these Rules in a manner that will, in its opinion, facilitate the fair, just and expeditious resolution of the merits of a complaint.

14. In exercising its powers and authority to hear and decide a complaint, the Tribunal may:

- lengthen or shorten any time limit in these Rules;
- add or remove a party;
- allow any filing to be amended;
- consolidate or hear cases together;



- direct that cases be heard separately;
- direct that notice of a proceeding be given to any person or organization;
- determine and direct the order in which issues in a proceeding, including issues considered by a party to be preliminary issues, will be considered and determined;
- require a party or other person to produce any document, information or thing and to provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form.

15. The Tribunal may exercise any of its powers under these Rules on its own initiative or at the request of a party.

16. The Chair may issue general or specific practice directions at any time.

17. The Tribunal may waive or vary the application of any of these Rules where appropriate.

## When do disclosure and witness information need to be filed with the Tribunal?

According to **Rules 16.3 and 17.1** of the *Rules of Procedure*, they must be served to all other parties and filed with the Tribunal no later than 45 days prior to the first scheduled day of hearing.

## What is the Tribunal allowed to order?

After reviewing the evidence at the hearing, if the Tribunal finds that a Respondent (the employer) has infringed a right under Part 1 of the *Code*, the Tribunal can order the Respondent to: (1) compensate the Applicant through monetary compensation for injury to dignity, feelings and self-respect, (2) pay restitution for related losses, and/or (3) do anything to ensure compliance with the *Code*.

[ss. 45.2(1)]



According to section 45.2(1) the *Code*:

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this *Act*.

### Is the Tribunal's decision final?

According to section 45.8 of the *Code*, yes the decision is final:

45.8 Subject to section 45.7 of this *Act*, section 21.1 of the *Statutory Powers Procedure Act* and the Tribunal rules, a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable.

**TIME CHART FOR A HUMAN RIGHTS TRIBUNAL OF ONTARIO MOCK HEARING**

| ORDER                                                                                                            | ACTION                                                                                                                                                              | TIME LIMIT |
|------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1                                                                                                                | Tribunal Adjudicator calls hearing to order                                                                                                                         | 1 min      |
| <b>OPENING</b>                                                                                                   |                                                                                                                                                                     |            |
| 2                                                                                                                | Applicant's opening statement                                                                                                                                       | 3 mins     |
| 3                                                                                                                | Respondent's opening statement                                                                                                                                      | 3 mins     |
| 4                                                                                                                | Preliminary matters <ul style="list-style-type: none"> <li>Adjudicator addresses any preliminary procedural, legal or other issues raised by the parties</li> </ul> | 2 mins     |
| <b>APPLICANT'S CASE</b>                                                                                          |                                                                                                                                                                     |            |
| 5                                                                                                                | Applicant's direct examination of Applicant Witness #1 (or take the stand if self-represented)                                                                      | 6 mins     |
| 6                                                                                                                | Respondent's cross-examination of Applicant Witness #1                                                                                                              | 3 mins     |
| 7                                                                                                                | Applicant's re-direct of Applicant Witness #1 (if necessary)                                                                                                        | 2 mins     |
| 8                                                                                                                | Applicant's direct examination of Applicant Witness #2                                                                                                              | 6 mins     |
| 9                                                                                                                | Respondent's cross-examination of Applicant Witness #2                                                                                                              | 3 mins     |
| 10                                                                                                               | Applicant's re-direct of Applicant Witness #2 (if necessary)                                                                                                        | 2 mins     |
| <b>RESPONDENT'S CASE</b>                                                                                         |                                                                                                                                                                     |            |
| 11                                                                                                               | Respondent's direct examination of Respondent Witness #1 (or take the stand if self-represented)                                                                    | 6 mins     |
| 12                                                                                                               | Applicant's cross-examination of Respondent Witness #1                                                                                                              | 3 mins     |
| 13                                                                                                               | Respondent's re-direct of Respondent Witness #1 (if necessary)                                                                                                      | 2 mins     |
| 14                                                                                                               | Respondent's direct examination of Respondent Witness #2                                                                                                            | 6 mins     |
| 15                                                                                                               | Applicant's cross-examination of Respondent Witness #2                                                                                                              | 3 mins     |
| 16                                                                                                               | Respondent's re-direct of Respondent Witness #2 (if necessary)                                                                                                      | 2 mins     |
| NOTE: A member can ask questions of the Applicant, Respondent or their witnesses at any time during the hearing. |                                                                                                                                                                     |            |
| 17                                                                                                               | Applicant's closing submissions                                                                                                                                     | 3 mins     |
| 18                                                                                                               | Respondent's closing submissions                                                                                                                                    | 3 mins     |
| 19                                                                                                               | Applicant's reply (if necessary)                                                                                                                                    | 1 min      |

**DECISION AND CLOSING**

20

Tribunal Adjudicator deliberates and makes a decision

**2 mins****POST HEARING AND DISCUSSION**

21

Tribunal Adjudicator gives feedback and discusses the hearing process, etc.

**10 mins**

## CHLOE JAFFER, THE APPLICANT

**Organizational fit** is the extent to which a person matches an organization's environment. It is determined by comparing the qualifications and characteristics of a person against a job description to see if there is a close match. The closer the match between the person and the position, the better the person 'fits' the organization.

### Your background:

- Your name is Chloe Jaffer.
- You are a South Asian woman.
- You recently graduated from university (April 20xx) and your first job was as an Employment Counsellor with Newcomers Can Centre (NCC) in May 20xx, where you were hired by Amke Martinez.
- On July 31, 20xx after your three-month probation period, your employment was terminated because you were not yet a good 'fit' with the organization.
- You have never been before the Human Rights Tribunal of Ontario, so you prefer that an agent represent you.

### Your version of what happened:

- You originally applied to the Employee Counsellor position with the Newcomers Can Centre (NCC) after graduating from university in April 20xx. You were interviewed in late April and were offered the position by your

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direct supervisor, Amke Martinez. As of May 1, 20xx, you began your new full-time position.

- You participated in the mandatory NCC orientation session held by Mr. Martinez and read the dress code policy, which requires that business attire be worn during work-related tasks. You were so enthusiastic about working with the NCC, that you went out and bought some 'western-style' business attire to wear in between the days you wore your saris. The saris you wear to work were considered business attire in your previous office experience as a volunteer, so you feel that your saris would still meet the NCC business attire requirement.
- During your first few weeks, you recall Mr. Martinez making comments about dressing professionally but there was never a formal discussion about your clothing violating the NCC dress code policy. As a result, you continued to mix and wear your 'business' saris.
- On June 12, 20xx, you walked into the staffroom to have lunch, where Mr. Martinez and two co-workers named Tory Liu and Drew MacDonald were already eating together. At this time, you heard Mr. Martinez make a comment about "the security risks created by brown people". He went on to tell a short story from the news about a South Asian employee being arrested for writing suspicious emails at work. Everyone found it funny except you especially since you were the only South Asian employee at the table. You began to feel targeted and put down by the comment. You also felt like you couldn't interact with everyone the way you did before because you felt like everyone shared the same negative and untruthful views of South Asians.
- You later asked Mr. MacDonald about his thoughts on the comments made by Mr. Martinez and he did not seem affected by it. Instead, he interpreted it as a normal discussion or "just jokes". You wished that Mr. Martinez had not made these comments but felt outnumbered in bringing it to his attention, so you decided not to say anything. Since that day you noticed that Mr. Martinez was continuously watching you and

this made you feel uneasy and frustrated. You tried to spend as little time around him as possible.

- On July 1<sup>st</sup>, you arrived at work to learn that Mr. Martinez was enforcing an increased security measure specifically for you. He mentioned that client files were either going missing or being misplaced since you began working there. From now on, he thought it best to have you access client files through Ms. Liu. After hearing the stereotypical comment Mr. Martinez made earlier, you felt like you were being treated with suspicion and being falsely accused. It also made you feel uncomfortable because Ms. Liu is your co-worker and now you felt that everyone was watching your movements without legitimate grounds.
- On July 28<sup>th</sup>, Mr. Martinez phoned you at your desk and he advised you that he would need to speak to the Human Resource Manager, Mr. MacDonald, now that your probation period was coming to a close on July 31<sup>st</sup>. He promised to give you a call the next day to let you know the decision.
- On July 31<sup>st</sup>, you received a call from Mr. Martinez advising you that you were being terminated as an Employment Counsellor due to a lack of **organizational 'fit'**, lack of compliance with the dress code and poor handling of client files.
- You asked why, and Mr. Martinez responded that after talking to Mr. MacDonald there was a problem with your lack of business attire and missing files.
- You felt like something was very wrong with the NCC's decision to terminate you so you hired a paralegal to assist you with filing your application at the Human Rights Tribunal of Ontario. The application was filed on September 15, 20xx.

**QUESTIONS YOU SHOULD THINK ABOUT:**

How do you feel about the dress code policy? Do you think it is too restrictive? If so, how?

Do you really think that the comments Mr. Martinez made about “brown people” were directed at you? Why? Did you know what the gym hours were?

Could Mr. Martinez be justified in placing heightened security measures on you since you are the newest employee at the NCC?

Was the situation avoidable? What could have been done differently?

WITNESS  
INFORMATION



## TORY LIU, APPLICANT WITNESS

### Your background:

- Your name is Tory Liu.
- You have been working at Newcomers Can Centre (NCC) as a bilingual Employment Counsellor for over five years.
- You are known for being the person at work who is always aware of what is going on in other people's lives. You are well-liked by your colleagues but found to be too nosy sometimes.
- Since Ms. Jaffer started working at Newcomers Can Centre, you have become really good friends because her office cubicle is right beside yours.
- Just prior to Ms. Jaffer's hiring, you witnessed another employee of NCC be terminated for violating the dress code.

### Your version of what happened:

- Since Chloe Jaffer's first day on May 1, 20xx, you and she became very close friends. Although she does not spend as much time in the office because of her workshop deliveries in the city, her desk is right across from yours, so you usually get to converse every morning.
- You noticed that since Ms. Jaffer started working, Mr. Martinez was continuously stressing "the importance of dressing professionally within the office." These remarks were said aloud to everyone in the

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office, but they did seem to be directed more specifically at Ms. Jaffer. You think this because there were some days when she wore 'western style' business attire and several days when she had come into work wearing saris that, unfortunately, did not meet the dress code policy of 'business attire.' Interestingly, you did not notice a change in Ms. Jaffer's choice of dress to work despite Mr. Martinez's comments.

- On June 12<sup>th</sup>, you were having lunch in the staffroom with Amke Martinez and Drew MacDonald. Mr. Martinez was recalling his dinner experience at a South Asian restaurant that had experienced a breach of security on their credit card system. Ms. Jaffer had walked into the staffroom partway through the conversation and it was clear that she was feeling uncomfortable with the comment about "the security risks created by brown people."
- Ms. Jaffer laughed at the comment with everyone else, and you found this odd since her facial expression did not match her reaction. Mr. Martinez proceeded to tell a story from the news about a South Asian employee being arrested for sending suspicious emails from work. You could see Ms. Jaffer was sensitive about the topic but she would usually say something to you and since she didn't mention anything to you, you left the issue alone.
- You did notice that in the mornings, Ms. Jaffer sometimes took client files to the photocopy room before going to deliver a job skills workshop.
- On July 28<sup>th</sup>, you noticed Ms. Jaffer received a phone call at her desk. She had been working diligently but after the call, she was very upset. You asked what was wrong and she told you that her employment with NCC was at risk. You were afraid that this would happen to Ms. Jaffer since it occurred to another co-worker, Ana Hernandez, last year in similar circumstances.

**QUESTIONS YOU SHOULD THINK ABOUT:**

Do you think the office's dress code policy is too restrictive?

How would you feel if the roles were reversed and you were in Ms. Jaffer's position?

Is there anything that you could have done differently to make the situation better?

WITNESS  
INFORMATION

## AMKE MARTINEZ, THE RESPONDENT

### Your background:

- Your name is Amke Martinez.
- You have been the Director of Newcomers Can Centre (NCC) for the past 10 years. You are very dedicated to and enjoy your position because it assists newcomers to Canada with developing job skills that will better allow them to find local employment opportunities.
- You spend a lot of time at work and you are on friendly terms with the NCC employees. Many of them, like you, are from a diverse ethnic and/or religious background.
- You recently interviewed and hired Chloe Jaffer in May 20xx, as an Employment Counsellor with NCC. On July 31, 20xx, the end of Ms. Jaffer's probation period arose. With the help of Mr. MacDonald, you decided to terminate Ms. Jaffer's employment with NCC due to **organizational 'fit,'** her lack of compliance with the dress code, and poor handling of client files.

### Your version of what happened:

- You interviewed Chloe Jaffer in late April and hired her to begin her position as Employment Counsellor on May 1, 20xx.
- Ever since Ms. Jaffer was hired 3 months ago, the office environment at NCC has not been as organized and the attention to following the dress code policy has not been as strictly

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followed as it used to be. On the first day of Ms. Jaffer's job, you held an orientation session and had professionally dressed employees model to demonstrate acceptable 'business attire.' You also gave Ms. Jaffer the office policy on dress code and directed her to the requirement of wearing a dress shirt that covers one's shoulders and midriff.

- Despite suggesting subtle hints to Ms. Jaffer such as wearing a blazer over her beautiful saris, you still did not find that Ms. Jaffer followed the rules consistently. Instead, she came to work sometimes wearing traditional western business clothing, such as a dress shirt and pants or skirt but on several other occasions she had worn saris that exposed her shoulders. You do *not* have a problem with Ms. Jaffer wearing her saris as business attire; however, you have a problem with the saris that show her shoulders and midriff since it violates the policy.
- On June 12<sup>th</sup>, you were having a friendly conversation over lunch with Tory Liu and Drew MacDonald in the staffroom. You had just finished telling a story about how much you love South Asian food and went to dinner with your wife at a South Asian restaurant the night before. After dinner, you were advised by the restaurant manager not to use your credit card as payment for dinner since they had recently experienced a breach of security on their credit card system. Just when you made a joke about "the security risks created by brown people," Ms. Jaffer had walked in and by the look on her face you could tell that she felt a bit uncomfortable. However, Ms. Jaffer laughed at the comment with everyone else, so you proceeded to tell a story from the news about a South Asian employee being arrested for sending suspicious emails from work.
- In general, you find Ms. Jaffer to be pleasant and competent at her job responsibilities; however, you have noticed that she acts suspiciously around you. Usually in the mornings you notice her ducking in and out of her office cubicle, avoiding being seen for lengthy periods and, unfortunately, many of the client files have gone missing since she started her new position. You've noticed this on more than one occasion and it usually happens to files that Ms. Jaffer is working on so you've brought

it to her attention. In addition, Ms. Jaffer's job requires her to make visits during the work day to various locations to host employment workshops and you are afraid that the files may be left and not returned to the office.

- By early July, you had become increasingly concerned about Ms. Jaffer's trustworthiness and professionalism. On July 1<sup>st</sup>, you told Ms. Jaffer that you were placing a heightened security measure on her ability to access client files. Instead of accessing files directly, you directed her from now on to seek permission from yourself or another employee, Tory Liu, to ensure that the files are being returned and filed back properly.
- On July 28<sup>th</sup>, you phoned Ms. Jaffer at her desk to advise her that you were going to speak with the Human Resource Manager, Mr. MacDonald, since her probation period was coming to a close on July 31<sup>st</sup>.
- Mr. MacDonald eventually told you that it would be best to terminate Ms. Jaffer since she had not complied with the dress code and client files had gone missing.
- On July 31<sup>st</sup>, you spoke to Ms. Jaffer and told her she could not continue as an Employment Counsellor due to organizational fit and her inability to follow the dress code or maintain client files.

**QUESTIONS YOU SHOULD THINK ABOUT:**

What is your opinion of Chloe Jaffer?

Do you think it would have been better if you had talked to Ms. Jaffer about the dress code prior to terminating her?

How would you feel if the roles were reversed and you walked in on your company director making joking comments about someone from your racial or ethnic background?

Do you think you and Mr. MacDonald handled the situation fairly towards Ms. Jaffer?

Was the situation avoidable? If not, why?

What could have been done differently to try and avoid the situation?

WITNESS  
INFORMATION

## DREW MACDONALD, RESPONDENT WITNESS

### Your background:

- Your name is Drew MacDonald.
- You have been the Human Resources Manager for NCC for the past three years. You were present on the day of Chloe Jaffer's interview and provided input when the NCC Director, Amke Martinez, made the decision to hire Ms. Jaffer in late April 20xx.
- You have been a good friend of the Director, Amke Martinez, for the past three years. You are not well-liked by the other employees of NCC because you are viewed as the person who always agrees with Mr. Martinez, even when his ideas are not worthy of supporting.
- You appeared before the Human Rights Tribunal of Ontario ("the Tribunal") last year when a past employee, Ana Hernandez, who violated the dress code filed an application alleging that you and the organization, NCC, discriminated against her on the enumerated ground of race when her employment was terminated. Due to your past experience with the Tribunal, you have strong opinions on this matter and believe that the Tribunal usually takes the side of the Applicant.

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- » Learn your facts by heart.
- » You will be sworn in during the hearing and need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package you can say you don't know the answer.
- » Speak with the lawyers, paralegals, agents or representatives for your side ahead of time, and get into character when you take the stand.



**Your version of what happened:**

- You were present on the day the Director of Newcomers Can Center (NCC), Amke Martinez, interviewed Chloe Jaffer for the Employment Counsellor position. You were looking forward to hiring Ms. Jaffer because she was very enthusiastic about getting her first full-time employment opportunity and having the ability to represent NCC.
- You noticed that since Ms. Jaffer started working, Mr. Martinez was continuously stressing “the importance of dressing professionally within the office.” These remarks were said aloud to everyone in the office but they did seem to be directed more specifically at Ms. Jaffer. You think this because there were some days when she wore ‘western style’ business attire and several days when she had come into work wearing beautiful saris that, unfortunately, did not meet the dress code policy of ‘business attire.’ Interestingly, you did not notice a change in Ms. Jaffer’s choice of dress to work despite Mr. Martinez’s comments.
- On June 12<sup>th</sup>, you were having lunch in the staffroom with Amke Martinez and Tory Liu. Mr. Martinez was recalling his dinner experience at a South Asian restaurant that had experienced a breach of security on their credit card system. Ms. Jaffer had walked into the staffroom partway through the conversation and it was clear that she was feeling uncomfortable with the comment about “the security risks created by brown people.”
- Ms. Jaffer laughed at the comment with everyone else, and you found this to be great because you interpreted it as a sign that she was able to participate in harmless, friendly conversation in the workplace. Mr. Martinez seemed to notice that Ms. Jaffer did not seem offended, so he proceeded to tell a story from the news about a South Asian employee being arrested for sending suspicious emails from work. Later that afternoon, Ms. Jaffer mentioned to you she was a bit sensitive about the topic, but you reminded her “it was just a joke. Mr. Martinez does it all the time!”

- On July 28<sup>th</sup>, you received an urgent phone call from Mr. Martinez advising you that Ms. Jaffer's probation period was ending and your thoughts on her continued employment. You let him know that you thought her dress was inappropriate for the office and for representing NCC to the public and clients trying to integrate and start careers in Canada. Because of this and her mishandling of files, you recommended that she be terminated.

**QUESTIONS YOU SHOULD THINK ABOUT:**

What is your impression of Ms. Jaffer? Do you think that you handled the situation fairly?

How would you feel if the roles were reversed and you were in Ms. Jaffer's position?

Is there anything that you could have done differently to make the situation better?

## TRIBUNAL ADJUDICATOR

If the role of the Tribunal Adjudicator is not being played by a justice sector volunteer, the following chart will help you to organize and render your decision. Additional information on preparing for the role of the Tribunal Adjudicator is available in the Role Preparation Package.

| ISSUE                                                                                                                                                                                                                                                | SUMMARY/FINDING                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| What is the specific area and enumerated ground the Applicant alleges discrimination?                                                                                                                                                                |                                      |
| What does the Applicant say happen?<br><br>Make a summary of the incidents<br><br>What proof does she have of the alleged discrimination?<br><br>Did she try to address the issue? If so, how and when?                                              | <i>The Applicant alleges that...</i> |
| What does the Respondent say happen?<br><br>Make a summary of the incidents<br><br>What proof does he have of the alleged discrimination?<br><br>Is there a reason why he made those decisions?<br><br>How did you try to make the situation better? | <i>The Respondent says that...</i>   |

ADJUDICATOR'S  
NOTES

| ISSUE                                                                                                   | SUMMARY/FINDING                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Who do you believe? Why?                                                                                | <i>I prefer the evidence of the Applicant/Respondent...</i>                                                                                                                                                                                                                   |
| What is your finding as to whether the alleged discrimination did or did not occur?                     | <i>I find that the Respondent _____, violated the Applicant _____'s right to equal treatment in [NAME THE GROUND] under section _____ under the Code by discriminating against her on the basis of race, colour, ancestry, place of origin, ethnic origin, creed and sex.</i> |
| How did the discrimination occur?                                                                       | <i>I find this discrimination occurred directly/indirectly through _____.</i>                                                                                                                                                                                                 |
| If you find the Respondent responsible of violating the Code, what remedy are you considering ordering? | <i>Having found that the Respondent _____ violated/did not violate the Applicant's rights under section 5 of the Code to equal treatment on the basis of race, colour, ancestry, place of origin, ethnic origin, creed and sex. The Tribunal orders...</i>                    |
| Did the Applicant raise any issues of her own at the hearing?                                           | <i>The Applicant raised the following issues at the hearing...</i>                                                                                                                                                                                                            |
| What was her evidence about these complaints?                                                           | <i>The Applicant states that on...</i>                                                                                                                                                                                                                                        |
| What was the Respondent's response to these complaints?<br><br>(Continued on the next page.)            | <i>The Respondent maintains that...</i>                                                                                                                                                                                                                                       |

ADJUDICATOR'S NOTES

|  | ISSUE                                                                                                                                                                                     | SUMMARY/FINDING                                                                                                                                    |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
|  | (Continuation of the previous page.)<br><br>What do the witness(es) have to say about these complaints?                                                                                   | <i>The witness(es) maintain that...</i><br><br><i>The Applicant's witness stated that...</i><br><br><i>The Respondent's witness stated that...</i> |
|  | Did the Respondent fulfill their duty to accommodate?<br><br>If the Respondent did try to accommodate the Applicant, how? Was it to the point of undue hardship?                          | <i>I find that the Respondent did/did not fulfill their duty to accommodate because...</i>                                                         |
|  | Who do you believe? Why?<br><br>Do you believe the Applicant on one issue but the Respondent on another?<br><br>What are your findings on the issues, which were raised by the Applicant? | <i>I prefer the evidence of the Applicant/Respondent...</i>                                                                                        |
|  |                                                                                                                                                                                           | <i>I believe the Applicant/Respondent on the issue of...</i><br><br><i>However, I believe the Respondent on the issue of...</i>                    |
|  |                                                                                                                                                                                           | <i>I find that...</i>                                                                                                                              |

ADJUDICATOR'S NOTES

| ISSUE                                                                                                                                                                                           | SUMMARY/FINDING                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>You have the ability to order <b>three</b> forms of remedy.</p> <p><i>(This means that the Applicant will have their right enforced and the wrong corrected through a formal order.)</i></p> | <p><i>The Applicant is seeking:</i></p> <p>» _____ <i>in restitution,</i></p> <p>» _____ <i>in monetary compensation and/or</i></p> <p>» _____ <i>as a public interest remedy</i></p> |
| <p>Did the Applicant raise this at the hearing?</p>                                                                                                                                             |                                                                                                                                                                                       |
| <p>Do you find it appropriate to use your discretion in this case and grant the order?</p>                                                                                                      | <p><i>Given the circumstances, I find that this is an appropriate case to order the remedy of...</i></p>                                                                              |
| <p>Why or why not?</p>                                                                                                                                                                          | <p><i>OR</i></p> <p><i>Despite the circumstances, I find that it would be unfair to order the remedy of...</i></p>                                                                    |
|                                                                                                                                                                                                 |                                                                                                                                                                                       |

ADJUDICATOR'S NOTES

|  | ISSUE                                                                                                                                   | SUMMARY/FINDING                                |
|--|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
|  | <b>What will you order...?</b>                                                                                                          | <i>It is ordered that...</i>                   |
|  | ...for restitution to the Applicant?                                                                                                    |                                                |
|  | ...about what the Applicant may have alleged she is owed for the loss of dignity, feelings and self-respect?                            | (Take a look at the sample Order for guidance) |
|  | ...about who pays for the application fee?                                                                                              |                                                |
|  | ...about the public interest remedy, taking into account all of the above?                                                              |                                                |
|  | ...about the timeline for fulfilling the public interest remedy?                                                                        |                                                |
|  | ...about the timeline for repayment? (if applicable)                                                                                    |                                                |
|  | ...about whether or not the Applicant will be given her job back?                                                                       |                                                |
|  | ...about what changes should be made to the practices and policies of the NCC to comply with the standards set out by the <i>Code</i> ? |                                                |

## EMPLOYMENT LETTER FOR CHLOE JAFFER

April 24, 20\*\*

Ms. Chloe Jaffer

214 Universal Crescent

Brampton, ON

L7A 9V1

Dear Ms. Chloe Jaffer:

Confirming our recent discussion in this office, we are pleased to confirm our offer of employment and your acceptance on the terms set out below.

You will begin work with Newcomers Can Centre on **May 1, 20\*\*** as a full-time **Employment Counsellor**.

Your responsibilities will be to prepare and facilitate workshops on three key areas of 'Career Decision Making and Planning', 'Work Preparation' and 'How to Perform a Job Search.' The target audiences you will be responsible for delivering these workshops to are primarily newcomers to Canada. A major aspect of your job responsibility will be to travel to and from various locations across the Greater Toronto Area to present the workshops to those person(s) or group(s) who have made a request. In anticipation that the job may evolve, over the course of time, you have agreed that your duties, responsibilities, reporting relationships and the location of your employment may be changed by the Newcomers Can Centre from time to time.

DOCUMENTARY  
EVIDENCE

At the Newcomers Can Centre, we have an open-door policy where employees are free to communicate their questions or concerns to their direct supervisor. Your direct supervisor will be Amke Martinez, and any questions or concerns can be posed to him directly or to the Human Resource Manager, Drew MacDonald.

It is important to both of us that during your initial period of employment, your ability to perform your duties be carefully assessed. Accordingly, we have agreed that the first three months of employment represent a probationary period,



during which either you or we may terminate your employment for any reason without notice or compensation in lieu of notice and without the payment of any further employment benefits.

Because the job requires a full-time commitment, you have agreed to work the 37.5 hours required, which may vary from time to time, in order to meet the objectives of your position.

Your salary will be paid bi-weekly on the basis of \$47,000.00 per year. In addition, you will be entitled to participate in those benefit plans made available by Newcomers Can Centre, and you can secure further information as to the current benefits by having reference to the benefit booklet, which is enclosed.

It is always difficult to consider termination at the beginning of a new relationship. However, having clear termination provisions provides security to both you and the Newcomers Can Centre. Your employment under this agreement may be terminated after the completion of your probationary period, and any extension thereof, by you on the giving of two weeks' notice to the Newcomers Can Centre. The Newcomers Can Centre may waive the notice in whole or in part.

If the Newcomers Can Centre deems it appropriate to terminate your relationship, it can do so after the completion of the probationary period on giving you notice in accordance with the requirements of the *Employment Standards Act* of Ontario.

We confirm that this letter constitutes the entire agreement between us with respect to your employment, regardless of any informal discussions that may have taken place during the hiring process.

We look forward to your joining the team here at the Newcomers Can Centre and to working with you in the future.

Yours very truly,  
Newcomers Can Centre  
Per: \_\_\_\_\_ Amke Martinez \_\_\_\_\_  
(Signature of Employer)

DOCUMENTARY  
EVIDENCE

I have read, understood and agree with the foregoing. I accept employment on the above terms and conditions.

DATED the 28<sup>th</sup> day of April, 20\*\*.

\_\_\_\_\_Chloe Jaffer\_\_\_\_\_

(Signature of Employee)

DOCUMENTARY  
EVIDENCE

## DRESS CODE POLICY FOR NEWCOMERS CAN CENTRE

### Philosophy and Purpose

It is management's intent that work attire should complement an environment that reflects an efficient, orderly, and professionally operated organization. This policy is intended to define appropriate "business attire" during normal business operations, Monday through Friday. The Newcomers Can Centre reserves the right to continue, extend, revise or revoke this policy at its discretion. The enforcement of this policy is the responsibility of Newcomers Can Centre management and supervisory personnel.

The key point to sustaining an appropriate professional business attire program is the use of common sense and good judgment and applying a dress practice that the Newcomers Can Centre deems conducive to our business environment.

Requests for advice in administering or interpreting this guideline should be directed to our Human Resources Manager, Drew MacDonald.

### Appropriate Business Attire

**Appropriate business attire is to be worn Monday through Friday, whether in the office or completing work-related tasks outside of the office.**

#### *Men:*

- Blazers, suits, or sport coats
- Dress slacks
- Ties
- Dress shirts with buttons and collars (\*sleeve must cover the shoulder)
- Dress shoes

#### *Women:*

- Dresses
- Blouses/dress shirts with buttons and collars (\*sleeve must cover the shoulder)

- Skirts (\*appropriate length)
- Dress pants
- Dress shoes
- Sweaters
- Nylons or stocking

\* Skirts should be worn at a conservative length. An appropriate measurement for the length of a skirt is your knee.

### **Unacceptable Attire**

- Logos, plain or pocket T-shirts
- Underwear as outerwear
- Cut-offs (\*pants or shirts)
- Midriff length tops
- Athletic wear
- Provocative attire
- Blue denim jeans
- Off-the-shoulder tops
- Logos, plain or pocket T-shirts
- Workout clothes or shoes
- Spandex or Lycra such as biker shorts
- Tank tops, tube tops, halter tops with spaghetti straps
- Any garment that overexposes your shoulders and chest

### **Enforcement**

Newcomers Can Centre supervisors are responsible for monitoring and enforcing this policy. The policy administration will follow these steps:

1. If questionable attire is worn in the office, the respective supervisor will hold a personal, private discussion with the employee to advise and counsel the employee on the inappropriateness of the attire.
2. If an obvious policy violation occurs, the supervisor will hold a private discussion with the employee and ask the employee to go home and change his/her attire immediately.
3. Repeated policy violations will result in disciplinary action, up to and including termination.

### **Distribution**

All employees will be provided with a copy of this policy.

### **Review and Revision**

The Newcomers Can Centre reserves the right to rescind and/or amend this and all Newcomers Can Centre policies, at any time.

**HUMAN RIGHTS TRIBUNAL OF ONTARIO**655 BAY STREET, 14<sup>TH</sup> FLOOR

TORONTO, ON M7A 2A3

TEL (TORONTO): (416) 326-1519

TEL (TOLL-FREE): 1-866-598-0322

TTY: (416) 326-2027

TTY (TOLL-FREE): 1-866-607-1240

FAX: (416) 326-2199

FAX (TOLL-FREE): 1-866-355-6099

E-MAIL: [HRT0.REGISTRAR@ONTARIO.CA](mailto:HRT0.REGISTRAR@ONTARIO.CA)WEBSITE: [HTTPS://TRIBUNALSONTARIO.CA/HRT0](https://tribunalsontario.ca/hrto)**CONFIRMATION OF HEARING****TRIBUNAL FILE NO: 20XX HRT0 8426****OCTOBER 1, 20\*\***

CHLOE JAFFER

214 UNIVERSAL CRESCENT

BRAMPTON, ON

L7A 9V1

7 JUSTICE WAY, UNIT 1

TORONTO, ON

M4J 2T1

NEWCOMERS CAN CENTRE

AND AMKE MARTINEZ

6842 DIVERSITY CIRCLE

MISSISSAUGA, ON

L5R 7B6

C/O THE SAHOTA GROUP

371 LIBERTY ROAD, FLOOR 3

MILTON, ON

M2C 8H7

## RE: JAFFER v. NEWCOMERS CAN CENTRE AND MARTINEZ

**ATTENDANCE:** Request for adjournments will be dealt with in accordance with the Tribunal's **Information Practice Direction on Scheduling of Hearings and Mediations, Rescheduling Requests, and Requests for Adjournments** located on the Tribunal's website at <https://tribunalsontario.ca/hrto/rules-and-practice-directions>.

If you fail to attend the hearing after receiving proper notice the Tribunal may:

- Proceed in your absence;
- Determine you are not entitled to further notice of the proceedings;
- Determine you are not entitled to present evidence or make submissions to the Tribunal;
- Decide the Application based solely on the materials before the Tribunal; and
- Take any other action the Tribunal considers appropriate.

**ACCOMMODATION:** You, your representative and your witnesses are entitled to accommodation of any *Code* related needs. For the Tribunal's Policy refer to <https://tribunalsontario.ca/en/request-an-accommodation>. Notify the Registrar as soon as possible if accommodation is required.

**RULES, GUIDES AND PRACTICE DIRECTIONS:** Please review the Tribunal's Rules of Procedure, Guides to its processes and practice directions available at <https://tribunalsontario.ca/hrto/application-and-hearing-process> or by contacting the Tribunal at [hrto.registrar@ontario.ca](mailto:hrto.registrar@ontario.ca) or by phone toll-free at 1-866-598-0322 or in Toronto at 41-362-1312 or TTY toll-free at 1-266-607-1240 or TTY Toronto 416-302-2027 or in person at 655 Bay St, 14th Floor, Toronto, Ontario.

## IMPORTANT INFORMATION

### Disclosure of Documents (Rule 16)

1. No later than forty-five (45) days from October 31<sup>st</sup>, 20\*\* each party must deliver to every other party and file with a Statement of Delivery:

- A list of all arguably relevant documents in the party's possession. Where privilege is claimed over any document the party must describe the nature of the document and the reason for making the claim; and
  - A copy of each document contained on the list, excluding any documents for which privilege is claimed.
2. Unless otherwise directed by the Tribunal, not later than forty-five (45) days prior to the first scheduled day of hearing, each party must deliver to every other party:
    - A list of documents upon which the party intends to rely at the hearing; and
    - A copy of each document on the list or confirmation that each document has already been provided to other parties.
  3. Unless otherwise directed by the Tribunal, not later than forty-five (45) days prior to the first scheduled day of hearing, each party must file to the Tribunal:
    - A list of all documents upon which the party intends to rely at the hearing; and
    - A copy of each document contained on the list;
    - And the Statement of Delivery on the other parties.
  4. No part may rely or present any document not included on a document list and provided to the other parties and filed with the Tribunal in accordance with the above, except with the permission of the Tribunal.

### **Disclosure of Witnesses (Rule 17)**

5. Unless otherwise ordered by the Tribunal, not later than forty-five (45) days prior to the first scheduled day of hearing, each party must deliver a witness list to every other party and file it with the Tribunal (with a Statement of Delivery). The witness list must include the name of every witness, including expert witnesses, the party intends to present to the Tribunal.



6. The witness list must include a brief statement summarizing the expected evidence of each witness.
7. Where a party intends to rely on the evidence of a proposed expert witness the party must provide either a copy of the expert's written report or a full summary of the expert's proposed evidence, and the expert's curriculum vitae with the witness list.
8. No party may present a witness whose name and summary of evidence was not included in the witness list delivered and filed in accordance with Rule 17, except with the permission of the Tribunal.

### **Non-Compliance (Rules 5)**

9. Where a party fails to deliver material to another party or personas required by the Tribunal Rules of Procedure (as explained above), the Tribunal may refuse to consider the material, or may take any other action it considers appropriate.

**Please Note:** Parties filing bound documents and other materials with the Tribunal are asked to also provide an electronic version and index to the bound materials. Where an electronic version is not available the Tribunal directs that document not to be bound.

### **Smartform Application<sup>1</sup>**

### **Smartform Response<sup>2</sup>**

<sup>1</sup> <https://tribunalsontario.ca/documents/hrto/SmartForms/Form%201%20-%20apply.pdf>

<sup>2</sup> <https://tribunalsontario.ca/documents/hrto/SmartForms/Form%202%20-%20respond.pdf>

## THE HUMAN RIGHTS CODE, 1990

## Respondent

The representative of Chloe Jaffer (“the Applicant”), \_\_\_\_\_, filed an application on the Applicant’s behalf with the Human Rights Tribunal of Ontario on September 15<sup>th</sup>, 20xx alleging that Amke Martinez, the Director of Newcomers Can Centre (“the Respondent”) discriminated against her on in the specific area of employment on the enumerated grounds of race, colour, ancestry, place of origin, ethnic origin, creed and sex, which is found under section 5(1) of the *Code*.

The application was heard in Toronto on \_\_\_\_\_, 20\*\*.

<sup>3</sup> NOTE TO TEACHER: You may wish to share this sample order with your students only after the class has rendered a decision.

At the hearing, the Applicant raised section 5 of the *Code* issues relating to having a right to equal treatment with respect to employment without discrimination because of race, colour, ancestry, place of origin, ethnic origin, creed and sex.

The Applicant and the Respondent attended the hearing. The Applicant called upon Tory Liu (Ms. Liu) as a witness and the Respondent called upon Drew MacDonald (Mr. MacDonald) as a witness. The Applicant was represented by \_\_\_\_\_, a licensed paralegal. The Respondent was represented by a private human rights lawyer, \_\_\_\_\_.

### **Evidence and Determination regarding the section 5 of the *Code* arguments:**

*Students should fill in this information below based on the evidence presented during the hearing by the Applicant and the Respondent.*

1. The Applicant raised/stated.....while the Respondent agreed/denied.....
2. The Applicant raised/stated.....while the Respondent agreed/denied.....
3. The Applicant raised/stated.....while the Respondent agreed/denied.....
4. The Applicant raised/stated.....while the Respondent agreed/denied.....

**It is ordered that:**

**The Tribunal Adjudicator may find the following: (*pick one or a combination of the choices below*)**

#### ***Monetary Compensation***

1. *I find that the Respondent did violate/did not violate (pick one) section 5 of the Code. I order the Respondent to pay to the Applicant \$\_\_\_\_\_ in monetary compensation and not \$\_\_\_\_\_ as the Applicant indicates. While the Respondent did not \_\_\_\_\_, the evidence indicates that \_\_\_\_\_.*

**Restitution**

2. I find that the Respondent did violate/did not violate (pick one) section 5 of the Code. I order the Respondent to pay to the Applicant \$\_\_\_\_\_ in restitution and not \$\_\_\_\_\_ as the Applicant indicates. While the Respondent did not \_\_\_\_\_, the evidence indicates that \_\_\_\_\_.

**Public Interest**

3. I find that the Respondent's dress code policy did violate / did not violate (pick one) section 5 of the Code. I order the Respondent to make the following changes to its dress code policy and procedure \_\_\_\_\_ by this date \_\_\_\_\_.

December 12<sup>th</sup> 20\*\*

Date of Order

\_\_\_\_\_  
Name & Signature of Vice-Chair