THE HUMAN RIGHTS APPROACH TO ADDRESSING RACIAL PROFILING: THE ACTIVITY OF THE ONTARIO HUMAN RIGHTS COMMISSION

Shaheen Azmi is Director of Policy, Education, Monitoring & Outreach at the Ontario Human Rights Commission. He has led the OHRC's efforts to address human rights and racism concerns in policing over the last decade.

The following article is a study of the exhaustive work on racial profiling done by the Ontario Human Rights Commission over the course of several years. It identifies the lingering concerns related to racial profiling in policing and other sectors.

In 2015 the Ontario Human Rights Commission (OHRC) embarked on the development of a new policy and guidelines on preventing racial profiling. This commitment comes in the shadow of more than a decade of activities aimed at curbing and preventing racial profiling and growing recognition of new shapes and forms of racial profiling in various multiple sectors and settings.

BACKGROUND TO CURRENT POLICY DEVELOPMENT

The Ontario Human Rights Commission has been directly involved in responding to racial profiling employing multiple approaches since 2002. Racial profiling has long been understood as a type of racism but its framing as a type of legal discrimination in violation of human rights legislation was not significantly developed in Canada prior to the OHRC's work.

In 2002 a series of articles by *The Toronto Star* on race and policing in Toronto provided fresh evidence of the reality of racial bias in police activity by the Toronto Police Service.[1] In direct response to the controversy raised by *Toronto Star* articles, the OHRC announced that it would conduct an inquiry into the effects of racial profiling. Racial profiling was defined for the purposes of the Inquiry as:

> ... any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.[2]

The definition clearly framed racial profiling as a type of racial discrimination, which notably was not restricted to policing but to any context in which "safety, security, or public protection" was operative. The purpose of the inquiry was to "raise

1 Jim Rankin *et al*, "Singled Out; Star Analysis of Police Crime Data Shows Justice Is Different for Blacks and Whites" *The Toronto Star* (October 19, 2002).

2 Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling: Inquiry Report* (Toronto: OHRC, 2003) at 6 [Inquiry Report].

public awareness about racial profiling, to mobilize public action, to put an end to it and to bridge the divide between those who deny the existence of racial profiling on the one hand, and the communities who have long held that they are targets of racial profiling on the other."[3]

Although the immediate response from most police and political leaders was hostile, the OHRC Inquiry Report titled: "Paying the Price: The Human Cost of Racial Profiling"[4], contributed to opening the door to a broad discussion that was previously limited in Ontario. In the Inquiry Report, the OHRC committed to hold anyone engaging in racial profiling accountable in accordance with the Ontario Human Rights *Code*. Towards this end the OHRC committed itself to develop a new public policy on racial discrimination and to engage in activity to further this discussion and acceptance of racial profiling as a concern among police.

Following upon its commitment in the racial profiling Inquiry Report the OHRC released its Policy and Guidelines on Racism and Racial Discrimination in 2005.[5] The Policy provided clearer guidance on the nature of racism as a feeder to racial discrimination and detailed different types of racial discrimination including racial profiling. It reiterated the definition of racial profiling first developed in the OHRC's Inquiry activity. The Policy also identified an onus to collect race-based data where there is reason to believe that racial discrimination may be present. It argued that detecting some forms of racial discrimination including racial profiling may only be confirmed through collecting race-based data. The emphasis on data collection was in significant part related to calls from racialized community groups for police to collect stop data based on race in order to address racial profiling. To support the Policy's call for race-based data collection and provide concrete guidance on how to do this, the OHRC later developed and released in 2009 its guidebook *Count Me In: Collecting Human Rights-Based Data*.[6]

The OHRC's efforts to address racial profiling have included litigation that aimed at clarifying and promoting the legal interpretation of racial profiling. The OHRC's litigation activity contributed to several significant settlements and decisions that have advanced the legal understanding of racial profiling and police activity in response to it.[7]

In the context of litigation activity, the most significant public interest remedy obtained by the OHRC was a human rights complaint settlement of a case alleging racial profiling with the Ottawa Police Service in May 2012 that required the collection of race-related police traffic stop data by the Ottawa Police Service for a two year period. This data collection represents the first multi year police stop data collection initiative established by a Canadian police service to monitor for concerns of racial profiling.

The OHRC has also been involved in several organizational development and training initiatives in the policing sector with have included a focus on human rights and racial profiling. In this regard notable partnerships have been undertaken with the Ontario Police College, the Toronto Police Service, and Windsor Police Service.

LINGERING AND NEW CONCERNS OF RACIAL PROFILING

Despite the many years of OHRC activity concerns of racial profiling continue to be prevalent in Ontario. In the policing context concerns of racial profiling in street checks or the related practice of carding arose as a major new area of concern over the last few years.[8] This development highlighted the contention that racial profiling in police work extends to many realms beyond the customary focus on traffic stop activity. Beyond police street checks there is concern that racial profiling is likely a factor in all areas of policing activity including surveillance, searches, charges, arrests, recruitment, and data retention.

While initial OHRC inquiry work uncovered racial profiling in sectors other than policing such as customs and security guard work, there is increasing and new concern of racial profiling in sectors including child welfare, education, health and intelligence work where decisions and actions are undertaken for reasons of 'safety and security and public protection' on a daily basis, and in which there have been raised many concerns that racialized stereotypes often influence decisions to scrutinize and pursue some more than others.

In addition, to growing concerns in key sectors of society there is a growing appreciation that racial profiling can be

---

3 Ibid at 67.

4 Ibid.

5 Ontario Human Rights Commission, Policy and Guidelines on Racism and Racial Discrimination (June 9, 2005) at 4 [Policy], online: OHRC www.ohrc. on.ca/sites/ default/files/attachments/Policy_and_guidelines_on_rac- ism_and_racial_discrimination.pdf.

6 Ontario Human Rights Commission, *Count Me In: Collecting Human Rights- Based Data* (Toronto: OHRC, 2009), online: OHRC www.ohrc.on.ca/sites/ default/files/ attachments/Count_me_in!_Collecting_human_rights_ based_data.pdf.

7 See for example *Nassiah v Peel* (Regional Municipality Services Board), 2007 OHRT 14; Phipps v. Toronto Police Services Board, [2009] HRTO; Maynard v. Toronto Police Services Board, 2012 HRTO 1220.

8 Jim Rankin *et al.* "As criticism piles up, so do the police cards", *Toronto Star* (February 27, 2013)

manifest in many every day settings such as stores or malls or even at libraries. The Peel Law Association v. Pieters case highlights a situation where an African Canadian Lawyer was aggressively scrutinized as he entered into a law association library.[9] The Court's decision in this case shows that racial profiling can be a form of every¬day racism. It is a phenomenon that is widespread in our society, and has many faces.

CONCLUSION

The OHRC believes that a new specific policy and guidelines on preventing racial profiling is needed. Such a policy promises a fresh look at the definition of racial profiling as a type of racial discrimination and to uncover forms of racial profiling that have been largely neglected. The aim of such a policy would be to provide more detailed and specific guidance to organizations engaged in "safety, security, and public protection" activity to ensure that racial profiling is prevented and monitored for effectively, particularly in key sectors of society like policing, education, child welfare, and health care.

9 Peel Law Association v. Pieters, 2013 ONCA 396