



Post-G20 Action Guide

Know your rights, know your options, and take action to get justice and hold the police accountable for their wrongdoing during the Toronto G20 Summit

Vilko Zbogor and Jamie Baxter

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About the Law Union of Ontario

The Law Union of Ontario is an organization of progressive lawyers, law students, and legal workers committed to protection of human rights, anti-oppression, and positive social change. The Law Union of Ontario was founded in 1974.

The Law Union recognizes that the legal institutions in which its members work can be oppressive, and aims to develop collective strategies to deal with the problems we face.

In this context, the Law Union of Ontario has commissioned this legal education guide as a public service for those individuals whose rights were violated by the actions of some police officers during the shocking events during the G20 Summit in Toronto in June 2010.

Comments regarding this guide can be directed to the authors at g20guide@gmail.com.

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1. Why do I need this guide?

During the G20 Summit in Toronto on June 26 and 27, 2010, police trampled on the legal rights and civil liberties of thousands of protestors, legal observers, media personnel, bystanders, and other members of the public. If you or someone you know were one of them, this guide is for you.

If you want to know what you can do to hold the police accountable for their wrongful actions and to get compensation and justice for any wrong done to you, this guide is for you.

Empowerment through public legal education

It is up to you and other members of the public to take action to seek justice and hold the police accountable. The purpose of this guide is to help you understand what your legal rights are, and to help you make sense of your options for taking legal action.

How to use this guide

You have many different possible ways to take action and many things to consider in different situations. You do not need to read the whole guide to get the information you need. Read Chapter 2 for a quick overview. Then use the table of contents or index to locate the specific questions or topics that you are interested in. Come back to this guide or check out the links provided whenever you need more information.

If you need help understanding some legal terms and concepts in this guide, you can refer to the glossary in [Chapter 16](#) for some definitions.

In this guide you will find information about:

- Your legal rights
- What the **G20 class actions** might mean for you
- Your legal options and their pros and cons, including:
 - ▶ **Suing the police** in the Small Claims Court or in the Superior Court
 - ▶ Making a **police complaint**
 - ▶ Making a **human rights application** about discriminatory treatment by the police
- The kinds of claims and arguments that you can make to a court or tribunal in Ontario
- What you can do where a police officer committed a crime, including **private prosecution**
- Where you can get legal assistance or more information

Nothing in this guide should be taken as giving you legal advice. This guide contains general legal information only, and that information may not apply to your particular facts or circumstances. The law and court procedures can be complicated, and you should consult a lawyer if you want specific legal advice about your particular situation.

2. Overview

The Law Union of Ontario and many other public interest organizations encourage everyone who was affected by police wrongdoing during the G20 Summit in Toronto in June 2010 to take legal and political action to hold the police accountable, seek justice for the violations of your rights, and make systemic changes that will deter such massive wrongful police conduct in the future. This guide gives you information about the options that are available to you for taking legal action.

Tell us what you think of this guide. Send your comments to:
g20guide@gmail.com

What are my rights?

(see [Chapter 5](#))

The *Canadian Charter of Rights and Freedoms* guarantees everyone in Canada certain fundamental rights and freedoms. These include the freedom to express yourself and to peacefully protest, the right not to be assaulted or unreasonably searched by the police or other government authorities, the right not to be arbitrarily arrested or detained, and the right to equal treatment without discrimination.

The law in Canada also protects your right not to be harmed by other the wrongful acts or omissions, and allows you to sue the wrongdoer or take other legal actions. Some wrongful acts (or “torts”) that you can sue for include wrongful arrest, wrongful detention, assault and battery, malicious prosecution, and negligence.

What are my options for taking legal action?

(see [Chapter 6](#))

If the police violated your rights or wrongfully harmed you during the Toronto G20 summit, you may:

- **Sue the police in court:**
 - ▶ As a class member in a **G20 class action**, or
 - ▶ Personally in either Small Claims Court or the Superior Court
- **Make a police complaint** concerning any police officer's misconduct, or the policies of or services provided by a police service
- **Make a human rights application** if your right to equal treatment was denied

This is not a complete list. See [Chapter 3](#) concerning social, political and collective actions and [Chapter 15](#) concerning private prosecutions.

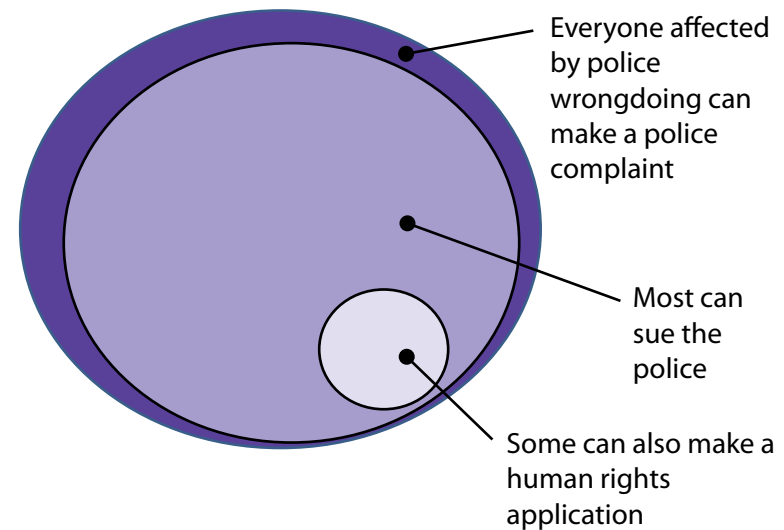
Note that strict deadlines apply for taking these steps.

Generally, you have only six months after an incident to make a police complaint, one year to make a human rights application, and two years to start a lawsuit.

You may not be able to pursue more than one process at the same time. For example, the Human Rights Tribunal might not deal with your human rights application about discrimination if you are making the same discrimination claim in a court lawsuit.

Also, if you have an issue that is adjudicated by a police tribunal as part of a police complaint process, a court might not permit you to pursue the same issue in a lawsuit.

Your options for taking legal action



What do the G20 class actions mean for me?

(See [Chapter 7](#))

In a class action lawsuit, one or a few “**representative plaintiff(s)**” sue on behalf of a whole group or class of people with similar claims (“class members”).

Two overlapping G20 class action lawsuits have been launched against the police and government authorities. Both class actions are being brought on behalf of everyone who was **surrounded, arrested and/or detained** by police during the G20 Summit. However, one class action excludes those who were **charged with a crime** whereas the other class action includes those people.

The Court still has to give official permission for the “representative plaintiff(s)” to represent a whole class of people in a class action. This is called “**certification.**”

The Court will sort out any overlap issues between the two class actions. The Court might certify only one of the class actions, or it might certify neither.

If and when a class action is certified, every person who fits within the definition of the class is automatically covered by and included in the class action. You do not need to do anything to be included. However, if you do not want to be included, you can opt out.

You may be covered by a class action if you were surrounded, arrested or detained by the police.

What can I do if I am a class member in a class action?

(See [Chapter 7](#))

- You can **contact the class action legal teams** and let them know who you are and where they can send information to you by e-mail.
- You can also **pursue a police complaint** (see [Chapter 10](#)).
- You can also **pursue a human rights application** if you experienced discrimination or unequal treatment (see [Chapter 11](#)).
- You can **start your own lawsuit in Small Claims Court or Superior Court** before the court certifies a class action (see [Chapter 9](#)). However, if you do, you may not be able to make a claim from any pool of funds that may be eventually paid as a result of the class action.

One circumstance in which you may wish to start your own lawsuit is where you have multiple claims, some of which are covered in a class action and some which are not, and where you want to have all of your claims dealt with together in one lawsuit.

- If a class action is certified, **you can opt out of the class action** if you want to pursue your own claim separately or if you do not want to be a class member for any other reason.
- You may consult a lawyer to help you make an informed decision that suits your particular circumstances, considering what is best for you in terms of your particular facts and the goals you want to achieve.

What can I do if I am not a class member in a class action?

- You can **start your own lawsuit in Small Claims Court or in the Superior Court** (see [Chapter 9](#))
- You can pursue a **police complaint** (see [Chapter 10](#))
- You can pursue a **human rights application** if you experienced discrimination or unequal treatment (unless you are raising those discrimination claims in a lawsuit instead) (see [Chapter 11](#))

What is my deadline for taking action?

There are different deadlines or “**limitation periods**” for starting a lawsuit, making a police complaint, and filing a human rights application. Some of these deadlines are very short so you may need to act quickly. Take careful note of these deadlines and make sure that you do not run out of time to take action.

Police complaints against municipal or OPP police officers:

You have up to six months from the date of an incident to make a police complaint in relation to that incident. In most cases arising from policing during the G20 summit in Toronto, you will need to start your police complaint by December 27, 2010.

Human rights applications: You have up to one year to make a human rights application. In most cases, you will need to start a human rights application that relates to something that happened during the G20 summit by June 27, 2011.

Lawsuits: You generally have up to two years to start a lawsuit. In most cases, you will need to start a lawsuit for something that happened during the G20 summit in Small Claims Court or Superior Court by June 25 or 26, 2012. If you have claims that are covered by a class action, you have some extra time for starting a lawsuit for those claims only (see [Chapter 7](#)).

In any case, it is not a good idea to wait until the deadline to start your claim or your complaint. It is usually best to start as soon as possible.

What are my options for suing the police?

(See [Chapter 9](#))

If you will be claiming compensation or “damages” of \$25,000 or less, or seeking recovery of property worth \$25,000 or less, then you would start your lawsuit in the **Small Claims Court**. Most potential G20 claimants would be entitled to less than that \$25,000 threshold. The procedures in Small Claims Court are simplified and you do not need a lawyer or a paralegal to represent you, although that is recommended. Some court fees apply (including a \$75 fee when you start your claim and a \$100 fee to get a trial date), but these fees may be waived for low-income claimants.

If you have a legitimate claim to damages or recovery or property worth more than \$25,000, or if you want to seek non-monetary relief (such as the Court’s interpretation of the validity of a law or a declaration that your *Charter* rights were breached), you may start a lawsuit in the **Superior Court**. If you think you might wish to make this kind of claim, you should consult a lawyer. Superior Court procedures can be complex, difficult and expensive and it is highly recommended that you have a lawyer to represent you in the Superior Court.

Can I make a police complaint?

(See [Chapter 10](#))

If you were affected by police wrongdoing, witnessed police conduct that offended you, or have a concern about a policy of a police force, you can make a police complaint. Police complaints about Toronto police officers, officers from another municipal police force in Ontario, and Ontario Provincial Police Officers go to the Office of the Independent Police Review Director (OIPRD). Police complaints about RCMP officers and some non-RCMP officers from outside Ontario go to the Commission for Public Complaints Against the RCMP (CPC).

Anyone who was affected by or offended by the conduct of a police officer during the G20 summit can make a police complaint.

There is no fee for making a police complaint, and the process for making a complaint is straightforward.

A police complaint is a different kind of process than a lawsuit. You cannot get financial compensation from filing a police complaint. However, a police complaint could lead to police officers being held personally accountable and disciplined for their misconduct. Some police complaints can also look at systemic issues.

Can I make a human rights application?

(See [Chapter 11](#))

The Ontario *Human Rights Code* deals with discrimination or denial of equal treatment based on your race/colour/ancestry/ethnic origin, citizenship, gender, sexual orientation, physical or mental ability, religion, marital status or age. Discrimination includes failure to properly accommodate differences based on these characteristics.

If you were **discriminated against** or **denied equal treatment or accommodation**, then you can file a human rights application.

If you were discriminated against, or denied equal treatment or proper accommodation, then you can file a human rights application with the Human Rights Tribunal of Ontario (HRTO).

A successful application could result in your getting some compensation for being discriminated against. It may also result in some systemic changes that might promote police respect for human rights and improve human rights protections.

Generally, HRTO will not deal with your application if you started a lawsuit in the courts that deals with violations of your rights under the *Human Rights Code*, so if you have a *Human Rights Code* claim, you may have to choose between starting a lawsuit and making a human rights application.

The G20 class actions do not deal with *Human Rights Code* violations and therefore should not affect your right to make a human rights application.

What is the point of starting a lawsuit, a police complaint, or a human rights application?

(See [Chapter 12](#))

It depends on what you want to achieve.

A lawsuit or a human rights application can potentially get you some financial compensation for the wrongs that you suffered.

A police complaint could result in police officers being held personally accountable and punished for their wrongful conduct.

The human rights application process and the police complaint process can result in orders or directions for systemic changes. Lawsuits can sometimes also persuade the police and governments to make systemic changes that could improve protection of people's civil and political rights in the future.

While one claim in Small Claims Court or one police complaint might not have a great impact on its own, if there are dozens or hundreds of court claims along with a class action, police complaints, and human rights applications – each of which will require a response from the police – the collective impact could be significant.

There are no guarantees that any process you choose will achieve the results you want. The only guarantee is that if you do nothing, you will achieve nothing.

What else can I do if a police officer committed a crime?

(See [Chapter 15](#))

If you have reasonable grounds to believe that a police officer committed a crime (such as an assault) or otherwise broke the law, there are other legal steps you can take.

You can **report the offence** to the police (but that means you might be reporting it to the same police force that employs the offender). Then the police have to decide whether to investigate and lay charges or not (and they may be hesitant to investigate or lay charges against one of their own). In cases where police cause serious death or injury to a civilian, a special agency called the **Special Investigations Unit (SIU)** must be called in to investigate.

If the police refuse to investigate or lay charges, you can report the offense to a court official called a “justice of the peace” (by “laying an information”), and prosecute the offending police officer by yourself. This process is called a “**private prosecution**”. This can be a complicated process, so you should consult a lawyer if you want to consider this step.

If you were the victim of an assault or other violent crime, you can apply to the **Criminal Injuries Compensation Board (CICB)** to recover compensation of up to \$25,000 for injuries that you suffered as a result of that crime (but you can achieve the same result in Small Claims Court - see [Chapter 9](#)).

3. What can I do besides start a lawsuit, police complaint or human rights application?

Suing the police, making police complaints, and filing human rights applications are just some of the many tools available to you to take action concerning police and government conduct during the G20 summit.

There are many other political, legal and social actions that you can take in a democratic and civil society – not just to address past wrongs but also to contribute to making systemic changes for the future. Many public interest organizations are already taking some important steps, and you may be able to support their activities.

One strategic imperative identified by some public interest organizations in the aftermath of the G20 Summit is to deter massive police and state violations of Charter rights and civil liberties in the future. Lawsuits, police complaints and human rights applications are important, and probably essential, parts of such a strategy – but many other concerted and persistent efforts by the public will also be needed to achieve this objective.

You may, for example:

- Share your stories with public interest organizations who are gathering information, such as:
 - ▶ **Canadian Civil Liberties Association** (<http://ccla.org/2010/06/29/resources-for-g20-related-complaints/>)
 - ▶ **Justice for Children and Youth** (www.jfcy.org)

- Demand, and help campaign for, a full public inquiry involving both federal and provincial governments
- Write to your federal, provincial and municipal government representatives
- Write letters to the editors of newspapers and magazines
- Help public interest organizations with fundraising, public education, and advocacy initiatives
- Help lobby for changes to the law that might prevent mass arrests and violations of *Charter* rights in future circumstances
- Participate in the reviews or inquiries that have been called by the Independent Police Review Director, the Toronto Police Services Board and the Ombudsman of Ontario, to the extent that those processes may allow public involvement
- Report abuses of civil and political rights to United Nations human rights authorities, either individually or, preferably, as part of a group or organization
- Bring criminal charges against, and privately prosecute, police officers who engaged in criminal conduct (see [Chapter 15](#))

4. What should I do right away?

Here is a “to-do list” for anyone who may have grounds for a lawsuit, police complaint, or human rights application, or who witnessed an incident that may be the subject of a legal process, and who has not yet consulted with a lawyer about it:

(1) Document the incident(s)

Write down everything that you remember about what happened while it is still fresh in your mind. Do this in chronological order. Be as precise as possible about dates, times, places, people, and events. Include:

- Any identifying information about the police officer(s) involved, such as his or her name, badge number (or the absence of any visible badge number), helmet number, police force, or description of uniform
- Names and contact information for any witnesses you know of
- The impact the events had on you, for example, if you were injured or traumatized

Write the date that you wrote the document on the top. Also, on the top of each page write “*Privileged & Confidential – for litigation*”. This may help to keep the information confidential.

Make at least one hard copy and keep it in a safe and secure place.

Things to do:

- Document the incident(s)
- Get treatment for your injuries, and document them
- Keep existing records safe
- Document lost or damaged property
- Keep receipts
- Keep track of lost income
- Consider making a “freedom of Information request”
- Be cautious about what you write or say publicly

This process could trigger traumatic memories, so you may want to have the support of friends or the psycho-social support team (peertopeersupportforactivists@gmail.com).

(2) Get treatment for your injuries, and document them

If you were physically injured or traumatized by what happened to you, or feel unsure about the effects of any trauma you might have experienced:

- See a doctor or counsellor right away if you haven’t yet
- Take photographs or videos of any visible injuries
- Write down a list and description of the physical and mental injuries you sustained

(3) Keep existing records safe

Keep any videos, photographs, audio recordings, or notes concerning the events in a safe and secure place. Make a note of the date, time, and location of any recordings now before you forget.

(4) Document lost or damaged property

Write down a detailed list of all of your property that was lost or damaged and take photographs of any damaged property.

(5) Keep receipts

Keep a record of all out-of-pocket costs, no matter how trivial (e.g., taxi fare, TTC fare, or vehicle mileage for getting home from the detention centre, getting to or from court, or getting to or from a doctor's or lawyer's office; pain medication or wound dressings; uninsured therapy costs; lawyers' fees, etc.). Keep all receipts together in a safe and secure place.

(6) Keep track of lost income

Prepare and keep a record of any employment or other income you have lost as a result of being wrongly detained or as a result of your physical or mental injuries arising from the incident.

(7) Consider making a "Freedom of Information" request

You might be able to get some documents or recordings from the police by making an application under "Freedom of Information" laws enacted by the Ontario and Canadian governments. There could be good strategic reasons for doing this that could help you in your lawsuit, police complaint, or human rights application. Public disclosure of such information could also help bring about greater public scrutiny of wrongful police actions.

You can get information about making an access request with the Toronto Police Service, and the form for making a request, at www.torontopolice.on.ca/aps/. For the RCMP, the information and form can be found at www.rcmp-grc.gc.ca/atip-aiprp/index-eng.htm. In either case, there is a \$5.00 application fee, and you will be required to pay some further fees to actually get copies of any relevant documents or recordings.

The **Information and Privacy Commissioner of Ontario** (www.ipc.on.ca) and the **Office of the Information Commissioner of Canada** (www.infocom.gc.ca/eng/) can provide further information about how to access information held by government organizations.

(8) Be cautious if you want to write or speak about your experiences

You might want to write or speak publicly about your experiences, but it is important to be cautious and truthful if you do. This is because anything you say in public can be used in court later. For example, lawyers for the other side may check to see if you have been consistent in all your descriptions and try to use any inconsistencies against you. You may consult with a lawyer about the extent of the information you propose to share publicly to ensure that your case is not jeopardized.

Also remember that what you write and say publicly can potentially affect other peoples' legal claims and criminal prosecutions, so keep that in mind when describing events where other people were involved as well.

5. What are my rights?

Constitutional rights

In Canada, everyone has certain fundamental rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*, which is part of the Constitution of Canada – the highest law of Canada.

Your *Charter* rights and freedoms (and the sections of the *Charter* in which they are contained) include:

- Freedom of expression - section 2(b)
- Freedom of peaceful assembly - section 2(c)
- Freedom of association - section 2(d)
- Right to liberty and security of the person - section 7
- Right to be secure against unreasonable search and seizure - section 8
- Right not be to arbitrarily detained or imprisoned - section 9
- Right to know the reasons for your arrest or detention - section 10(a)
- Right to speak with and hire a lawyer if you are arrested or detained section 10(b)
- Right to equal treatment without discrimination section 15

Your *Charter* rights and freedoms are not absolute. They are subject to “reasonable limits” and must be balanced with other considerations. However, the government must demonstrate that any limits it wishes to place on your *Charter* rights and freedoms are “justified in a free and democratic society.”

Some of these *Charter* rights are described in [Chapter 13](#).

You can access a copy of the *Canadian Charter of Rights and Freedoms* at: <http://laws.justice.gc.ca/en/charter>

For more information about your rights under the Charter see www.cba.org/bc/public_media/rights/200.aspx

Human rights / Civil and political rights

Some of your *Charter* rights are based upon fundamental human rights recognized by the global community and described in certain international human rights treaties. These are discussed briefly at the end of [Chapter 11](#).

Statutory rights

Some laws (or “statutes”) enacted by provincial and federal governments provide people with certain rights. For example:

- The Ontario *Human Rights Code* states that everyone is entitled to be treated equally without discrimination.
- The *Police Services Act* in Ontario gives you the right to make an official complaint concerning police conduct or about the policies and services of a police force, including when the police have failed to safeguard your *Charter* rights or to ensure your safety and security.
- Freedom of Information statutes entitle you to access documents in the possession of the police and other government authorities, subject to certain exceptions.

You can access the laws of Ontario at:

www.e-laws.gov.on.ca.

You can access the federal laws of Canada at:

<http://laws.justice.gc.ca/en/>.

You can access both provincial and federal laws at: www.canlii.ca.

Common law rights

You have other rights that are not necessarily written down in any law enacted by the government. These include “common law” rights that have been established by the courts.

For example, you have an inherent right not to be harmed by the wrongful acts (or “torts”) of someone else, and if you are harmed by someone’s wrongful actions or negligence, you can sue the wrongdoer in court.

“Torts” or wrongful acts that may be applicable to many court claims against the police in relation to the G20 Summit (as described in [Chapter 13](#)) include:

- Assault and battery
- Malicious prosecution
- Negligence
- Unlawful seizure of or damage to property (“trespass to chattels”)
- Wrongful arrest
- Wrongful detention or imprisonment

Does my citizenship affect what rights I have?

The rights described in this Chapter apply to everyone physically present in Canada, regardless of your immigration status (or lack thereof) or nationality.

You do not have to be a citizen or a resident of Canada in order to make any of the kinds of claims or complaints described in this guide. If you have a legal claim or complaint about something that happened to you during the G20 summit, you can bring a lawsuit, a police complaint, or a human rights application to the appropriate Canadian Court or Tribunal regardless of your immigration, residency or citizenship status.

6. Do I have grounds to take legal action?

You may have grounds to make a legal claim, police complaint, or human rights application where, for example:

- Your right to peacefully protest and to freely express yourself was denied or unreasonably limited by the police or the government
- You were surrounded by police on a street or public area and prevented from leaving the area, without a proper justification
- You were arrested just for being at or near a protest
- You were wrongfully detained in the Eastern Avenue detention centre, a jail, a police vehicle, or other place
- Police assaulted you by using (or threatening to use) unnecessary force at any time, including in the course of an arrest
- Police searched you or your bag without your consent or a proper legal reason
- You are being wrongfully criminalized and prosecuted
- You were discriminated against or your human rights were violated by police failing to accommodate your special circumstances
- Your rights were violated or you were injured in any other way by the police or government

What are my options for taking legal action?

If any of these situations apply to you, you may:

- **Sue the police** in court for a “tort” or for a breach of your *Charter* Rights:
 - ▶ As a class member in a **G20 class action**, or
 - ▶ Personally in either **Small Claims Court** or the **Superior Court**
- **Make a police complaint** concerning any police officer’s misconduct, or the policies of or services provided by a police service
- **Make a human rights application** if your right to equal treatment was denied
- **Privately prosecute** a police officer who committed a crime, or apply to the **Criminal Injuries Compensation Board** if you were a victim of a violent crime

What can I do if...? (Options for action in specific circumstances)

What happened to me	What police may have done (some examples)	Options for action
<p>I was peacefully protesting when police actions forced me to stop</p>	<ul style="list-style-type: none"> ▪ Dispersed peaceful protestors at Queen's Park ▪ Intimidated people who wanted to join the protest into staying away ▪ Stopped a peaceful protest march from continuing, or surrounded and silenced a peaceful protest gathering 	<ul style="list-style-type: none"> ▪ Personal lawsuit for <i>Charter</i> breach (s.2) ▪ Police complaint
<p>I was surrounded by police during a protest and not permitted to leave the area</p>	<ul style="list-style-type: none"> ▪ "Kettled" protestors at Queen & Spadina on Sunday June 27 ▪ Boxed in peaceful protestors at or near the Esplanade (Novotel), the Eastern Avenue detention centre, Parkdale, or any other area – possibly followed by mass arrests 	<ul style="list-style-type: none"> ▪ Class action OR personal lawsuit for: <ul style="list-style-type: none"> ▶ Wrongful imprisonment ▶ <i>Charter</i> breaches (sections 2, 7, 9 and 10) ▪ Police complaint
<p>I was arrested without a proper legal reason</p>	<ul style="list-style-type: none"> ▪ Mass arrests at any location including at or near: <ul style="list-style-type: none"> ▶ Queen's Park on Saturday June 26 ▶ The Esplanade (by the Novotel) on Saturday June 26 ▶ Eastern Avenue (by the detention centre) on June 26/27 ▶ Parkdale (by the organizing centre) on Sunday June 27 ▶ Queen & Spadina on Sunday June 27 ▪ Arrested peaceful protestors or observers for "breach of the peace," or for no given reason 	<ul style="list-style-type: none"> ▪ Class action OR Personal lawsuit for: <ul style="list-style-type: none"> ▶ wrongful arrest, abuse of process, and negligence ▶ <i>Charter</i> breaches (sections 2, 7, 9 and 10) ▪ Police complaint

What happened to me	What police may have done (some examples)	Options for action
<p>I was detained or imprisoned without a legal reason</p>	<ul style="list-style-type: none"> ▪ Grabbed, dragged, or held protestors or observers or placed them in handcuffs ▪ Locked up protestors or observers in a police vehicle ▪ Jailed protestors or observers in the Eastern Ave. detention centre or another jail without criminal charges pending 	<ul style="list-style-type: none"> ▪ Class action OR personal lawsuit for: <ul style="list-style-type: none"> ▶ Wrongful imprisonment, abuse of process, and negligence ▶ <i>Charter</i> breaches (sections 2, 7, 9, and 10) ▪ Police complaint
<p>I was assaulted or threatened with violence by the police</p>	<ul style="list-style-type: none"> ▪ Fired rubber bullets or other projectiles ▪ Hit people with batons, shields, pepper spray or tear gas, or kicked or stomped on them ▪ Threatened to arrest people for no reason or for trivial or improper reasons (e.g., if you don't stop taking pictures) 	<ul style="list-style-type: none"> ▪ Personal lawsuit for: <ul style="list-style-type: none"> ▶ Assault and battery ▶ <i>Charter</i> breaches (sections 2 and 7) ▪ Police complaint ▪ Private prosecution
<p>I was searched by a police officer without a legal reason</p>	<ul style="list-style-type: none"> ▪ Stopped people on the street and searched bags or patted them down without consent or a proper legal reason ▪ Conducted strip-searches following wrongful arrests ▪ Unnecessarily or repetitively strip-searched prisoners 	<ul style="list-style-type: none"> ▪ Personal lawsuit for: <ul style="list-style-type: none"> ▶ Assault and battery ▶ <i>Charter</i> breach (s. 8) ▪ Police complaint
<p>A police officer took or destroyed my property</p>	<ul style="list-style-type: none"> ▪ Confiscated property after illegally searching a bag, and failed to return it ▪ Damaged a camera, bicycle, or other property with a baton, shield or projectile or by hitting or kicking it ▪ Confiscated property from people taken into custody, but failed to return it upon release 	<ul style="list-style-type: none"> ▪ Personal lawsuit for: <ul style="list-style-type: none"> ▶ "Trespass to chattels" and negligence ▶ <i>Charter</i> breach (s.8) ▪ Police complaint ▪ Private Prosecution

What happened to me	What police may have done (some examples)	Options for action
I am being wrongfully prosecuted for a criminal charge	<ul style="list-style-type: none"> ▪ Laid trumped-up criminal charges because of your protest activity, especially if you are perceived as a “leader” ▪ Fabricated evidence against you ▪ Ignored evidence that proves your innocence 	<ul style="list-style-type: none"> ▪ Personal lawsuit for: <ul style="list-style-type: none"> ▶ Malicious prosecution ▶ Negligent investigation ▪ Police complaint
A police officer made offensive comments to me	<ul style="list-style-type: none"> ▪ Made racist, sexist, homophobic and/or other insulting or discriminatory comments while dealing with protestors and prisoners 	<ul style="list-style-type: none"> ▪ Personal lawsuit for <i>Charter</i> breach (s. 15) ▪ Human rights application ▪ Police complaint
I was denied equal treatment, or have special circumstances that were not accommodated	<ul style="list-style-type: none"> ▪ Provided no access to medications that you needed while you were detained ▪ Targeted you specifically because you were a woman, a francophone from Québec, a young single person, or based on another personal characteristic ▪ Arrested a hearing-impaired person who did not hear police orders or directions ▪ Male officer strip-searched a female detainee unnecessarily 	<ul style="list-style-type: none"> ▪ Personal lawsuit for: <ul style="list-style-type: none"> ▶ Negligence ▶ Human Rights Code violations ▶ <i>Charter</i> breach (s. 15) ▪ Human rights application ▪ Police complaint

7. What do the G20 class actions mean for me?

What is a class action?

A class action is a special kind of lawsuit where one or more people (the “representative plaintiff(s)”) advance a legal action on behalf of a group or class of people who have some common legal and factual issues (“class members”).

Class actions can have some important advantages over other kinds of lawsuits. First, a class action can be an efficient way to handle complex cases where a wrong happened to many people. This is because the class members have some common legal issues that can be decided at the same time.

Second, a class action can improve access to justice in cases where many of the class members would not bring legal claims on their own if the class action did not occur.

Third, a class action can change the behaviour of wrongdoers who might ignore their obligations to the public if they were not held accountable in a court by the class action lawsuit.

A class action may also have some important disadvantages compared to other options. For example, a class action might not cover all of the legal claims that you want to make, and it takes a long time for a class action to work its way through the court process. See [Chapter 12](#) for a more detailed comparison of the advantages and disadvantages of class actions.

What G20 class actions have been launched?

Two separate class actions have been launched on behalf of people who were surrounded, arrested or detained by police in relation to the G20 Summit in Toronto in June 2010.

Sherry Good class action

(www.g20classaction.ca) – this class action was launched against the Toronto Police and the RCMP on August 5, 2010 by lawyers Murray Klippenstein and Eric Gillespie on behalf of the Representative Plaintiff, Sherry Good. This class action is estimated to affect over 800 people.

McQuade/Barber class action

(www.g20defence.ca) – this launched against the Toronto Police, the RCMP, and the Peel Regional Police on September 2, 2010 by lawyers David Midanik and Charles Wagman on behalf of the Representative Plaintiffs, Miranda McQuade and Mike Barber. This class action is estimated to affect about 1150 people.

Before either class action can go ahead, it has to be approved or “certified” by the Court. This means that the Court has to give official permission for the Representative Plaintiff(s) to represent a whole class of people.

Subject to court certification, you might be included as a class member in one, both or neither of the two G20 class actions, depending on your particular circumstances.

Am I covered by the G20 class actions? (i.e. who is a “class member”?)

You are potentially covered by both class actions if you were **surrounded, arrested and/or detained** by police during the G20 Summit, but were later **released without being charged with a crime**, at or near:

- Queen’s Park on June 26
- The Novotel on the Esplanade on June 26
- The Eastern Avenue Detention Centre on June 26 or June 27
- The Parkdale organizing centre near Queen Street West and Noble Street on June 27
- Queen Street West and Spadina Avenue on June 27 (the “kettling” incident)
- Other locations in Toronto

You are potentially covered by only one class action (the McQuade/Barber class action), if you were **charged with a crime** after being arrested and/or detained by police at one of these places.

You are also potentially covered by the McQuade/Barber class action **if you are a property owner whose property in downtown Toronto was vandalized** during the G20 summit (note: this guide does not provide information about the claims and options that these property owners may have – see www.g20defence.com for more information on this issue).

You are not included in either of the class actions if none of your interaction(s) with the police during the G20 Summit are covered by the circumstances described above. For example, neither class action covers:

- Police dispersal of peaceful protests (e.g., if police forced you to flee Queen’s Park but never surrounded, arrested or detained you)
- Illegal searches of people’s bags and pat-downs that went on throughout the G20 weekend on Toronto streets
- Assaults by the police (unless the assault occurred in the course of your wrongful arrest or detention)
- Human rights issues related to a lack of equal treatment or failure to accommodate

If you have multiple issues, it may be that some of your issues are included in a class action and some are not.

What does “certification” mean?

Certification means that the Court gives permission for a representative plaintiff to represent a whole class of people in a lawsuit. If the Court certifies a class action that covers legal claims that you may have, then you are automatically included in the class action as a class member.

Right now, both G20 class actions are, in effect, proposals to represent a class of people in a lawsuit. It is up to the Court to decide which of those proposals to accept, if any.

The Court might, for example, certify only one class action, or it might certify neither.

Certification is a matter that will be dealt with by the class action lawyers and by the Court, and does not require you or other class members to do anything. If you are covered by a class action, and if the class action is certified, you are automatically included as a class member and cannot thereafter bring your own lawsuit for something that is covered by the class action unless you opt out.

If you do not want to be a class member, you will need to opt out by a deadline that will be set by the court and that you will be advised of if the class action legal team has a way to contact you.

Which class action will be certified by the Court?

Before certification, the Court will sort out any overlap issues between the two class actions, or the class action lawyers might work that out between themselves. The Court will not allow you to be included as a class member in two class actions that cover the same issues and facts.

It is not possible to predict which class action the Court will certify in these circumstances, or whether the Court will certify either. While one might expect that those people who are covered by both class actions would have a greater chance of being included in at least one certified class action, there are no guarantees since the Court does not have to certify either class action.

Take this uncertainty into account in considering what action to take or not. Be aware of the possibility that your claims might be dealt with on your behalf in a class action without you having to do anything at all; however, also be aware that there is no guarantee that this will happen and you may need another plan to make sure your issues get dealt with by the court.

Sherry Good class action -

website: www.g20classaction.ca

email: contact@g20classaction.com

McQuade/Barber class action -

website: www.g20defence.ca

email: https://www.g20defence.ca/potential_lawsuit.php

When will certification happen?

The certification hearing will happen several months after the launching of the class actions. If there are appeals, it might take more than a year or two before the appeal courts make a final decision on certification.

You can keep up to date on what is happening with the G20 class actions as this process unfolds. Information about each of the proposed class actions is available on their websites.

Will I get some money as a result of a G20 class action?

Both G20 class actions claim monetary compensation or “damages” for events related to the G20. The Sherry Good class action claims \$45 million (on behalf of over 800 class members). The McQuade/Barber class action claims damages of \$115 million (on behalf of 1150 class members). Both class actions also seek various declarations of rights.

However, it is unknown exactly how much might actually be paid, if anything, in either proposed class action.

According to public statements made by both legal teams, the G20 class actions are not only about monetary compensation. A more important objective of the proposed class actions is to change the conduct of the police and governments in the future.

While there may be some compensation paid out to class members at the end of the class action process, this is not guaranteed. Even if compensation is eventually paid, it will likely be years before that happens.

If you opt out of being a class member, you will not be entitled to any compensation that may eventually be paid in the class action.

What should I do if I am a class member?

If your situation is covered by a G20 class action, you do not need to do anything to be included as a “class member”. Your inclusion is automatic if you fit within the definition of the class and if the class action is certified.

It may be a good idea, however, to e-mail the legal team for one or both of the G20 class actions with your name, email address and mailing address if your own facts or those of someone you know are likely to fit within the proposed class(es).

This is particularly important if you are a potential class member but the police don’t have a record of your name (for example, if you were “kettled” at Queen Street West and Spadina Avenue but not arrested), as the class action legal teams might not have any other way to get your information or to contact you about important case developments.

If the class action is successful, you may then need to take certain steps if you wish to claim compensation from any pool of funds that may be paid as a result of the class action. However, that is probably years away. The class action legal team should be in touch with you about this when the time comes, if the lawyers have a way of contacting you.

Can I start my own legal action if I am a class member?

Every potential class member can also file a police complaint.

Those that experienced some discrimination or unequal treatment can also file a human rights application.

You can pursue a lawsuit in Small Claims Court or Superior Court that is limited to those claims that are not covered by the class action where you have multiple claims and only some of them are covered by a class action.

However, no class member may pursue a separate lawsuit in Small Claims Court or Superior Court that deals with claims that will be part of the class action after the class action is certified, unless:

- You start your lawsuit before the court certifies the class action
- You opt out of being a class member after certification

Be aware that strict deadlines apply for taking these steps.

Generally, you have only six months after an incident to make a police complaint, one year to make a human rights application, and two years to start a lawsuit. (However, the two-year period for starting a lawsuit is extended for claims that are covered by a class action, until certain court steps happen in the class action)

How do the G20 class actions affect the deadline for starting my own lawsuit?

In Ontario, you generally have **two years** after the incident in which you were harmed to start a lawsuit in Small Claims Court or the Superior Court. This deadline is called a “limitation period.”

However, the G20 class actions have stopped the clock from running on that two-year limitation period in relation to claims that are covered by the G20 class actions. The clock will start again if:

- You opt out of the class action
- Class membership in the class action is changed in such a way that your claim is no longer covered by the class action
- The class action is dismissed or abandoned – for example, because the court refuses to certify the class action, or because the court grants its permission for representative plaintiff to abandon the class action

Part of the two-year limitation period already elapsed before the class action was started and stopped the clock from running further (about 40 days before the Sherry Good class action was started, and about 68 days before the McQuade/Barber class action was started).

Your deadlines are only extended for the claims that are covered in a class action. Claims not covered by a class action are unaffected and the normal two-year time limit will apply. Keep this in mind if you have multiple claims and only some are covered by the class action.

What can I do if I don't want to wait for a G20 class action?

Even if you are a class member, you can start your own lawsuit in Small Claims Court or in the Superior Court before the class action is certified by the court. This might be an option for you if you want to take some action that might achieve a result more quickly than a class action possibly could, or you might have some other strategic or principled reason for taking such action.

However, if you bring your own lawsuit to the Small Claims Court or to the Superior Court, you may be barred from later making a claim from any pool of funds that may be paid as a result of a class action.

Whether it will be better for you to start your own lawsuit or be a class member in a class action would depend on the circumstances of each case and what you want to achieve. You may want to consult a lawyer to help you make an informed decision that suits your particular circumstances.

What if only some of my claims are covered by a class action?

Some people had their rights violated in multiple ways during the G20 Summit. For example, someone might have been “kettled” at Queen and Spadina on the evening June 27 and illegally searched earlier in the day. The kettling incident would be covered by either of the G20 class actions, but the illegal search would not be covered.

In these kinds of circumstances:

- You can start your own lawsuit that addresses some or all of your claims before a class action is certified
- If a class action is certified, you can still start a lawsuit that addresses all of your claims, but only if you “opt out” of the class action first
- You can start your own lawsuit that is limited to those issues that are not covered by the class action, without having to opt out of the class action

If you have multiple possible claims, the option that is best for you will depend on your individual circumstances, and this is something that you may wish to consult a lawyer about.

What can I do if I am not a class member?

If you are not a potential class member in any class action, you can pursue your legal claims in your own lawsuit against the police in Small Claims Court or in the Superior Court (see Chapter 8).

Regardless of whether you are a class member or not, you can file a police complaint and, in some circumstances, you can also file a human rights application.

8. I want to sue the police. What are my options?

If you have potential legal claims that are not included in a class action, or if you do not wish to be a class member in a class action, you can personally start a lawsuit in either the Small Claims Court or in the Superior Court (as well as make a police complaint and, in some circumstances, a human rights application).

The choice of court depends on what you are seeking. Small Claims Court is limited to lawsuits where the claim is for payment of \$25,000 or less, or for recovery of property worth \$25,000 or less. Superior Court is for lawsuits claiming greater than \$25,000 and for lawsuits seeking something other than money or property.

If you are facing criminal charges arising from the G20 events, you should consult with your criminal defence lawyer before starting a lawsuit.

You go to **Small Claims Court** if you want compensation or recovery of property worth **\$25,000 or less**.

You go to the **Superior Court** if you want compensation of more than **\$25,000** or something other than money.

What court do I go to if I want compensation or recovery of property worth \$25,000 or less?

In most potential lawsuits arising from police wrongdoing during the G20 Summit, the amount of compensation that could legitimately be claimed will be less than \$25,000. Such lawsuits must be brought in Small Claims Court, not in the Superior Court.

You can also file a lawsuit in the Small Claims Court for the recovery of property, such as if the police took away your camera or bicycle and never returned it, if the total value of the property is \$25,000 or less.

What court do I go to if I want compensation of more than \$25,000?

You may have a reasonable claim to an amount greater than \$25,000 where you experienced some particularly serious harm (for example, if you lost your job or a lot of income because of your arrest or bail conditions, are spending a lot of money defending yourself against groundless or trumped-up criminal charges, spent many days in jail on unfounded charges, or suffered injury or serious mental trauma that has affected your daily life).

These kinds of lawsuits can be brought to the Superior Court. They can be brought to Small Claims Court as well, but if you bring this kind of case to Small Claims Court you will not be able to recover more than \$25,000 no matter how serious your injuries or losses are. A lawyer should be able to assist you in determining which option is legally, strategically, and financially better for you in your particular circumstances.

There is no specific limit to how much money you can claim in the Superior Court, although there may be some court decisions that discuss some relevant principles and set out what kinds of results people have achieved in cases similar to yours. A lawyer can help you identify the court decisions that may be relevant to your case.

What court do I go to if I want something other than money?

In some cases, you may wish to seek some non-monetary relief, such as a declaration that your *Charter* rights were breached by police or government action, or a court's interpretation of the validity or applicability of a law or a regulation. Only the Superior Court can grant that kind of result. Small Claims Court has no power to do so.

Such cases tend to deal with complicated and important legal questions, and it is strongly recommended that you consult a lawyer if you wish to consider starting a case in the Superior Court.

What is my deadline for starting my lawsuit?

You must start your lawsuit, whether in Small Claims Court or Superior Court, within two years after the events that gave rise to your lawsuit. There are some exceptions, but in the majority of cases this means that **a lawsuit arising from the G20 summit weekend must be started by June 25, 2012.**

One exception is that time limits for any claims that you have that are covered by a G20 class action are extended until certain court steps happen (see [Chapter 7](#)).

Although you have two years, it is not usually desirable to wait that long. It is usually best to start the lawsuit as soon as possible.

Some people may wish to wait and see what happens with certification of the G20 class actions before starting their own lawsuit in court. If you wish to take this approach, be sure to make a note of the two year limitation period for starting your own lawsuit concerning matters that are not covered by the class action. The class actions only extend the time limits for claims that are included in the class action, not for other claims that you might have. If the two years run out before the court makes a final decision on certification of a G20 class action, it may then be too late for you to start your own lawsuit for claims that are not covered by the class actions.

Do I need a lawyer?

If you sue the police in **Small Claims Court**, you do not need a lawyer or paralegal. Small Claims court procedures are simplified and are intended to be accessible to people with no legal training. This guide explains some of these procedures if you are interested in this kind of “self-help” remedy.

However, even in Small Claims Court it is a good idea to seek legal advice from a lawyer, and maybe to hire a lawyer or licensed paralegal to represent you in the process. Be aware that the police will inevitably hire a lawyer to represent them and will pay that lawyer well to fight your lawsuit.

While you are permitted to represent yourself in the **Superior Court**, this is not recommended. Superior Court procedures and the kind of legal issues that the Superior Court might deal with can be complicated, and it is very strongly recommended that you do have a lawyer if you sue the police in Superior Court.

Can I still make a police complaint or human rights application if I sue?

You can make a police complaint regardless of any other legal steps you take. However if you have an issue that is adjudicated by a police tribunal in a police complaint process, a court might not thereafter permit you to pursue the same issue in a lawsuit but it depends on the specific circumstances of each case.

As for a human rights application, your right to make such an application may be affected if you start a lawsuit in either Small Claims Court or Superior Court. It will depend on what you are claiming in your lawsuit. If there is overlap between what you are claiming in your lawsuit and what you put into your human rights application, the Human Rights Tribunal may decide not to deal with your human rights application (see [Chapter 11](#)). You may have to choose between whether to raise your discrimination issue in a lawsuit only or in a human rights application only.

If your lawsuit does not involve a discrimination or *Human Rights Code* issue, the fact that you have a lawsuit against the police should not affect your right to make a human rights application.

9. How do I sue in Small Claims Court?

The process for a Small Claims Court lawsuit is simplified, but even so it can be intimidating for people who are not familiar with legal procedures. This guide will give you some of the essential information to get you started. There are several other resources available to give you more detailed information about the process. See the end of this chapter or [Chapter 18](#) for a list of these resources.

Who can start a lawsuit in Small Claim Court?

You can start a lawsuit if the police violated your rights or committed some wrong against you during the G20 summit, unless your lawsuit overlaps with the claims being made on your behalf in a certified G20 class action and you are not opting out of the class action.

You start a lawsuit in Small Claims Court by filling out and filing a form called a “Plaintiff’s Claim.”

You can sue on your own as a single Plaintiff. You can also sue jointly with one or more other Plaintiffs, such as where those other people have similar claims arising from similar factual circumstances. In either case, each Plaintiff acts on his or her own behalf (or on behalf of a specific person that he or she is a legal guardian for, such as a minor or a mentally incapable person), rather than on behalf of a whole class of people like in a class action.

If you are a minor under 18 years of age, you can only sue on your own behalf if you are claiming \$500 or less. If you are a minor claiming more than \$500, you need to have a “litigation guardian” commence the lawsuit for you (this could be a parent, legal guardian, or other responsible adult).

Who do I sue?

You can sue any person, government body, or other entity responsible for the wrong done to you. This person or entity is called a Defendant. You can sue more than one Defendant at the same time.

You must correctly identify the Defendant(s) in your Plaintiff’s Claim. If you sue the wrong person or government body, the Court could refuse to hear your case.

In every case, you can sue any and every individual police officer who was responsible for the wrong done to you.

If you were harmed by the actions of a Toronto police officer, then you can also sue the “**Toronto Police Services Board**” which is legally responsible for the wrongdoing or “torts” committed by Toronto Police officers. You can do so even if you do not know the officer’s name.

If the officer responsible for the wrong done to you was a member of the RCMP, you may also sue the “**Attorney General of Canada**,” even if you do not know the officer’s name.

If the responsible officer is a member of the Ontario Provincial Police, you could name “**Her Majesty the Queen in Right of Ontario**” as one of the defendants.

If you were harmed during the G20 Summit in Toronto by the actions of a police officer from another jurisdiction (e.g., from another municipal police force), it can get a little more complicated. You may still be able to sue the “Toronto Police Services Board” even if the officer is not a Toronto Police officer, or you may be able to sue another government authority that is legally responsible for the wrongdoing of the officer (which might be another municipal police services board or an Attorney General). A lawyer can assist you with identifying who you can name as a Defendant in the particular circumstances of your case.

What can I claim in a Small Claims Court lawsuit?

In Small Claims Court, each Plaintiff can make a claim for payment of money up to \$25,000 (such as for compensation or “damages” for some harm or loss that you suffered). You can also claim interest on that amount.

In Small Claims Court, you can also make a claim for recovery of property where the value of property does not exceed \$25,000.

While \$25,000 is the maximum that the Small Claims Court can award, that is not necessarily the amount that you should be seeking in your Plaintiff’s Claim. The chart in Chapter 14 of this guide includes a summary of how much Courts have awarded for lawsuits that may be similar to yours, and may assist you in deciding how much to claim.

How do I get started with a claim in Small Claims Court?

To get started, you need to fill out a form called a “Plaintiff’s Claim” in which you provide your name and contact information, identify who you are suing, describe what happened, and state how much money you are claiming or describe the property you wish to recover.

You can find a copy of the “Plaintiff’s Claim” form at:
www.ontariocourtforms.on.ca/english/scc

You will have to give the original of your Plaintiff’s Claim, plus one additional copy for each person or organization you are suing, to the Small Claims Court office.

You have to start your claim either in Toronto or in another court jurisdiction in which a defendant that you are suing resides or carries on business. In Toronto, the **Small Claims Court office is at 47 Sheppard Avenue East, 3rd floor.**

It costs \$75 to file your Plaintiff’s Claim in the Small Claims Court. The court may waive that fee for low-income plaintiffs. You can get a “fee waiver” guide and application form from a court office or on-line at: www.attorneygeneral.jus.gov.on.ca/english/courts/feewaiver/guide-forms.asp

Once the Plaintiff’s Claim is filed in court, you need to give or “serve” a copy to each of the Defendants. There are various rules for service depending on whom you are suing, which are described in the links provided at the end of this chapter and in

Chapter 18. To serve the Toronto Police Services Board, you can leave a copy of the claim with a member or officer of the **Toronto Police Services Board at 40 College Street, Toronto.**

What happens after I start the lawsuit?

After you properly “serve” the Defendant(s) by giving them a copy of your Plaintiff’s Claim, the Defendant(s) will have 20 days to respond to your claim by serving a “Defence.” If they do not defend, then they are in “default.” If that happens, you can report the default to the Small Claims Court and then go ahead with your lawsuit without any further notice to the Defendant(s).

If the Defendant(s) do defend (and they almost certainly will), then within three months there will be a “settlement conference.” At the settlement conference, you (and your lawyer or paralegal if you have one) and the Defendants’ lawyer and representative(s) will meet with a Small Claims Court judge to discuss your case and see if some agreement could be reached between you and the police to resolve your lawsuit without a trial. Such settlements usually involve an agreement by the Defendant(s) to pay some amount of money in exchange for termination of the lawsuit.

Aside from the settlement conference, either side can make a written “offer to settle” at any time up to seven days before the trial. If one side fails to accept a reasonable offer to settle, then that party may be penalized by having to pay a higher amount for the other side’s legal costs at the end of the case.

If no settlement is reached, you can ask the court to schedule a trial date. The court would then schedule a trial for a date a few months away. It costs \$100 to get a trial date, but that fee can

be waived for low-income individuals who submit a fee waiver application form.

What is my deadline for starting a lawsuit?

In the majority of cases, you will have to file your lawsuit against the police within two years after the events at issue. This means the **deadline for most G20 cases will be June 25 or 26, 2012.**

Generally it is best to start the lawsuit as soon as possible and not to wait until closer to the deadline.

If you want to wait to see what happens with the class actions before starting your own lawsuit, you still need to be sure that your limitation period does not expire while you are waiting.

The class actions suspend the limitation period from running for those claims that are covered by the class actions, but will not affect your deadlines for starting claims that are not covered by the class action (see [Chapter 7](#)).

How much money will I get if I win in Small Claims Court?

The amount of money that a court orders a Defendant to pay to a Plaintiff for some wrong that was done is called “damages.” The maximum amount of damages that the Small Claims Court is allowed to give is \$25,000.

That does not mean you will get \$25,000 in damages if you win. You might win just a few hundred or a few thousand dollars, depending on the circumstances of your case (see [Chapter 14](#)

under “general damages” for some examples of what your case might be worth).

You might also recover some of your legal costs and out-of-pocket expenses if you win. The amount varies depending on whether you have a lawyer or agent representing you or not. If you are representing yourself in Small Claims Court, you can recover up to \$500, plus your out-of-pocket expenses (or “disbursements”) for things such as court filing fees. If you have a lawyer representing you, you can recover up to 15% of the amount claimed or of the value of the property you are seeking to recover, plus disbursements. The actual amount is at the discretion of the judge and the judge can award a lower amount of costs or none at all.

The costs amount might be higher if you had made a written “offer to settle” that the Defendant(s) rejected and if the result you achieved at trial is better than what you offered to settle for. On the other hand, if the Defendant(s) make an offer to settle and the amount that you win at trial is less than what the Defendant(s) had offered, then you might be denied your costs and might even be ordered to pay some of the Defendant(s)’ costs.

In most cases where the court orders the police or another government body to pay something, the money is paid to the plaintiff with little difficulty (unless there is an appeal). If there is any difficulty in collecting payment, there are certain enforcement steps that can be taken, which are described in the resource materials in the links at the end of this chapter and in Chapter 16.

Even if you win, the Defendant(s) might appeal the ruling to a higher court. If that happens, you may not be able to collect the amount you win unless and until you also win the appeal.

What happens if I lose (i.e., what is the potential financial downside of suing)?

If you lose your case, the judge might order you to pay some of the Defendants’ legal costs. The maximum amount that you will have to pay is 15% of the amount of your claim or of the value of the property you seek to recover, plus the other side’s out-of-pocket costs, or “disbursements,” for such things as court filing fees and witness fees.

For example, if you sue the police for \$10,000 and you lose, a judge may order you to pay the police up to \$1,500 plus disbursements.

This 15% is not automatically awarded to the winner. It is up to the judge to decide how much is fair. You can argue that you don’t have much money and a judge make a lower cost award, or none at all.

In rare cases the court can award more than 15%. This could happen if the judge feels you should be penalized for behaving unreasonably in conducting your case.

Where can I get more information about Small Claims Court?

The **Toronto Small Claims Court** is located at 47 Sheppard Avenue, East 3rd Floor (tel: 416-326-3554). Outside of Toronto, check the blue pages under “courts”, call 411, or visit this website for a list of all the court locations in Ontario:

www.attorneygeneral.jus.gov.on.ca/english/courts/CourtAddresses/

The **Ontario Ministry of the Attorney General** has some helpful guides for people involved in a Small Claims Court lawsuit:

www.attorneygeneral.jus.gov.on.ca/english/courts/guides/

The forms that you will need to file a lawsuit are available online at: www.ontariocourtforms.on.ca/english/scc

There are two very useful independent resources available to provide more details on suing the police in Small Claims Court:

- **“Sue the Police in Small Claims Court!”** available at: charneylaw.ca/helpfuldocs/BookletSueThePolice-UpdatedNovember2006.pdf (note that there have been some changes to the law since this guide was published in 2006, including an increase in the amount that you can claim in Small Claims Court from \$10,000 to \$25,000).
- **“How to Sue the Police and Private Security in Small Claims Court”** published by the Pivot Legal Society. This publication is tailored to British Columbia, but includes information that will be helpful in preparing your Small Claims Court case in Ontario. See: www.pivotlegal.org/pdfs/HowtoSuethePoliceandPrivateSecurityinSmallClaimsCourt.pdf

10. Should I make a police complaint?

Many public interest organizations, including the Law Union of Ontario, encourage everyone who has grounds to make a police complaint to go ahead and file one. It is free, it is an important tool for holding police officers accountable, and it can help contribute to systemic changes that might prevent similar mass arrests, detentions, and violations of civil rights in the future.

What are the standards of policing in Ontario?

Police services in Ontario are to be provided in accordance with certain important principles, including the need to ensure the safety and security of all people and property in Ontario, and the importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

Consistent with those principles, all police officers in Ontario must swear an oath to uphold the Constitution of Canada (which includes the *Charter of Rights and Freedoms*), to preserve the peace, and discharge their duties faithfully, impartially and in accordance with the law. Some of the specific obligations of police officers are described in a **Code of Conduct** that is part of the law in Ontario. Police officers are guilty of misconduct if they breach the Code of Conduct.

The Code of Conduct describes circumstances that would constitute misconduct, including:

- Making an unlawful or unnecessary arrest without good cause

- Using unnecessary force against any person contacted in the execution of duty
- Using profane, abusive or insulting language or being otherwise uncivil to a member of the public
- Failing to treat people equally without discrimination with respect to police services
- Neglecting or omitting to promptly and diligently perform a duty, or
- Conspiring in or abetting any such misconduct

You can find a copy of the Code of Conduct at:

www.e-laws.gov.on.ca/html/source/regs/english/2010/elaws_src_regs_r10268_e.htm

An officer who is found guilty of misconduct may be subjected to disciplinary action, such as a suspension, loss of pay or a reprimand.

Police complaints from members of the public could lead to a police officer being investigated and penalized if found guilty of misconduct (and can also lead to systemic and policy changes in policing).

Do I have grounds to make a police complaint?

Anyone whose rights were violated by a police officer, who was mistreated or abused by a police officer, or who was offended by anything a police officer did during the G20 Summit (even if you only saw it on television) can make a police complaint.

In Ontario, police complaints are not just limited to complaints against individual police officers. You can also make a police complaint about a policy of a police department or the failure of a police department to provide proper service.

You can make a formal police complaint if:

- You are concerned about how a police officer behaved in an interaction with you
- You are offended by how a friend or relative or nay other person was treated by a police officer
- You have been given permission by someone who had a troubling interaction with police to submit a complaint on their behalf
- You believe that a police department has not provided proper service
- You disagree with a policy of a police department

You have a right to make a police complaint regardless of whether or not you are also pursuing a lawsuit against the police, covered by a G20 class action, or making a human rights application.

Where do I go to make a police complaint?

You can make a police complaint against any police officer of the Toronto Police Service, another municipal police force in Ontario, or the Ontario Provincial Police by filing a complaint form with the Office of the Independent Police Review Director (OIPRD).

Complaints about the conduct of RCMP officers must be made to the Commission for Public Complaints Against the RCMP (CPC), an independent commission responsible for public complaints against the RCMP.

If you have a complaint against a non-RCMP officer from outside of Ontario involved in policing during the G8 and G20 meetings, you may also be able to file this complaint with the CPC. You might also be able to make a complaint against that officer under any police complaint system that may exist in the province where that officer is employed.

For further information about CPC and to file a complaint using their online form, you can visit www.cpc-cpp.gc.ca.

The remainder of this chapter is focused on complaints to OIPRD about Ontario police officers, as it appears that most of the police officers who might be the subject of a police complaint are non-RCMP officers from Ontario.

What does the Office of the Independent Police Review Director (OIPRD) do?

The Office of the Independent Police Review Director (OIPRD) was created in 2009 “to provide an objective, impartial office to accept, process and oversee the investigation of public complaints against Ontario’s police.” OIPRD is an all-civilian “arms-length agency” which is generally responsible for making its own decisions but is also responsible to the Attorney General of Ontario. Because this agency is new, it is hard to predict how all the parts will work or what the most likely outcome is for any particular case.

OIPRD is able to review police actions and policies from all of the police forces in Ontario. OIPRD does not have jurisdiction over federal police forces such as the RCMP. OIPRD also will not review the actions of out-of-province officers who were acting on the direction of an Ontario police force.

OIPRD has already committed to undertaking a systemic review of police actions during the G20 Summit. According to OIPRD, the systemic review will include the following issues: (a) unlawful searches; (b) unlawful arrests; (c) improper detention; and (d) issues related to the temporary holding facility used during the G20 Summit. While OIPRD will take patterns that emerge in individual complaints into consideration while conducting the systemic review, each individual complaint will still be handled separately.

When is my deadline for making a police complaint?

Police complaints to OIPRD concerning a municipal police officer in Ontario or an Ontario Provincial Police officer:

- Usually, you have up to six months after an incident has happened to file a complaint with OIPRD. There are a few exceptions (for example, OIPRD has the discretion to extend the filing deadline if you are facing criminal charges). However, in most circumstances, **you will need to make your complaint to OIPRD concerning police conduct during the G20 summit by December 27, 2010.**

Police complaints against the RCMP:

- There is currently no deadline for making a police complaint about an RCMP officer. However, new legislation being considered in the fall of 2010 might impose such deadlines. If you are considering making a complaint against an RCMP officer, act as soon as possible to avoid problems from any changes in the law.

How do I start my police complaint?

To start a police complaint against an Ontario municipal police officer (such as an officer with the Toronto Police Service) or an Ontario Provincial Police officer, you must complete a complaint form and send it to OIPRD. You can also attach additional information to that form and submit this as part of your complaint.

The OIPRD police complaint form is available online on the OIPRD website (www.oiprd.on.ca) or from any police station.

The more details you can provide about an incident, the easier it will be to get results from your complaint. If you are submitting a complaint about specific police officers, it will be helpful to know their badge or helmet numbers, their names, which force they work for, or at least a physical description. It is not necessary to have all of this information, but proceeding without any of it may be challenging. It is not clear how complaints will be handled where officers cannot be easily identified, particularly considering how many officers (and how many different police forces) were on the streets during the G20 Summit.

You can fill out a complaint form online at www.oiprd.on.ca, you can print the form and send it to OIPRD by fax or mail, or you can submit the form in person at a police station.

OIPRD's contact information is:

655 Bay Street, 10th Floor
Toronto, ON M7A 2T4

www.oiprd.on.ca

p: (877) 411-4773 or (416) 246-7071

f: (877) 415-4773 or (416) 327-8332

You do not have the option of submitting complaints anonymously; you will have to include your basic information and sign a consent form to allow your complaint to be investigated. You can submit a complaint in either English or French.

There is no fee for making a police complaint.

What could happen to my police complaint?

Once your complaint has been received and recorded by OIPRD, it will assign your complaint to one of four basic processes:

Referred police investigation – If your complaint is about the policies or services of a municipal police force, it must be sent to that police force to investigate. If your complaint is about the conduct of an individual police officer, it may be sent to the police service that employs the subject officer for investigation.

In most cases, the investigating officer will contact you to ask you further questions about your complaint. The investigating officer will also be responsible for telling you about the process they will use and what is required of you. This information will also go to OIPRD, and if the Director does not approve of the way the complaint is being handled, OIPRD can intervene by giving police instructions or taking over the investigation.

The Chief of Police can dismiss a complaint if he or she does not find reasonable grounds to believe that the alleged incident occurred, or if he or she finds a complaint “frivolous or vexatious.” If a complaint referred to the Chief of Police is dismissed on these grounds, a complainant can ask OIPRD (for conduct complaints) or the municipal police services board (for policy and service complaints) to review the decision.

Informal Resolution – This process only happens by consent: both you and the officer(s) in question must agree to it. The format will be a mediated conversation between the complainant and the officers involved in the complaint. Both you and the officer(s) must agree to the proposed resolution before it is implemented.

OIPRD Conduct Investigation – Rather than sending the complaint to a police force for investigation, the OIPRD can investigate some complaints about police officer conduct itself. An OIPRD Investigator will be assigned to your complaint and will communicate with you about what process they will take and what action will be taken at the end of the process. In some circumstances, conduct complaints will still be referred back to the police service(s) of the officer(s) that is/are the subject of the complaint.

Systemic Review – Where OIPRD finds patterns in public complaints about a policy or systemic issue, the Director can do a systemic review. OIPRD will produce a report with recommendations, which it will provide to the relevant police services and other people or organizations. Reports will also be made publicly available.

The majority of complaints submitted to OIPRD will be referred for investigation by the police force that is named in the complaint or that employs the subject officer.

While it is possible to appeal a decision made by a police service investigation or disciplinary hearing, you cannot appeal the decision to send your complaint through a particular process, nor can you appeal the result of an OIPRD investigation.

What can my police complaint accomplish?

Because the OIPRD system is new and untested, and because investigations can proceed in many different ways, there is no easy way to predict what the result of your investigation will be. Some possibilities include:

- Informal resolution
- Police taking disciplinary action against an officer without a hearing
- Police holding a disciplinary hearing for an officer
- A change in police procedures or policies
- No action

What if I am unsatisfied with the outcome of my police complaint?

If you have made a conduct complaint against the police and are unsatisfied with the way it has been handled, you may request a review by OIPRD.

You have **30 days** from the day you were notified to request a review by OIPRD if, for example:

- The Chief of Police/Commissioner of the OPP has determined your complaint is unsubstantiated (e.g., because there is not enough evidence)
- The Chief of Police/Commissioner of the OPP has determined your complaint is not of a serious nature

If there is a disciplinary hearing and you are not satisfied with the result, you may appeal the result to the Ontario Civilian Police Commission (OCPC). For more information on the OCPC and on disciplinary hearing appeals, please visit www.occps.ca.

If you do not agree with the Chief of Police/Commissioner of the OPP's decision about a policy or service complaint, you may request a review by the local police services board. Your local police services board can be found on your municipal website or by contacting your municipal councillor.

If a review by the OIPRD is not an option that is available, or if you are unsatisfied with the results of an OIPRD review, you can apply to the court for judicial review. Applications for judicial review are complicated, and will normally require a lawyer. There are short

time lines for pursuing a judicial review, so you may need to act very quickly if a decision is made that you want the courts to judicially review.

Will a police complaint affect my right to sue the police?

A recent court decision (*Penner v. Niagara (Police Services Board)*) concluded that where an issue has been adjudicated by a police tribunal as part of a police complaint process, the court has the option to not permit you to pursue the same issue in a lawsuit, where doing so would not be “unfair or unjust”. However, other cases have concluded that a police complaint does not prevent someone from raising the same issues in a lawsuit.

It is unclear what the full implications of the *Penner* will be. It will depend on the circumstances of each case. If you were considering pursuing multiple processes that deal with the same issues, you may wish to consult a lawyer about the legal concept “issue estoppel”.

Why should I file a police complaint?

Police complaints (along with private prosecutions) are the only mechanisms that members of the public have to try to hold police officers personally accountable for their individual misconduct. In a lawsuit, it is usually the responsible municipality (or its insurer) or other government authority that pays any “damages” or compensation, and so the individual police officer is not financially affected. By comparison, a police complaint can lead to personal repercussions for a police officer and can therefore contribute to

personal accountability and deter other police officers from similar misconduct in the future.

There are also some strategic advantages to filing a police complaint with OIPRD:

- The information in your complaint may help OIPRD find issues for its systemic review.
- OIPRD complaints can also be helpful in supporting a human rights application or a lawsuit.
- In at least a few instances, OIPRD has worked with the scattered information provided by a complainant to identify the individual officers who acted inappropriately. Building a public record of officers involved can increase accountability and facilitate other people’s attempts to seek accountability.
- The more complaints that are received, the more information OIPRD will have to identify officers who conducted themselves improperly.
- The more complaints that are received, the more pressure and incentive there is likely to be for police and governments to make systemic improvements to ensure protection of Charter rights and prevent future misconduct
- The number of complaints received will be a publicly reported indication of the magnitude of the situation and the level of condemnation of police actions during the G20 summit

Where can I get more information about, or help with, police complaints?

The OIPRD process is designed so that members of the public can make their complaints without lawyers or other help, but you still may want help, support, or advice at some point in this process. There are a few different options.

OIPRD can be a good source of basic information, although OIPRD cannot advise you on how to proceed with your individual complaint. OIPRD has a series of informative brochures on its website: <http://oiprd.on.ca/CMS/Publications.aspx>.

The Community & Legal Aid Services Program (CLASP), which operates through Osgoode Hall Law School in North York, has experience helping people through the OIPRD process and is available to assist anyone who meets the financial guidelines of Legal Aid Ontario. You can find information about CLASP at www.osgoode.yorku.ca/clasp/contact.html.

The Canadian Civil Liberties Association (CCLA) is collecting completed OIPRD complaint forms from people who would like CCLA to submit their complaints in a package with many others. This can have the advantage of helping to attract media attention and increase accountability. Regardless of how you submit your complaint, if you find you need assistance or advice once the process has started, CCLA can connect you with help. There are no eligibility criteria. More details are available at ccla.org/2010/06/29/resources-for-g20-related-complaints/.

Sanctuary Ministries of Toronto has been helping people to resist police and security guard violence and misconduct, and can help people to see police complaints through the OIPRD process and to connect with media where appropriate. You can find out more about Sanctuary Ministries of Toronto at www.sanctuarytoronto.ca.

11. Should I make a human rights application?

The Law Union of Ontario and other equity-seeking organizations strongly encourage everyone who was denied equal treatment or discriminated against by the police to pursue a human rights application. There is no fee for making a human rights application, and many human rights applications can result in the police being required to improve their policies, practices, and systems in order to ensure better human rights protections in the future.

Human rights protection under the *Ontario Human Rights Code*

Ontario's *Human Rights Code* protects equality rights – the right to be treated equally without discrimination based on personal characteristics such as race, age, gender or disability. The *Code* gives every person in Ontario the right to be free from discrimination in employment, in housing, in services and in facilities, and in entering into contracts.

A person who has experienced discriminatory treatment may apply to the **Human Rights Tribunal of Ontario (HRTO)** seeking a remedy for the discrimination. The HRTO's role is to resolve individual applications through mediation or by conducting a hearing to decide if what took place was in fact discrimination. The HRTO can make an order against a person or organization if discrimination is found to have occurred.

The HRTO process is designed to be easy to navigate. Information and forms are available at: www.hрто.ca.

The **Human Rights Legal Support Centre** offers legal advice and assistance to people bringing a human rights application to the Tribunal. For information, go to: www.hrlsc.on.ca.

The **Ontario Human Rights Commission** is responsible for public education about human rights. Among other powers, the Commission can conduct a review or inquiry into issues involving human rights in Ontario. To find out more about the Commission, you can visit: www.ohrc.on.ca/en.

Does the *Human Rights Code* protect me against discrimination by a police officer?

The on-duty actions of municipal police (such as the Toronto Police Service) and Ontario Provincial Police (OPP) officers are covered by the Ontario Human Rights Code as policing “services”. A detention centre may also be considered a facility that is covered by the Human Rights Code.

Discriminatory treatment by a municipal or OPP officer, or by any person in authority in a detention centre, for example, can be the subject of an application to the HRTO.

You can file an application with the HRTO if you believe that something happened during the G20 events that subjected you to discriminatory treatment in the “service” of policing.

What is discrimination under the *Human Rights Code*?

Discrimination is about equal treatment. Not all unfair or inhumane treatment is covered by the Human Rights Code. For example, if you believe that you were arrested or detained by police during the G20 Summit without a proper reason, this will not, in itself, constitute a violation of your right to equal treatment in services under the *Human Rights Code*. Without evidence of discrimination, you cannot effectively challenge your detention by applying to the HRTO (but there may be other legal steps that you can take in these situations, such as filing a lawsuit or making a police complaint).

Discrimination is negative treatment that is tied to certain personal characteristics that are listed in the *Human Rights Code* as prohibited grounds of discrimination (listed below).

Discrimination happens when a person is treated differently and negatively according to a ground of discrimination prohibited by the *Human Rights Code*.

Discrimination can also occur if a service provider, such as a police officer, fails to consider the special needs of a person if those needs are linked to one of the *Human Rights Code*'s prohibited grounds of discrimination, such as disability. A person whose special *Human Rights Code*-related needs are not accommodated has not been treated equally, even if offered the same treatment as others.

Discrimination can occur even if a service provider, such as a police officer, does not expressly intend to discriminate.

What are the prohibited grounds of discrimination?

Prohibited grounds of discrimination included in the *Human Rights Code* are:

- Race, colour, ancestry, ethnic origin
- Place of origin
- Citizenship
- Creed (religion)
- Age
- Gender, sexual orientation and identity, pregnancy
- Marital status, family status
- Disability

Under what circumstances might I have grounds to make a human rights application?

In any case where you experienced discrimination or unequal treatment contrary to the Human Rights Code you can make a human rights application. Some examples of discriminatory or unequal treatment that people might have experienced during the G20 summit include:

- You asked for and were denied access to necessary medication or assistive devices while in detention
- You were the target of racist comments or homo/transphobic slurs by a police officer
- You were subjected to sexual taunts or sexual touching by a person in authority while in detention.

- You were sexually propositioned by a police officer or by person in authority while in detention.
- You were treated differently and negatively by a police officer because of your race, gender or sexual orientation while in detention.
- You were targeted and subjected to different and negative treatment by police officers because you are francophone from Québec.
- Your were targeted and subjected to different and negative treatment because you are a young single person.

What is my deadline for filing a human rights application?

If you decide to file an application at the HRTO because of something that happened to you during the G20 Summit, you must do so **within one year** of the event. This means that in most cases **you will need to file your application by June 27, 2011.**

How do I file an Application under the *Human Rights Code*?

You need to complete an application form, which you can download from www.hrto.ca/hrto/?q=en/node/32.

The application form will require you to show how you were treated differently than others, or subjected to negative treatment, *because of* a personal characteristic that is associated with a prohibited ground of discrimination. In other words, your application must clearly explain the connection between a personal

characteristic recognized by the *Human Rights Code* (such as your ethnic origin or race) and the negative treatment you experienced.

The application form will also ask you to identify the remedy or redress that you would like the Human Rights Tribunal to order if you are successful in proving that you were subjected to discrimination. You could ask for financial compensation, an apology, certain systemic or policy changes, or a wide variety of other remedies.

What remedies can be ordered by the Human Rights Tribunal?

The HRTO has the power to order a very wide variety of remedies to compensate you if you are successful in proving your discrimination claim. As an applicant, you may request monetary or non-monetary remedies.

Monetary remedies can include compensation for costs that you incurred as a result of the discrimination, such as health care costs, as well as compensation for lost wages. The HRTO can also order that you receive a financial award for the emotional impact of the experience of discrimination.

Non-monetary remedies can include more long-term or systemic changes, such as requiring the police to implement mandatory policies about special detention centres or requiring special training for police officers.

Can I make a human rights application if I am also suing the police or a member of a G20 class action?

If there is some overlap between your lawsuit and the matters you are raising in a human rights application, the HRTO might delay your application or might not deal with it at all.

The proposed G20 class actions do not cover discrimination-related issues. Therefore being a member of a G20 class action should not affect your right to make a human rights application.

However, your right to make a human rights application may be affected if you start a lawsuit in Small Claims Court or the Superior Court that raises discrimination-related issues. You may have to choose between whether to raise your discrimination issue in a lawsuit only, or in a human rights application only. This decision will depend in part on your particular facts and on what you want to achieve (noting, for example, that the Human Rights process can lead to systemic remedies that are beyond a court's powers, but that a court can deal with a wider range of claims and issues than the HRTO can). If you have a potential overlap issue of this nature, it is recommended that you consult with a lawyer or a legal clinic to give you advice that is suited to your particular situation.

How do I contact the Human Rights Tribunal of Ontario?

You can download an application form on the HRTO's website at: www.hrto.ca/hrto/?q=en/node/32

The HRTO's website includes all of the required forms and information about bringing a discrimination application, including an information guide about the application process at:

www.hrto.ca/hrto/?q=en/node/30

An *Applicant's Guide* is also available at: www.hrto.ca/hrto/sites/default/files/New%20Applications1/ApplicantsGuide.pdf.

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor

Toronto, ON M7A 2A3

Local : (416) 326-1312

Toll Free : 1-866-598-0322

TTY (Local): (416) 326-2027

TTY (Toll Free): 1-866-607-1240

Fax: (416) 326-2199

Fax (Toll Free): 1-866-355-6099

www.hrto.ca

How do I contact the Human Rights Legal Support Centre?

The Human Rights Legal Support Centre is able to provide legal assistance to people who file an application to the HRTO. The level of service that the Centre can offer depends on each case. All services are provided free of charge and are available in over 140 languages.

If you believe that you experienced discrimination during the events of the G20 Summit, you can contact the Centre to obtain legal advice including advice about your options in seeking a legal remedy.

The first step is to go to the Centre's website at: www.hrlsc.on.ca. You will find information to help you determine if you want to pursue a discrimination application.

For specific legal information and assistance, contact the Centre through its telephone inquiry lines:

Human Rights Legal Support Centre

Tel: (416) 314-6266

Toll Free: 1-866—625-5179

TTY: (416) 314-6651

TTY Toll Free: 1-866 612-8627

www.hrlsc.on.ca

What about human rights violations that are not covered by the *Human Rights Code*?

The HRTO cannot deal with claims arising from human rights violations other than discrimination (for example, arbitrary detentions or violations of your right to freedom of expression).

You may be able to raise these kinds of issues in a lawsuit. Some of these issues may be included in the G20 class actions.

You might also be able to raise these kinds issues in a police complaint.

Can I report my human rights violations to the United Nations?

Human rights are universal and are protected by international law. For example, the Universal Declaration of Human Rights (UDHR), which applies to Canada, states that everyone is entitled to certain rights and freedoms. Many of those rights are similar to the rights that are contained in the *Canadian Charter of Rights and Freedoms*.

The UDHR states that everyone is entitled to, among other rights:

- The right to life, liberty and security of the person (Article 3)
- The right to not be subjected to inhuman or degrading treatment or punishment (Article 5)
- The right to equal treatment without discrimination (Article 7)
- The right to not be arbitrarily arrested or detained (Article 9)
- Freedom of opinion and expression (Article 19)
- Freedom of peaceful assembly (Article 20)

There are certain mechanisms for reporting violations of your human rights to the United Nations. Some of those mechanisms are available only after you exhaust all of the options that you have available to you within Canada, which usually means that you have to go as far as you can within the Canadian court system before you go to the United Nations.

However, there are other mechanisms that you can use right away, and the United Nations encourages victims of human rights abuses to use them. Specifically, you can report violations of your human rights during the G20 summit to:

- The Working Group on Arbitrary Detention (www2.ohchr.org/english/issues/detention/index.htm)
- The Special Rapporteur on the Right to Freedom of Opinion and Expression (www2.ohchr.org/english/issues/opinion/index.htm)
- The Special Rapporteur on the Situation of Human Rights Defenders (which might apply to legal observers who were wrongfully arrested) (www2.ohchr.org/english/issues/defenders/index.htm)

Often, it is best for such reports to be submitted as part of a group or through a public interest organization, which can often put together a more comprehensive and influential report about the human rights violations that occurred.

12. What kind of action should I take?

This guide informs you of some legal options that may be available to you in Ontario, but just because an option is available to you does not necessarily mean that it will be appropriate in your particular circumstances. This guide cannot advise you on what approach would be best in any particular situation (this is something you would need to contact a lawyer for), but it is intended to help you make an informed decision about which option(s) may be right for you.

Whatever options may be available to you, the Law Union of Ontario and other public interest organizations encourage you to avail yourself of them in order to hold the police accountable and seek justice for the serious wrongs they committed. The police committed mass injustices during the G20 summit, and one important strategy for responding to that is for the mass of people affected to seek justice.

If your rights were violated in any of the ways described, you will have the right to do one or more of the following:

- **Sue the police** (either by starting your own lawsuit in Small Claims Court or in Superior Court, or as a member of a G20 class action)
- **Make a formal police complaint**
- **File a human rights application** if you experienced any kind of discrimination

This chapter reviews some of the pros and cons of each of these three options.

This is not a complete list. There are other actions that you can take, including political or collective activities (such as those described in [Chapter 3](#) of this guide), private prosecutions where you have reasonable grounds to believe that a police officer committed a crime (discussed in [Chapter 15](#)), and others.

There are many factors to consider in deciding how you wish to proceed. These include legal, personal, financial, and strategic considerations. Some of the factors that you may wish to consider include:

- The factual circumstances of your case
- What you want to achieve
- How a legal process might affect you emotionally or mentally (for some people it can be empowering; for others it can be re-traumatizing)
- Whether you can hire a lawyer, or can get funding to do so
- How much of your own effort you are able to devote
- The costs and risks of each approach
- How quickly you want to achieve results
- Broader strategic considerations, including how your efforts may contribute to systemic change and deter future mass detentions and arrests of peaceful demonstrators

In evaluating your options, remember that each of the options available to you is designed to do different things. In many cases,

the decision as to which option(s) to take will depend primarily on what you want to achieve. In summary:

- **Small Claims Court lawsuits** can get you compensation for some wrong that you suffered or recovery of property.
- **Superior Court lawsuits** can likewise get you compensation or recovery of property, and can also lead to a court making declarations about violations of your Charter rights, striking down laws, and ordering a party to do something or to stop doing something. Such lawsuits could also have the effect of changing the policies and future conduct of the Defendant(s).
- **Police complaints** will not get you compensation for police wrongdoing, but can lead to police officers being held personally accountable for their actions through disciplinary measures. The Ontario Office of the Independent Police Review Director (OIPRD) also has a mandate to review systemic issues and police policies.
- **Human rights applications** are available only in circumstances where there is a discrimination issue. You can get compensation for the discrimination that you suffered through this process. You can also get systemic remedies (for example, an order that the police put certain policies in place or provide certain kinds of training to officers) that are beyond the powers of a court to order in a lawsuit.

Option 1 – Suing the Police

There are three main ways to sue the police for their actions in relation to the G20 Summit, each with its own pros and cons:

- A class action, brought by a representative Plaintiff or Plaintiffs on behalf of a whole class of people with similar claims
- A Small Claims Court lawsuit, where you are claiming less than \$25,000
- A lawsuit in the Superior Court, if you are claiming more than \$25,000 or want to get something other than money, such as a ruling on the validity or applicability of a statute or regulation or a declaration that your *Charter* rights were breached

Option 1(a) – Class actions: pros and cons for class members

PROS

Access to Justice: Ideally suited for cases involving a large group of people who suffered similar wrongs. Enables individuals who might not otherwise pursue small claims individually to have access to justice.

Scope: Complex issues (such as important *Charter* issues) can be dealt with comprehensively.

Systemic impact: Can be used to as leverage to help bring about systemic changes and deter future mass police misconduct.

Public profile: Likely to have a high public profile and can provide opportunities to educate the public about what happened during the G20 summit and about *Charter* rights.

Cost: It costs nothing to be a class member (class action legal teams usually work on a contingency basis – they get paid at the end of the case if they achieve a favourable outcome).

Risk: Class members risk nothing to be class members. The class action lawyers and the representative plaintiff(s) assume all of the risk of the case being unsuccessful.

Effort: You don't need to do anything to be a class member, until the end of the case.

Truth-finding: The court's "discovery" process to get can help you to get access to documents, recordings, and information that is otherwise confidential.

CONS

Time: It will likely take several years before a class action is concluded.

Compensation: A portion of any compensation paid as a result of the class action will be required to compensate the legal team for their fees and the significant risk they personally take on to bring the class action forward without being paid. These fees are usually higher in class actions than they are in regular individual lawsuits because of the very high risk and level of effort involved in class actions.

Limited issues: There are some limits to the proposed G20 class actions. They may not deal with all of the wrongs that happened to you – only certain wrongs that you share in common with other class members.

Control: Individual class members do not normally have a role in providing input into the class action or instructing the legal team.

Uncertainty: There is no certainty that either of the two G20 class actions will be certified by the court. This may make it difficult for some people to decide whether they should wait for certification or start their own lawsuit.

Option 1(b) – Superior Court Lawsuits (non class-action): pros and cons

PROS

Applicability: Can address important claims that are not covered by the G20 class action and are outside the Small Claims Court’s jurisdiction (such as *Charter* claims).

Compensation: Where damages are high (beyond \$25,000), this is the only legal option that can lead to full compensation.

Scope: The Superior Court can make binding declarations about your *Charter* rights and it can strike down laws. This can set important precedents.

Systemic impact: Certain cases and court findings could help prompt systemic changes and change police conduct in the future.

Public profile: Certain cases can attract significant public attention.

Truth-finding: You have the right to “discovery” in some Superior Court cases, a process which may enable you to get access to otherwise confidential documents, recordings and information.

Time: Certain kinds of cases can be brought by a procedure called an “Application,” which could be heard fairly quickly, within several months.

Control: You have some control over the process, as your lawyer acts on instructions given by you.

CONS

Time: Most Superior Court lawsuits take a long time, though generally not as long as a class action as there is no need for certification. (An exception is where the case is brought by a special procedure called an “Application,” which is a streamlined process that may take just a few months but that is available only in certain limited circumstances).

Complexity: You generally will need a lawyer to represent you, as legal issues and procedures can be difficult.

Cost: Legal fees for representing you in a case before the Superior Court can be high – typically tens of thousands of dollars (although some lawyers will sometimes do certain cases for free or for a reduced fee or on a contingency basis).

Risk: The risk if you lose your case is that you have you pay part of the other side’s legal costs. This could be several thousand dollars or possibly tens of thousands.

Effort: It can take a significant amount of effort and energy to be involved in a Superior Court lawsuit, even where you have a lawyer.

Option 1(c) – Small Claims Court: pros and cons

PROS

Accessibility: A low-cost simplified way of bringing straightforward claims for financial compensation or for recovery of property to a court.

Self-representation: You can represent yourself (although it is usually better to have good legal representation). There are many materials available from the Ministry of the Attorney General for do-it-yourself claimants in Small Claims Court.

Cost: Costs are minimal compared to a Superior Court lawsuit.

Time: The process is fairly quick, and it is possible to have a trial within six months to one year after starting a lawsuit.

Risk: There is minimal downside risk. If you lose, you may have to pay some of the other side's legal costs, but those costs are capped at 15% of what you are claiming, plus out-of-pocket expenses such as court fees, except in extraordinary circumstances.

CONS

Limitations: The maximum you can recover is \$25,000 (this may be sufficient for most G20 claims, but some claims may be worth more than that).

Scope: The Court is not set up to deal with some complex legal issues, and generally is not able to deal with legal issues as thoroughly as the Superior Court.

Authoritativeness: Small Claims Court decisions do not set binding legal precedents or constitute persuasive developments of the law.

Truth-finding: There are some opportunities to force the other side to turn over documents and information prior to a trial, but this is not as thorough as the "discovery" process that is available in Superior Court cases.

Systemic impact: One case on its own is unlikely to have a significant systemic impact (although dozens or hundreds of cases might collectively have an important impact).

Public profile: It is difficult to attract media interest in most Small Claims Court cases, although some particular cases do attract media interest.

Effort: You will have to invest significant effort and energy to prepare your case and carry it forward to a trial, especially if you are representing yourself.

Option 2 – Police Complaints: pros and cons

PROS

Accountability: Can result in police officers being held personally accountable for their wrongdoing through disciplinary measures.

Deterrence: Findings of misconduct may deter police officers from misconduct in future situations.

Systemic issues: Individual complaints may be relevant to the systemic review that the OIPRD will be conducting.

Availability: Everyone who was affected by or offended by police actions during the G20 Summit can make a complaint.

Self-help: You don't need a lawyer or paralegal to help you make a police complaint, but you can if you want.

Cost: There is no fee for making a police complaint or at any stage of the process prior to any judicial review.

Risk: There is no financial risk. If the police officer is cleared of wrongdoing, nothing happens (although such a finding might affect what happens in a lawsuit against the officer).

Strategic value: Every complainant can request that a written report be produced as the result of a police complaint. This can be useful when considering whether or not to launch a lawsuit.

Effort: Minimal, after filing the initial complaint (unless and until there is a review, appeal or judicial review).

Time: The time it takes for a police complaint to go through the process varies from case to case. Usually the process can be relatively quick. However, in other cases it can take years. It is not yet clear how long it may take for most G20 complaints to work their way through the process.

Public profile: The media have been watching the OIPRD process closely, and may also show an interest in individual cases. Publicity may further increase public accountability.

CONS

Independence: Some observers have expressed concern that complaints that are sent to the subject police service for investigation may not be dealt with independently and may be biased towards police officers.

Control: The process, after making your complaint, is out of your hands, until there is a final decision which you might wish to review or appeal.

Compensation: You cannot get compensation through the police complaints process.

Option 3 – Human Rights Applications: pros and cons

PROS

Systemic impact: The Human Rights Tribunal of Ontario (HRTO) has the power to order systemic remedies that are beyond the power of the courts.

Self-help: You do not need to have a lawyer or paralegal to help you make a human rights application, but you can retain a lawyer or paralegal for this purpose if you want.

Legal support: The Human Rights Legal Support Centre is available to give you some basic legal assistance for free with your human rights application. This is a unique and valuable service.

Cost: No fees for making a human rights application.

Risk: No downside financial risk if you lose.

Control: You are responsible for taking steps to move your case forward and you control how you present your case to the HRTO.

Time: The time it takes for a human rights application to go through the process varies from case to case. The HRTO attempts to complete cases within one year. Some cases are settled more quickly through mediation, and some cases take longer.

CONS

Availability: Not everyone affected by policing at the G20 can file an application – only those who experienced some form of discrimination.

Limited scope: This process only looks at one aspect of what you experienced during the G20 Summit, and cannot necessarily deal with all of the claims arising from your situation.

Effort: Can require some time and effort to prepare your application and to go through the process of an HRTO hearing. This may be daunting for some applicants, but there are resources available to help you through the process, including the Human Rights Legal Support Centre.

13. More information about your grounds for a lawsuit

For those who wish to sue the police in Small Claims Court or in the Superior Court, this chapter gives you some basic information about some legal terms and concepts that might help you in drafting your claim and in presenting your case.

Also see Chapters [8](#) and [9](#) for information about your options for starting a lawsuit and the process for suing the police in Small Claims Court.

In a lawsuit in the Small Claims Court or in the Superior Court, the set of facts that provide the basis for legal action is called a “cause of action”. Your cause of action may arise from a certain “tort” (someone’s wrongful or negligent act that caused you harm). There are many different kinds of torts, including:

- Assault and battery
- Malicious prosecution
- Negligence
- Unlawful seizure of or damage to property (“trespass to chattels”)
- Wrongful arrest
- Wrongful detention or imprisonment

You also have a cause of action if your rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* were violated. Some of the *Charter* rights and freedoms that police appear to have breached during the G20 Summit in June 2010 (with the applicable section of the *Charter* noted) include:

- Freedom of expression - section 2(b)

- Freedom of peaceful assembly - section 2(c)
- Freedom of association - section 2(d)
- Right to liberty and “security of the person” - section 7
- Right to be secure against unreasonable search and seizure - section 8
- Right not to be arbitrarily detained or imprisoned - section 9
- Right to be given a reason for your arrest or detention and to speak with and hire a lawyer if you are arrested or detained - section 10
- Right to equal treatment without discrimination - section 15

Civil “Tort” Claims

Assault and battery

Battery occurs where someone intentionally or recklessly uses unlawful force against you.

Assault is like battery, but occurs where you reasonably think that someone is going to use unlawful force against you. For example, a police officer commits an assault if he or she threatens that either you answer questions or he/she will hurt you. Waving a baton at someone can be an assault, and it becomes battery if the baton actually makes contact with that person.

To prove a claim of assault or battery against the police, you need to establish that force was used. Use of force might mean that a police officer:

- Kicked, struck, grabbed, dragged, or shoved you, or used other physical force against you
- Used a weapon, including a baton, shield, pepper spray, tear gas, projectile, or ammunition against you
- Restrained you with physical force (such as a choke hold or a half-nelson) or with mechanical restraints such as handcuffs or plastic ties
- Used police dogs or horses to attack or threaten you

Once you show that force was used, the police officer will then need to prove that there was a legal justification for that use of force. Police officers are authorized by law (under section 25 of the *Criminal Code*) to use force that is “reasonable, proper and necessary” to carry out their duties. Thus, in many claims for assault and battery, a key issue will be whether the police officer’s use of force in the circumstances was reasonable.

The police officer accused of committing the assault or battery will have to show that he or she:

- Believed that the use of force was necessary, and that the grounds for that belief were reasonable, and
- Believed that the use of force was not excessive given the level of danger, and that the grounds for that belief were reasonable.

If there was a less dangerous alternative to a police officer using force, he or she will need to explain why they did not take the alternative course of action.

Assault and battery during an illegal search

If you were lawfully arrested, then the police had the right to search you. However, if you were wrongfully arrested or detained, then the police did not have a right to search you without your consent. An illegal search of your person is an assault.

Strip searches are only legal when the police have reasonable grounds for concluding that a strip search is necessary given the circumstances (for example, if you are being held in custody overnight, or if the police have reasonable grounds to believe that you

are hiding drugs, a weapon, or evidence). If the police do not have reasonable grounds, the strip search will be assault and battery.

Even if the police had a right to strip search you, their obligation is to use no more force than is necessary in the circumstances. Thus, unnecessarily repeated strip searches, which are sometimes used in an attempt to intimidate or degrade prisoners, can constitute assault and battery.

Related claims: wrongful arrest, wrongful detention, *Charter* claims (sections 2, 7, 8 and 9).

Malicious prosecution

Malicious prosecution occurs where someone prosecutes you for a crime or other offence, or causes the prosecution to take place, for a reason other than to enforce the law.

For example, you might have a malicious prosecution claim if you were charged with a crime and subsequently prosecuted because the police wanted to stop you from protesting or punish you for engaging in legal political activities, and not because you were breaking the law.

To prove malicious prosecution against the police, you will need to show that:

- The criminal proceedings against you were initiated by the police

- The proceedings were terminated in your favour (e.g. the charges were dropped, stayed or withdrawn, or you were found “not guilty”)
- The police had no reasonable and probable grounds for charging you, or allowed the prosecution to continue when they knew you were innocent, and
- The police acted with malice or bad faith, for a reason other than enforcing the law

Malicious prosecution is a difficult claim to prove, as you need to show not only that you were wronged, but also that the police acted maliciously in causing you to be prosecuted.

Related claims: wrongful arrest, negligent investigation.

Negligence

Negligence occurs where you suffer some harm as a result of another person or entity breaching some duty of care that they owed to you. A police officer may be negligent if he or she either injures you because they were not being careful, or fails to protect you from some danger that they knew or should have known about.

There are an infinite number of ways that someone can be negligent. A police officer might have been negligent if he or she, for example:

- Caused you to be injured or caused your property to be damaged because he or she was not being careful or because he or she used unnecessary force against you
- Failed to get you medical attention and treatment that you needed while you were in custody (for example, insulin for your diabetes, pain medication, or treatment for wounds that you received while you were being arrested) when they knew or should have known you needed it
- Failed to address inhumane conditions while you were detained or in custody (for example, by failing to provide you with water or access to a washroom for a long period of time)
- Observed another police officer unreasonably harming you and failed to take steps to stop it
- Released you from custody into a dangerous situation
- Conducted an improper investigation that disregarded information that tended to prove your innocence

To make a case for negligence you will need to show that the police officer's conduct fell below the standard of a "reasonably prudent" officer. A "reasonably prudent" officer is one who carries out his or her duties with a level of care that you would normally expect of a good police officer in their position. You must also show that you suffered damages (i.e. injuries or a loss of property) as a result of the police officer's conduct.

Negligent investigation

Negligent investigation is one category of negligence. You can sue the police for conducting a negligent investigation if you think that you have been wrongfully charged with a crime because the police were not careful enough in their investigation (for example, if they ignored evidence that tended to indicate your innocence). This is similar to a claim of "malicious prosecution" but it does not require you to prove that the police acted with "malice" or "bad faith".

Related claims: assault and battery, wrongful arrest, wrongful detention, trespass to chattels, malicious prosecution

Unlawful seizure of or damage to property ("trespass to chattels")

Trespass to chattels means that police officers kept, interfered with or destroyed your property without a legal reason.

"Chattels" is the legal word for personal property. Chattels can include money, identification, equipment, medication or other personal property that you own or were carrying with you when you came into contact with police.

The police might have unlawfully interfered with your property if they, for example:

- Confiscated your money, identification, medication, equipment or other belongings after a legal or illegal search and have not returned that property to you
- Damaged or destroyed your bicycle, assistive devices, camera, or other belongings

If the police take property from you that is not required for an investigation, and they know who owns the property, they must return it to the owner as soon as possible. However, police officers are allowed to seize property that they have reasonable grounds to believe is connected to a crime (such as drugs, illegal guns, or weapons used in a crime).

To make a case for “trespass to chattels” you will have to show that:

- The police directly and intentionally or negligently interfered with your property, and
- You were in possession of the property when it was damaged, interfered with, or seized.

You *do not* need to be the owner of the property. If you borrowed your friend’s camera and it was damaged by the police, you can still make a claim that the police should pay for the cost of repairing or replacing the camera.

One of the ways the police might try to counter your claim of “trespass to chattels” is that they acted with legal authority in seizing or damaging your property. You might want to include an explanation in your claim of how the police acted without lawful authority (i.e. without any legal reason).

Related claims: assault and battery, conversion, negligence, *Charter* claims (s. 8).

Wrongful arrest or false arrest

Wrongful arrest or false arrest means that you were arrested by the police when they did not have “reasonable and probable grounds” for arresting you.

The police are only allowed to arrest you if:

- They have reasonable grounds to believe that you committed or are about to commit a crime, or they find you actually committing a crime
- There is a warrant for your arrest, or
- You are breaching the peace, or about to breach the peace, by causing a disturbance in public

Arresting you for “breach of the peace” when you are simply participating in a peaceful demonstration would usually be wrongful. Arresting you for trumped-up or fake criminal charges would also be wrongful.

Related claims: wrongful detention, negligence, assault and battery, *Charter* claims (sections 2, 7, 9, and 10).

Wrongful detention or false imprisonment

Wrongful detention or false imprisonment means that you were totally confined against your will without legal justification.

You may have been wrongfully detained or falsely imprisoned even if you were never put in jail or even arrested. If you were confined to any place that you were not permitted to leave or were unable to reasonably escape from, then you were “imprisoned.”

You were imprisoned if, for example:

- You were surrounded by police on the street and not permitted to leave the confined area
- You were physically held, dragged or restrained by a police officer or officers
- You were handcuffed
- You were locked in a police cruiser or paddy wagon
- You were put in a jail or detention centre, or
- You were locked in a police interview room and not free to leave

To make a case for wrongful detention you have to show:

- That you were totally deprived of your liberty (i.e. confined to a place that you could not reasonably, legally and immediately escape from)

- That this deprivation of your liberty was against your will (i.e. you did not consent to being restrained), and
- That this deprivation of your liberty was caused by the police officer or other defendant that you are suing

If you can show that you were imprisoned, then the police or other person or entity that imprisoned you has to show that the imprisonment was legally justified. If, for example, the imprisonment resulted from a lawful arrest, then it will not be considered a “wrongful” or “false” imprisonment. However, if you were wrongfully arrested, then your imprisonment would likely also be wrongful.

Related claims: wrongful arrest, negligence, abuse of process, assault and battery, *Charter* claims (sections 2, 7, 8, 9 and 10).

Claims for violations of your *Charter* rights

Section 2: Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Freedom of expression (section 2(b)) means that you have a right to express your ideas, thoughts, beliefs and opinions in the way(s) that you choose. For example, you can exercise your right to free expression by:

- Talking to others
- Writing about your ideas, thoughts and beliefs
- Making chalk drawings on the sidewalk
- Distributing flyers or posters

- Participating in a political demonstration, such as by marching, holding a sign, singing, chanting, or blowing bubbles
- Observing events and reporting them in the media

Freedom of peaceful assembly and association (sections 2(c) and 2(d)) means, among other things, that you have a right to join together with other people to share your ideas, opinions and beliefs and to take actions as a group, including organizing and participating in peaceful political protests and demonstrations.

You can claim that the government violated your rights under section 2 if you think that the actions of the police suppressed or violated your fundamental freedoms of expression, peaceful assembly and association – whether that was intended or not.

It appears that some of the actions taken by the police during the G20 Summit may have been taken for the purpose of silencing political dissent, contrary to the *Charter* (for example, dispersing peaceful protestors gathered at the designated protest area at Queen’s Park, or “kettling” hundreds of protestors at Queen and Spadina without any apparent good legal reason).

If your right to peacefully protest was constrained or detained in any way (for example, if you think that the police arrested or detained you in order to prevent you from expressing your political views or from protesting peacefully), then you may include a claim that your section 2 *Charter* rights were breached in your lawsuit.

Section 7: Right to life, liberty and security of the person

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 of the *Charter* protects your right to be secure from physical harm, to access the things you need to protect your physical health, and to maintain your own liberty.

Your right to life, liberty and security of the person includes, among other things, your right not to be held against your will, your right to be free from physical assault or interference by the police or other agents of the state, and your right to be free from the *threat* of physical assault or interference by the police.

You may have a claim under section 7 if, for example, you were assaulted by the police, if you were wrongfully detained, or if you were strip-searched by the police without a good reason.

Section 8: Right to be free from unreasonable search and seizure

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Your right to be secure against unreasonable search and seizure restricts the ability of the police to search you in certain circumstances and protects your property when you have a “reasonable expectation of privacy”. Before the police can search or seize something, they must have a good legal reason to do so.

You may make a claim that your rights under section 8 were infringed if you were searched by the police and/or if your property was seized by the police without your consent or a proper legal reason (whether or not it was damaged or returned to you).

Arbitrarily stopping you on the street because you were at or near a protest area or you looked like you might be a protestor, and going through your bag or other belongings without your free consent, may also be a violation of your rights under section 8. (See also the civil tort of “trespass to chattels”).

Section 9: Right not to be arbitrarily detained or imprisoned

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Section 9 of the *Charter* means that the police are not allowed to arrest you, surround you on the street, or otherwise imprison you without a legal justification.

Your right not to be arbitrarily arrested or imprisoned means that the police must have a good legal reason for arresting or imprisoning you. Something is arbitrary if there is no good legal reason for it or if it is done because of someone’s opinion and there is no good reason for that opinion.

If you have grounds for a tort claim that you were wrongfully arrested and/or imprisoned, you may also make a claim that the police breached your rights under section 9 of the *Charter*.

Section 10: Right know why you have been arrested and the right to a lawyer

Arrest or detention

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor
- (b) to retain and instruct counsel without delay and to be informed of that right

Your lawsuit can include a claim that the police breached your rights under section 10(a) 10(b) of the *Charter* if you were arrested or imprisoned (legally or illegally) but were not:

- Told the reason why you were being arrested or imprisoned
- Advised that you had a right to talk to a lawyer (counsel) without delay
- Allowed to promptly contact a lawyer of your choice, or
- Given privacy to speak with a lawyer

Section 15: Right to equality without discrimination

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Your right to equality means that police cannot discriminate against you on the basis of race, national or ethnic origin, colour, religion, sex, age, mental or physical disability, or a ground that is “analogous” to any of these categories, such as sexual orientation.

Your right to equal treatment does not mean that the police should always treat you the same as everybody else. Sometimes, treating you the same as everyone else will be discriminatory if the circumstances call for different treatment (for example, many people suffered equally deplorable conditions at the Eastern Avenue detention facility, but those who were denied access to medications that they needed were left in a worse situation and may thus have a claim under section 15).

Your section 15 rights may have been violated if, for example, the police:

- Targeted you specifically because of a personal characteristic such as being a woman or being Francophone

- Arrested you because you are hearing impaired and did not hear instructions from the police
- Denied you access to your medication while you were being detained or arrested
- Failed to provide you with assistive devices that you need as a result of a physical disability while you were in custody

Unequal treatment under section 15 is defined in much the same way as discrimination under the Ontario Human Rights Code (see Chapter 11 on making a human rights application). One difference, however, is that the grounds of discrimination under section 15 of the *Charter* might be broader and more numerous than those covered by the *Ontario Human Rights Code*. If you have a claim under section 15 of the *Charter*, you may want to consider filing a human rights application with the Human Rights Tribunal of Ontario instead (you may not be able to raise the same discrimination issues in both a lawsuit and a human rights application).

The police do not need to intend or pre-plan a violation of your section 15 rights – it is the *effect* of the discriminatory treatment that is important. If the police did anything to discriminate against you, or failed to do anything to take into account your special circumstances, then you can claim that the police breached your rights under section 15 of the *Charter*.

14. What kind of remedies can I claim in my lawsuit?

There are a variety of things that you could ask the Court for in your lawsuit.

In Small Claims Court or in Superior Court, you can ask for financial compensation or recovery of property.

In Superior Court only, you can also ask for non-financial remedies. Non-financial remedies can include things like an injunction to order somebody to do something or to stop doing something, a declaration that a law is unconstitutional or invalid, a declaration that your *Charter* rights have been breached, or a variety of other things. Such declarations are persuasive public rulings that could deter future misconduct and lead to systemic changes.

There are limits on the kinds of non-financial remedies the Superior Court can grant. For example, the Court cannot order someone to apologize to you, and it cannot force the police to make systemic changes (although lawsuits can sometimes persuade the police to do so).

The monetary compensation that you might claim and be entitled to is called “damages.” If you win your case, the Court will determine what your damages are worth and will order the Defendant(s) to pay that amount to you.

There are at least five different categories of damages that you can claim as part of a lawsuit in Small Claims Court or Superior Court, depending on the nature of your claim: special damages; general damages; aggravated damages; punitive damages; *Charter* damages

Special damages

Special damages are compensation for money you had to pay “out of pocket” as the result of the wrongful conduct of a Defendant. These types of expenses might include:

- Medical expenses for uninsured medical treatment by a doctor or counsellor
- Transportation costs for getting home from a detention centre, or to and from a court, a lawyer’s office, or a doctor
- Costs for pain medication or wound dressings
- The value of, or repair cost for, property that the police seized, damaged or destroyed
- Your lawyer’s fees for defending you against wrongful criminal charges or for getting you out of jail
- Income you lost because you were unable to go to work
- Any other expenses that you incurred as a result of what happened to you

General damages

General damages are payments of money that are meant to compensate you for harm that you suffered other than for out-of-pocket costs. These can include payments for “pain and suffering” (which can result from either physical injuries or mental trauma), for the deprivation of your liberty, for damage to your reputation, or a wide variety of other harm that you suffered.

The table on this page gives you a rough idea of the kinds of general damages that courts have awarded for pain and suffering inflicted by the police. These amounts may be very different than what might be appropriate in the circumstances of your particular case, as no two cases are exactly the same. However, this table may assist you in deciding how much you think is reasonable to claim in your lawsuit.

Your Claim	Examples	Amount of General Damages
Wrongful arrest or detention	You were held by police for no reason for 15 to 30 minutes	\$2,000 - \$3,000
	You were arrested and held for 30 minutes to 1 hour	\$3,000 - \$4,000
Illegal search	You were strip searched illegally	\$5,000 - \$12,000

Your Claim	Examples	Amount of General Damages
Assault	You were kicked or punched by a police officer, and it caused a minor injury to you like a cut or bruise.	\$2,000 - \$3,000
	You were kicked or punched by a police officer, and it caused a more serious injury to you like a torn muscle, scrape that left a scar on your face or a painful deep bruise.	\$3,000 - \$4,500
Assault	You were hit in the head by a police baton, causing headaches, disabling you for two to three months and damaging your teeth (does not include brain injury).	\$10,000
	You have bite wounds from police dogs that left scars.	\$15,000
	You were bitten by police dogs and suffered a broken bone like an arm, leg or rib.	\$20,000
	You were hit in the head, causing a concussion and memory loss, and you have a CT scan from your doctor that proves it.	Up to \$25,000

Adapted from: David Eby and Emily Rix, “How to Sue the Police and Private Security in Small Claims Court” (Vancouver: Pivot Legal Society, 2007).

Aggravated damages

A court can order a Defendant to pay additional damages if, in the process of committing a wrongful act against you, he or she did something that increased the seriousness of an injury to you, such as by causing you embarrassment or humiliation, thus making a bad situation for you even worse. These are called aggravated damages.

Punitive damages

Damages are generally only awarded to compensate you for some harm that you suffered. Punitive (or “exemplary”) damages are an exception to that rule. In extreme cases, a court could punish a Defendant by ordering him or her to pay an extra amount. For example, if the conduct of a police officer was particularly outrageous, such as if the officer made racist or homo/transphobic comments while wrongfully arresting you, or wantonly abused his or her authority in knowingly and deliberately violating your Charter rights, you may be awarded punitive damages.

In most lawsuits arising from police conduct during the G20 summit, it may be a good idea to claim punitive damages, as it appears that there were many flagrant and unnecessary violations of people’s Charter rights and other rights. However, punitive damages awards can be difficult to win, especially against the police.

Charter damages

If your *Charter* rights were breached, you can claim additional remedies (under section 24(1) of the *Charter*), including damages for the breach of your Charter rights.

You will usually not get *Charter* damages if your *Charter* claim overlaps your tort claim, as the Court will not compensate you twice for the same incident. However, if you have a *Charter* claim that is not similar to a tort claim that you are making, you may be entitled to compensation for the breach of your Charter rights.

Whether or not a court will actually award *Charter* damages, or what amount will be awarded, is difficult to predict because this is an area of the law that remains unsettled.

There is one recent case from the Supreme Court of Canada (the highest court in Canada) that provides some clarity on this issue. In the case of *City of Vancouver v. Ward*, the Supreme Court upheld an award of \$5000 in *Charter* damages for an unlawful strip search by the police, and set out some important guidelines about when *Charter* damages may be awarded and how they can be calculated. This case may make it easier to successfully claim *Charter* damages in other cases.

Even if a court declines to award *Charter* damages, it may still make a finding that your *Charter* rights have been violated. Such a finding may be a persuasive public statement that the police acted wrongly.

15. What can I do if a police officer committed a crime or broke the law?

If a police officer committed a crime or broke the law during the G20 summit but is not being investigated or prosecuted for it, you may be able to prosecute that officer yourself. This is a way to hold police officers legally accountable for their illegal acts. However, private prosecutions are difficult and relatively rare.

A private prosecution could result in a police officer being found guilty of an offence and sentenced accordingly. A private prosecution will not result in compensation for you, although if a police officer is found guilty for a crime committed against you it would assist you in any civil lawsuit that you may have against the police.

If you were yourself the victim of a violent crime committed by a police officer, you might choose to seek monetary compensation from the Criminal Injuries Compensation Board, a special tribunal that streamlines the compensation process of victims of certain violent crimes.

Should I report a police officer's crime to the police?

Any person can report a crime to the police. The police then have to decide whether or not to investigate the alleged crime and whether or not to lay charges. If charges are laid, then Crown Attorneys are responsible for prosecuting the alleged offender.

Where the alleged offender is a police officer, you may be reporting the crime to the same police force that employs the alleged offender. Some people are reluctant to do this because they believe police will be biased in favour of their fellow officers and will not properly or thoroughly investigate and act upon such reports.

In cases where a police officer caused serious injury or death to a civilian, a special independent investigation agency called the **Special Investigations Unit (SIU)** is obliged to investigate. If you are aware of such an incident that is not currently before the SIU, you may report it to the SIU. You can get information about the SIU at www.siu.on.ca/about.html.

Can I prosecute a police officer who committed a crime if the police and Crown Attorney do not?

If the police refuse to investigate or lay charges even though there are reasonable grounds to believe that an offence has been committed, it is possible for any person to prosecute the alleged offender personally.

The *Criminal Code* allows anyone who has reasonable grounds to believe that an offence has been committed contrary to the Criminal Code, another federal or provincial statute or regulation, or a municipal bylaw, to privately prosecute the alleged offender.

Private prosecutions can be onerous and complicated, and you should consult with a lawyer if you are considering this option.

How do I privately prosecute somebody?

Before you start a private prosecution, you need the name of the alleged offender and detailed information about the alleged offence. You will need to be able to convince a Court that you will be able to produce evidence (including the names of witnesses) if the prosecution goes ahead. You will also likely need to show that you have already asked the police to investigate the incident, and to explain the results of that investigation.

Even if the Court allows the prosecution to go forward, the Crown Attorney can intervene in the case and either take over the prosecution or withdraw the charges.

The first step in starting a private prosecution is to “lay an information” with a Justice of the Peace (JP) at your local Ontario Court of Justice (or Provincial Court) office. This involves filling out and signing a form on which you have to name the alleged offender and set out the details of the alleged offence. The JP will ask you to swear under oath that this statement is true and will sign his or her name as a witness.

You will need to draft the charges carefully and accurately, keeping the following in mind:

- **Obtain the correct forms** – the forms used for provincial offences are different from those for federal offences, so be sure you fill out the proper form
- **Lay the information promptly** – you have only **six months** from the time the offence occurred to lay the charges under the summary conviction provisions of the *Criminal Code* and under the *Ontario Provincial Offences Act*

- **Follow the wording of the statute** – the best way to be precise about the charge(s) is to follow the wording of the statute that describes the offence(s) as closely as possible
- **Be clear about the facts** – state the specific date and place where the offence occurred, and give the name of the accused in full
- **Break the information into separate “counts”** if it relates to more than one breach of the law – use separately numbered paragraphs to set out each offence in detail

While a JP cannot refuse to accept a sworn information, he or she can refuse to “issue” a summons to the accused, which will effectively derail your private prosecution. Be prepared to answer some probing questions from the JP about the case and come well prepared. You can also choose to bring a lawyer with you to lay the information.

Once an information is laid, there will be a special hearing before a JP or a judge of the Ontario Court of Justice. The purpose of the hearing is to determine whether a summons or warrant should be issued to compel the accused person to attend court and answer to the charge.

This hearing takes place in private, without notice to the accused person. At the hearing, the judge or JP must hear and consider all of the allegations and the available evidence.

The Crown Attorney’s office must also receive a copy of the information, get notice of the hearing, and have an opportunity to attend.

The judge or JP can decide not to issue a summons or a warrant according to their discretion. If no summons or warrant is issued, the private prosecution process will come to an end (subject to appeal).

If the judge or JP issues a summons, the accused person will be served with a copy of the summons, which notifies them of the charge and compels them to attend court. If the judge or JP issues a warrant, the person will be arrested and brought before a judge.

To avoid any abuse of the private prosecution process, a Crown Attorney is allowed to supervise privately laid charges to ensure that such prosecutions are in the public interest. If a summons or warrant is issued and the case involves an indictable offence (i.e. an offence that requires a trial), the Crown is required to take over the prosecution.

If the Crown intervenes, the Crown will review the matter, as it does in every other criminal case, to determine whether there is a reasonable prospect of conviction and whether a prosecution is in the public interest. If so, the Crown will proceed with the prosecution. If not, the Crown must withdraw the charge.

It can be difficult to find detailed information about bringing a private prosecution in Canada. One resource that may be of some assistance is a background guide published by the Federal Government, which is available at:

www.justice.gc.ca/eng/dept-min/pub/fps-sfp/fpd/ch26.html.

For further resources on private prosecutions, see [Chapter 18](#).

Getting compensation from the Criminal Injuries Compensation Board (CICB)

Another legal option that is available in some circumstances is to apply to the **Criminal Injuries Compensation Board (CICB)** for monetary compensation if a police officer (or anyone else) committed a violent crime that injured you – for example, if you were assaulted or if you were injured while trying to protect somebody else from an assault.

However, in most cases a Small Claims Court claim will be a better option than a CICB application because CICB cannot award you anything greater than the \$25,000 that you can get in Small Claims Court, because the CICB cannot deal with other legal claims that you may have, and because it may be more difficult to prove that a police officer committed a crime (which the CICB requires) than it is to prove that he or she committed a civil tort.

An application for compensation to the CICB must be made within two years of the date of the incident.

16. Words and phrases worth knowing

Aggravated damages – Money that the Court may order the Defendant to pay to a Plaintiff if the Defendant did something that increased the seriousness of an injury to you, such as causing you embarrassment or humiliation in the course of committing a wrongful act against you.

Cause of action – A set of facts that provides the basis for action in court. You have a cause of action, or a basis for action in court, if some wrong was committed against you (such as a tort or a Charter breach).

Certification – A special legal procedure in a class action, in which the Court approves the class action and permits a Representative Plaintiff or Plaintiffs to automatically represent a whole group or class of individuals in the class action.

Charter of Rights and Freedoms – An important law, which is part of the Constitution of Canada, that guarantees everyone in Canada certain fundamental rights and freedoms, including:

- Freedom of expression
- Freedom of peaceful assembly
- Freedom of association
- Right to be secure against unreasonable search and seizure
- Rights not to be arbitrarily detained or imprisoned
- Right not to be given reason for your arrest or detention and to speak with and hire a lawyer if you are arrested or detained
- Right to equal treatment without discrimination

Charter damages – Money that the Court may order the Defendant to pay to a Plaintiff if the Defendant violated the Plaintiff's *Charter* rights. *Charter* damages are a remedy that is available under section 24 of the Charter.

Chattel(s) – Personal property. Any property that is not land.

Class action - A special lawsuit under the *Class Proceedings Act* brought by one or a few Representative Plaintiff(s) on behalf of a defined group or “class” of people who have similar legal claims arising from the same circumstances.

Class member – An individual on whose behalf a class action is being brought.

Common law – Laws that have developed over time through court cases. People may have rights and obligations under common law that are not necessarily written down in statutes enacted by governments.

Crown attorney – A lawyer who works for the government who is responsible for prosecuting those who commit crimes or offences.

Damages – Money that the Court may order the Defendant(s) to pay to a Plaintiff if the Defendant(s) did something wrongful that caused you a loss or injury. See *Aggravated Damages*, *Charter Damages*, *General Damages*, *Punitive Damages*, and *Special Damages*.

Defendant(s) – The person(s) or organization(s) who is sued in a lawsuit and who would be defending the claims made by the Plaintiff.

Evidence – The documents, photos, testimony and anything else you will use to prove your case.

General damages – Money that the Court may order the Defendant(s) to pay to a Plaintiff as compensation for pain and suffering and other injuries that the Defendant caused you, other than special damages.

Human rights application – A claim to the Human Rights Tribunal of Ontario that you were discriminated against under the Human Rights Code.

Human Rights Code – An Ontario law that protects your equality rights – the right to be treated equally without discrimination based on personal characteristics such as race, age, gender or disability. Under this law, everyone in Ontario has the right to be free from discrimination in employment, in housing, in services and in facilities, and in entering contracts.

Limitation period – Deadline for taking legal action. The amount of time someone has to start a lawsuit or other legal procedure. Legal actions that are started after expiry of the applicable limitation period are generally not permitted to proceed.

Litigation guardian – A responsible adult who acts on behalf of a person who otherwise is not able to participate in a lawsuit because that person is a minor under 18 years of age or is mentally incompetent.

Ontario Court of Justice – A branch of the Ontario Court system. The Court of Justice deals with most criminal law matters and other offences in Ontario.

Plaintiff(s) – The person(s) or organization(s) who start a lawsuit asking the Court to do something, such as order a Defendant to pay money to the Plaintiff or interpret the rights that the Plaintiff has.

Police complaint – A formal complaint made to the Office of the Independent Police Review Director or to the Commission on Public Complaints against the RCMP about either a policy of the police or the misconduct of a particular police officer or officers.

Punitive damages – Money that the Court may order the Defendant(s) to pay to a Plaintiff over and above other damage awards, intended to punish the wrongful party for behaving very badly and not to compensate the Plaintiff(s).

Private prosecution – The prosecution of a crime or other offence by a civilian rather than a Crown Attorney.

Representative Plaintiff(s) – the person(s) who start a class action on behalf of a group or class of people with similar causes of action.

Small Claims Court – A branch of the Ontario Court system that provides a simplified procedure for litigating “small” claims, i.e., claims where the only thing you are seeking is compensation of \$25,000 or less or recovery of property worth \$25,000 or less.

Special Damages - Money that the Court may order the Defendant(s) to pay to a Plaintiff for out-of-pocket expenses or lost income.

Statute – A law enacted by the Parliament of Canada or by the Legislature of Ontario or another province.

Statement of Claim (or Plaintiff's Claim) – A document filed with a Court by a Plaintiff to start a lawsuit. This document is called a "Statement of Claim" in Superior Court and a "Plaintiff's Claim" in Small Claims Court. This document describes what the Plaintiff is seeking and the facts relevant to the claim.

Superior Court – A branch of the Ontario Court system. Deals with all legal cases that are not within the jurisdiction of other courts. All civil lawsuits seeking compensation of more than \$25,000 or for non-monetary relief, and all class actions in Ontario, are brought in Superior Court.

Tort – a wrongful act or omission that some person or organization committed against and that you can sue that person or organization for. Some torts include:

- Assault and battery
- Malicious prosecution
- Negligence
- Unlawful seizure of or damage to property
- Wrongful arrest
- Wrongful detention or imprisonment

17. Where can I find legal advice or assistance?

For any of the options discussed in this guide, and depending on the complexity of your case, you may find it useful to consult with a lawyer to help you decide which strategy best meets your own circumstances and goals.

Many of the options discussed in this guide – such as lawsuits in Small Claims Court, police complaints, and human rights applications – are meant to be straightforward and accessible to the public. Even so, you would probably benefit from getting legal advice or assistance in these cases. Other options – such as lawsuits in the Superior Court or private prosecutions – are more difficult and usually have higher stakes. It is strongly recommended that you get a lawyer to advise and represent you in these cases.

While this guide can provide you with some information about your rights and options, this guide does not provide legal advice. Only a lawyer can give you legal advice that is suited to your particular circumstances.

There are many lawyers who have experience and expertise with suing the police or governments, police complaints, and human rights processes. Some of them are listed below.

There are also a number of services and programs provided by government agencies, legal organizations, and public interest organizations that may be available for free to help you through some of your options for taking legal action.

Government agencies, legal organizations, and public interest organizations that can help you

General help

- **Law Help Ontario** (provided by **Pro Bono Law Ontario**) can provide some further information about Small Claims Court and Superior Court lawsuits and referrals to lawyers.
393 University Ave
Toronto, ON M5G 1E6
tel: (416) 597-0770
www.lawhelpontario.org/civil

Legal clinics

- **The Human Rights Legal Support Centre (HRLSC)** can assist you through the human rights application process.
180 Dundas Street West, 8th Floor
Toronto, ON M7A 0A1
tel: (416) 314-6266 or 1-866-625-5179
<http://www.hrlsc.on.ca>
- **Justice for Children and Youth (JFCY)** is a specialized legal clinic for youth, and can assist minors through various legal processes
415 Young Street, Suite 1203
Toronto ON M5B 2E7
tel: (416) 920-1633 or 1-866-999-5329
www.jfcy.org

- **The Community & Legal Aid Services Program (CLASP)** can assist certain people with the police complaints process. Eligibility criteria may apply.
4700 Keele Street
Toronto, ON M3J 1P3
tel: (416) 736-5029
www.osgoode.yorku.ca/clasp

Non-government organizations

- **The Canadian Civil Liberties Association**, which is a non-government organization, may be able to provide some assistance with making police complaints.
506 - 360 Bloor Street West
Toronto, ON M5S 1X1
tel: (416) 363-0321
www.ccla.org
- **Sanctuary Ministries of Toronto** – The Street Outreach program will be helping people to see complaints through the OIPRD process
25 Charles Street East
Toronto, ON M4Y 1R9
tel: (416) 922-4961
www.sanctuarytoronto.ca/programs/outreach.php

Legal Aid

- **Legal Aid Ontario** provides funding for low-income people in certain kinds of cases. However, it generally will not provide funding to pursue a civil lawsuit, police complaint or human rights application.
40 Dundas Street West
Toronto, ON M5G 2H1
tel: (416) 979-1446 or 1-800-668-8258
www.legalaid.on.ca

Class action legal teams

Those specifically seeking to contact the G20 class action legal teams can contact them at:

- www.g20ClassAction.ca (for the Sherry Good class action, led by lawyers Eric Gillespie and Murray Klippenstein)
- www.g20defence.ca (for the McQuade/Barber class action, led by lawyers David Midanik and Charles Wagman)

Where can I find a lawyer?

One resource for helping you to find a lawyer is the **Lawyer Referral Service**, which is a service provided by the Law Society of Upper Canada

- **Lawyer Referral Service**
1-800-268-8326 or 416-947-3330
www.lsuc.on.ca/public/a/faqs---lawyer-referral-service.

Some lawyers who have specific expertise with the legal options that may be available to you arising from events during the G20 summit are listed below. Each of these lawyers has agreed to provide a free one-half hour consultation about G20 legal claims and complaints.

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

300-474 Bathurst Street

Toronto ON M5T 2S6

tel: (416) 964-1115

Janet Borowy (JBorowy@cavalluzzo.com)

Kate Hughes (khughes@cavalluzzo.com)

Shaun O'Brien (sobrien@cavalluzzo.com)

CharneyLaw

tel: (226) 747-2317

Davin Charney (davincharney@gmail.com)

www.charneylaw.ca

Paul Copeland

31 Prince Arthur Avenue

Toronto ON M5R 1B2

tel: (416) 964-8126 ext. 142

paulcope9@yahoo.com

Victoria Cross

Suite 203, 52 Chatham Street West

Windsor, ON N9A 5M6

tel: (519) 971-9565

vcross@hotmail.com

Eric del Junco

27 Prince Arthur Ave.

Toronto ON M5R 1B2

tel: (416) 960-0049 ext 248

eric@deljuncolaw.ca

www.deljuncolaw.ca

Dewart Gleason LLP

366 Adelaide Street West, Suite 102

Toronto, ON M5V 1R9

tel: (416) 583-5755

Sean Dewart (sdewart@dglp.ca)

The Law Office of David Midanik

34 Shaftesbury Avenue

Toronto, ON M4T 1A1

tel: (416) 967-1603

David Midanik (david@midaniklawoffice.com)

www.g20defence.ca

Selwyn Pieters

P.O. Box 518, 31 Adelaide Street East
Toronto ON M5C 2J6
tel: (416) 601-1001 ext. 194
selwyn@selwynpieters.com
www.selwynpieters.com

Shell Lawyers

672 Dupont Street, Suite 401
Toronto M6G 1Z6 Ontario
tel: 416 539-0226
Brian Shell (brian@shelllawyers.ca), ext. 201
Chris Donovan (christopher@shelllawyers.ca), ext. 211
Estair Van Wagner (estair@shelllawyers.ca), ext. 202
www.shelllawyers.ca

Swadron Associates, Barristers & Solicitors

115 Berkeley Street
Toronto ON M5A 2W8
tel: (416) 362-1234
Susan McDermott (smcdermott@swadron.com, ext. 233)
Mercedes Perez (mperez@swadron.com, ext. 242)
Alexander Procope (aprocope@swadron.com, ext. 230)
Barry Swadron (bbs@swadron.com, ext. 232)
Marshall Swadron (mas@swadron.com, ext. 231)
www.swadron.com

Zbogar Advocate

51 Crossovers Street
Toronto ON M4E 3X2
tel: (416) 855-6710
Vilko Zbogar (vzbogar@zbogaradvocate.ca)

18. Where can I get more information?

In this chapter you will find links to resources with more information on the following topics:

- General legal information
- *Charter of Rights and Freedoms*
- Legislation (statutes and regulations)
- G20 class actions
- Small Claims Court
- Police complaints
- Human rights applications
- Private prosecutions
- Criminal Injuries Compensation Board
- Access to information / Freedom of information
- International human rights protections
- Psycho-social support
- Criminal charges
- Public interest organizations
- Pamphlets and books

General

A series of online videos related to class actions, Small Claims Court lawsuits, police complaints, and human rights applications filmed at a public information meeting convened by the Law Union of Ontario and the Movement Defence Committee is available at: <http://movementdefence.org/claimants>

Canadian Charter of Rights and Freedoms

Canadian Charter of Rights and Freedoms:
laws.justice.gc.ca/en/charter

Canadian Bar Association (Information about your rights under the *Charter*): www.cba.org/bc/public_media/rights/200.aspx

Legislation (statutes and regulations) - General

- **E-laws** is an online database of Ontario's statutes and regulations: www.e-laws.gov.on.ca
- **Canada laws** is an online database of federal statutes and regulations: <http://laws.justice.gc.ca/en/>
- **Canadian Legal Information Institute (CanLII)** is a database of both federal and provincial laws, including statutes, regulations, and case law: www.canlii.org

G20 class actions

- www.g20ClassAction.ca
(for the Sherry Good class action)
- www.g20defence.ca
(for the McQuade/Barber class action)

Small Claims Court

- **Toronto Small Claims Court Office**
47 Sheppard Avenue East, 3rd Floor
Tel: 416-326-3554
- For Small Claims Court offices outside Toronto, check the blue pages under “courts” or visit: www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses

Documents for Small Claims Court

- Forms for making a claim:
www.ontariocourtforms.on.ca/english/scc
- Forms to request a “fee waiver” exempting you from paying court filing fees: www.attorneygeneral.jus.gov.on.ca/english/courts/feewaiver/guide-forms.asp

Useful guides for Small Claims Court

- From the Ontario Ministry of the Attorney General:
www.attorneygeneral.jus.gov.on.ca/english/courts/guides
- **Sue the Police in Small Claims Court! A Guide: do it yourself or do it with help** (The Police Accountability Small Claims Collective, Toronto, 2006):

charneylaw.ca/helpfuldocs/BookletSueThePolice-UpdatedNovember2006.pdf (Note: Some court rules have changed since this guide was published, including an increase to the limit of how much you can claim in Small Claims Court from \$10,000 to \$25,000)

- **David Eby and Emily Rix, How to sue the Police and Private Security in Small Claims Court**, (Pivot Legal Society, Vancouver, 2007): www.pivotlegal.org/pdfs/HowtoSuethePoliceandPrivateSecurityinSmallClaimsCourt.pdf (This is a British Columbia publication and does not deal with the specific procedures in Ontario, but it provides a lot of useful information about how to prepare your case).

Police complaints

Office of the Independent Police Review Director (OIPRD)

655 Bay Street, 10th Floor, Toronto, ON M7A 2T4

www.oiprd.on.ca

Tel: (877) 411-4773 or (416) 246-7071

Fax: (877) 415-4773 or (416) 327-8332

Commission for Public Complaints Against the RCMP (CPC)

7337 137 Street, Suite 102, Surrey, BC V3W 1A4

www.cpc-cpp.gc.ca/

Tel: (800) 665-6878

Fax: (613) 952-8045

Community & Legal Aid Services Program (CLASP) – A legal clinic operating from Osgoode Hall Law School which has experience helping people through the OIPRD process and is available to

assist anyone who falls within the financial guidelines of Legal Aid Ontario: www.osgoode.yorku.ca/clasp/contact.html

Canadian Civil Liberties Association (CCLA) – May assist with submitting complaints, and may submit your complaint on your behalf together with others: <http://ccla.org/2010/06/29/resources-for-g20-related-complaints>

Legislation and regulations useful for police complaints:

- *Police Services Act* (Ontario): www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm
- Code of Conduct under the *Police Services Act* (Ontario): www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100268_e.htm
- *Royal Canadian Mounted Police Act* (Canada): laws.justice.gc.ca/en/R-10/index.html

Human rights applications

Human Rights Tribunal of Ontario

655 Bay Street, 14th floor

Toronto, ON M7A 2A3

www.hrto.ca

Tel: (416) 326-1312 or (866)-598-0322

TTY: (416) 326-2027 or (866)-607-1240

Fax: (416) 326-2199 or (866)-355-6099

Forms and guide for making a human rights application:

- Application forms: www.hrto.ca/hrto/?q=en/node/32

- Applicant's Guide: www.hrto.ca/hrto/sites/default/files/New%20Applications1/ApplicantsGuide.pdf

Human Rights Legal Support Centre - offers legal advice and assistance to people bringing a human rights application to the HRTO www.hrlsc.on.ca

Tel: (416) 314-6266 or (866) 625-5179

TTY: (416) 314-6651 or (866) 612-8627

Ontario Human Rights Commission: responsible for public education about human rights; can conduct a review or inquiry into issues involving human rights in Ontario: www.ohrc.on.ca/en

Legislation and regulations useful for human rights applications:

- *Human Rights Code* (Ontario): www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm

Private prosecutions

Government resources:

- **Ontario Ministry of the Attorney General Website:** www.attorneygeneral.jus.gov.on.ca/english/private_prosecution.asp
- **Guide from the Federal Department of Justice:** www.justice.gc.ca/eng/dept-min/pub/fps-sfp/fpd/ch26.html

Toronto Advocacy for Respect for Cyclists (ARC) - has a short online publication that provides some helpful information on private prosecutions: <http://respect.to/wiki/pmwiki.php?n=LegalInfo.HowToPursueAPrivateProsecution>

R. v. McHale: is a recent decision by the Ontario Court of Appeal that discusses the proper procedure for a private prosecution: <http://www.canlii.org/en/on/onca/doc/2010/2010onca361/2010onca361.html>

Criminal Injuries Compensation Board

Criminal Injuries Compensation Board: www.cicb.gov.on.ca

Access to information / freedom of information

Government resources:

- **Toronto Police Service, Access and Privacy Section** (information, forms, and fee schedule for access requests) www.torontopolice.on.ca/aps/.
- **Royal Canadian Mounted Police (RCMP), Access to Information and Privacy Branch** (for information and links to forms for access requests): www.rcmp-grc.gc.ca/atip-aiprp/index-eng.htm.
- **Information and Privacy Commissioner of Ontario:** www.ipc.on.ca
- **Office of the Information Commissioner of Canada:** www.infocom.gc.ca/eng

Legislation and regulations useful for access to information requests:

- **Municipal Freedom of Information and Protection of Privacy Act (Ontario):** www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m56_e.htm

- **Access to Information Act (Canada):** laws.justice.gc.ca/en/A-1/index.html

International human rights protections

International organizations:

- **United Nations, Office of the High Commissioner for Human Rights (UNHCHR):** www.ohchr.org/EN/Pages/WelcomePage.aspx
- **United Nations Human Rights Committee:** www2.ohchr.org/english/bodies/hrc/index.htm
- **Working Group on Arbitrary Detention:** www2.ohchr.org/english/issues/detention/index.htm
- **Special Rapporteur on the right to freedom of opinion and expression:** www2.ohchr.org/english/issues/opinion/index.htm
- **Special Rapporteur on the situation of Human Rights Defenders** (which might apply to legal observers who were wrongfully arrested): www2.ohchr.org/english/issues/defenders/index.htm

International human rights instruments:

- *Universal Declaration of Human Rights:* www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng
- *International Covenant on Civil and Political Rights:* www2.ohchr.org/english/law/ccpr.htm

Psycho-social support

Peer to Peer Support for Activists Collective – a support network set up to locate psycho-social assistance for activists: peertopeersupportforactivists@gmail.com

Criminal charges

- **247 Committee** – if you have outstanding criminal charges related to the G20, this committee has been created to offer you logistical support related to billeting, rides, media, outreach, and resource referrals: 247.g20@gmail.com
- **Movement Defence Committee (MDC)** – is an autonomous working group of the Law Union of Ontario that provides legal support and training to groups organizing demonstrations or direct actions, offers legal observer training, and offers workshops on civil disobedience and direct action and on how to set up your own legal support committee: <http://movementdefence.org>

Public interest organizations

- **Law Union of Ontario:** www.lawunion.ca
- **Movement Defence Committee:** movementdefence.org
- **Canadian Civil Liberties Association:** www.ccla.org
- **Toronto Community Mobilization Network:** g20.torontomobilize.org
- **Amnesty International Canada:** www.amnesty.ca

- **Convergence des Luttes Anticapitalistes / Anti-Capitalist Convergence** – a Quebec-based organization offering activists trauma and legal support: www.clac2010.net
- **G20Inquiry.org** – an online repository for reports about incidents that occurred during the G20 summit: www.g20inquiry.org

Pamphlets and books

The Police Accountability Library

Parkdale Community Legal Services
1266 Queen St. W, Toronto
Tel: (416) 531-2411 ext. 248

British Columbia Civil Liberties Association, “Arrest Handbook”
available online: www.bccla.org/arrest/index.html

Paul Ceysens, “Legal Aspects of Policing”
(Earlscourt Press, 2004).

19. Acknowledgements

The shocking events of the G20 Summit in Toronto in June 2010 saw the *Charter* rights of thousands of Canadians suspended for a weekend while police cracked down on and criminalized dissent. These events galvanized a community of people committed to ensuring that such a travesty is never repeated in Canada.

It was this sentiment, and a stubborn persistence in the opinion that Canada must be a place that cherishes and protects human rights and civil liberties, that gave birth to this guide. It was motivated by the hundreds of people looking for answers in the wake of G20 Summit about what they can do to hold police accountable and to get some justice for the wrongs that they suffered or witnessed. It was made possible through the dedicated efforts of many committed lawyers and other legal professionals, students, and community members who contributed.

This guide is part of a broader G20 public legal education project, which included a public information session on August 8, 2010 organized by dozens of volunteers and led by Jeff Carolin and Claire Mummé.

The Human Rights Legal Support Centre (HRLSC) and the Community & Legal Aid Services Program (CLASP) each provided their expertise by drafting materials concerning human rights applications and police complaints.

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September 2010

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Toronto, Ontario

Canada M5R 1B2

Tel: 416-927-9662

A Guide for Responding to Police Actions During the G20 in Toronto is a resource to help you understand your rights and the kinds of actions you can take in response to a violation of your rights during the G20 Summit in Toronto in June 2010.

During the G20 Summit in Toronto on June 26 and 27, 2010, police trampled on the legal rights and civil liberties of thousands of protestors, legal observers, media personnel, bystanders, and other members of the public. If you or someone you know were one of them, this guide is for you.

If you want to know what you can do to hold the police accountable for their wrongful actions and to get compensation and justice for any wrong done to you, this guide is for you.



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