

Human Rights Decisions and Settlements on Grounds related to Race, Colour, Ancestry, Ethnic Origin, Creed, Place of Origin

Human Rights Legal Support Centre

April 2012



18/04/2012

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More race-based discrimination cases are moving through Ontario's new human rights system

- The Human Rights Tribunal (HRT) reports that race and/or colour was named as a ground of discrimination in 37.8% of the 3100 filed applications in 2010/11.
- This means approximately 1178 applications based on race and/or colour were filed in 2010/11
- The Human Rights Commission (OHRC) Annual Reports (2007/8; 2006/7) cite race and/or colour as a ground of discrimination in 36% of the 2400 complaints filed annually.
- This means approximately 864 complaints based on race and/or colour were filed each year at the Commission under the old system.

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More than 4 times more decisions upholding allegations of race or related grounds of discrimination



Before the reforms, the Commission won only 1 to 3 cases each year based on allegations of race, ethnic origin, ancestry or creed discrimination.

New System:

In its first 3 years, the new Tribunal found discrimination in at least **27 decisions** :

- 22 final decisions upholding a claim of race-related discrimination (most citing colour and ethnic origin as well)
- 4 final decision finding discrimination on the basis of ethnic origin and/or ancestry; and
- 1 final decision finding discrimination against a Muslim man based on creed.

Old System:

In the last 3 years before the transitional period (and transitional funding to reduce the backlog), the Commission was successful at the Tribunal in **6 decisions**:

- 2004/5 – 1 final decision finding race discrimination
- 2005/6 – 1 final decision finding race discrimination; 1 based on creed; 1 based on ancestry
- 2006/7 – 1 final decision finding race discrimination; 1 based on ethnic origin.
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Even in 2007/8, with increased resources at the Commission and Tribunal, there were only 3 decisions finding discrimination based on race-based grounds.

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Key Tribunal Decisions Finding Race, Ethnic Origin, Ancestry or Creed-based Discrimination



- Qureshi v G4S Security (creed - no accommodation of hours for Muslim employee) April 2009 **\$2,520 lost wages, \$5,000 for injury to dignity and training**
- Szyluk v UFCW (race, colour, ethnic origin, association) June 2009 **\$2,000 for insult to dignity training**
- Saadi v Audmax (race, ethnic origin, creed in employment) Oct 2009 **\$15,000 general damages and \$21,070 lost wages** (sent back on judicial review)
- Phipps v TPSB (postal worker – race in police services) Oct 2009 **\$10,000**
- Direk v Coffee Time (ethnic origin, race in services) Nov 2009 **\$15,000**

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Key Tribunal Decisions Finding Race, Ethnic Origin, Ancestry or Creed-based Discrimination



- Bertrand v Primary Response (race, reprisal in employment) Jan 2010 **\$4,870 lost wages and \$8,000 for insult to dignity**
- Adams v. Knoll (racial stereotyping in employment) Feb 2010 **\$15,000 for insult to dignity and \$10,000 lost wages**
- Ramoutar v. TCHC (race in employment) Feb 2010 **\$8,000 for insult to dignity, \$1,032.72 lost wages**
- Vasu v. TCHC (race, ethnic origin in housing) Feb 2010 **\$322 and training** (applicant insisted on that amount)
- Khan v. Lynx Trucking (race in employment) Feb 2010 **\$25,000 in for insult to dignity, new harassment policy for all future employees as well**

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Key Tribunal Decisions Finding Race, Ethnic Origin, Ancestry or Creed-based Discrimination



- Abbott v TPSB (newspaper deliverer, race in police services) June 2010 **\$5,000 for insult to dignity**
- Nemati v NY Women's Support Network (race, colour, ethnic origin in employment) Feb 2010 **\$10,000 insult to dignity and \$12,012 lost wages**
- Dhamrait (race, colour, ethnic origin in employment) May 2010
• **\$10,000 injury to dignity, \$18,500 lost wages and reinstatement**
- Bageya v Dyadem (racial stereotyping in employment) July 2010
Remedy: \$10,000 for insult to dignity; training required
- Armstrong v. Anna's Hair & Spa (race in services) Aug 2010
\$1,000 for insult to dignity

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Key Tribunal Decisions Finding Race, Ethnic Origin, Ancestry or Creed-based Discrimination



- Persaud v. Toronto District School Board (expulsion – race in educational services) Sept 2010 **\$5,000 for insult to dignity; TDSB required to report back to Commission on training for staff**
- Nemati v. Ontario College of Teachers (place of origin, ethnic origin in services; foreign accreditation) Sept 2010 **\$10,000 for insult to dignity**
- Chuvalo v. TPSB (race, sex in employment) October 2010 **\$20,000 general damages for experience of discrimination; TPSB required to deliver training**
- Pieters v. Peel Law Assoc. (race in services) Dec 2010 **\$2,000 each for insult to dignity**

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Key Tribunal Decisions Finding Race, Ethnic Origin, Ancestry or Creed-based Discrimination



- Couchie v. Ontario (ancestry in employment – heightened scrutiny of Aboriginal employee) April 2011 **\$20,000 general damages**
- Huang v. 1233065 Ontario Ltd. (creed in membership; Falun Gong) April 2011 **\$15,000 general damages**
- McLarry v. Universal Supply (race in employment; racial slur; failure to investigate; termination) May 2011 **\$5324 damages for lost wages**
- McKay v. TPSB (ancestry in police services, racial profiling of Aboriginal applicant) March 2011 **Remedy still to be ordered**
- A.W. v. Ottawa International Soccer Club (race in services; settlement breach) April 2011 **Required to retain external consultant with expertise in racial discrimination to deliver training program**

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Key Tribunal Decisions Finding Race, Ethnic Origin, Ancestry or Creed-based Discrimination



- **Tulul v. King Travel** (ethnic origin, ancestry, place of origin in services) March 2011 and August 2011 \$20,000 for injury to dignity; **Respondent required to take human rights training with 30 days**
- **Correia v. York Catholic School Board** (racial stereotyping, race discrimination in employment) Sept. and December 2011 \$10,000 for injury to dignity; **Board required to retain consultant with expertise in anti-racism and bias-free interviewing practices; training required for Director of Education, Trustees and senior management. Ongoing training for new senior staff. Refresher training every 2 years.**
- **Kartuzova v. HMA Pharmacy** (ethnic origin, marital/family status) February 2012; \$4000 for insult to dignity plus lost wages; **Employer to take human rights training**

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Decisions in HRLSC Cases based on Race, Ethnic Origin, Ancestry, Racial Stereotyping, Place of Origin and Citizenship



- **Parris v. Canada's Wonderland Company**, 2012 HRTO 249
- **Couchie v. Ontario (Municipal Affairs and Housing)**, 2011 HRTO 689
- **Toussaint v. Ontario (Health and Long-Term Care)**, 2011 HRTO 760 & 2010 HRTO 2102
- **Chuvalo v. Toronto Police Services Board**, 2010 HRTO 2037
- **Dhamrait v. JVI Canada**, 2010 HRTO 1085
- **Eldary v. Songbirds Montessori School Inc.**, 2011 HRTO 1026
- **Saadi v Audmax**, 2009 HRTO 1627 (overturned on review)
- **Khan v. Lynx Trucking**, 2010 HRTO 265
- **Tsehaye v. English District Lutheran Church – Missouri Synod** 2011 HRTO 629 & 2010 HRTO 1396

Pending race-related applications in HRLSC cases



HRLSC has many pending applications based on race, colour, ethnic origin, ancestry and creed including applications alleging:

- Systemic discrimination based on race and ethnic origin in employment
- Racial profiling by police services
- Discrimination based on race, colour and ethnic origin in health services
- Racial profiling in accessing public facilities and services
- Ancestry and racial profiling in government services

Settlements



For many different reasons, our clients often ask us to try to settle their discrimination claims without a hearing. If instructed to do so by our client, we will try to settle at any stage.

- Before an application is filed, we intervene early, especially when there is a chance to save a job or obtain an immediate result for the person experiencing discrimination.
- After filing and before mediation.
- At mediation.
- Before the hearing on the merits begins.
- During the hearing.

We always recommend a public interest remedy to be part of the settlement.

Example of HRLSC Early Intervention in Race-based Case



“Unavailable” apartment back on the market

- A superintendent was reluctant to allow an African-Canadian woman to apply for the apartment that she had just viewed. She telephoned back the next day and identified herself and was told that the unit was no longer available.
- After talking to the HRLSC, the woman got a friend with a British accent to telephone the building. She was told the unit was still available. The next day the white friend went to the building and confirmed the unit was available with the Superintendent. The African-Canadian woman then walked in. The Superintendent contacted the property manager, who said the unit was rented.
- The HRLSC contacted the landlord/owner. The HRLSC negotiated acceptance of the client's application.

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Example of HRLSC Early Intervention in Race-based Case



- Client was African-Canadian woman living in Toronto who was targeted by new neighbours in an apartment across the hall. The new neighbours vandalized her property and subjected her to hurtful racial slurs.
- Client had originally complained to the superintendent and was ignored. On one occasion, she had involved the police in a complaint about property damage.
- HRLSC contacted the landlord, provided detailed particulars about the harassment. The landlord accepted a detailed account of the harassment and commenced eviction proceedings against the harassers within two days of our intervention.

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Example of HRLSC Early Intervention in Ancestry Case



- Client was an Aboriginal woman living with her granddaughter in a housing complex. Neighbours in her building began to harass her and her granddaughter, including racial comments.
- Client complained to the property manager to no avail and eventually received an eviction notice because the landlord considered her a nuisance.
- The HRLSC intervened and was successful in having the eviction notice against our client withdrawn. The landlord took steps to stop the harassment and agreed to commence eviction proceedings against the harassing tenants if the harassment continued. The harassment ended.

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Settling Applications at Mediation



- HRLSC represents applicants at mediations before the Tribunal.
- HRLSC always recommends that applicants seek a “public interest” remedy that will prevent others from experiencing the same discrimination.
- Examples of public interest remedies include:
 - New anti-discrimination policies in the workplace
 - Anti-discrimination training for managers and other staff
 - Revised service policies (e.g. Allowing guide-dogs in restaurants)
 - Public adoption of anti-discrimination goals by a public facility or body such as a school board.
- Decision of whether to accept a settlement offer that does not include a public interest component is made by individual applicant, not HRLSC.

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Example of HRLSC Settlement at Mediation in Race-based Case



Over-monitoring case leads to compensation and new discrimination policies

- African-Canadian newcomer to Canada endured comments at her workplace about “where she was from”.
- Despite a positive performance evaluation from her previous supervisor, the employee was subjected to over-monitoring and scrutiny of her work. When she complained about the treatment, she was terminated.
- Mediation resulted in substantial financial compensation and a letter of reference indicating good performance. As well, the organization agreed to conduct an external “discrimination” audit of their workplace practices and policies.

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Example of HRLSC Settlement at Mediation in Race-based Case



One woman’s claim leads to changes nationwide

- HRLSC represented a African-Canadian woman originally from Jamaica. She worked at a national retail chain on a part time basis. Her manager made comments to her several times blaming shoplifting in the store on Jamaicans. When the client took issue with the manager’s comment, the manager became angry and refused to continue to deal with her directly. She was eventually terminated.
- At mediation, HRLSC negotiated financial compensation for the client and the employer committed to developing human rights training for staff, a new human rights policy and a complaints process for all of their stores nationwide.
- Negotiated Canada-wide human rights policy acknowledging the company’s obligations as both a service provider and as an employer.

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Example of HRLSC Settlement at Mediation: Discrimination in Services based on Race, Colour and Ethnic Origin



African-Canadian gentlemen harassed in convenience store. HRLSC negotiates human rights standards for store employees across Ontario

Applicant in his neighbourhood convenience store was followed by new employee. The Applicant went to cashier with items to buy. The new employee accused him of stealing. He turned out his pockets in front of the store camera to show he did not take anything.

The employee called him a n----- and called the police. He told the Applicant he would be going to jail and "you people are criminals to the police." When the police arrived, he was searched and put in a police car.

At mediation, HRLSC negotiated an agreement that the store would:

- Amend their internal employee agreement to reflect language in the Human Rights Code
- Educate staff to observe and uphold the Code in the treatment of customers, particularly recognizing the dignity and worth of everyone
- Require all new employees in any store in Ontario to sign the amended agreement
- Provide all new employees in Ontario shall be provided with a copy of the Ontario Human Rights Commission's (Commission's) Code card
- Circulate the new agreement to all existing employees in Ontario

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Example of HRLSC Settlement at Mediation: Discrimination based on Ethnic Origin & Place of Origin



Large manufacturing company agrees to train all staff on human rights

- A man who had immigrated to Canada from a Middle Eastern country five years earlier complained to employer about harassment from a fellow employee based on his country of origin.
- The harassment included statements such as that he had been learning "how to fly an airplane in order to hit the Parliament buildings" and that all people from his country are "idiots."
- The employer was a large organization and claimed to have investigated the matter but refused to share the results with the employee.
- The Centre negotiated a settlement for employee that included financial compensation and an agreement to conduct mandatory human rights training for all managers and employees within six months.

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Example of HRLSC Settlement at Mediation in Race-based Case



Large manufacturing company – racial harassment

- The client worked at a manufacturing company. Her supervisor regularly made racist comments about racialized employees, including calling them “monkeys”.
- The client is white and the mother of a 10-year-old girl who is racialized. The employee was targeted because of her daughter. This included comments that she shouldn’t have “mixed [her]self with those kind of people.”
- When she told management about his harassment, it conducted a cursory investigation and then ignored reports of racism within the company. Client went on sick leave and eventually quit.
- HRLSC negotiated damages to fully cover the client’s wage loss as well as substantial financial compensation for the discriminatory treatment. Company revised its process for investigations.

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Example of HRLSC Settlement at Mediation in Race-based Case



Retailer and Security Service compensate African-Canadian client for race-based harassment including ban from retail mall

- Client was elderly gentleman. During a late night shop, he was followed around a store by security. When he confronted the guard, he was forced to leave and was not allowed to make his purchases even though he attempted to make the purchase.
- When he returned a few days later to make a complaint to the manager, he was physically removed from the store and mall.
- Security enforced a ban on him returning to the mall.
- At mediation, client accepted an offer of financial compensation, as well as the removal of the ban and a letter of regret from the Security Service.

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Example of HRLSC Settlement at Mediation in Race-based Case



Black employee with “dreadlocks” was disciplined for non-compliance with company grooming standards.

- A Black woman filed an application based on race and gender because she experienced negative treatment in the workplace due to her hairstyle.
- The respondent agreed to:
 - Change their grooming policy to allow “dreadlocks”
 - An update to the company’s website to include information about the Human Rights Code
 - Human rights training for management staff.

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Race and/or Colour as a Ground of Discrimination in HRLSC Representation Files



- Race and/or colour comprised 15% of the total grounds of discrimination named in all HRLSC files where our lawyer represented an applicant before the Tribunal in 2011/12.
- By way of comparison, in 2006/7, race and/or colour comprised 16% of the total grounds named in all complaints where the Commission lawyers represented the public interest in a complaint referred to the Tribunal.

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Service provided in over 140 languages



- HRLSC has in-house language abilities in fifteen languages, and the assistance of community-based interpreter services across the province.
- We also have a contract with a service provider that gives us immediate access to telephone interpreting services in over 140 languages.
- Select materials in 9 languages other than English and French.