

Anti-Racial Profiling Toolkit

**An ACLC Public Legal Education
Resource**



**African Canadian Legal
Clinic**

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What is Racial Profiling?

Racial profiling is any action undertaken for reasons of safety, security, or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place or origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment (Ontario Human Rights Commission).

Steps to Take If You Believe You Have Been Subject to Racial Profiling

The police may approach you and ask you questions (as any person can), but they must let you go on your way unless they arrest you or have grounds to detain you.

Although you are not obligated to answer when stopped by the police, stay calm and be polite. Use discretion when answering questions. Seemingly innocent answers could be a reason to further question or detain you or they could prevent you from being further investigated by the police.

If you feel you have been the subject of racial profiling:

- Ask “Am I being detained?”
- If so, ask on *what grounds* (what basis) you are being detained.
- Ask for and write down the name, badge number, and squad car number of the officer. The police must provide that information upon request.
- Look to see if there were any witnesses to the situation and write down their names and phone numbers.
- Write down exactly what happened and what was said immediately after the incident.
- Write down the date, time of day, location, lighting, and any objective evidence such as the posted speed limit if you were driving, how fast you were driving, or if any signs are posted.

Proving Racial Profiling

There is an inherent problem with evidence in cases of racial profiling – they can rarely be proven by direct evidence. The profiling may be subtle and based on the circumstances. So make sure to write down and keep all relevant facts and circumstances, as well as how you felt during the situation (see previous page).

Race only needs to be one factor in the police officer's conduct. It need not be the main or major cause of the mistreatment, and racial profiling can be found to have occurred even if race was mixed in with other legitimate factors (e.g. speeding). There is no need to prove intent or motivation in a case of discrimination – the discriminatory effects of the act are sufficient. The officer's conduct can be the result of subconscious beliefs about members of a visible minority group.

To prove racial profiling:

- the person profiled must belong to a disadvantaged group;
- it must be shown that the person alleged to have profiled (e.g. the police officer), acting in a situation of authority, had some opportunity to observe or presume the race of the person profiled; and
- it must be determined whether this knowledge led the person alleged to have profiled to act in a discriminatory way, either consciously or subconsciously.

Relevant considerations:

- statements were made to indicate the existence of stereotyping or prejudice (e.g. racial slurs, asking "Do you speak English?", suggesting the person profiled is foreign: "In this country we don't...", comments indicative of stereotyping: "What are you doing in this neighbourhood?", etc.)

- a non-existent, contradictory, or changing story is given for why someone was subjected to greater scrutiny or differential treatment (e.g. says after-the-fact that the person profiled was speeding when they were not informed at the time that they were stopped for speeding)
- an explanation is offered that does not accord with common sense (e.g. in cases of unnecessary strip searches)
- the situation would have unfolded differently had the person been from a non-profiled group
- there were deviations from the normal practice (e.g. not telling you your Miranda rights/"reading your rights")
- an unprofessional manner was used or the person profiled was subjected to discourteous treatment (e.g. You ask for the officer's badge number and they reply "1234" or "666")
- a situation where law enforcement officers overstep statutory powers (e.g. using the *Highway Safety Act* to pursue a criminal investigation with regard to the passengers of the vehicle for no valid reason)

Systemic Racism:

- it may help your case to prove that the officer's behaviour and actions were part of a larger problem
- try to establish systemic or institutional racism by seeing if there is a *pattern* within the specific police service that was involved
- look at the training, policy, reports and overall internal culture of the police service where the officer works—was their conduct (partly) a result of training or internal policies?

Important Evidence and Information to Request (Disclosure)

Examples of Some Types of Evidence to Present:

- Copies of the employment record of the officers that relates to the incidents of racial discrimination;
- witness statements;
- copies of any complaints of unprofessional or unlawful conduct made by members of the public against the officers that relate to racial discrimination;
- copies of all policies and training materials dealing with racial discrimination, including confirmation of whether the officers successfully completed any such training;
- memorandum book notes, incident reports, surveillance videos, etc.;
- transcripts of dispatch (was there a call to the officer to look out for someone matching a particular description?); and
- statistical data illustrating the social context (ex. the overrepresentation of African Canadians in police stop, search, and arrest activities) can also help prove the discriminatory situations and prove systemic discrimination.

How to Get Disclosure of the Evidence Needed:

- In order to get this evidence, Requisition forms must be filled out at the appropriate court. In a human rights proceeding before the Human Rights Tribunal of Ontario, write to the respondents and request the information. If it is not provided, follow-up with a request for order during proceedings.
- Provided the information is arguably relevant, the police will then be obligated to make copies of the evidence you have requested and send them to you (including training and internal policies).

How to Prove Damages

After an incident involving racial profiling has occurred and the circumstances surrounding the situation has been documented, it is important to keep track of any **losses** that you incur as a result.

If you are suing the police in Small Claims Court, the Superior Court of Justice, or filing a complaint at the Human Rights Tribunal of Ontario, the Court or administrative tribunal may award damages—monetary value to compensate you for loss or suffering that has incurred.

It is important to keep track of bills and receipts.

Damages can include:

- Medical bills or prescriptions;
- Therapist or psychiatrist appointments;
- Time taken off work to attend these appointments.

The Human Rights Tribunal has the jurisdiction to award damages for injury to dignity, feelings and self respect. Thus, it is also important to record damages to one's self-esteem, dignity, self-respect or routine, as well as any feelings of alienation or distrust that arise. For example:

- Someone stops driving at night because the situation that involved racial profiling occurred while driving at night;
- A person stops going to an area where she used to shop because she was the victim of racial profiling in that area;
- Someone doesn't allow their son to walk home from school or to a friend's house, but instead insists on driving him everywhere because he was the victim of racial profiling;
- You no longer feel like a contributing member of society (e.g. you don't return to school);
- Trust in police, or in society, is damaged or shattered;
- New feelings of fear upon seeing police.

Keep track of everything that has changed as a result of the incident, including how the incident made you feel and affected your sense of self-worth and dignity.

Office of the Independent Police Review Director (OIPRD)

What is the Office of the Independent Police Review Director?

The OIPRD is for complaints that concern matters that occurred on or after October 19, 2009.

The OIPRD is an arms-length agency of the Ontario Ministry of the Attorney General, staffed by civilians. The OIPRD is accountable to the Attorney General, but the Independent Police Review Director is responsible for the day-to-day decisions. Therefore decisions are separate from the government, the police and the community.

The OIPRD's goal is to provide an objective, impartial office to accept, process and oversee the investigation of public complaints against Ontario's police. In some cases the OIPRD will also investigate a public complaint.

Under the Police Services Act, police officers cannot discriminate, which includes racial profiling. Discrimination can lead to a finding of misconduct and subsequent discipline.

How to use the OIPRD

You may file a complaint on the OIPRD website, by fax, by mail or in person at the office (information below). You may also file your complaint at any police service in Ontario. Complaint forms can be found online or the OIPRD will send you a hard copy.

Complaints must be filed within six months after the incident took place. OIPRD complaint forms are available on the website, at all municipal, regional and provincial police services, at ServiceOntario locations throughout Ontario and in many community centres and legal clinics.

Outcomes include: the police may decide to improve or change their procedures; they may hold a disciplinary hearing; or they may take disciplinary action without a hearing.

Advantages

- You do not need a lawyer for this process, although you may appoint an agent to help you.
- It encourages local and informal resolution, which would be a great deal faster than going through the courts.
- If there is a finding against the officer, it will go on record.
- It is quick, flexible, and inexpensive.

Disadvantages

- There are no monetary awards. Outcomes of a successful complaint at the OIPRD are not compensatory to the person who has been a victim of racial profiling.
- Local or informal resolution may not appear in the officer's disciplinary record.
- You may not be able to proceed with a case at the Human Rights Tribunal. The Human Rights Tribunal will not hear a case if the substance of the application was already dealt with "appropriately" in another proceeding.

For more information about the OIPRD visit:

<https://www.oiprd.on.ca/CMS/Home.aspx>

Or call: 416.246.7071

Toll Free in Ontario: 1.877.411.4773

TTY: 1.877.414.4773

Fax: 416.327.8332 Toll-free fax: 1.877.415.4773

Or visit their office:

655 Bay Street, 10th Floor

Toronto, Ontario

M7A 2T4

*If the incident happened before October 19, 2009, contact the Professional Standards Division of the applicable Police Services Board.

Human Rights Tribunal of Ontario (HRTO)

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What is the Human Rights Tribunal of Ontario?

All claims of discrimination under the *Human Rights Code* are dealt with through applications filed directly with the Human Rights Tribunal of Ontario. The Tribunal's primary role is to provide an expeditious and accessible process to assist parties to resolve applications through mediation, and to decide those applications where the parties are unable to reach a resolution through settlement.

The amended *Code* established a new Human Rights Legal Support Centre (HRLSC) to provide advice, support and representation for applicants. The Human Rights Legal Support Centre gives free legal assistance to applicants to the Tribunal. The Centre can help you fill out your Application and also help you during the Tribunal process.

How to use the HRTO:

For complaints against the police, fill out the Goods, services, and facilities form (Form 1-C). Name the officer(s) in the complaint. The Ontario Human Rights Code includes a list of specific grounds of discrimination. These are listed on your Application.

After you've received documents you've requested the police department you've filed against, and they are not adequate, contact the HRLSC.

You can complete your application online.


You can also send you Application by mail to:

Richard Hennessy – Registrar
Human Rights Tribunal of Ontario
655 Bay St. 14th Floor
Toronto, ON M7A 2A3

Or you can send your Application by email at
HRTO.Registrar@ontario.ca

The limitation period for bringing a claim to the HRTO is one year from the time the last incident of discrimination occurred.

Damages awarded to successful claims range from \$2000 to \$20,000.



Advantages

- The HRTO is flexible in terms of remedy. You can request a number of remedies: financial, specific (e.g. getting one's job back), or public interest remedies to prevent similar discrimination from happening in the future (e.g. Ordering police services to develop new directives or training programs around racial profiling)
- You are also not limited to one remedy (you can get any or all).
- You can voluntarily choose mediation.
- The HRTO is experienced hearing cases dealing with incidents of racial profiling.
- Remedies at the HRTO take into account injury to dignity, self-respect, and feelings when assessing the amount.

Disadvantages

- It is difficult to represent yourself
- Damages may not be very high
- They may not hear your case again if you have already been through another proceeding

For more information about the HRTO visit: www.hrto.ca

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor

Toronto, ON M7A 2A3

Or email: hrto.tdpo@ontario.ca

Call: 416.326.1312

Toll-free: 1.866.598.0322

TTY: 416.326.2027

TTY Toll-free: 1.866.607.1240

Fax 416.326.2199

Toll-free: 1.866.355.6099

For more information about the Human Rights Legal Support Centre:

www.hrlsc.on.ca

180 Dundas Street West,

8th Floor Toronto, ON M7A 0A1

Call: 416.597.4900

Toll Free: 1.866.625.5179

TTY: 416.597.4903

TTY Toll Free: 1.866.612.8627

Other Avenues

Although there are other avenues to seek redress from racial profiling incidents, such as suing in Small Claims Court or Superior Court, it is a lengthy process that is prohibitively expensive. There are only a handful of judgments in civil cases seeking a remedy for racial profiling—and recently the Ontario Court of Appeal has reviewed and rejected two cases (Falconer and Esmonde, 2008).

Courts are difficult to navigate without legal representation. There are many deadlines that must be met and forms that must be completed. There are also no public interest remedies, as opposed to going through the OIPRD or the Human Rights Tribunal.

If you still want to use Small Claims Court or Superior Court to sue the police service or officer(s) involved in the incident, you should enlist the services of a lawyer.

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