

CHV2O Unit 2: Rights and Responsibilities

Activity 7: Racial Profiling

Overview

In this Activity, students examine the issue of racial profiling.

Lesson

Racial Profiling

What is racial profiling? The Ontario Human Rights Commission, defines racial profiling as:

Any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.

To help you further develop your understanding of what racial profiling is, consider these examples provided by the Commission:

- a law enforcement official assumes someone is more likely to have committed a crime because he is African Canadian;
- school personnel treat a Latino child's behaviour as an infraction of its zero tolerance policy while the same action by another child might be seen as normal "kids' play";
- a private security guard follows a shopper because she believes the shopper is more likely to steal from the store;
- an employer wants a stricter security clearance for a Muslim employee after September 11th;
- a bar refuses to serve Aboriginal patrons because of an assumption that they will get drunk and rowdy;
- a criminal justice system official refuses bail to a Latin American person because of a belief that people from her country are violent; and
- a landlord asks a Chinese student to move out because she believes that the tenant will expose her to SARS (Severe Acute Respiratory Syndrome) even though the tenant has not been to any hospitals, facilities or countries associated with a high risk of SARS.

According to the Commission report, anyone may experience profiling. But in its study, the Commission found that racialized persons are primarily affected. They only heard from people who were identified as Aboriginal, African Canadian, Arab, Chinese and South East Asian, Latin American, South Asian and Muslim.

Examine the following two cases that deal with racial profiling:

Case Study #1 -- R. V. Brown (2002) 57 O.R. (3d) 615

Decovan Brown, a young black man, was driving a Ford Expedition on the Don Valley Parkway in Toronto. Before being stopped, he was traveling slightly in excess of the posted speed limit. Traffic was moderate. Speeding is common on this highway. He was dressed in an athletic suit and baseball cap. He was polite and courteous to the police and cooperated in providing breath samples. He was charged with impaired driving "over 80."

At trial, defense counsel brought an application to exclude the results of the Breathalyzer test, arguing that Mr. Brown had been arbitrarily stopped as a result of racial profiling. The supporting evidence included the fact that the police had begun a vehicle registration check prior to stopping the car. In the course of defense counsel's submissions, the judge described the allegations as "nasty" and "malicious" and commented on the lack of tension and hostility between the accused and the arresting officer. The trial judge dismissed the application without calling for submissions from the Crown. The accused was convicted. During sentencing, the trial judge referred to "distaste for the matters raised during trial" and suggested that an apology be given to the arresting officer. The accused appealed.

Case Study #4 -- R. V. Barnes [1999] O.J. No. 3296 (Ont. C.A.)

The accused, a black Jamaican male, was convicted of trafficking in cocaine, possession of cocaine, and possession of the proceeds of crime. The trial judge did not allow certain questions to be asked of prospective jurors which would have alerted them to the nationality of the accused, the nature of the crime, or whether they would be more likely to believe a police officer; however, the trial judge did allow jurors to be asked whether their ability to judge the evidence without bias or prejudice would be affected by the fact that the accused was black. The trial judge accepted that within Metropolitan Toronto there exists a widespread prejudice about people of West Indian origin, which suggests that they are more likely to commit crimes than people of other origins. However, the judge believed that the potential prejudice arising from this could be overcome by proper instructions to the jury and by jury dynamics.

Assignment

1. What do you think is meant by the term "racial profiling"?
2. "Judicial impartiality" means that the judge must be neutral during a trial. She or he is not allowed to favor one side or the other. Do you think that the actions of the judge in each of these cases were fair and impartial? Explain.
3. In a criminal case, if you feel that something occurred which was unfair, you may be allowed to appeal your case to a higher court to have another judge see if the trial was properly carried out. If you were the appeal judge, would you grant the appeal in Case Study #1? Explain.
4. In Case Study #4, did the judge go too far in allowing defense counsel to challenge jurors about their possible racial prejudice? Explain.