

Ontario Human Rights Commission Presentation to the Quebec Inquiry on Relations between Indigenous Peoples and Certain Public Services

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Ontario Human Rights Commission

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Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Overview

- Ontario Human Rights Commission
- Racism and Indigenous related work
- Systemic discrimination
- Data collection
- Human rights organizational change

Ontario Human Rights Commission

OHRC History

- First Human Rights Commission in Canada (1961)
- Ontario Human Rights Code (1962)
- Several revisions to Code since foundation

Ontario's current human rights system



Ontario Human Rights Commission
(OHRC)



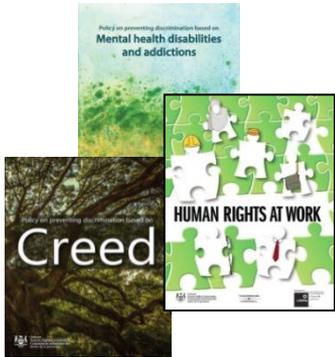
Human Rights Tribunal of Ontario
(HRTO)



Human Rights Legal Support Centre
(HRLSC)

Ontario Human Rights Commission (OHRC)

www.ohrc.on.ca



- Policy



- Public inquiries

- Legal cases
(initiates,
intervenes)



- Community outreach

- Monitoring



- Public education

Current Human Rights Code

SCOPE



Code prohibits
discrimination
and harassment in
5 social areas,
based on
17 protected grounds

5 protected **social areas**

Employment

Housing

Services, goods and facilities

Contracts

Membership in unions and professional associations

17 protected grounds

- Race
- Ancestry
- Place of origin
- Colour
- Ethnic origin
- Citizenship
- Creed
- Age
- Disability
- Sexual orientation
- Sex (including pregnancy)
- Gender identity
- Gender expression
- Family status
- Marital status
- Receiving public assistance (housing only)
- Record of offences (employment only)

Racism and Indigenous related OHRC activity

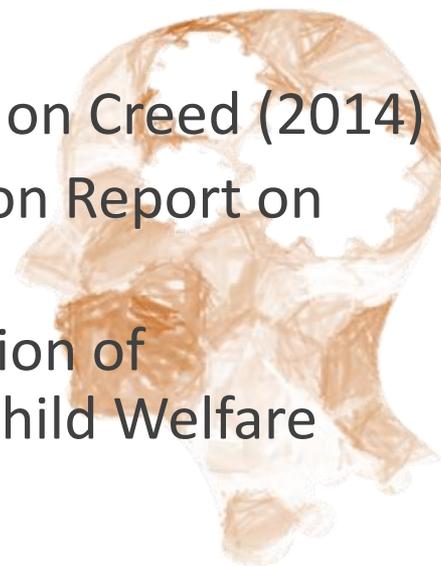
Litigation

- Mckinnon v. Ontario Ministry of Correctional Services (settled 2011)
 - Indigenous corrections worker exposed to racism
- OHRC v. Ontario Ministry of Education (settled 2007)
 - Safes Schools Act implementation amounts to race discrimination
- Police racial profiling cases
 - Nassiah v. Peel (Regional Municipality) Services Board, [2007]
 - Police questioning female black shopper
 - Phipps v. Toronto Police Services Board [2009]
 - Police questioning black mail deliverer
 - MacKay vs. Toronto Police Services Board (2011)
 - Police stopping an Aboriginal man with a bike
 - Maynard v. Toronto Police Services Board (2012)
 - Police stopping black man while driving
 - Aiken v. Ottawa Police Services Board (OHRC settled 2012)
 - Police stopping black man while driving



Key Policy Documents

- Paying the Price: The Human Cost of Racial Profiling (2003)
- Policy and Guidelines on Racism and Racial Discrimination (2005)
- Count me in: Collecting Human Rights Based-Data (2007)
- Human Rights and Policing: Creating and Sustaining Organizational Change (2011)
- Policy on Preventing Discrimination Based on Creed (2014)
- Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario (2017)
- Interrupted Childhoods: Over Representation of Indigenous and Black children in Ontario Child Welfare (2018)



Racial profiling: *Under Suspicion* report

- 2017 OHRC *Under suspicion: Research and consultation report on racial profiling in Ontario* found:
 - Racial profiling widespread
 - In multiple sectors: law enforcement, health care, education, courts and corrections
 - Main groups effected: Indigenous, Black, Muslim people
 - Rooted in systems that normalize discriminatory practices

Key Projects

- Key Projects
 - Human rights organizational change initiatives
 - Toronto Police Service (2007-2010)
 - Windsor Police Service (2011-2014)
 - Ministry of Community Safety and Correctional Services (2011-17)
 - Education Sector
 - Safe Schools Act human rights settlement implementation
 - Collaboration with Ministry of Education and school boards on human rights and equity

Indigenous related activity

- Indigenous human rights and reconciliation identified as one of four priority areas in 2016 Strategic Plan
- Centred on engagement and relationship development

Indigenous related activity

- Collaboration and partnerships with Indigenous organizations
 - Ontario Federation of Indigenous Friendship Centres
 - Chiefs of Ontario
 - Metis Nation of Ontario
- Mutual training, communication and program coordination

Indigenous related activity

- Listening Circles across Province
- Indigenous Peoples and Human Rights: A Dialogue (Feb. 2018)
- Timmins area engagement to foster reconciliation and address discrimination faced by Indigenous Peoples (2018 ...)

Systemic discrimination

Systemic racial discrimination

- A major barrier for Indigenous and racialized persons
- OHRC developed policy and program interpretations in context of race related discrimination
 - OHRC Policy and Guidelines on Racism and Racial Discrimination

Systemic discrimination in law

“Practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or group's right to the opportunities generally available because of attributed rather than actual characteristics.”

- Rosalie Silberman Abella,
The Report on the Commission on Equality in Employment, 1984

OHRC definition

- Systemic or institutional discrimination consists of patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for *Code*-identified persons
- Appear neutral on the surface but have an exclusionary impact

Key elements

“Systemic”

- Widespread
- Impactful
- Rooted in broader elements of system

“Institutional”

- Systemic discrimination usually refers to “institutional” discrimination
- Institution or organization is the main system of focus for *Code*-based human rights

Key elements (cont'd)

“Patterns of behaviour”

- culture, subcultures
- not-individual centred

“Policies or practices”

- organizational structures and processes
- facilities
- policies, procedures, practices

“Which create or perpetuate a position of relative disadvantage for *Code*-identified persons”

- Discrimination

Normalized

- Systemic discrimination is usually concealed in normalized elements of the system
- People are unable to detect systemic discrimination because it is usually seen as simply the way things are or should be

Societal forces

“Stereotypes,” “isms,” “obias” and “prejudice” are major societal forces contributing to “discrimination”

- **stereotypes** – generalizations not properly founded in fact
- **isms** – ideologies of superiority – e.g. racism
- **obias** – irrational fears – e.g. transphobia
- **prejudice** – deeply held negative perceptions
- Major factors in shaping “institutional” norms and practices that marginalize minority groups that amount potentially to systemic discrimination

Identifying systemic discrimination

***OHRC's Policy and guidelines on racism and racial discrimination* identifies 3 considerations for identifying and assessing systemic discrimination:**

1. Policies, practices and decision-making processes

2. Organizational culture

3. Numerical data

1. Policies, practices and decision-making processes

- Policies, practices, procedures, processes
- An organization's "neutral" rules and practices may pose systemic barriers
- Informal processes and practices often give rise to discriminatory barriers

2. Organizational culture

- Patterns of informal social behaviour, e.g. communication, interpersonal relationships, social networks
- Reflect deeply held and unconscious values and behavioural norms
- Tendency to undervalue strengths and contributions if seen not to “fit” with dominant norms

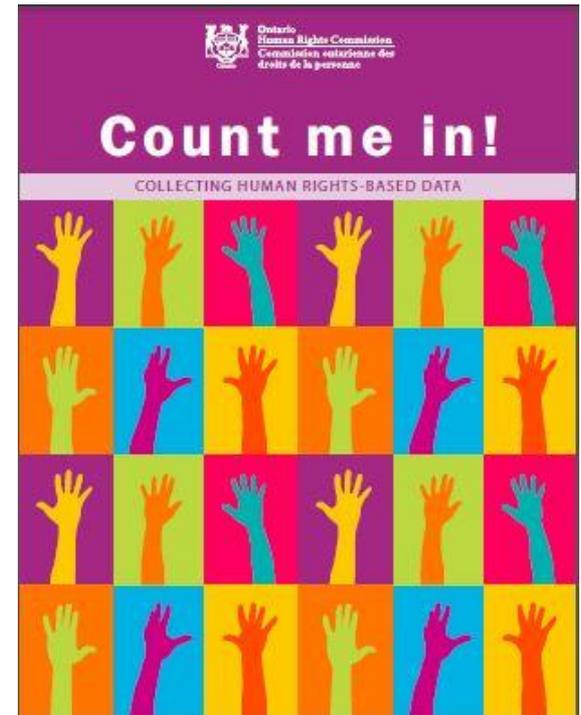
3. Numerical data

- Looking for disproportionate representation or outcomes
- Disproportionate representation or outcomes are an indicator – “strong circumstantial evidence of inequitable practices”
- But numbers usually not enough to confirm existence of discrimination

Data collection

OHRC guide

- *Count me in!: collecting human rights-based data*
- Practical, user-friendly guide:
 - helps organizations determine when data collection is useful and what is involved in doing it
 - shows how it can be done in a way that protects rights
 - offers case studies of six data collection efforts of public and private organizations including police, school board and hospital settings



It's okay to collect data

- Collecting data on *Code* grounds for a *Code*-consistent purpose *is* allowed and is supported by Canada's human rights legislative framework
- The OHRC has found that data collection can play a useful and often essential role in creating strong human rights and human resources strategies for organizations in the public, private and non-profit sectors

Organizations should collect data

- Organizations, in their roles as employers and service providers, should collect and analyze human rights related data on issues of racism and discrimination

OHRC *Policy and Guidelines on Racism and Racial Discrimination* affirm that data collection is an essential element to identifying and addressing systemic and subtle discrimination

- organizational culture
- policies, procedures, and practices
- numerical outcomes

Data collection can?

- Gathering, analyzing and reporting on human rights-related data collection can help you:
 - Identify trends or disparities in services and employment associated with *Code* ground identity that may suggest discrimination
 - Identify perceptions of discrimination
 - Support identification of initiatives to deal with problems
 - Monitor whether anti-racism and anti-discrimination initiatives are effective
 - Gain trust and secure the support of key decision-makers and stakeholders
 - Reduce exposure to possible legal action and human rights complaints

What does data collection include?

- Data collection includes gathering information using both:
 - Quantitative research methods such as surveys,
 - Qualitative research methods such as focus groups. Interviews, document review
- Data collection can be a highly technical, complex and expensive process, but for many organizations it doesn't need to be

Data collection issues?

- Framing the question
- Data sources
 - Existing -- modification
 - New
- Aggregation and disaggregation
- Benchmarking – comparators -- census
- Analysis techniques
 - Experts
 - Peers
 - stakeholders

Overcoming concerns about data collection

- Collecting sensitive information can raise concerns about privacy and confidentiality that must be planned for and addressed
- Organizations can overcome concerns by:
 - Clearly communicating the rationale, method and benefits of collecting data
 - Clarifying who has access to the information and why

Overcoming concerns (cont'd)

- Organizations can overcome concerns by:
 - Outlining how the information collected will be handled and stored confidentially
 - Surveying all employees or service users, rather than just staff or service users representing or perceived to represent targeted groups
 - Consulting with affected communities and other appropriate individuals/organizations

Data collection examples

- Composition of workforce
 - Eg. Ontario Public Service, Ottawa Police,
- Student demographics and various educational and disciplinary outcomes
 - Eg. Toronto District School Board
- Police traffic stops and other
 - Eg. Ottawa Police Traffic Stop Data Collection
- Health, social service, child welfare utilization and outcomes
 - Eg. Toronto Children's Aid Society

Ontario Legal Framework

- Ontario Human Rights Code
- Ontario Anti-Racism Act
 - Creation of Anti Racism Directorate
 - Data Standards for the Identification and Monitoring of Systemic Racism
 - Regulation requiring data collection for various public services phased in over next five years
 - Courts, corrections, school boards, children and youth services, police oversight

Human rights organizational change

What is it?

- The process of moving an organization to be more inclusive, and to fully respect and accommodate the dignity, worth, and rights of all people in both its employment and service practices
 - planned change process
 - aims at building capacity to address human rights obligations
 - way to develop institutional capacity to manage known human rights concerns and to anticipate and address unknown or new human rights concerns

OHRC Background

- History of OHRC experience
 - Toronto Police Service (2007-2010)
 - Windsor Police Partnership (2011-14)
 - MCSCS Human Rights Partnership (Corrections) (2011- ongoing)
 - Ontario Shores 2015-16
 - Manual on Human Rights Organizational Change for Policing (2011)

Effective organizational change

1. Comprehensive organizational change approach
2. Committed and involved leadership
3. Vision
4. Capable lead agents
5. Multiple-stakeholder structure
6. Communication and reporting
7. Planning for resistance
8. Choosing areas to focus change
9. Monitoring and evaluation

Change initiatives

- Initiatives aimed at central Core capacity:
 - Actions aimed at central organizational capacity for human rights understanding and response
- Initiatives aimed specific realms:
 - Actions aimed at specific realms or issues
 - employment, service delivery, training
- Remember interactions

Core elements

1. Human rights and accommodation policy(ies)
2. Review policies and procedures and consider human rights implications
3. Inclusive design reviews
4. Publicize and report on human rights commitment
5. Integrate human rights elements into complaint procedures

Specific initiatives

- Employment related
- Service related
- Training related

Employment initiatives

1. Staff census
2. Focused recruitment and promotion from under-represented groups
3. Exit surveys to include human rights focus
4. Affinity groups

Actions related to **service delivery**

1. Adapt performance management to include human rights
2. Collect service data
3. Adapt community consultation activity to include human rights focus
4. Develop language guide
5. Develop outreach tools for hard-to-reach communities
6. Attend or organize diversity and human rights-related events

Actions related to training

1. Develop generic human rights training programs
2. Develop training related to specific human rights issues
3. Integrate human rights into other training

Questions



OHRC resources

www.ohrc.on.ca

Available online:

- *Policy and guidelines on racism and racial discrimination*
- *Under suspicion: Research and consultation report on racial profiling in Ontario (2017)*
- *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare (2018)*
- *Count me in! Collecting human rights based data*
- *Human rights and policing: Creating and sustaining organizational change*
- eLearning module:
Call it Out: Racism, racial discrimination and human rights (2018)
- Brochures:
 - Racial harassment: know your rights
 - Racial discrimination
- Living Rights Project (lived experience videos)