



July 28, 2006

THE IPPERWASH INQUIRY
250 Yonge Street, 29th Floor
P.O. Box 30
Toronto, Ontario M5G 2N7

Dear Commissioner Linden,

RE: Part II Written Submissions of the African Canadian Legal Clinic

Please find attached the written submission of the African Canadian Legal Clinic (“ACLC”) which was granted standing in Part II of the Inquiry.

Yours truly,

Gerry McNeilly
Counsel for the African Canadian Legal Clinic

IN THE MATTER OF THE IPPERWASH INQUIRY, *Public Inquiries Act*, R.S.O. 1990, c. P.41,

WRITTEN SUBMISSIONS OF THE AFRICAN CANADIAN LEGAL CLINIC

Introduction

These are the written submissions of the ACLC as a Part II participant in the Ipperwash Inquiry. The submissions here will be augmented by oral submissions. This Inquiry is of the utmost importance in terms of the impacts of policing and use of force on racialized communities. While the focus of the Inquiry is on the Aboriginal experience which we acknowledge, we would ask the Inquiry to recognize the profound impact of the issues being addressed on the African Canadian Community. In this regard, we offer the following submissions.

The African Canadian Legal Clinic (“ACLC”), Policing and Police Accountability

1. The ACLC is a legal clinic in the Legal Aid Ontario Clinic system, which serves and represents the African Canadian Community. The ACLC fulfils its mandate to address systemic anti-Black racism and racial discrimination through test case litigation and interventions, advocacy, law reform and community development.
2. The ACLC is actively involved in policing issues and efforts to secure police accountability and bias-free policing through its law reform and test case work. The ACLC advocates for African Canadians who have been subjected to police misconduct or abuse.
3. Notably, the ACLC has been involved with issues around the Special Investigations Unit (SIU). In 1995, the ACLC made submissions to the Commission on Systemic Racism in the Ontario Criminal Justice System providing recommendations on the role of the SIU with respect to ensuring police accountability for causing serious injury or death. In 2002 the ACLC participated

in the consultative process of the *Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams, Q.C.* In 2002, the ACLC joined the SIU Director's Resource Committee.

4. The ACLC has made numerous deputations and submissions to various government committees and reviews on police practices and accountability,¹ most recently in 2004 to the *Lesage Review of the Police Complaints System in Ontario*. The ACLC has also been active in this area in many other law reform and community development activities.²

5. The ACLC's test case litigation on policing and the criminal justice system, include:

- intervention at the Supreme Court of Canada in *Odhavji et al v. Woodhouse et al.*,³ which involved the police shooting of a racialized man in Toronto and the issue of abuse of police powers and duties;
- intervention at the Supreme Court of Canada in *R. v. Golden*,⁴ on the scope of police strip search powers;
- intervention at the Court of Appeal for Ontario in *R. v. Richards*,⁵ on racial profiling or race-based traffic stops by the police;
- intervention at the Ontario Court of Appeal in *R. v. Brown*⁶ on racial profiling by the police;
- standing in 1995 at the Coroner's Inquest into the death of Ian Clifford Coley, an African Canadian fatally shot by a police officer;
- representation of African Canadians at the Ontario Human Rights Commission and Human Rights Tribunal on complaints of police discrimination and abuse;
- representation of African Canadians bringing Public Complaints against the police.

¹ For example to the Ontario Criminal Justice Review Committee (1995); the Ontario Standing Committee on the Administration of Justice on *Bill 105, An Act to Amend the Police Services Act* (1997); and to the Toronto Police Services Board (1997 to the present).

² For example: the formation of the Community Coalition Concerned about Civilian Oversight of Police which submitted a report *In Search of Police Accountability* to the Solicitor General and Attorney General (1997); participation in the Toronto Police Services Board's (TPSB) Special Consultation on the police complaint process (1997); participation in consultations between Toronto Police and the African Canadian community on violence in the community (2001); organization of a national consultation of experts on civil remedies for police misconduct; formation of the African Canadian Community Coalition on Racial Profiling (ACCRP) in response to media reports of racial profiling by the police (2002); organization of a conference on racial profiling (2004); and membership in the Community Network on Policing Anti-Racism, Access & Equity.

³ [2003] 3 S.C.R. 263.

⁴ [2001] 3 S.C.R. 679.

⁵ Unreported, May 4, 1999.

Discharge of Public Interest Mandate of the Commission

6. The Part II mandate of the Commission involves the consideration of public interest issues raised by Part I of the Inquiry relating to the use of force by the police. Based on the evidence of witnesses given during Part I of the Inquiry, such public interest issues include systemic racism in police forces with respect to police surveillance and police use of force (including firearms), specifically, police perceptions and treatment of racialized communities, and the effect of racial stereotyping on the exercise of police powers and discretion.

7. These public interest issues profoundly impact the African Canadian Community, which the ACLC represents. There is pervasive racial discrimination against African Canadians in the justice system and policing, this is demonstrated in the over-criminalization and over-surveillance (racial profiling) of African Canadians, and the disparate impact of police use of force against African Canadians.

8. As such, the full and effective discharge of the Part II mandate of the Inquiry requires a consideration of the broader context surrounding the policing of racialized communities, including African Canadians. Recommendations flowing from these public interest issues relating to the processes governing police use of force, measures to address systemic racism in the police, and police accountability for use of force, will have a crucial and important effect on the African Canadian Community, and must therefore be cognisant of and be relevant to their needs. This is particularly essential given their long-standing efforts and demands for accountability for police use of force.

Overall Context: Policing, Surveillance, Use of Force and African Canadians

9. Systemic discrimination is experienced by African Canadians in the criminal justice system and African Canadians are disproportionately subjected to police scrutiny and use of force.

⁶ (2003), 64 O.R. (3d) 161.

10. Pervasive and deeply-rooted stereotypes underpin systemic discrimination in the criminal justice system. These stereotypes include the “dangerous” Black male, as one who is prone to criminality and violence, have been judicially recognized, and are routinely reinforced by the media.⁷

11. Canadian courts have taken judicial notice of the widespread existence of racism in Canada and the pervasive nature of anti-Black racism in Ontario within the criminal justice system.⁸

12. As well, racial discrimination in policing has been judicially recognized. The Supreme Court of Canada in *R. v. Golden* acknowledged that African Canadians are disparately subjected to police scrutiny with respect to arrests and strip searches. In deciding the scope of police strip search powers the Court noted the overrepresentation of African Canadians in the criminal justice system and that they are likely to represent a disproportionate number of those who are arrested by police.⁹ In *R. v. Brown*, the Ontario Court of Appeal recognized that the existence of racial profiling by the police was supported by significant social science research.¹⁰

13. The *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* indicates that race factors into police decision-making with respect to African Canadians. The Report found that African Canadians were more likely to be stopped and questioned by the police and concluded that systemic racial bias operated at all levels of the criminal justice system.¹¹

Clearly, the disparities in reported stops, particularly multiple stops, support complaints made to this Commission and previous inquiries that the police single out black men to display their authority and because they perceive black men as warranting more scrutiny than other people. Furthermore, the differences in

⁷ *R. v. Golden*, [2001] 3 S.C.R. 679, at para. 83; *R. v. Parks* (1993), 84 C.C.C. (3d) 353 (Ont. C.A.) at 369-372; *R. v. Wilson*, (1996), 107 C.C.C. (3d) 87 (Ont. C.A.) at 92; F. Henry & C. Tator, *Racist Discourse in Canada's English Print Media*, (The Canadian Race Relations Foundation, March 2000), at 125.

⁸ *R. v. Parks*, *supra*; *R. v. Wilson*, *supra*; *R. v. Williams*, [1998] 1 S.C.R. 1128, at 1155, 1156; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484.

⁹ *R. v. Golden*, *supra* at 725

¹⁰ *R. v. Brown* (2003), 64 O.R. (3d) 161, at 165.

¹¹ Gittens, Margaret, et al., *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (Queens Printer for Ontario, 1995), at 357, 358.

experiences of fairness suggest that some police officers make judgements based on race when deciding whom to stop.¹²

14. The disparity of policing on African Canadians is also illustrated by the effects of the “war on drugs” initiative in Ontario which resulted in the increased surveillance and incarceration rates of African Canadians. Between 1986 and 1993, the number of Black people admitted to Toronto area detention centres on drug trafficking charges increased by 1,164% while the number of White admissions increased by only 151%.¹³

15. Indications of a racially biased culture and value system within the Toronto police force were revealed in a 1992 report prepared by the Municipality of Metropolitan Toronto. The Report found that after working in the force, officers developed strong attitudes about racialized people that resulted in biased behaviour that caused unequal treatment.¹⁴

16. The *Report on Race Relations in Ontario* recognized explicitly that with respect to lethal use of force by the police, African Canadians have been the primary targets.

First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and the wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot.....¹⁵

17. That African Canadians are vulnerable to and have been disproportionately subject to police violence and use of force resulting in death or serious injury is supported in a study of official deaths caused by the police in Toronto and Montreal between 1994 and 1997.¹⁶ The study illustrates the overwhelming disparity of Black victims. Of the eleven deaths in Montreal, 45% were Black men when African Canadians formed 1.25% of the population in Montreal in 1991. Of the twelve deaths in Toronto, 50% were Black men when in 1991 African Canadians

¹² *Report of the Commission on Systemic Racism, supra*, at 357.

¹³ S. Wortley & J. Tanner, “Inflammatory Rhetoric? Baseless Accusations? Responding to Gabor’s Critique of Racial Profiling Research in Canada” (2005) 47(3) *Canadian Journal of Criminology and Criminal Justice* 581.

¹⁴ Andrews, A.G., *Review of Race Relations Practices of the Metropolitan Toronto Police Force*, September 4, 1992, Metropolitan Audit Department, The Municipality of Metropolitan Toronto, at 14.

¹⁵ Lewis, Stephen, *Report on Race Relations in Ontario*, June 9, 1992, at 2.

¹⁶ Pedicelli, Gabriella, *When Police Kill: Police Use of Force in Montreal and Toronto*, (Véhicule Press: 1998), at 63-75.

constituted 3.25% of Toronto's population. With respect to the Black victims, all were killed by the use of handguns.

18. The *Commission on Systemic Racism* highlighted concerns with the disproportionate number of African Canadians being shot by the police in Ontario.

In the past two decades, the number and circumstances of police shootings in Ontario have convinced many black Ontarians that they are disproportionately vulnerable to police violence. They conclude that the police are quicker to use their guns against black people and that the shootings are unduly harsh responses to the incidents under investigation. The resulting deaths and injuries have also come to represent the ultimate manifestation of daily discrimination and harassment that many black people experience, especially in interactions with the police. In short, the shootings are perceived not as isolated incidents, but as tragedies that affect the entire black community – and as a reflection of the destructive force of systemic discrimination.¹⁷

19. The African Canadian Community have over the past two decades demanded accountability for police use of force, fueled by frustration with the apparent failure of the criminal justice system's response to police killings of African Canadians and lack of accountability.¹⁸ For example, as observed by the *Commission on Systemic Racism*, at least 16 African Canadians were shot by police in Ontario, 10 fatally, since 1978. In the 9 cases where criminal charges were laid against the officers, not one was convicted.¹⁹ As a result, various task forces and consultations were established in Ontario to inquire into policing policies and practices, including the use of force, which ultimately resulted in the establishment of the SIU in 1990. Subsequent reports echoed the concerns of the African Canadian Community with the continuing

¹⁷ Commission on Systemic Racism, *supra*, at 377

¹⁸ Commission on Systemic Racism, *supra*, at 377-378; McKinney, David W. Jr., Abuse of Power and Non-Accountability: The Case of the Coroner's Inquest Judging the Legitimacy of Police Killings in Ontario, (May 1991), at 28-31; McMahon, Maeve W. and Ericson, Richard V., "Reforming the Police and Policing Reform", in Ratner, R.S. and McMullan, John L. (eds.), *State Control: Criminal Justice Politics in Canada*, (University of British Columbia Press: 1987), at 39 referring to the formation of the Albert Johnson Community against Police Brutality by the Black community in response to the police shooting of Albert Johnson, a Black man; Landau, Tammy, *Public Complaints Against the Police: A View from Complainants*, (Centre of Criminology, University of Toronto: 1994), at 4; Jackson, Peter, "Policing Difference: "Race" and Crime in Metropolitan Toronto," in Jackson, Peter and Penrose, Jan (eds.), *Constructions of Race, Place, and Nation*, (UCL Press Limited: 1993), at 186 referring to the formation the Black Action Defence Committee in 1988 in Toronto in response to systemic racism against African Canadians in policing; *In Search of Police Accountability: Report of the Community Coalition Concerned about Civilian Oversight of Police*, January 1997, at 21-22; *Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit*, ("Adams Report"), May 14, 1998, at 3-4; Pedicelli, Gabriella, *supra*, at 63.

¹⁹ Commission on Systemic Racism, *supra*, at 377-378.

problems of public accountability for police misuse of force, police resistance to cooperation with SIU investigators and inadequate funding of the SIU.²⁰

20. Within this context, recommendations arising from Part II of the Inquiry with respect to police use of force can be seen to be of vital importance for the African Canadian Community. African Canadians are critical stakeholders in oversight processes involving police use of force. The Part II mandate of this Inquiry must include and be strongly informed by their realities and perspectives. In addition, it will assist in promoting the confidence and trust of the African Canadian Community in the justice system.

21. Indeed a link was made at the Inquiry between the racism against Aboriginal and African Canadians. Racist remarks caught on tape by the police officers at Ipperwash the day before Dudley George was killed, extended beyond Aboriginal people to persons of African descent. The tape obtained by the CBC News revealed that OPP officers posing as a media crew made racially derogatory comments about using beer as “bait” to trap the Aboriginal protesters and how it works with watermelon in the South, referring to a stereotype about African Americans.

ACLC Research Project

22. The following represents an overview of the ACLC’s research project report.

23. Part I will be a literature review that will start with a detailed review of the literature on police use of force in Canada, the United States and other western nations. The review first establishes that racial minorities – particularly people of African and Aboriginal descent – are grossly over-represented in police use of force statistics. The research further suggests that minorities are particularly over-represented in cases involving unarmed civilians (i.e., the civilian was not in possession of a firearm or other weapon at the time of the incident). The literature review then describes various models or explanations that have been used to explain the over-

²⁰ McLeod, Roderick M., Q.C., A Report and Recommendations on Amendments to the Police Services Act Respecting Civilian Oversight of Police, November 21, 1996, Toronto, at 18-19; Lewis, Stephen, Letter to Ontario Premier Bob Rae, *supra*; Adams Report, *supra*, at pp. 3-4, 10-11, 24, 32-37, 39; Commission on Systemic Racism, *supra*, at pp. 377-379; Henry, Frances and Tator, Carol, et. al., *The Colour of Democracy: Racism in Canadian Society*, 2nd Ed., (Harcourt Canada Ltd.: 2000), at 191-195.

representation of minorities in police shootings and other use of force incidents. These explanations include:

The Racial Animus Model: Proposes that blatantly racist police officers (bad apples) sometimes abuse their authority and illegitimately use coercive force against racial minorities as an act of racial hatred or animus.

The Devaluation Model: Proposes that, in general, racial minority citizens are devalued by mainstream society. As a result, use of force against minorities is less likely to be questioned or come under State scrutiny. This devaluation ultimately puts minorities at greater risk of becoming a victim of police violence.

The Stereotype Model: Proposes that racial stereotypes may lead to a belief among police officers that racial minority males are more dangerous or violent than others. Such stereotypes could cause police officers to become more fearful or apprehensive when they encounter minority males on the street. This fear or apprehension, in turn, may increase the probability that the police will use force against racial minority males compared to other groups. The stereotyping of other groups as “dangerous”, including the mentally ill, may similarly increase their vulnerability to police use of force.

The Crime Model: Proposes that racial minority males are over-represented in police use of force statistics because they are actually more involved in crime and violence than others. In other words, minorities are more involved in the types of violent or aggressive behaviors that result in the *legitimate* use of force by police.

The Neighbourhood Model: This model proposes that people who live in poor, socially disorganized, high-crime neighbourhoods are at greater risk of police violence than those who live in more affluent, low-crime communities. The idea is that the police may be more wary or fearful when working in such neighbourhoods and thus quicker to resort to violence. To the extent that racial minorities are over-represented in such communities, they will also be over-represented in police use of force statistics.

The Demeanor Model: This model proposes that those who are aggressive and disrespect police authority are more vulnerable to police use of force than those who are polite and compliant. It predicts that the over-representation of minorities in police use of force statistics may be at least partially explained by the fact that minorities are less likely to respect police authority.

An Integrated “Fear” Model: Combines elements of the Stereotype, Neighbourhood, Crime and Demeanor Models. It argues that the police are most likely to use force when they fear for their own safety, the safety of fellow officers, or the safety of civilians. The greater the level of fear, the higher the probability that force will be used. For example, a civilian carrying a gun may legitimately create “fear” among responding police officers. However, if racial stereotypes exist, this fear may be greater if it is a black man carrying a gun rather than a white man. Similarly, fear may be even greater if it is a black man carrying a gun in a poor, high-crime neighbourhood. Fear may be higher still if it is a black man, displaying signs of mental illness, carrying a gun in a high crime area. The

idea is that police use of force is most likely to occur when a high number of fear-generating factors – some of them legitimate (violent behaviour, weapons possession, etc), some of them illegitimate (racial stereotypes) – converge at the same place and time.

The Police Subculture Model: Argues that the police subculture may increase the likelihood of police violence because it: 1) reinforces racial stereotypes through the telling of “war stories” that depict minorities as dangerous; 2) increases the likelihood that young officers will want to prove their courage and toughness on the street and possibly reduce the probability that officers will try to diffuse confrontations with citizens through non-violent methods; 3) reinforces the belief that the police should respond to citizen hostility, disrespect or disobedience with violence; and 4) creates a code of silence among police officers that makes investigations into the illegitimate use of force difficult if not impossible. This code of silence protects officers who may use force in an illegitimate fashion.

24. The literature review will conclude with a discussion of various recruiting strategies, training procedures, organizational factors and monitoring techniques that may reduce the illegitimate use of force by the police.

25. Part II will describe the results of an intense, two hour focus group that was held with various representatives from Toronto’s black community. The focus group results suggest that: 1) black leaders have a broad definition of police violence that includes behaviours like racial profiling and verbal abuse as well as police brutality and police shootings; 2) many respondents perceive that the police are much more likely to use force against members of the black

community than people from other racial groups; 3) many feel that both overt racism and fear are the primary causes of police violence against members of the black community; 4) many believe that the police “code of silence” impedes investigations into police brutality and offers shelter to corrupt and violent officers; and 5) many feel that the current system of investigation into deaths or injuries caused by the police is ineffective and does not serve justice. The focus group concluded with a discussion of policies and legislation that might help reduce police violence against the black community.

26. Part III involves a detailed analysis of records from the SIU, an independent civilian oversight organization that has the mandate to investigate all cases in which a civilian is killed or severely injured as result of police activity in Ontario. In early 2006 we received permission from the SIU to examine the Director’s Report for each case dating back to 2000. In the end we were able to collect detailed information on over 1,000 SIU investigations that took place over a five year period between 2000 and 2005. For each case we collected information on a large number of variables including: the age, gender and race of the civilian; cause of injury or death, criminal history of the civilian, mental health of the civilian, police service involved, age, gender and race of subject officers, rank and years of experience of subject officers, description of the incident and final outcome of case (i.e., officers cleared or charges laid). The data collection instrument used to collect information on each case will be provided as an appendix to the report.

27. The analysis of the final dataset will focus on a number of important questions including: 1) Are African Canadians, Aboriginal and other racial minorities over-represented in SIU cases? and 2) Are SIU cases involving racial minorities similar or different than cases involving white civilians (i.e., are they more or less likely to involve weapons, are they more or less likely to

result in the death of the civilian, are they more or less likely to involve charges against the subject officers). Given the mandate of this Inquiry, and to our knowledge, this is the first study in Canada to examine statistics on police use of force.

Recommendations

28. Based on the above, the ACLC proposes that the following recommendations be considered by the Commission:

- i. That the collection of disaggregated race-based data for the purpose of monitoring use of force by the police be conducted on a permanent basis by the SIU, and by the police through the Public Complaints Process for incidents not falling within the mandate of the SIU. Data collection will include information on a large number of variables such as: the age, gender and race of the civilian; cause of injury or death, criminal history of the civilian, mental health of the civilian, police service involved, age, gender and race of subject officers, rank and years of experience of subject officers, description of the incident and final outcome of case (i.e., officers cleared or charges laid). The data collection instrument to be used to collect information on each case will be provided as an appendix to the report.
- ii. That police oversight mechanisms be strengthened to ensure accountability, transparency and independence with respect to police use of force against racialized people. Specifically:
 - (a) The implementation of the recommendation in the *Adams Report* for cross-cultural education opportunities for SIU investigators and the recruitment of investigators from cultural and racially diverse backgrounds.²¹

²¹ *The Review Report on the Special Investigations Unit Reforms prepared for the Attorney General of Ontario by The Honourable George W. Adams, Q.C.*, February 26, 2003, at 63-64, reported that the SIU has not fulfilled this recommendation.

(b) The definition of “serious injury” should be broadly interpreted to protect victims of police violence to include psychological harm, such as to engage the investigative jurisdiction of the SIU.

(c) With respect to incidents of use of force where injury is caused but does not fall within the SIU’s “serious injury” mandate, particularly in situations where racism or racial bias is alleged to have been a factor, complainants must be entitled to and ensured of an independent investigation. In the proposed *Bill 103 Independent Police Review Act, 2006*, such an investigation would be conducted by the civilian oversight body the Office of the Independent Police Review Director.

- iii. That police forces ensure that complaints and concerns against police officers relating to use of force, particularly when the complainant is racialized, are reflected and factored into the assessment of each officer’s performance review and or promotions.
- iv. That police forces develop an anti-racism curriculum and training program to be incorporated into any existing training programs on use of force and which will be mandatory for recruits, new officers, and serving officers. The training should be designed and delivered by independent experts in anti-racism to ensure a full understanding of racially biased policing, racial discrimination and the racialized communities police serve, particularly with respect to use of force. This training should be provided as a refresher on a regular basis. The training program should be independently and regularly evaluated to assess its efficacy.
- v. That police forces develop rules and regulations regarding when it is legitimate to use force and when it should not be used.
- vi. That police forces be encouraged to retain independent employment equity experts to develop concrete, measurable and attainable goals to increase the number of racialized people, particularly African Canadians and Aboriginals, in positions of responsibility.

vii. That police forces develop and adopt policies and procedures to address the existence of the police subculture.

viii. That police forces develop policies and procedures to review, deal with and report on incidents involving the use of force within a specified time frame.

All of which is respectfully submitted this 28th day of July, 2006.

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