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Ontario's Divisional Court rules Human Rights Commission is not the gatekeeper of racial profiling remedies

TORONTO, June 23, 2015 – On June 15, 2015, Ontario's Divisional Court released its decision in the racial profiling case of [Aiken v. the Ottawa Police Services Board](#) (OPSB). In this case, the African Canadian Legal Clinic (ACLC) successfully argued before three judges of the Divisional Court that a racial profiling settlement between the OPS and the Ontario Human Rights Commission (the Commission) does not bar a young African Canadian man from seeking his own systemic human rights remedies independent of the settlement agreement between the other two parties.

This case originates from a 2005 racial profiling complaint made by Chad Aiken against the OPSB. Mr. Aiken, who was 18 at the time of the incident, made a claim against the Ottawa police for being subjected to discrimination, racial profiling and systemic anti-Black racism after he was stopped by police while driving his mother's Mercedes.

The Commission became a party when the complaint came before the Tribunal. Before the matter was fully argued at the Ontario Human Rights Tribunal (the Tribunal), the OPSB and the Commission decided to settle. Mr. Aiken was excluded from the negotiations that led to this settlement. In the settlement, the OPSB agreed with the Commission to undertake a racial profiling study that included a two-year data collection project which focused exclusively on vehicular traffic stops. Upon reaching this settlement, the Commission withdrew as a party in this matter.

Mr. Aiken sought to continue the proceedings and argued that the racial profiling data-collection should include OPSB pedestrian stops not just vehicular stops. The Tribunal refused to allow Mr. Aiken to have a full hearing to make his arguments in support of his position. Instead, the Tribunal determined that it would dismiss the rest of Mr. Aiken's claim and close the matter. The Tribunal reasoned that because the Commission found its settlement with the OPSB to be sufficient to effectively examine racial profiling in the OPSB, Mr. Aiken's suggested enhancements to the racial profiling study would not be necessary.

In a unanimous decision, Ontario's Divisional Court has now overturned the Tribunal's decision. The Court vindicated Mr. Aiken's position by noting that if "the practices [of racial profiling] exist in the Ottawa police force, it is hard to understand how they would be exhibited only by officers stopping [B]lack men in cars and not by officers stopping pedestrians." The Court also stated that the Tribunal's decision "cannot be regarded as an acceptable outcome, given the nature of human rights remedies generally and the importance of the public interest issue at stake in this case."

Roger Love and Anthony Morgan of the ACLC represented Mr. Aiken before the Divisional Court. Love stated, "This decision affirms that courts should not rely upon a narrow interpretation of racial profiling. In order to eliminate racism in policing and other contexts, decision-makers should consider robust remedies that attack the full extent of the problem". Morgan added, "We're pleased with the outcome because it increases access to justice to human rights remedies for African Canadians subjected to racial profiling in Ontario." The Executive Director of the ACLC, Margaret Parsons, stated, "This decision affirms that the voice of African Canadians should not be ignored or excluded by the Tribunal when determining appropriate systemic human rights remedies."

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