

Promoting Inclusive and Harassment-Free Workplaces: Law, Science, and Best Practices



Presented by Emma Phillips

Public Legal Information Event – June 15, 2018
Presentation on behalf of the Law Society of Nunavut

AGENDA

- ❖ The Law of Workplace Harassment
- ❖ Rights and Responsibilities
- ❖ Implicit Bias in the Workplace
- ❖ Towards an Inclusive and Respectful Workplace



What is Workplace Harassment?

WHAT IS WORKPLACE HARASSMENT?

Belittling or threatening behavior directed at an individual worker or a group of workers

- E.g. Pattern of:
 - putting someone down, especially in front of others
 - shouting, yelling, excessively confrontational behaviour
 - demeaning comments about someone to others in the workplace (malicious gossip)



WHAT IS WORKPLACE HARASSMENT?

Belittling or threatening behavior directed at an individual worker or a group of workers

- consistently disrespectful interactions, e.g. turning your back to someone when they are speaking, interrupting repeatedly, using a sarcastic or mocking tone of voice



WHAT IS WORKPLACE HARASSMENT?

Legal test:

“a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.”



- **Objective/Subjective test:**
Would a reasonable person in the complainant's position find the conduct or comments to be objectionable?

WHAT IS WORKPLACE HARASSMENT?

Elements of Harassment:

- Usually a **pattern of behaviour** (but sometimes a single egregious incident)
- **Does not have to be targeted** at a specific person (ie. hostile work environment)



WHAT IS WORKPLACE HARASSMENT?

Elements of Harassment:



- **Intention** of the alleged harasser is not determinative
- **Subjective feelings** of the complainant is not determinative

WHAT IS WORKPLACE HARASSMENT?

What is *not* workplace harassment?

- ✗ Occasional acts that are callous or insensitive.
- ✗ Every heedless act or comment that hurts someone's feelings.
- ✗ Appropriate workplace supervision (including discipline and performance reviews)

What are the Sources of the Obligation not to Engage in Workplace Harassment?

Human Rights Act

Section 6 of the *Human Rights Act*, prohibits workplace harassment on the prohibited grounds:

(6) No person shall, on the basis of a prohibited ground of discrimination, harass any individual or class of individuals

...

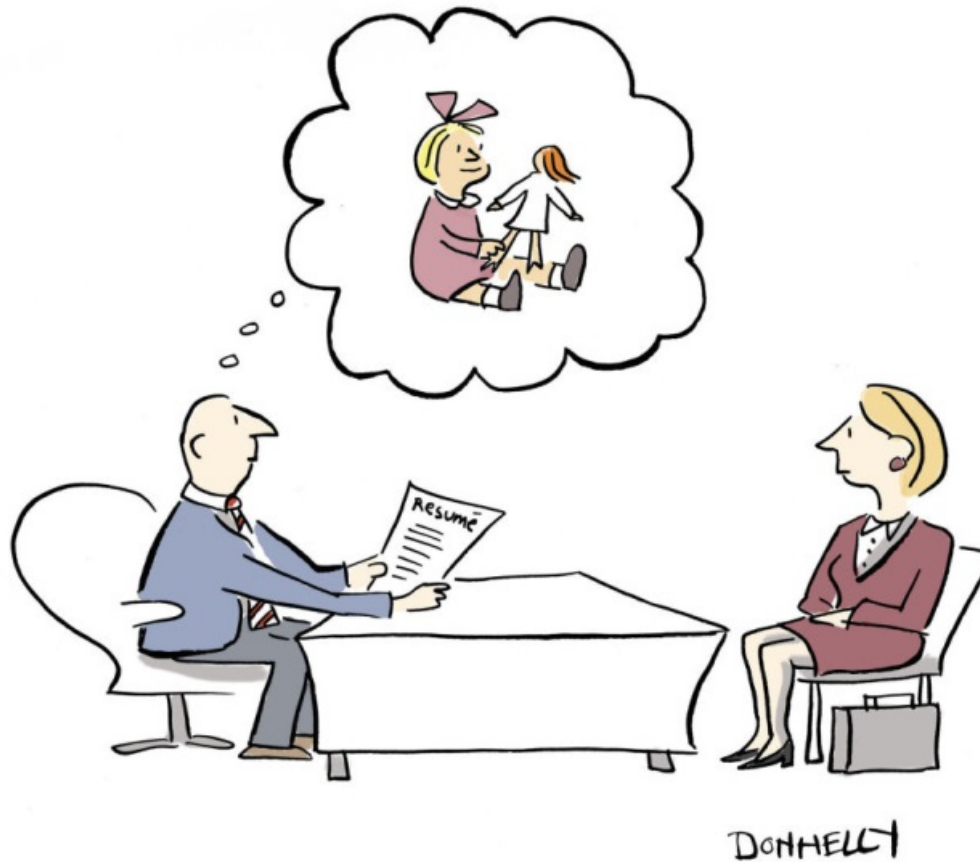
- (c) in matters related to employment; or
- (d) in matters related to membership in an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization.

Human Rights Act

Prohibited grounds, s. 7:

- race
- colour
- ancestry
- ethnic origin
- citizenship
- place of origin
- creed
- religion
- age
- disability
- sex
- sexual orientation
- gender identity
- gender expression
- marital status
- family status
- pregnancy
- lawful source of income
- a conviction for which a pardon has been granted

Human Rights Act



Occupational Health and Safety Regs

S. 34 of the *Occupational Health and Safety Regulations, Safety Act:*

(1) In this section, "harassment" means, subject to subsections (2) and (3), a course of vexatious comment or conduct at a work site that:

- (a) is known or ought reasonably to be known to be unwelcome; and
- (b) constitutes a threat at the work site to the health or safety of a worker.



Occupational Health and Safety Regs



It is not harassment:

(3) For the purpose of subsection (1), harassment **does not include reasonable action taken by an employer or supervisor** relating to the management and direction of the workers or of the work site.

Occupational Health and Safety Regs

Employer Policies

- S. 34(5), employers are required to create a written harassment prevention policy:
 - Take “every reasonable effort” to ensure that workers are not subject to harassment
 - Create internal complaint and investigation mechanisms
 - Protect confidentiality
 - Inform complainant and respondent of results of investigation
 - Take corrective action

HARASSMENT AND IMPLICIT BIAS

Harassment can arise out of implicit discriminatory attitudes and beliefs



HARASSMENT AND IMPLICIT BIAS

Explicit vs. implicit bias



Explicit bias: the attitudes and beliefs we have about a person or group on a conscious level



Implicit bias? the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious, or barely conscious, manner.

FEATURES OF IMPLICIT BIAS

- **Biases are deeply ingrained in our cultural belief systems**




FEATURES OF IMPLICIT BIAS

➤ Culture?

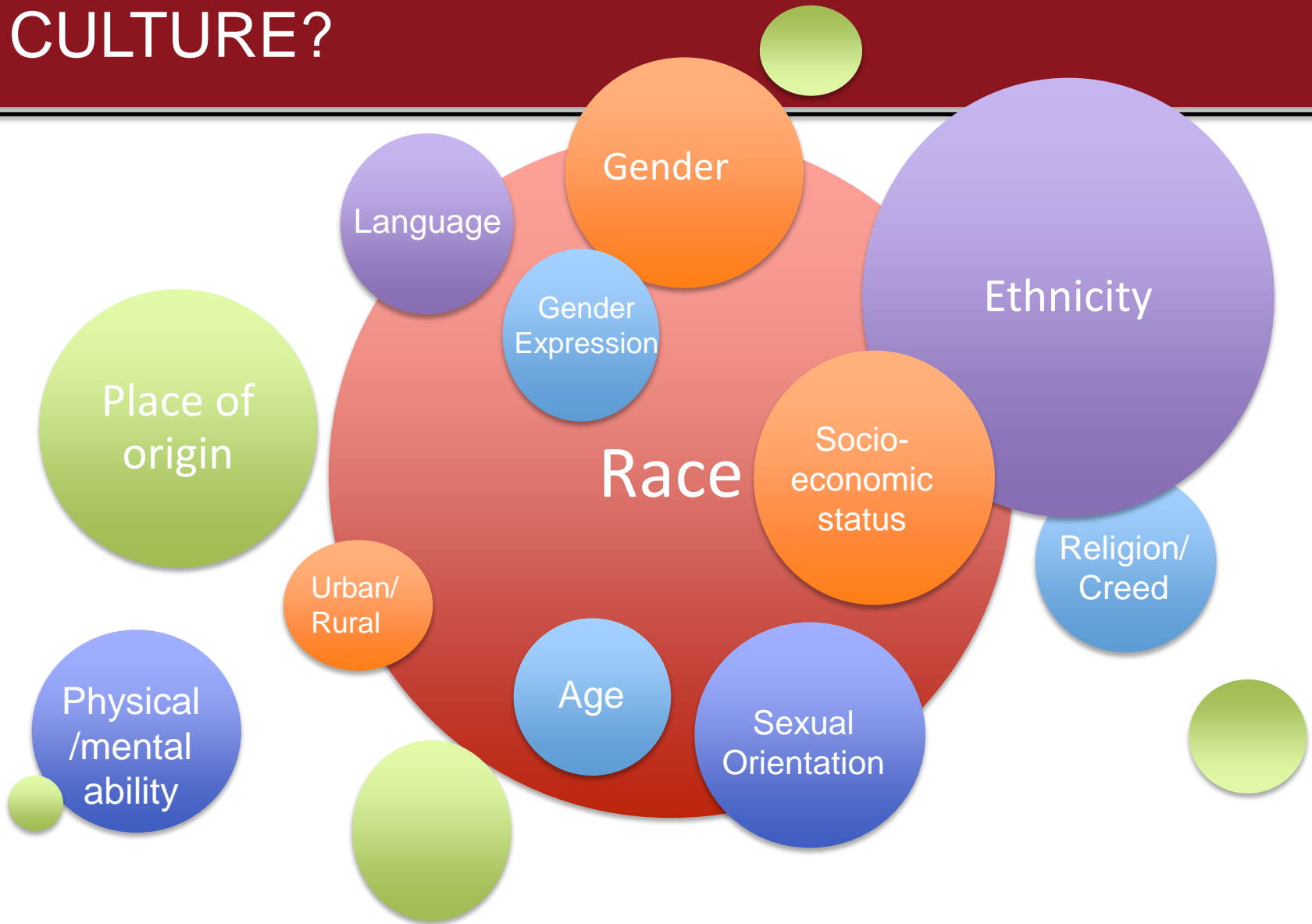


“a system of collectively held values”



The “deeper level of basic assumptions and beliefs ... that **operate unconsciously and define in a basic ‘taken for granted’ fashion** a group’s view of its self and its environment.”

CULTURE?



THE SCIENCE OF IMPLICIT BIAS

- Psychology tells us that the brain processes information in different ways on two different levels: conscious and unconscious



THE POWER OF THE UNCONSCIOUS



- Neural pathways are formed in the brain whenever information is processed.
- These pathways become hard-wired and create automatic unconscious defaults for our thinking.

THE UNCONSCIOUS MIND

- An extremely useful quick-thinking tool that helps us avoid dangerous situations and negotiate daily life.



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- An extremely useful quick-thinking tool that helps us avoid dangerous situations and negotiate daily life.

*Even if you're very thirsty, your
unconscious tells you
not to drink this > >*

You don't have to think about it.



Conscious Mind

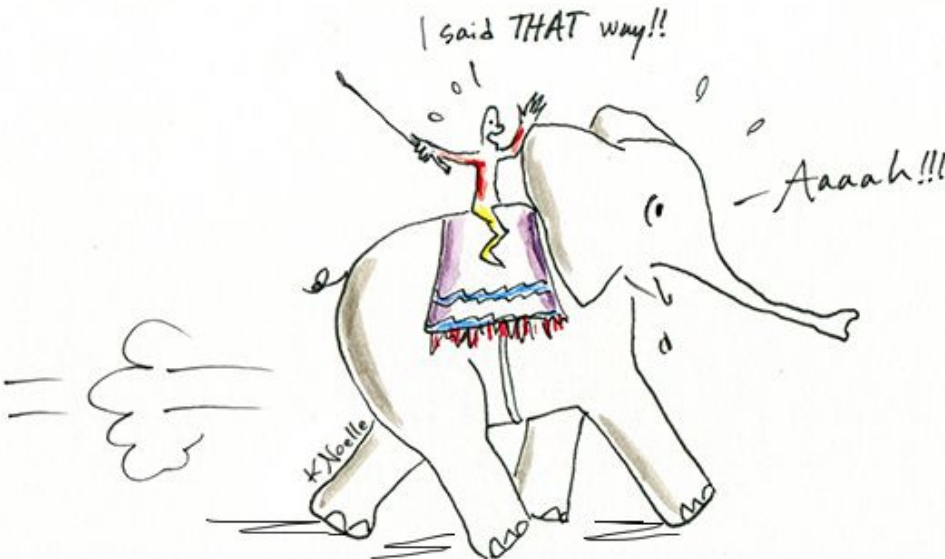
- ❖ Operates methodically and slowly and requires some effort.
- ❖ A typical person can only consciously process up to 8 bits of information at a time.
- ❖ It can take seconds or minutes to reach a decision or conclusion.

Unconscious Mind

- ❖ Operates effortlessly, quickly and constantly in the background, like an “auto-pilot”.
- ❖ It has 200,000 times more brain processing power than the conscious mind.
- ❖ Brain scans show that it processes information in as little as 30 milliseconds.

Conscious Mind

- ❖ Slow and inefficient, but results are more reliable because the conscious mind uses logic and careful rational processing.



Unconscious Mind

- ❖ Unconscious judgements are useful and necessary in everyday life.
- ❖ They are usually “good enough” for daily routine, but they are often wrong when it comes to more complex matters because they are based on limited information and super-fast processing.

Implications?

STEREOTYPES

- **The (consistent but inaccurate) attribution of particular traits or qualities to members of certain groups**
 - May involve negative *or* positive biases.
 - Can affect our perceptions, decisions and behaviours without us even being aware – even when we are highly attuned to the problems of bias and stereotypes

First Impressions



EFFECTS OF SOCIAL BIASES

❖ Multiple studies show:

- racial bias in criminal justice system
- racial and age bias in health care
- gender bias in IT
- gender bias in music



Recognizing unfairness, inequity & inaccessibility



News / Canada
Why are so many black children in foster ar

A disproportionate number of Toronto-area children are black. Advocates are blaming poverty, cultural misu

foster and group-ho
standing and racism

LAW TIMES

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Law Times > Alex Robinson

'Widespread barriers' for racialized licensees

Education, internal diversity assessment recommended

September 26, 2016 | Written By Alex Robinson



A long-awaited report on the barriers racialized licensees face recommended the Law Society of Upper Canada to address racism in the legal workplace.



Raj Anand says research done by an LSUC committee on racialized licensees confirmed anecdotal evidence experienced by some licensees. Photo: Alex Robinson

How an ethnic-sounding name may affect the job hunt

WALLACE IMMEN

The Globe and Mail

Published Thursday, Nov. 17, 2011 7:15PM EST
Last updated Thursday, Sep. 06, 2012 11:10AM EDT



THE STAR

Opinion · Editorials

What to do about the overrepresentation of Indigenous people in prisons: Editorial

By STAR EDITORIAL BOARD
Mon., Nov. 6, 2017



For decades watchdogs and researchers have attempted to draw attention to the disturbing overrepresentation of Indigenous people in the country's prison systems. ... clear the situation continues to get worse.



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Canada's prisons are the schools'

A months-long investigation reveals that at every step, the system is set against Indigenous people

Nancy Macdonald
February 10, 2016

Nancy Macdonald discusses her investigation



IMPLICIT BIAS IN EMPLOYMENT

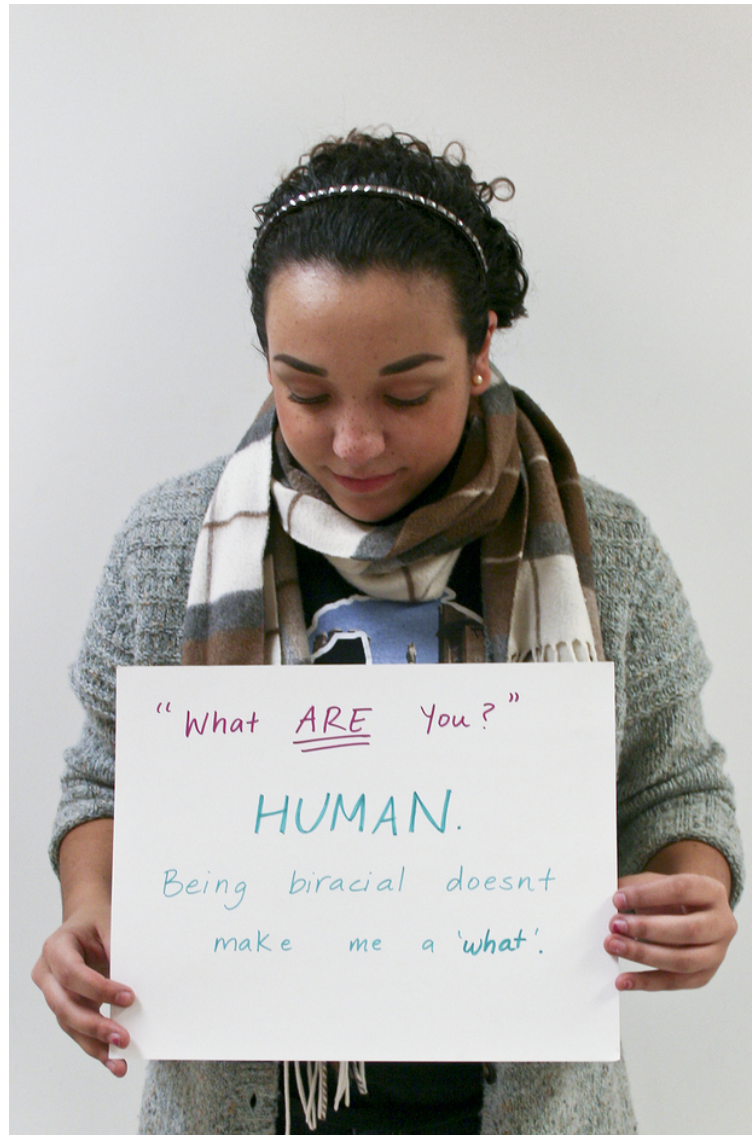
- **2011 Canadian study regarding employment barriers for immigrants and racialized people:**
 - Researchers examined call-back rates from identical resumes sent to real online job postings across multiple occupations in Toronto, Montreal, and Vancouver.
 - English-sounding names were 35% more likely to receive callbacks.

MICRO-AGGRESSIONS

What is a “micro-aggression”?

- Brief but frequent comments or gestures that reflect (whether intentionally or not) hostile, demeaning, disrespectful attitudes toward individuals or groups.
- Often well-intentioned.
- Micro-aggressions convey highly nuanced messages, often communicated through body language or tone rather than words.
- *They may be imperceptible to bystanders who witness them.*









Where to Begin ???

STEP 1: Get Over Denial

Acknowledge that, like all other people, we have implicit biases and that those biases unconsciously affect how we perceive and treat other people.

- Be open to feedback and don't become defensive if you don't like what you hear.
- Try to become aware of your own biases – **check yourself constantly.**

STEP 2: Check Yourself

Pay attention to the words, emotions and physical reactions that surface in interactions with others, then consider whether these respect and accommodate difference.

- The act of discovering and understanding our own hidden biases can help propel us to act to correct them.

STEP 3: Curb Your Positive Biases

Recognize that positive bias can have just as much harmful impact as negative bias.

- A common form of hidden bias is the inclination to give an extra helping hand to someone with whom we share a common bond.
- Don't refrain from helping others, mentoring, providing guidance and advice, etc. But **check yourself** to be sure that you are doing so equitably and not simply assisting those who belong to your "in-group".

STEP 4: Evaluate Your Biases

Try to gain insight into the origins of your biases.

- Ask yourself whether your bias is consistent with your own experiences? Or whether it's based on first-hand information? (versus, for example, the media)
- If you recognize that you have developed a bias based on a past experience, ask yourself whether that past experience was an isolated incident? is it actually what you are experiencing in the present?

STEP 5: Slow Down

We are most vulnerable to having our decisions influenced by implicit biases when we are mentally lazy and take short cuts.

- When making important decisions (hiring, discipline, promotion, performance review, assignment of work), create criteria, and examine and weigh all relevant information
- Use protocols, not impressions. Gather the information/evidence you need to make an informed decision.
- Don't make mental lists!

STEP 6: Expand Your Networks

Expand your networks:

- Like-minded people often gravitate towards each other. Restricting our social and professional networks to like-minded people simply reinforces rather than challenge our implicit biases.
- Seek out opportunities to immerse yourself in different environments outside your comfort zone and expose yourself to people from different cultural, racial, religious, ethnic and socio-economic backgrounds.

STEP 7: Focus on Inter-Group Similarities

When you interact with people from an “out-group”, focus on similarities (common identities and shared goals) not differences.

STEP 8: Focus on Inter-Group Similarities



Thank you!