

Ontario Police Officer Guilty of Racial Profiling

A ten dollar bra has produced a lengthy judgment from the [Ontario Human Rights Commission](#) (OHRC) exploring the prevalence of racial profiling among police forces. Racial profiling is “any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, region or place of origin rather than on reasonable suspicion” [1].

1. [Ontario Human Rights Commission v. the Regional Municipality of Peel Services Board](#) [2], Richard Elkington, currently a police officer with the Greater Sudbury Police Service, was found to have discriminated against Jacqueline Nassiah while investigating an alleged theft at a Sears store in fall 2003.

Elkington began the investigation by asking the store clerk if Nassiah spoke English. The OHRC held this question to be discriminatory since it was based on the colour of the person’s skin [3]. In addition, Elkington made a racial slur during the investigation and threatened to take Nassiah “downtown” if she didn’t admit to stealing the garment. The slur was based on a derogatory stereotype that Nassiah was likely to be a “‘foreigner’ because she [was] black,” and came before a second fruitless body search of Nassiah’s person [4]. Overall, the OHRC held that Elkington’s investigation was prolonged, more intensive, and characterized by heightened suspicion and hostility because of Nassiah’s ethnicity.

The May 11, 2007 decision marks the first time the OHRC has ruled a person was wronged because of racial profiling [5]. It has also caused the Sudbury police force to conduct an internal investigation concerning Elkington’s employment [6].

The decision coincides with recent claims that the RCMP is using racial profiling in their search for drugs on the Trans-Canada highway [7]. Targeting cars based on the skin colour of the driver, without any safety concerns or objective evidence of illegality, is beyond the power of the police. It is also contrary to [section 8](#) of the Canadian Charter of Rights and Freedoms, the right to be free from unreasonable search and seizure.

The OHRC decision surveyed recent academic literature on the subject, which showed that racial profiling is a real and prevalent issue. The literature points to a systemic bias in many police forces. It also shows that victims of racial profiling often feel angry, hurt, embarrassed and traumatized; in the case of Ms. Nassiah, the OHRC awarded her \$20,000 in damages for the incident [8]. Peel police are currently seeking legal advice as to whether they should appeal the decision [9].

Further Reading

- Scot Wortley & Julian Tanner, “Data, Denials, and Confusion: The Racial Profiling Debate in Toronto” (2003) 45 Canadian Journal of Criminology and Criminal Justice.
- Scot Wortley & Julian Tanner, “Inflammatory Rhetoric? Baseless Accusations? A response to Gabor’s Critique of Racial Profiling Research in Canada” (2005) 47 Canadian Journal of Criminology and Criminal Justice.
- “Tribunal rules racial profiling in case against Peel Police” Ontario Human Rights Commission (17 May 2007), <http://www.ohrc.on.ca/en/resources/news/peelvictory20>

[1] Ontario Human Rights Commission, “Policy and Guidelines on Racism and Racial Discrimination” (9 June 2005),

online: <http://www.ohrc.on.ca/en/resources/Policies/RacismPolicy/pdf>

[2] [Ontario Human Rights Commission v. the Regional Municipality of Peel Services Board](#), 2007 HRTO 14 (CanLII) at 204 [OHRC].

[3] OHRC, *supra*, note 2 at 106.

[4] OHRC, *supra*, note 2 at 107.

[5] Bob Mitchell, “Police may fight rights ruling,” Toronto Star, (19 May 2007).

[6] Laura Stradiotto, “Sudbury cop caught in racial profiling case” The Sudbury Star, (19 May 2007)

<http://www.thesudburystar.com/webapp/sitepages/search/results.asp?contentid=535561&cname=Local%20News&type=search&search1=racial%20profiling>

[7] “Drug Evidence being tossed out after improper searches” CBC News, (30 April 2007)

<http://www.cbc.ca/canada/saskatchewan/story/2007/04/30/profiling.html>

[8] OHRC, *supra*, note 2 at 179.

[9] Mitchell, *supra*, note 5.