

OPEN LETTER TO BARBARA HALL

VIA REGULAR MAIL and  
EMAIL TO [barbara.hall@ohrc.on.ca](mailto:barbara.hall@ohrc.on.ca)

May 7 2012

ONTARIO HUMAN RIGHTS COMMISSION  
180 Dundas Street West, 8th Floor  
Toronto ON M7A 2R9

Attention: Barbara Hall, Chief Commissioner

Dear Ms. Hall,

RE: *Aiken v. Ottawa Police Services Board*

As you are likely aware, the African Canadian Legal Clinic represents the Complainant Chad Aiken with respect to his Commission-referred complaint to the Human Rights Tribunal of Ontario regarding allegations of racial profiling by the Ottawa Police Service. As you are also well aware, racial profiling by police is an issue of fundamental importance to the African Canadian community. Research in Canada and the United States shows that Blacks are among the primary victims of racial profiling. The Commission itself in its Inquiry Report on racial profiling noted that “the greatest number of submissions about profiling were received from persons who identified as African Canadian.”<sup>1</sup> This is not surprising, though it is tragic given Stephen Lewis’ *Report of the Advisor on Race Relations* in which Mr. Lewis, twenty years ago, found that “while it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus.”<sup>2</sup>

In July 2010 the Complainant, Commission and the Ottawa Police Services Board reached a settlement of Mr. Aiken’s complaint, with the exception of one remaining public interest remedy of race-based data collection. Consistent with the Commission’s Policy on racial discrimination,<sup>3</sup> this remedy was originally requested by both the Complainant and the Commission to monitor for the existence and prevalence of racial profiling as well as the effectiveness of the Ottawa Police Service’s policy and training initiatives. The issue of data

<sup>1</sup> Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling*, Inquiry Report (2003) [Racial Profiling Inquiry Report] at p. 4.

<sup>2</sup> Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae* (9 June 1992) [Report of the Advisor on Race Relations] at p. 2.

<sup>3</sup> Ontario Human Rights Commission, *Policy and guidelines on racism and racial discrimination* (2005) [Racism Policy] at pp. 31-32 and 42-43.

collection proceeded to a hearing, which was scheduled to begin on April 23 2012. The Complainant's and Commission's legal counsel worked together to prepare for the hearing of this issue, and made a joint submission to expand the request for data collection to include recommendations made by an expert in racial profiling and social science methodology retained by the African Canadian Legal Clinic.

Until April 24 2012, the Complainant and Commission agreed that any settlement must include certain aspects of these recommendations that are fundamental to making data collection an effective tool for addressing racial profiling in policing. Specifically, it was and remains the Complainant's position that fundamental to any data collection remedy is the scope of any data collection project (best practice is ongoing and permanent<sup>4</sup>, but at minimum three years), the source of the data to be collected (all traffic and pedestrian stops<sup>5</sup>), and methodological design and analysis by an Advisory Committee including an external expert chosen by the Complainant and Commission (ie not design and analysis solely by an expert chosen by a police force known to engage in racial profiling). These aspects are supported in research on data collection in the area of racial profiling, and are recommended in the Commission's own Racism Policy, Racial Profiling Inquiry Report and Guide on collecting human rights-based data<sup>6</sup>.

Shockingly, on or about Friday April 27 2012 the Commission concluded Minutes of Settlement with the Ottawa Police Services Board on the issue of data collection, without consensus of the Complainant, and excluding these fundamental components. The settlement, a copy of which is enclosed herewith for your reference, falls far short of the goal of monitoring for the existence and prevalence of racial profiling in the Ottawa Police Service and in fact, fails to fulfill the Commission's mission of advocating for the full realization of human rights, and ensuring that those responsible for upholding human rights do so. The settlement reached without consensus of the Complainant further violates the Commission's own principle of consultation with and participation of the communities it serves. Indeed, it is abundantly clear that the Commission is more concerned about its "collaborative working relationship" with the Ottawa Police Services Board,<sup>7</sup> a police service that is notorious for egregious acts of racial profiling against African Canadians<sup>8</sup>, than it is about its relationship with the African Canadian community, one of the racialized communities it serves.

The African Canadian Legal Clinic, on behalf of the Complainant and the broader African Canadian community in Ontario, is appalled by the Commission's clear lack of respect for and understanding of the unique issues faced by the African Canadian community, proven by its actions in concluding this ill advised settlement. While the Commission "talks the talk" in its Inquiry Report on racial profiling, for example by acknowledging that "the emotional and

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<sup>4</sup> *Ibid* at p. 53 ("Ongoing evaluation of an organization's or institution's anti-racism program is important to ensure its effectiveness. As with the other aspects of an anti-racism program it is important to devote resources to ongoing assessment.") See also Ontario Human Rights Commission, *Count Me In! Collecting Human Rights-Based Data* (24 March 2010) [*Count Me In!*] at p. 40.

<sup>5</sup> Racial Profiling Inquiry Report at p. 4 ("contrary to common perception, racial profiling is not just about traffic stops by the police").

<sup>6</sup> *Count Me In!* at p. 39 (expert participation) and p. 40 (scope and sources of data). See also Racism Policy at pp. 45-46 and 53 (scope) and at p. 45 (expert participation), and Racial Profiling Inquiry Report at pp. 70-71.

<sup>7</sup> Minutes of Settlement dated 27 April 2012 (enclosed) at para. 12.

<sup>8</sup> Vincent Gardner and Stacy Bonds, to name just two high profile cases.

psychological damage inflicted by profiling is significant and we as a society cannot afford to ignore it”<sup>9</sup>, the Commission by this settlement fails miserably to “walk the walk.” The scope of the agreed-upon project is far too narrow, and by agreeing to its terms the Commission has not only failed to deal with this case in a way that is consistent with its published policies<sup>10</sup> but has rather flouted its own admonition to persons in positions of leadership to acknowledge the problem of racial profiling and send a strong message that such acts of anti-Black racism are not tolerated.<sup>11</sup>

The settlement reached by the Commission and the Ottawa Police not only fails to include the fundamental aspects outlined above, but omits any real measure to effectively address racial profiling despite “community concerns”<sup>12</sup> about persistent and horrific acts of anti-Black racial profiling by the Ottawa Police Service, and the recognized importance of race-based data collection “to minority communities”<sup>13</sup>. In this respect, something is not better than nothing, particularly as this settlement can now be used by other police forces as a ‘reasonable’ precedent for agreeing to a data collection project with no real transparency, accountability or substantive effect.

First and foremost, the settlement fails to even acknowledge the proven existence of racial profiling by police<sup>14</sup> and the social cost that profiling has on the community served by the police. Rather, the parties generally reference the “concerns and perceptions of minority communities” in the same ‘value statement’ as specific confirmation that the settlement is not meant “to disparage the OPS [or] OPSB.”<sup>15</sup> This language is insulting to the African Canadian Complainant and the African Canadian community in light of the very real incidents and effects of racial profiling they continue to experience as a result of interactions with police – interactions in which they are victimized by the very people who are duty bound to protect them. Ultimately, in agreeing to this language the Commission has only served to reinforce anti-Black racism and condone racial profiling.

Second, despite the agreement to engage an expert in data collection (ultimately chosen by the OPSB), the settlement language limits what role the expert may play (eg. “assist in the development of the methodology”) and what data the expert may advise are meaningful to record (ie. “relevant information required for analysis” is at least limited to traffic stops and perceived race. In this respect it should be noted that the settlement does not even specify all traffic stops). The Commission’s own publication on human-rights based data collection acknowledges that meaningful analysis of data depends on the methods used and the amount of data collected.<sup>16</sup> By these provisions the Commission has allowed the OPSB, who has a vested interest in the results, to maintain control over the data collection such that the results will be viewed as less credible and reliable and therefore rendered meaningless. Clearly, the Commission does not care about

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<sup>9</sup> Racial Profiling Inquiry Report at p. 47.

<sup>10</sup> Racial Profiling Inquiry Report at p. 5 (“the public has the right to expect that the Commission will deal with cases in a way that is consistent with its published policies.”).

<sup>11</sup> Racial Profiling Inquiry Report at p. 69.

<sup>12</sup> Minutes of Settlement at paras. 1 and 3.

<sup>13</sup> Minutes of Settlement at fourth “whereas” clause.

<sup>14</sup> Racial Profiling Inquiry Report at pp. 9-10.

<sup>15</sup> Minutes of Settlement at para. 3.

<sup>16</sup> *Count Me In!* at p. 42.

the quality of data, meaningful analysis and effective outcomes. Instead the Commission has consented to a watered down study, without regard to the serious concerns of the young Black Complainant and the African Canadian community.

Finally, while the settlement does provide for consultation with ‘stakeholders’ prior to data collection, and contemplates the possibility of the Commission having a study conducted, there is no requirement that the OPSB consult, cooperate with or report to its stakeholders on the methodology or results of data collection. This omission, coupled with the agreement “not to disparage the OPS”, results in a complete lack of transparency and accountability that renders this settlement effectively useless as a measure to promote community trust and confidence. It is also especially disturbing given the admonition of Stephen Lewis, twenty years ago, that “[g]one are the days when racial minority communities can be excluded from such crucial processes. They have to be involved, as must the police, in identifying the police forces to be audited in any given year, refining the methodology, designing the right questions, and commenting on the results.”<sup>17</sup>

In short, the settlement simply gives ‘lip service’ to the issue of data collection. It is a stop-gap measure that can be used to placate the community and tout the OPSB as a leader in addressing racial profiling. The Commission’s actions in concluding this settlement are absolutely not in the African Canadian community’s or broader public interest, and rather demonstrate that the Commission is willing to be used to the detriment of African Canadians in Ottawa. In essence, by concluding this settlement the Commission has demonstrated profound disrespect for the African Canadian community by ignoring issues that are of great concern to African Canadians.

The history of marginalization of African Canadians is well known to the Commission, which itself came about after centuries of injustice and decades of protests and lobbying by the African Canadian community and its allies<sup>18</sup> for concrete government action against discrimination in services, housing and employment, and against police brutality. The Black community is extremely proud of its part in this enormous struggle for dignity and equality, which makes the Commission’s treachery in continuing to allow police to trample the rights of African Canadians all the more disturbing.

This settlement is clear proof that the current Commission is not a friend of the African Canadian community. As a provincial body entrusted with protecting, advancing and defending the human rights of African Canadians, the Commission has abandoned this role in favour of chumming up with a police service that is notorious for egregious acts of racial profiling against African Canadians. As Chief Commissioner, you have failed to speak out against blatant incidents of anti-Black hate, police violence against Black suspects and other forms of anti-Black racism, and have proven once again that the Commission is not willing to take a strong public stance regarding the insidious and systemic problem of racial profiling. The Commission is playing politics with the Black community, and has demonstrated that its real interest is in the optics of conciliation. The African Canadian Legal Clinic seriously doubts that the Commission would

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<sup>17</sup> Report of the Advisor on Race Relations, at p. 7.

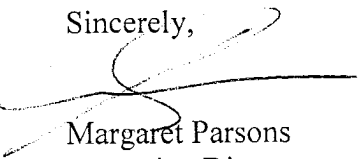
<sup>18</sup> Including Alan Borovoy, then secretary of the Jewish Labour Committee and subsequently General Counsel of the Canadian Civil Liberties Association, and Rabbi Gunther Plaut, a respected leader in the Jewish community and one-time Vice Chair of the Ontario Human Rights Commission

have acted with such blatant disregard for any other marginalized community it is mandated to serve.

The year 2012 marks the 20th anniversary of the acquittal of police officers who brutally beat Rodney King, and the 20th anniversary of the acquittal of police officers who shot and killed African Canadian teenager Michael Wade Lawson in the back of his head, two high profile cases that brought the issue of anti-Black racial profiling into the public consciousness and discourse. These jury acquittals sent a clear message that the profiling and brutalizing of young Black men is acceptable and that the police will not be held responsible for these horrific behaviours. Sadly, Michael Wade Lawson's killers are just two examples in a long list of Canadian police officers that have been cleared of wrongdoing in the humiliation, injuries or deaths of African Canadians.<sup>19</sup> It is inconceivable that the Commission would continue to perpetuate this miscarriage of justice a full twenty years later.

The African Canadian Legal Clinic, on behalf of the Complainant and the African Canadian community, vehemently objects to the White-dominated Commission appropriating our voice in respect of anti-Black racism. The Commission's paternalistic move in concluding this settlement without consensus of the Complainant and the African Canadian community is tantamount to a hostile takeover of this most fundamental and continuing concern facing African Canadians today.

Sincerely,



Margaret Parsons  
Executive Director

Encl.

cc. Honourable Dalton McGuinty, Premier of Ontario

Honourable John Gerretsen, Attorney General of Ontario

Ontario Human Rights Commission, Attention:

Ruth Goba, Commissioner

Raja Khouri, Commissioner

Fernand Lalonde, Commissioner

Julie Lee, Commissioner

Paul LeFebvre, Commissioner

Larry McDermott, Commissioner

Errol Mendes, Commissioner

Mark Nagler, Commissioner

Fiona Sampson, Commissioner

Bhagat Taggar, Commissioner

Maggie Wenté, Commissioner

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<sup>19</sup> See, for example, Ajamu Nangwaya, *Factsheet on Police Containment of and Violence in the African Community*, online <<http://linchpin.ca/English/Factsheet-Police-Containment-Violence-African-Community>>.

**HUMAN RIGHTS TRIBUNAL OF ONTARIO**

IN THE MATTER OF the *Human Rights Code*, R.S.O. 1990, c. H. 19 as amended;

AND IN THE MATTER OF the Complaint of Chad Aiken, Complaint No. **LHOR-6DUR4D**, alleging a violation of his right to equal treatment with respect to services without discrimination because of age, colour, ethnic origin, and race

BETWEEN:

**ONTARIO HUMAN RIGHTS COMMISSION**

**Commission**

- and -

**CHAD AIKEN**

**Complainant**

- and -

**OTTAWA POLICE SERVICES BOARD**

**Respondent**

- and -

**OTTAWA POLICE ASSOCIATION**

**Intervenor**

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**MINUTES OF SETTLEMENT**

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*MSA*  
*Dec*

WHEREAS the Complainant filed a Human Rights Complaint on July 5, 2005 with the Ontario Human Rights Commission (the "Commission"), alleging a violation of the Ontario *Human Rights Code* (the "*Code*") by the Ottawa Police Services Board (the "OPSB") with file number LHOR-6DUR4D;

AND WHEREAS the Commission referred the Complaint to the Human Rights Tribunal of Ontario (the "Tribunal") and it was assigned Tribunal File No.: HR-1282-07;

AND WHEREAS the Complainant and Commission requested collection of race-based data for all traffic stops for a period of three years;

AND WHEREAS the OPSB greatly values its positive and inclusive relationship with minority communities, is taking a leadership role in addressing issues involving racial profiling, and recognizes that the collection of race-based data is an important matter to minority communities;

AND WHEREAS the OPSB and Commission wish to resolve this matter without a hearing;

NOW THEREFORE the OPSB and Commission agree as follows:

#### Underlying Values

1. The OPSB is committed to professional policing, the delivery of unbiased services, and promoting trust and confidence by addressing community concerns, as set out in its policy on racial profiling (Policy No. 5.39).
2. The OPSB and Commission are committed to transparency and accountability in the collection and delivery of disaggregated race-based data.
3. The OPSB and Commission recognize that the purposes underlying these Minutes of Settlement are to advance the study of data collection in policing within Canada, provide policing services in a manner that is consistent with the *Code*, address the concerns and perceptions of minority communities, and not to disparage the OPS, OPSB or individual officers.
4. The OPSB will not rely on the race-based data it collects for the purpose of discipline or performance evaluation of its officers.
5. The OPSB and Commission agree that the data collected will be used in a manner that is consistent with the *Code*.
6. The OPSB and Commission recognize the importance of officer and community safety and morale in the delivery of professional policing services.



### **Consultation**

7. Prior to commencing data collection, the OPSB shall have a period of six (6) months from the execution of these Minutes of Settlement to participate in dialogue, cooperation and engagement with community partners, including but not limited to the Commission, Community Action and Police Action Committee and other stakeholders on the topic of data collection.

### **Data Collection**

8. Following this consultation and having regard to the insights derived from it, the OPSB will collect disaggregated race-based data on traffic (vehicle) stops by observational recording of perceived race by officers (as opposed to self-identification by the person stopped).
9. Within nine (9) months of the execution of these Minutes of Settlement, the OPSB shall engage an expert in relation to race-based data collection to assist in the development of the methodology (collection, retention and delivery of the data). The OPSB shall engage in meaningful consultation with the Commission in selecting this expert. The OPSB will not select an expert identified as a witness in this matter.
10. Within twelve (12) months of the execution of these Minutes of Settlement, the OPSB shall begin collecting the data. The data shall be collected for no less than two (2) full years (the "data collection period"). The data collection period may be extended if recommended by the expert.

### **Delivery and Use of Data**

11. This data shall be made available to the Commission at the conclusion of the data collection period. If the two (2) year data collection period is extended, the data shall be made available to the Commission every two years. This data will not include the names of individual officers. The data will be limited to relevant information required for analysis. The required data will be determined in consultation with the expert, as per paragraph 9.
12. The Commission and the OPSB will endeavour to maintain their collaborative working relationship. If the Commission engages an expert to conduct a study in relation to the data, the OPSB will give good faith consideration to the implementation of any recommendations arising from this study.

A handwritten signature in black ink, appearing to be 'M. J. ...', is located at the bottom right of the page.



**Withdrawal**

13. The Commission will bring a "Request for an Order" indicating that it will be withdrawing from the remainder of these proceedings.

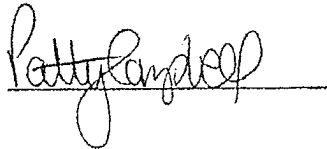
DATED this 27<sup>th</sup> day of April 2012.

PARTIES

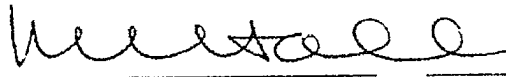
WITNESS

DATE

  
Ottawa Police Services Board



April 27, 2012

  
Per: Ontario Human Rights  
Commission

April 26, 2012