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## **Hypothetical Standards: Human Rights Tribunal finds Police Liable for Racism**

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The Human Rights Tribunal of Ontario has ruled that the Police are liable for the subconscious, racist attitudes and beliefs of one of its Sergeants. The Tribunal's decision provides a worrying look into the standard of proof required for a finding of discrimination where racism or sexism is alleged.

### **The Incident**

Just after 3 a.m. one morning in Toronto, Police Sergeant Stephen Ruffino (Male, White) believed that he observed an empty car parked in a no-parking zone with its flashers on. He tried to run the license plate but could not see it clearly because there was no light over the plate. Ms. Abbott, the driver, returned to the car and pulled away. Sergeant Ruffino believed she was not wearing a seatbelt and observed her failing to signal a left turn. He pulled up alongside the car to give Ms. Abbott a warning. She pulled away, narrowly missing his squad car.

Sergeant Ruffino followed the car. She mounted a curb and exited, leaving the door ajar. She was delivering newspapers. Sergeant Ruffino could now see that she was a Black woman. Sergeant Ruffino asked if he could speak with her (though it is unclear how cordial he was in that request given the narrow miss with his squad car). To which she apparently replied, "I didn't do anything. I know my rights." Sergeant Ruffino repeated the request, and she replied, "I can hear you from here." She then began punching numbers into her cell phone to call her husband (she later explained that she was concerned that Sergeant Ruffino may have been an impostor).

Sergeant Ruffino then ordered Ms. Abbott to identify herself and to produce her driver's license, ownership and insurance. She gave her first name only and continued to talk to her husband. Sergeant Ruffino repeated his request twice more. Ms. Abbott again provided only her first name, she continued to talk on her cell phone and she apparently ignored his requests to produce her documents.

Sergeant Ruffino told Ms. Abbott she was under arrest, but failed to advise her of the right to counsel. Next Sergeant Ruffino grabbed her arm either at the elbow or wrist and positioned her against the squad car to facilitate her arrest and to apply handcuffs. There was some kind of struggle and they both fell to the ground. In the struggle, Ms. Abbott suffered an abrasion over her eye, cuts on her inside upper lip and bruising from the handcuffs. Sergeant Ruffino

suffered minor injuries as well. Sergeant Ruffino finally secured the handcuffs and placed Ms. Abbott in the back of the patrol car while he wrote up her tickets.

A female officer arrived on the scene. She searched Ms. Abbott and her car. A knife was found in the back seat. Ms. Abbott explained that she used it for cutting newspaper ties. Sergeant Ruffino offered to remove her handcuffs if she remained calm. According to Sergeant Ruffino she became hostile and continued to say she hadn't done anything wrong. He decided to leave the handcuffs on.

Ms. Abbott was charged with seven counts, including several driving infractions and failure to identify herself. She was acquitted on six counts (though it is unclear exactly why, or what happened to count 7). Ms. Abbott claimed that she remained scared and emotional days after the incident.

## **Findings at the Tribunal**

This debacle was before the Human Rights Tribunal of Ontario recently in the case of *Abbott v. Toronto Police Services Board, William Blair and Stephen Ruffino*.

The Tribunal found that Sergeant Ruffino's conduct was consistent with that of a person in authority imposing harsh consequences against a racialized person for failing to be docile and compliant. The primary reasons for this finding appear to be that the Tribunal believed Sergeant Ruffino failed to de-escalate the situation, and that he would have acted differently had the driver been White. The Tribunal also found that Sergeant Ruffino knew or ought to have known that she was confused and fearful.

In coming to this conclusion, the Vice Chair apparently used his imagination: "In this case, I have tried to hypothesize a White woman out delivering papers in the early morning having fairly routine traffic matters escalate into an arrest. I have been unable to do so." Apparently this tipped the scale in favour of liability. Notably, the Tribunal specifically found that there was no evidence that Sergeant Ruffino consciously subscribed to racist attitudes or belief systems.

The Tribunal also found that Ms. Abbott was at least partially responsible for the extent of her injuries, because of her struggle against arrest. Further, the Tribunal refused to have regard to her evidence that she sought medical attention, despite photographic evidence of her injuries, because she provided no medical records or witnesses.

As a result, the Tribunal awarded \$5,000 for violation of the *Human Rights Code* including for injury to dignity, feelings and self-respect.

## Mixed News for Employers

Although this is not an employment-related decision, the lessons are equally applicable.

It is clear that an employer or member of management could be held liable for racialized misconduct even if the Tribunal specifically were to find no *conscious* manifestations of racism or sexism. This is worrisome, because it suggests that employers may be held liable for actions or attitudes over which the perpetrator apparently has no conscious control or even knowledge.

Employers should take some solace from three aspects of the decision:

1. The same concerns about inherent, underlying racist and sexist attitudes among police cannot be imported to the employment realm so easily. Decisions dealing with such *bias* or *profiling* tend to involve police and other similar government actors.
2. Employees will be put to the strict proof regarding evidence of harm caused. The Tribunal in this case rejected anecdotal evidence from Ms. Abbott about her medical care because she failed to produce hard evidence that could have been produced, and the Tribunal reduced her damages because she was partly to blame for her physical injuries.
3. Employers have been bombarded by warnings that the size of monetary awards from the Tribunal would trend upward after the recent removal of the \$10,000 cap in the *Code* for damages for injury to dignity, feelings and self-respect. The relatively modest award in this case would suggest that the Tribunal remains conservative in its approach.

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