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Access Obscured

An analysis of human rights
applications against police
services in Ontario

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Message from the Black Legal Action Centre

Anti-Black racism in policing is a problem. This is a fact.

Study after study has documented that police are more likely to:

- stop and search Black people,
- charge Black people, and
- use force against, seriously injure, and kill Black people

At a press conference in June 2022, a reporter asked James Ramer, Interim Police Chief of the Toronto Police Service (TPS), why the TPS is not using disaggregated race-based data to discipline individual officers. In response, Ramer outlined the other ways that people who have experienced police misconduct can hold individual police officers accountable for their actions:

- file a complaint with the police service
- file a complaint with the Office of the Independent Police Review Director (OIPRD)
- file an application with the Human Rights Tribunal of Ontario
- challenge the conduct through the courts

But here's the problem.

When a person files a complaint with a police service, the police do not make the results of that complaint public.

In 2021, only 4% of the complaints that were filed with the OIPRD were substantiated. The others were unsubstantiated (37%), resolved through early resolution (31%), or withdrawn (31%).

In June 2022, the Toronto Star reported that, between 2011 and 2021, police officers across Canada engaged in serious breaches of the Charter of Rights and Freedoms more than 600 times. But police services are often not told when this happens, and consequences for individual officers are rare.

This report demonstrates that when people file applications against police services at the Human Rights Tribunal of Ontario, this, too, rarely results in findings that the police have engaged in wrongdoing or remedies for members of the public.

Put in this context, this report raises a number of important questions. How can anti-Black racism in policing be so rampant but findings against individual officers be so rare? Where can Black people go to be made whole for the loss of their right to be free of discrimination and harassment, or to be compensated for the mental anguish caused by being subjected to this kind of treatment? How can applicants who often cannot afford to pay for legal representation have a fair chance at accessing justice when they are almost always up against well-resourced and represented police services?

BLAC thanks Jonathan Carlson for undertaking this research and will work to change to how human rights applications against police services are addressed and resourced.



How can anti-Black racism in policing be so rampant but findings against individual officers be so rare?

Executive Summary

This report analyzes 269 applications filed with the Human Rights Tribunal of Ontario (“HRT0” or “the Tribunal”) against police services in the Province of Ontario which were closed by the HRT0 between 2017 and 2020.

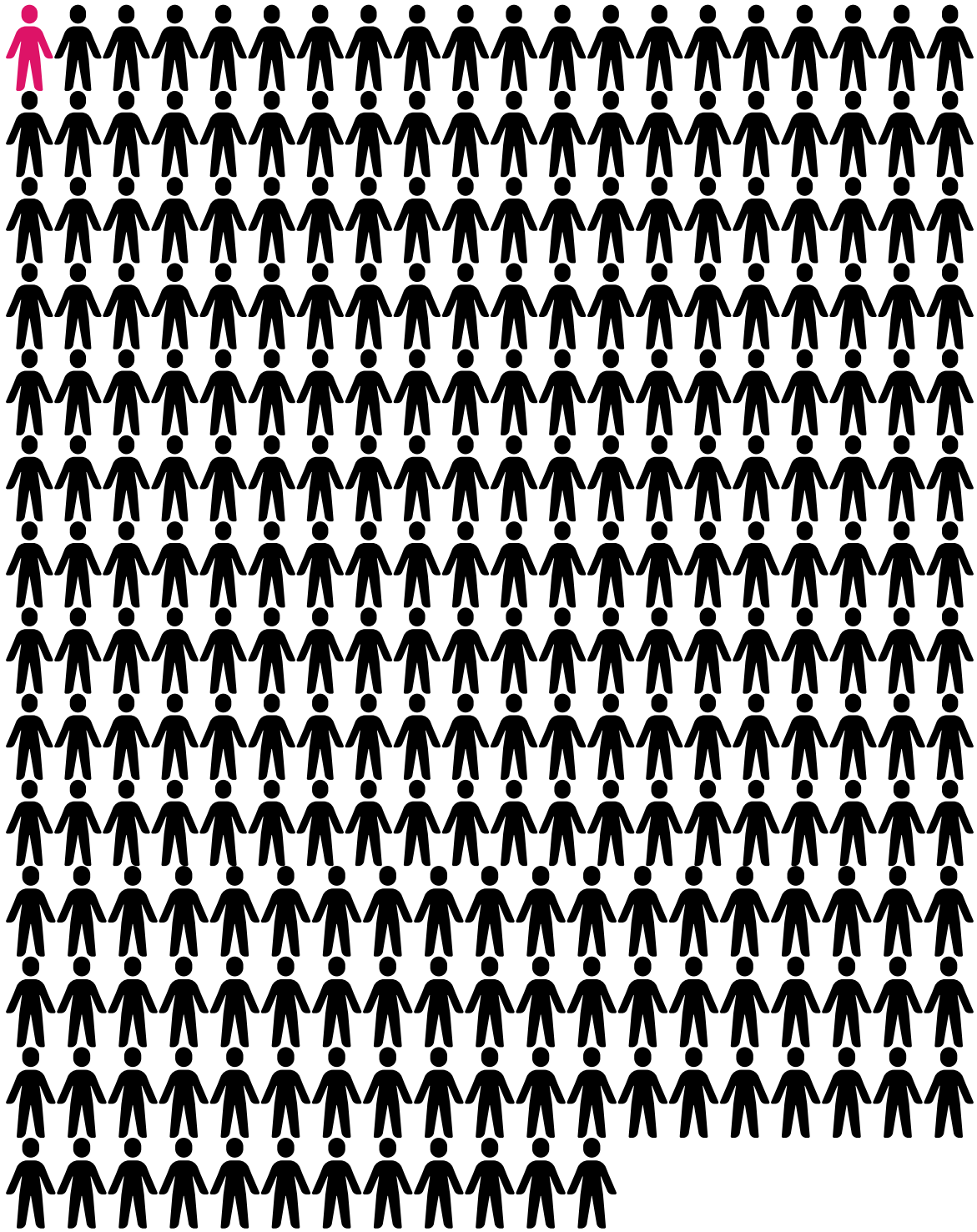
The applications analyzed allege discrimination, harassment and/or reprisal on an enumerated ground of discrimination set out in the Ontario Human Rights Code, R.S.O. 1990, c. H.19 (the “Code”) relating to the provision of police services.

The enumerated grounds of discrimination include: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability.

Based on an analysis of the outcomes of the applications, this report provides key statistical findings and assessments relating to the experiences of applicants' experiences at the Tribunal, and can inform conversations regarding access to justice.

Disclaimer

The views expressed in this report are based on the independent research of Jonathan Carlson. The opinions expressed in this report do not necessarily reflect the opinions of the Black Legal Action Centre (BLAC).



Introduction

The Human Rights Tribunal of Ontario (“HRTO” or “the Tribunal”) receives more than 4,000 applications every year. Recent statements made by [Tribunal Watch Ontario](#), and [research](#) conducted on the outcomes of HRTO applications, have noted an existential crisis in the Tribunal touching on problems of funding, institutional independence of its adjudicators, and delays in delivery of service.

This study analyzes 269 applications filed against police services with the HRTO and closed over a period of four (4) years (2017-2020). The study considers three identifiable markers for deepening an understanding of access to justice problems facing applicants who file human rights applications at the HRTO against police services: the outcomes of the applications, the representation of the parties, and the length of time that it took to resolve the applications.

Methodology

In July 2020, a disclosure request was submitted to the HRTO for all applications made to the Tribunal with the term "police" in the respondent field. In February 2021, the HRTO provided a spreadsheet containing information on 1,404 applications filed from July 16, 2008 to December 7, 2020, and closed before December 31, 2020. This period corresponds with the start of the "Direct Access" era. The spreadsheet included:

- the file numbers of each application;
- the date the application was opened;
- the status of the application (open/closed/reactivated);
- the name of the respondent;
- the disposition and closing date of the application;
- the outcome of mediation if mediation was attempted;
- the social area of the application; and
- the grounds of the application.

The total number of days the application took to be resolved was calculated.

The recorded name of the respondent was corrected to account for any differences in spelling. For example, "The Ottawa Police Service" and "Ottawa Police Service" were both categorized as "Ottawa".

For applications closed from January 1, 2017 until December 31, 2020, a review of the Canadian Legal Information Institute ([CanLII](#)) was conducted to determine if the decision was publicly available. If so, the decision was reviewed to determine the outcome of the application (i.e. whether it was dismissed, founded, abandoned, administratively closed by the Tribunal, settled), whether each party was represented, and whether the party was represented by a licensed member of the Law Society of Ontario (i.e., lawyer or paralegal) or by an unlicensed representative.

Narrowing the Dataset

For the purpose of expediency, the scope of inquiry was narrowed from 1,404 applications filed between July 16, 2008 and December 7, 2020, to the 269 applications closed between January 1, 2017 and December 31, 2020.

The dataset that was analyzed only includes applications that are in the area of goods, services, and facilities. It does not, for example, include applications in the areas of employment or unions and vocational associations and contracts. This social area of goods, services, and facilities was selected because it indicates that the application is about police activities and their interactions with the public at large, not an internal employment dispute.

Of the 269 applications reviewed, there was at least one public decision on CanLII with respect to 189 of the applications. The public decisions were reviewed to obtain additional information, such as whether the applicants and respondents were represented, whether they were represented by a licensed member of the Law Society or an unlicensed representative, and how the application was resolved. Additional information about representation was available with respect to 119 of the applications.

Outcomes

Out of 269 applications:

- 95 applications (32.34%) were dismissed by the Tribunal;
 - 27 applications were dismissed due to timeliness
 - 25 applications were dismissed after a summary hearing for having “no reasonable prospect of success”
 - 15 applications were dismissed due to a finding that it was “plain and obvious” that the subject matter of the application was not conduct prohibited by the *Code*
 - 11 applications were dismissed due to a finding by the Tribunal that the application amounted to an abuse of process
 - 8 applications were dismissed after a full hearing of the merits (i.e., the Tribunal determined that the application was “unfounded” and there was no breach of the *Code*)
 - 5 applications were dismissed due to issues of timeliness and for having “no reasonable prospect of success”
 - 3 applications were dismissed due to ongoing external proceedings
 - 1 application was dismissed jointly due to a finding that it was “plain and obvious” that the subject matter of the application was not conduct prohibited by the *Code*, and due to the timeliness of the application
- 68 applications (25.28%) were abandoned by the applicant;
- 52 applications (19.33%) were administratively closed by the Tribunal;
- 44 applications (16.36%) were resolved through a settlement between the parties;
- the result of 6 applications (2.23%) were not clear;
- 3 applications (1.12%) were withdrawn by the applicant; and
- 1 application (0.37%) resulted in a public decision favouring the applicant -- *JKB v. Peel (Police Services Board)*, 2020 HRTO 172 (“JKB”).

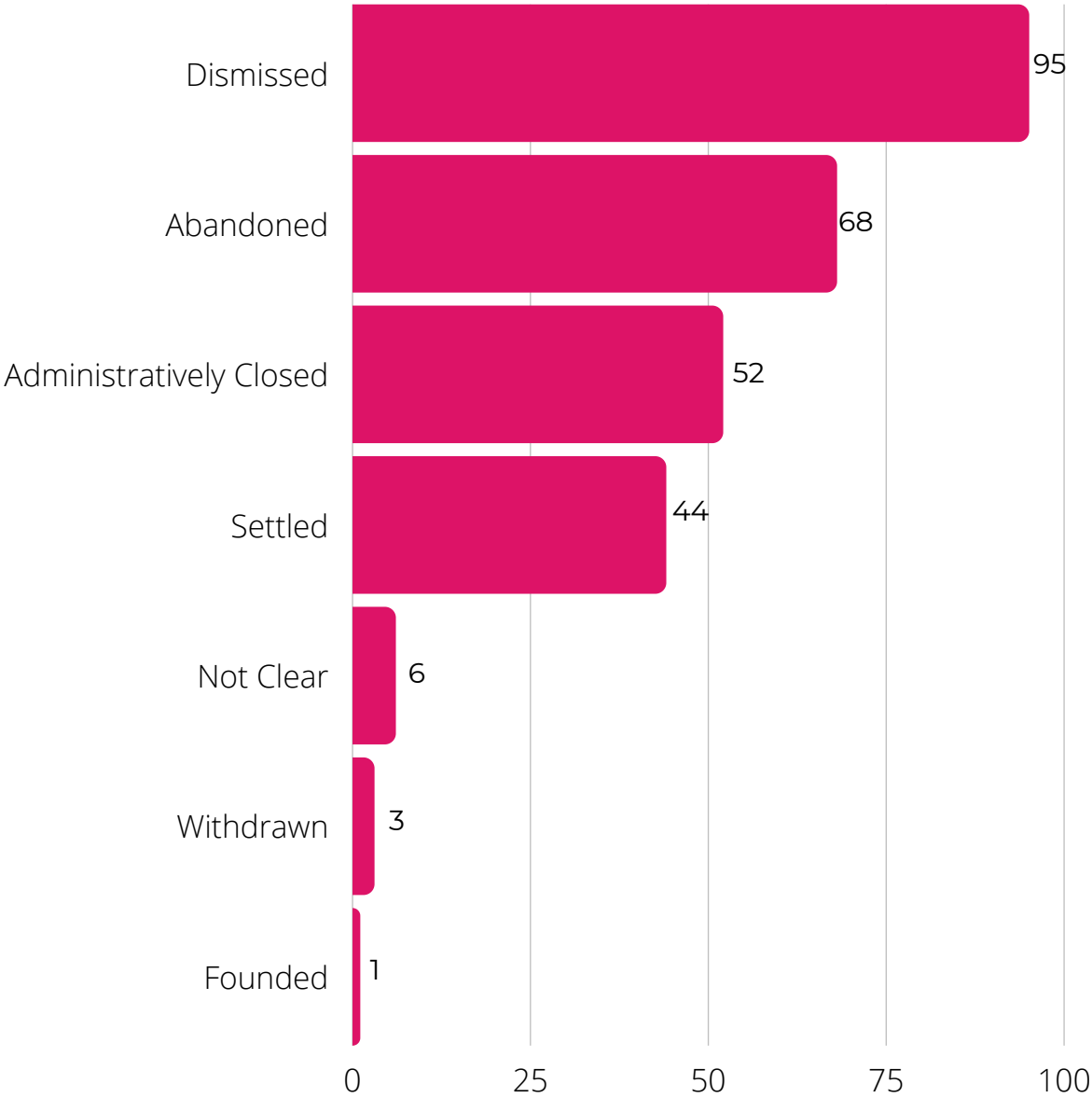
Taking a closer look at the applications that were settled, administratively closed by the Tribunal, and abandoned by the applicant, 44 applications (16.36%) were resolved through a settlement between the parties. The terms of settlement agreements are typically confidential. There is a strong public interest in the settlement of disputes and litigation, particularly with respect to public services like policing. Anonymized data on confidential settlements with police services, including systemic remedies and quantum of damages awards may serve to increase public accountability. Also, the majority of applicants are self-represented, whereas the majority of police respondents are represented by a licensed member of the Law Society of Ontario. This raises concerns about power imbalances and whether applicants are in fact being made whole through the terms of settlement agreements.

52 applications (19.33%) were administratively closed by the Tribunal. The Tribunal will close an application administratively if the application is not legible or is incomplete and if the applicant fails to provide additional information. When the Tribunal administratively closes an application, it does not issue a public decision. More public information about the nature of administrative closing letters may shed light on barriers faced by applicants at the initial stages of the process and may reflect a need for increased resources to legal service providers like the Human Rights Legal Support Centre (HRLSC).

68 applications (25.28%) were abandoned by the applicant. The high number of abandoned applications raises questions and concerns about the accessibility of the Tribunal. These questions include, is the threshold that applicants have to meet to file an application too high/burdensome? Do social and material circumstances (e.g. language barriers, disability) impact the ability of applicants to continue their applications? Can such factors be remedied within the current HRTO system?

Outcomes of human rights applications

Figure 1



Reasons

Of the 269 applications reviewed, additional information with respect to 189 applications was available online through CanLII. Of these 189 applications:

- 95 applications were dismissed by the Tribunal, with only 8 applications dismissed after a full hearing on the merits (i.e., the Tribunal determined that the application was “unfounded” and there was no breach of the *Code*);
- 67 applications were abandoned by the applicant;
- 20 applications were resolved through a settlement between the parties;
- 3 applications were withdrawn by the applicant
- the outcomes for 2 of the applications is not clear;
- 1 application was administratively closed by the Tribunal; and
- 1 application resulted in a public decision in favour of the applicant.

In addition, of the 189 applications, 165 were closed through a specific provision under the Tribunal’s Rules of Procedure. Figure 2 presents how frequently each rule was used to close an application.

Rule 13 permits the Tribunal to dismiss an application that it determines is outside of the jurisdiction of the Tribunal. The Tribunal dismissed 46 applications on this basis.

Rule 5 permits the Tribunal to dismiss an application where the application is not filed in compliance with the Rules, or where the applicant cannot be contacted by the Tribunal. The Tribunal dismissed 46 applications on this basis.

Rule 19A permits the Tribunal to hold a summary hearing on the question of whether an application should be dismissed in whole or in part on the basis that there is “no reasonable prospect” that the application or part of the application will succeed. The Tribunal dismissed 25 applications on this basis.

Where a party has been notified of a hearing and fails to attend, Rule 3.13 permits the Tribunal to, among other things, decide the Application based solely on the materials before it, or take any other action it considers appropriate. The Tribunal dismissed 21 applications on this basis.

Where the Tribunal finds that a person has persistently instituted vexatious proceedings or conducted a proceeding in a vexatious manner, Rule A8 permits the Tribunal dismiss the proceeding as an abuse of process. The Tribunal dismissed 11 applications on this basis.

The Tribunal dismissed 5 applications after holding a summary hearing under Rule 19A and after determining that the application was outside of its jurisdiction under Rule 13.1.

Rule 10.5 permits an applicant to withdraw an application with the permission of the Tribunal. 3 applications were withdrawn pursuant to this Rule.

Of the 165 applications that were closed, the Tribunal considered the merits of only 49. These include:

- the 8 applications in which the Tribunal determined that no breach of the *Code* had occurred;
- the 30 applications that the Tribunal dismissed pursuant to Rule 19A (no reasonable prospect of success); and
- the 11 applications that the Tribunal dismissed pursuant to Rule A8 (abuse of process).

The remaining majority of applications were dismissed largely on technical grounds such as timing and jurisdiction.

A thorough discussion of the summary hearing mechanism is outside the scope of this report. However, two general statements can be made about this mechanism.

First, it has value in adjudicative settings as a tool to prevent a frivolous matter from taking more time and resources than it ought to. It also prevents the Tribunal from being used in inappropriate, vexatious ways as it requires the applicant to present their application coherently.

Second, these hearings can be difficult for self-represented applicants as they must meet specific legal thresholds and levels of evidence. Applicants appear to face barriers when attempting to collect evidence and make timely, legally relevant submissions in summary hearings, or in response to a Notice of Intent to Dismiss through Rule 13 of the HRTO's Rules of Procedure, as applications are frequently dismissed in these scenarios. However, further research is required to determine if this is unique to the class of applicant involved in these decisions, or if it is a broader problem all classes of applicants face at the Tribunal.

Frequency of use of Rules of Procedure to dismiss applications

Figure 2

Rule(s) of Procedure used to Dismiss Application	Count of Applications Dismissed
Rule 13	46
Rule 5	46
Rule 19A: Summary Hearing	25
Rule 3.13: Non-Attendance at a Hearing	21
Rule A8: Abuse of Process	11
Hearing on the Merits	8
Rule 19A and Rule 13	5
Rule 10.5: Withdrawn	3

Representation

Of the 269 applications reviewed, there was at least one public decision on CanLII with respect to 189 of the applications. The public decisions were reviewed to obtain information on whether the applicants and respondents were self-represented, represented by a member of the Law Society of Ontario (“LSO” or “Law Society”), or represented by an unlicensed representative.

Of the 189 applications, the representation status of the applicant was available in 119 applications, and the representation status of the police respondents was available in 91 applications.

Of the 119 applications in which the representation status of the parties was available:

- applicants were self-represented in 97 out of 119 applications;
- applicants were represented by a member of the LSO in 18 out of 119 applications (i.e., a lawyer or paralegal);
- applicants were represented by an unlicensed representative in 4 out of 119 applications; and
- respondents were represented by a member of the LSO in 91 out of 91 applications.

There is a disparity in representation between parties. Figures 3A and 3B demonstrate the disparity in access to representation between applicants and respondents in these applications.

The Human Rights Legal Support Centre (HRLSC) is an independent agency, funded by the Government of Ontario, to provide free legal services to individuals who have experienced discrimination. The HRLSC's legal assistance policies state that the HRLSC considers the available resources for both applicants and respondents when determining who should receive funding for their applications. However, there remains a large proportion of these applicants who are unrepresented in hearings of applications against police services.

Rates of representation of applicants and respondents

Figure 3A: Applicants

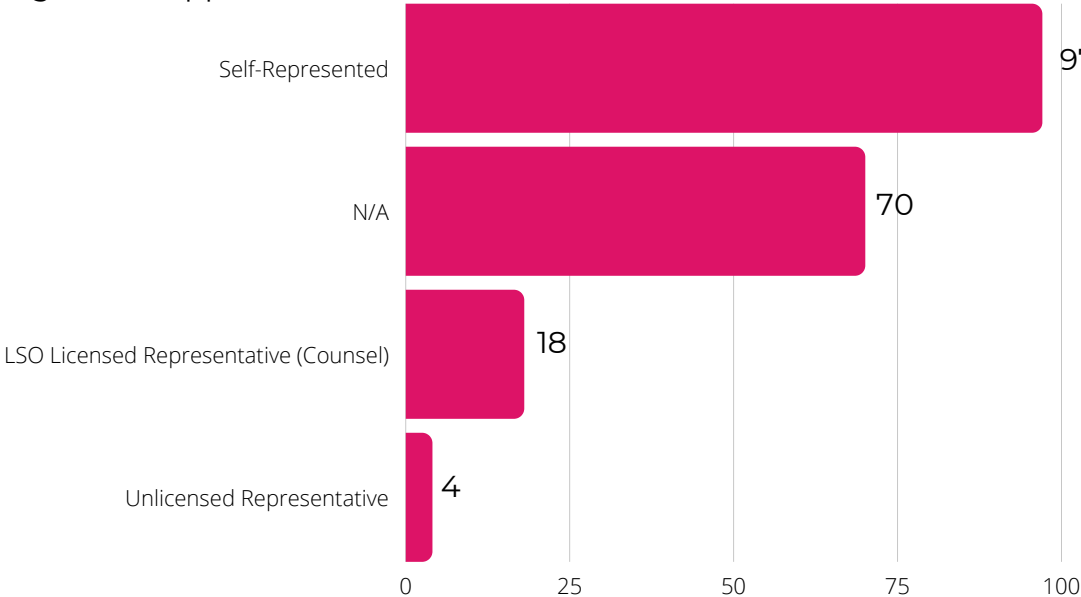
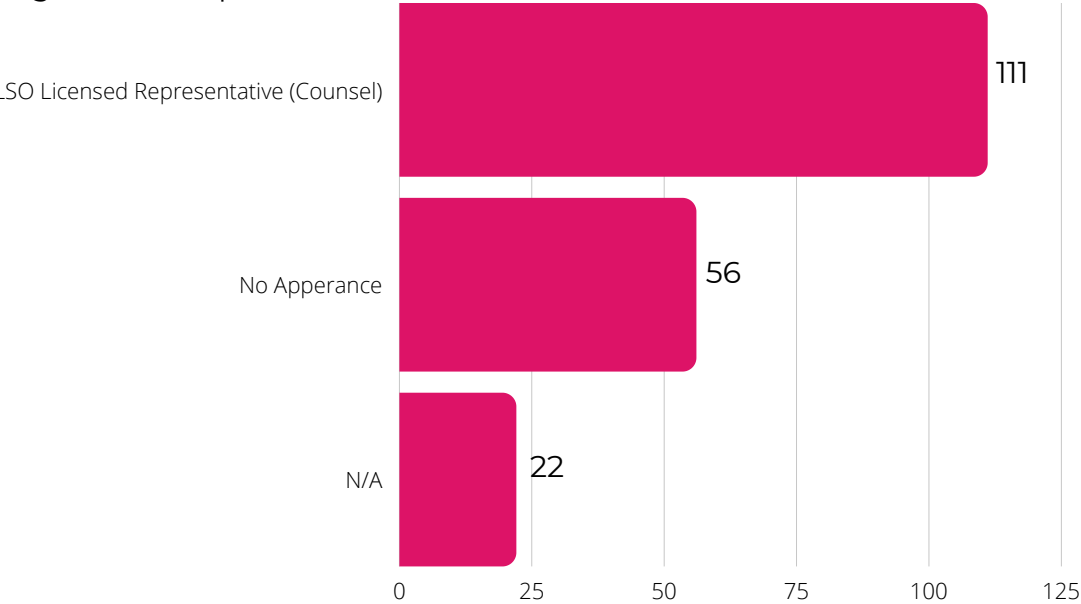


Figure 3B: Respondents



Outcomes by form or representation

As noted in Figure 3A, there were 70 applications in which there was no information available about the representation status of the applicant. These are labelled N/A in Figure 4. The N/A category is predominantly made up of abandoned applications.

Of the 97 applications in which applicants were self-represented:

- 81 applications (83.51%) were dismissed by the Tribunal;
- 9 applications (9.28%) were abandoned by the applicant;
- 5 applications (5.15%) were resolved through a settlement between the parties;
- 1 application (1.03%) was withdrawn by the applicant; and
- the result of 1 application was not clear.

Of the 81 applications that were dismissed by the Tribunal:

- the Tribunal dismissed 23 applications for having “no reasonable prospect of success”;
- the Tribunal dismissed 22 applications for being untimely;
- the Tribunal dismissed 15 applications for being outside the jurisdiction of the Tribunal;
- the Tribunal dismissed 10 applications as an abuse of process;
- the Tribunal dismissed 4 applications for having “no reasonable prospect of success” and due to timeliness;
- the Tribunal dismissed 4 after a full hearing of the merits;
- the Tribunal dismissed 2 applications due to ongoing external proceedings; and
- the Tribunal closed 1 administratively.

Of the 18 applications in which applicants were represented by a licensed member of the LSO:

- 1 application (5.56%) resulted in a public decision favouring the applicant
- 7 applications (38.89%) were resolved through a settlement between the parties
- 9 applications (50.00%) were dismissed by the Tribunal
- the result of 1 application was not clear

All 4 of the applications in which applicants were represented by an unlicensed representative were dismissed by the Tribunal.

Though a direct line of causation between representation and outcomes cannot be drawn, applicants that were represented by a licensed member of the LSO were more likely to have a positive outcome (e.g. to receive a decision by the Tribunal in favour of the applicant, or enter into a settlement agreement between the parties), and applicants that were self-represented were more likely to achieve negative outcomes (e.g. to abandon their application, or to have their application dismissed by the Tribunal). Specifically, applicants who were represented by a licensed member of the LSO were:

- less likely to have their applications dismissed by the Tribunal than self-represented applicants -- 50.00% vs. 83.51%;
- more likely to resolve their application through a settlement between the parties -- 38.89% vs. 5.15%; and
- more likely to resolve their application through a favourable public decision from the Tribunal -- 5.56% vs. 0.00%

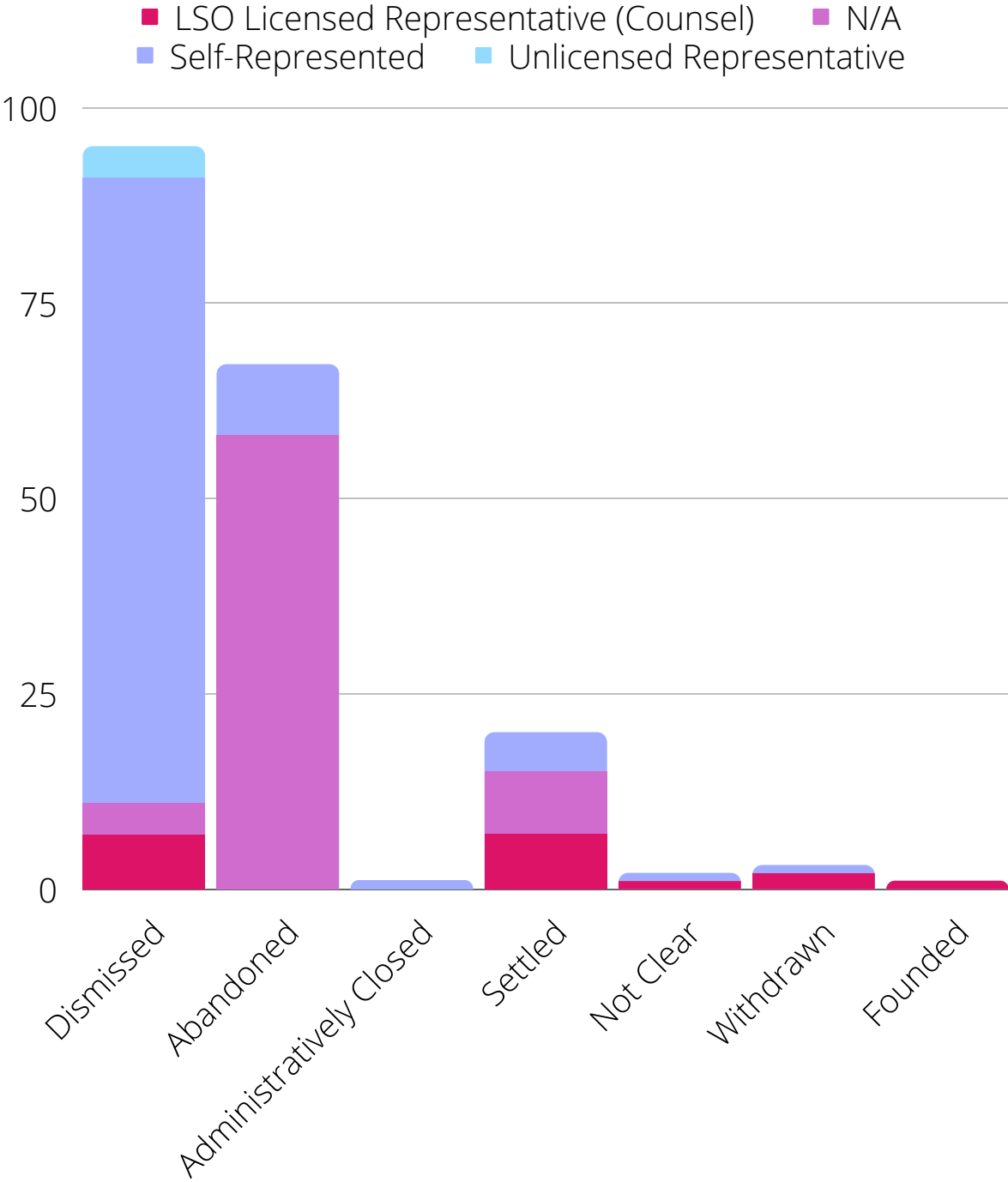
As noted above, only 1 application (0.37%) resulted in a public decision favouring the applicant -- *JKB v. Peel (Police Services Board)*, 2020 HRTO 172 (“JKB”).

The applicant in JKB was represented by lawyers from the Human Rights Legal Support Centre (“HRLSC”). Through the HRLSC, the applicant presented the evidence of two experts who provided reports and attended hearing dates. The experts participated in the proceeding at a reduced rate that ranged from \$2,500 to \$4,000 each. The hearing took place over seven (7) days. Assuming an hourly rate for legal services of \$109.13 (i.e., the lowest rate payable to lawyers funded through Legal Aid Ontario’s certificate program), the estimated cost for legal services for attendance at the hearing dates alone amounts to over \$6,000. The estimated total cost of legal services in the JKB case highlights the resources required to file a successful application at the Tribunal.

Further research is required to see if the inequity in legal representation is also found in other categories of HRTO applications.

Outcomes by form of representation

Figure 4



Timeliness

The Human Rights Tribunal of Ontario publishes annual reports that include information such as the average number of days to resolve applications in a fiscal year.

According to the annual reports, it took the Tribunal an average of 352 days to resolve applications in 2017/18, 391 days in 2018/19, and 419 days in 2019/20.

In contrast, the average number of days to resolve the applications that are the subject of this report was 377.6 days in 2017/18 and 602.2 days in 2018/19. In 2019/20, the average number of days it took the Tribunal to resolve applications against police services (388.2) was lower than the annual average reported by the HRTO (419.0). However, these annual totals do not adequately reflect the timelines that applicants will face when raising allegations against police services.

As per Figure 6, there is a substantial degree of variability in the length of time required to achieve different outcomes. The 269 applications analyzed in this report suggest that the length of time that it takes the Tribunal to resolve an application is related to the outcome of the application. Those applications that are administratively closed by the Tribunal take the least amount of time to resolve (227.8 days). Applications in which the Tribunal issues a decision in favour of the applicant take the longest to resolve (1,186.0 days). This finding suggests that the overall average is lowered by the large portion of applications that are dismissed early on in the process.

Figure 7 presents the distribution of these applications by the length of time applications take to resolve for each type of outcome.

This chart demonstrates that, when outliers are removed, the distribution of applications by the total days to resolution is quite large. The box and whisker chart (Figure 7) demonstrates that typically applications will take between 181 and 635 days, with extreme cases taking up to 1261 days and 40 days. Inconsistent timelines appear to be common for all outcomes included in Figure 7, with median values varying from 1,401.50 days for a Hearing on the merits, 584 days for a settlement and 280.50 days for abandoned applications.

Applications that are abandoned by the applicant or closed administratively by the Tribunal have the tightest distribution among resolution types, indicating a higher degree of consistency with these data points. The higher degree of variability associated with applications which receive greater consideration by the tribunal requires further research to be fully explained, as the data does not reflect why these delays occur, instead it simply demonstrates that they do occur.

Further research into the significance of the distribution of this data within different categories of the dataset may be revealing. For instance, does the distribution of applications widen or narrow based on the ground of discrimination? Are issues of delay aggravated depending on the type of discrimination and personal characteristics/ self-identified background of the applicant? What can be done to ensure applicants have a clearer picture of how long applications will take to resolve? Lastly, what can be done to make these timelines more consistent?

Average days to resolve applications

Figure 5: Annual Totals - Average Days to Resolution

Fiscal Year	HRTO Annual Reports	269 Applications
2017/18	352.00	377.63
2018/19	391.00	602.21
2019/20	419.00	388.21

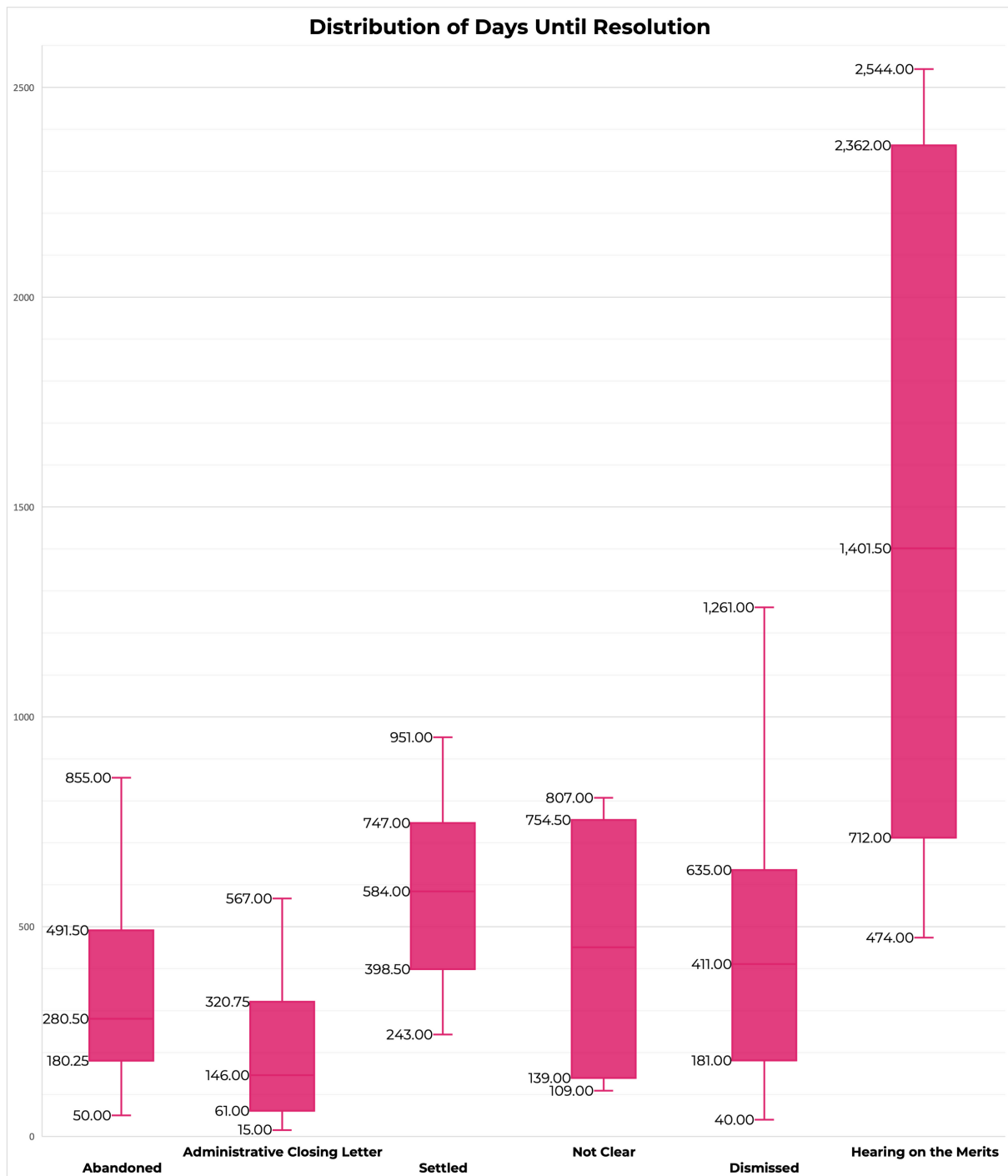
Figure 6: Days to Resolution by Outcome

Outcomes	Average Days to Resolution	Minimum	Maximum	Total Applications
Abandoned	432.01	50	3970	68
Settled	793.14	243	2853	44
Dismissed	485.54	40	1893	87
Founded	1186.00	1186	1186	1
Administrative Closing	227.75	15	840	52
Not Clear	450.50	109	807	6
Withdrawn	936.34	777	1238	3
Hearing on the Merits	1451.88	474	2544	8

For the purpose of Figure 6 - files which were dismissed after a hearing on the merits were removed from the Dismissed category and displayed separately in order to demonstrate the real length of time that a fully considered application takes.

Average days to resolve applications

Figure 7: Distribution of Total Days to Resolution



Conclusion

The applications considered in this study are applications filed by members of the public against Ontario-based police services charged with their protection. Broader research and inquiry which utilizes similar data points across various applications in other service areas and against different respondents will aid in identifying the challenges faced, more generally, by applicants at the HRTO.

The findings of this study present a grim outlook for those looking to be made whole by the Tribunal after an experience of police misconduct. Applicants frequently experience technical barriers to their allegations being heard, resourcing disparities, and long, inconsistent timelines. The report also suggests that the HRTO is not well suited to be a venue for public accountability when engaging with policing issues in the province. Even though the HRTO is meant to be an accessible, affordable and expedient venue for justice, it appears that those who are vulnerable to discriminatory police action are being shut out of the human rights system.

The findings of this report suggest that more legal supports are needed for applicants in the Tribunal process, particularly in the face of poor outcomes for self-represented applicants. Greater transparency is required in respect of the Tribunal's practices for reporting on the administration and outcomes of its applications, with particular attention to settlements reached between applicants and police services. Better reporting of crucial information on the practices of Tribunals in Ontario will aid future assessments of access to justice in the context of the tribunal system.

Glossary

Abandoned: If the Tribunal tries to contact the applicant, and the applicant does not respond, the Tribunal may dismiss the application as abandoned.

Abuse of Process: A determination by the Tribunal that the application should be dismissed pursuant to Rule A8.2 of the Rules of Procedure because the applicant is a vexatious litigant and the proceeding are an abuse of process.

Administrative Closing: The Tribunal will review applications to make sure that they are legible and complete. If not, the HRTO will write to the applicant to explain how the application is incomplete and asking for the missing information or document. If the applicant does not respond or fails to provide the missing information, the Tribunal will not process the application and will administratively close the file. When the Tribunal administratively closes a file, it is not accompanied by a public decision. Therefore, the rationale of these closings is unclear.

Dismissed as untimely: A determination by the Tribunal that the application should be dismissed pursuant to s. 34 (1) of the Code because the applicant failed to file the application within one year of the most recent instance of discrimination and the Tribunal is not satisfied that the delay was incurred in good faith.

Dismissed due to external proceedings: A determination by the Tribunal that the application should be dismissed pursuant to s. 34 (11) of the Code because the issues raised in the application have been or are being addressed by another adjudicative body.

Founded: The Tribunal may make a determination that the respondent has breached the Code; i.e., that the allegations made in the application are founded.

Not Clear: The outcome of the decision cannot be determined based on the information available at the time of writing.

Public Decision: Decisions that are available online through the Canadian Legal Information Institute (CanLII).

Settled: Applications can be resolved through a private, confidential settlement agreement between parties. Settlements are not accompanied by a corresponding public decision. As such, there is little public information available on them. Information relating to applications that are resolved through a settlement agreement only appear in the public record when the Tribunal makes a pre-merits decision before the application is resolved.

Withdrawn: A decision by the applicant to withdraw their application, typically on a with prejudice basis, meaning that the applicant cannot file another application with the Tribunal that raises the same issues.

About BLAC

The Black Legal Action Centre (BLAC) is a not-for-profit corporation set up under the laws of Ontario in 2017. BLAC provides free legal services to low and no income Black Ontarians who are facing a legal issue directly related to anti-Black racism.

Our mission is to educate, advocate, and litigate to combat and eradicate individual and systemic anti-Black racism in Ontario. BLAC delivers direct legal services, including information, advice, and representation. We also develop and deliver public legal education materials and resources, and engage in test case litigation and law reform initiatives.

Acknowledgements

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