

June 19, 2021

Ms. Kirsten Stevenson, Administrator  
Hamilton Police Services Board  
155 King William Street  
Hamilton, Ontario L8R 1A7

Re: R. v. Orane Brown and the Inability of the Hamilton  
Police Service to Conduct Strip Searches in Accordance  
with the Law and HPS policy

Dear Members of the Hamilton Police Services Board,

On May 28, 2021, Goodman J., a judge of the Superior Court of Justice at Hamilton, issued a ruling regarding the exclusion of essential evidence in a drug trafficking case due to serious errors committed by several Hamilton Police Service officers.

Goodman J.'s decision highlights the ignorance of law and HPS policy by the officers. The management failures that led to this bad state of affairs may be of interest to the Board.

The full report of the decision can be found at:

<https://www.canlii.org/en/on/onsc/doc/2021/2021onsc3862/2021onsc3862.html?resultIndex=1>

#### The Facts of the Case

The accused man, Orane Brown, was suspected of drug trafficking. He became the subject of police surveillance on September 14, 2017. Subsequently, the HPS obtained a warrant to search the accused's home.

On October 6, 2017, the warrant was executed, a quantity of crack cocaine was found and the accused man was arrested outside his home after apparently taking part in a drug transaction.

Mr. Brown was taken to shower area of the holding cells in an HPS station and strip searched. This is the most intrusive and demeaning search imaginable and was done in a way that constituted a breach of Mr. Brown's rights under the *Canadian Charter of Rights and Freedom*. That police misconduct led to the exclusion of essential evidence. As a result, the case was lost.

#### What the Police did Wrong

The Supreme Court of Canada in 2001 set out the legal criteria to determine whether a strip search was conducted lawfully. The standard set by the Supreme Court was embodied in HPS policy which was in effect when Mr. Brown was strip searched.

There were three officers involved in the strip search: the arresting officer, the custody sergeant and another officer who was asked to assist. **None of them followed the HPS policy regarding strip searches.**

At paragraph 45 of his decision, Goodman J. stated:

Frankly, with the officers' evidence of the rare occurrences of strip searches conducted by the Hamilton Police Service, **there is no justifiable excuse for the police officers in this case to not know how to properly conduct a strip search in compliance with the law and their own police policies.** (emphasis added)

There were several problems with the execution of the strip search, including the prisoner being left naked longer than necessary and the search not being conducted in a place that offered sufficient privacy. However, the most striking failure was the easiest to comply with: the police officers involved did not take adequate notes. The law and HPS policy required that the search be documented in the officers' notes, the Detention Log and an Incident Report. It was not.

At paragraph 39 of his decision, Goodman J. wrote this about the arresting officer:

In fact, it was readily apparent to me that **this officer demonstrated a cavalier and somewhat lackadaisical approach to the entire event.** His evidence, notes and recollection are sparse. He did not even know if there was a door to the area where the search was conducted. (emphasis added)

Usually, in cases where a *Charter* breach is alleged, the onus is on the defence to prove the breach. However, in the case of the strip searches, the onus changes and it is up to the Crown to prove that the search was conducted lawfully. As a retired Assistant Crown Attorney, I can only imagine the frustration and embarrassment felt by the Federal Prosecutor in this case. One major difference between good police witnesses and bad ones is the quality of their notes. The judge's comment regarding the officer's "cavalier and somewhat lackadaisical approach" should taint that officer for the remainder of his career.

Members of the Board should view this incident not as a failure of individual officers but as a failure of management. The officers either did not know or did not follow the HPS policy. If they had been trained effectively, which is a management issue, all of them should have known the policy. Since a strip search is likely to be an aspect of a drug investigation, the officer in charge of the investigation should have made sure that all officers who could be involved in the strip search knew how to do it correctly. That is a management issue. A review of the officers' notes, the Detention Log and an Incident Report would have revealed critical deficiencies possibly in time to correct them. There is no indication that happened. That is a management issue.

#### Questions the Board may choose to ask the Chief of Police

1. Has the Chief of Police read Goodman J.'s decision? If not, why not?

2. Is it the practice of the Hamilton Police Service to review local court decisions in which HPS officers were found to have breached the *Charter* rights of the people they dealt with? If not, why not?
3. Who is responsible for reviewing the behaviour of HPS officers in the course of the investigation of crimes and provincial offences?
  - a. What is the nature of the review?
  - b. Is the review done as a matter of course?
  - c. Is the standard and method of review adequate?
  - d. Were those standards and methods of review in place around the time the strip search of Orane Brown was conducted?
4. Was any supervisor aware of the deficiencies in the strip search of Mr. Brown prior to the decision by Goodman J.?
5. In the absence of the decision by Goodman J., would the deficiencies in the strip search of Mr. Brown ever have been discovered?
6. Have the officers who took part in the strip search of Mr. Brown met with a supervisor regarding deficiencies in the strip search?
7. Has the Chief of Police taken any steps to ensure that the deficiencies in the strip search of Mr. Brown do not recur?

I expect the responses of the Chief of Police to these questions will be disappointing.

The Hamilton Police Services Board is the only public body which is responsible for “the provision of adequate and effective police services” to the people of Hamilton. If you do not take steps to fix these problems, no one will.

If any member of the Board wishes to discuss this matter further, I can be reached using the email address that I’ve provided to the Administrator, Ms. Kirsten Stevenson.

Yours truly,

Andrew Bell

Stoney Creek, Ont.