

January 16, 2017

Mr. Ronald J. MacDonald Q.C.
Director
SiRT: Serious Incident Response Team
Suite 203, 1256 Barrington St.
Halifax, N.S. B3J 1Y6

Ms. Christine Hansen
Director and CEO
Nova Scotia Human Rights Commission
PO Box 2221, Halifax N.S. B3J 3C4

Dear Mr. MacDonald and Ms. Hansen:

As members of the Serious Incident Response Team (SiRT) Community Liaison Committee and the African Nova Scotian community, we are calling for an immediate end to the use of street checks.

We are also calling upon SiRT and the Nova Scotian Human Rights Commission (NSHRC) to investigate the practice of street checks by the Halifax Regional Police and the Halifax RCMP, in consultation with the Board of Police Commissioners and the Police Complaints Commissioner. The investigation must include the meaningful involvement of African Nova Scotian communities - who are disproportionately subject to this illegal practice.

The independent, evidence-based examination should include the following issues:

1. The legality of street checks under Canadian law;
2. All policies and practices relating to street checks with a view to examining the way in which they can violate citizens' rights;
3. The direct and adverse discriminatory impact on African Nova Scotian individuals and communities;
4. Remedies for harm caused to African Nova Scotian individuals and communities as a result of the disproportionate use of street checks to date, and additional safeguards for all citizens.

The Illegality of Street Checks – A Concern for Everyone

Street checks affect everyone. We live in a constitutional democracy wherein the people bestow power to the police. The police must operate within the legal parameters of legislation and the Constitution, including the *Canadian Charter of Rights and Freedoms* as mediated by our judicial system.

By definition street checks involve the police checking citizens *without* reasonable and probable grounds - or even reasonable suspicion - to believe they have committed a criminal offence. There is no legislation or common law power permitting the use of police street checks. As such, police are checking people and recording information without legal authorization to do so - and street checks should cease immediately. Not only are street checks illegal - and harmful to those who are “checked” – citizens’ individual rights are not being protected throughout the course of the stop.

An Independent Review must be undertaken of police street checks

It is not appropriate for police to be the arbiters of the legality or impact of street checks. HRM Police were directed to keep statistics as part of the settlement ordered by the Nova Scotia Human Rights Commission (NSHRC) tribunal in the Kirk Johnson case. The police kept the race statistics as ordered, but apparently did not examine them for some eleven years – despite numerous indications that such an examination would be warranted. Those indications include provincial and federal statistics highlighting the overrepresentation of African Nova Scotians in the criminal justice system; and the importance of all players within that system to establish clear mechanisms for investigating and dealing with systemic racism that plagues that portion of the system for which they are responsible. Most recently, a report by former police commissioners indicates that the HRM Police have been reporting to the HRM CAO, rather than the Board of Police Commissioners as mandated by law.

Clear lines of civilian oversight are needed now more than ever. An independent external investigation into the legality and discriminatory impact of street checks is consistent with the mandates of SiRT and the NSHRC.

Enslavement to Segregation to Racial Profiling – Understanding street checks of African Nova Scotians in context

The disproportionate street checking of African Nova Scotians must be examined and understood in the context of the history of enslavement and segregation of African Nova Scotians, the legacy of which continues to shape access to power, resources and opportunities for both Black and non-Black Nova Scotians today.

The enslavement and segregation of African Nova Scotians was legally enforced and created the racial structure underlying contemporary Nova Scotian society. That racialized enforcement (whether intentional or not) has always included the surveillance and monitoring of African Nova Scotians. Black communities were geographically separated from White towns, sundown laws were enforced such that African Nova Scotians were not allowed in White towns after a certain time of night, and African Nova Scotians were even forbidden from socializing together at times. “Customary” codes of segregation were maintained by law enforcement – as in the

case of Viola Desmond. The Kirk Johnson case and the NSHRC study on consumer racial profiling are but two official examples of the 'unofficial' surveillance that African Nova Scotians face daily – especially young Black men.

Racial profiling in Nova Scotia is part of a national, North American and international phenomena rooted in the global conditions created by the enslavement and colonization of African peoples. It is not surprising then, that just a few months ago, the United Nations Working Group of Experts on People of African Descent visited Halifax as part of their Canadian site visit. In their preliminary report of October 2016, the UN Group of Experts called on Canada to stop street checks, saying:

"There is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement. Arbitrary use of "carding" or street checks disproportionately affects people of African descent...

[The Government of Canada should] **Discontinue the practice of carding or street checks and all other forms of racial profiling...** Furthermore, there must be a cultural change and greater respect for the African Canadian community." [Emphasis added]

The final UN Report will be issued in September 2017.

As Nova Scotians we trust that the provincial and municipal governments will not wait for that report before discontinuing street checks; we call upon the independent external agencies to determine whether street checks are in any way legal; and to examine the discriminatory impact of those checks on African Nova Scotians. Moreover, SiRT and the NSHRC must ensure meaningful participation by African Nova Scotians in that process.

Sincerely,

Rev. Dr. Lennett J. Anderson, Moderator, African United Baptist Association (AUBA)

Ms. Shawna Hoyte Q.C., Lawyer, Dalhousie Legal Aid Service

Prof. Michelle Y. Williams, Schulich School of Law, Dalhousie University

Mr. Robert S. Wright, MSW, RSW

cc: Premier Stephen McNeil
Hon. Diana Whalen, Attorney General and Minister of Justice
Hon. Tony Ince, Minister of African Nova Scotian Affairs
Mayor Mike Savage
Deputy Mayor Steve Craig, Chair, Halifax Board of Police Commissioners
Ms. Nadine Cooper Mont, Police Complaints Commissioner
African Nova Scotian DPAD Coalition
African Canadian Legal Clinic
Mr. Niraj Dawadi Human Rights Officer, Anti-Racial Discrimination Section, Office of the United Nations High Commissioner for Human Rights