

HAMILTON POLICE SERVICE BOARD MOTION

Monitoring Violations of the Canadian Charter of Rights and Freedoms

MOVED BY Member A. Menezes

SECONDED BY

WHEREAS the Community Safety and Policing Act, 2019 (CSPA, 2019) outlines that “adequate and effective policing” means that all provided policing functions respect the requirements of the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

WHEREAS the duties of the Hamilton Police Service Board under the CSPA, 2019 include ensuring “that adequate and effective policing is provided in the area for which is has policing responsibility.

WHEREAS the CSPA, 2019 (38) outlines that police service boards shall establish policies respecting “the provision of adequate and effective policing” and “the handling of discipline within the police service;”

WHEREAS there have been a number of recent court rulings related to the violation of Charter Rights by the Hamilton Police Service reported in local media including most recently:

- R. v. Russell, 2024 in which the judge noted “an absolute ignorance of well-established Charter rights” ruling that \$500,000 in cannabis and \$50,000 in cash be excluded from evidence in a case that subsequently failed
- R. v. MacKenzie, 2024 in which the ruling noted that the Hamilton Police Service violated the defendant’s Charter rights, resulting in evidence being excluded from the trial with the ruling noting “Gun violence has gripped the City of Hamilton this year. Media reports decry the alarming rates of shootings in our community. Excluding the evidence will deprive society of a trial in a case with significant public interest. But exclusion is necessary to protect the long-term integrity of the justice system...”
- R. v. Elawad, 2025 in which the defendant was acquitted of all charges, including the possession of a firearm and drugs, due to their Charter rights being breached. Notably the two officers involved were found to have racially profiled a Black man, failed to acknowledge his right to legal counsel, and conducting an illegal search.

WHEREAS Charter rights violations:

- Decrease public trust in policing;
- Negatively impact public safety; and
- Place the Hamilton Police Service Board at considerable risks of litigation

AND WHEREAS Charter Rights Violations can be complex to track comprehensively as the ruling in R. v. Grant, 2009 noted (para 75) “that for every *Charter* breach that comes before the courts, many others may go unidentified and unredressed because they did not turn up relevant evidence leading to a criminal charge.”

THEREFORE, BE IT RESOLVED-

(A) That the Hamilton Police Service Board invite the following speakers:

1. To deliver to the Board training on common Charter Rights violations and the mechanisms by which they are commonly identified:
 - i. Kaley Hepburn as the Hamilton representative from the Criminal Lawyers' Association;
 - ii. A representative from the Office of the Crown Attorney;
 - iii. That the training include reference to the following sections of the *Canadian Charter of Rights and Freedoms*:
 - a. S. 7 "life, liberty and security of the person" particularly as it relates to disclosure obligations
 - b. S. 8 "unreasonable search or seizure" particularly as it relates to searches with and without warrant
 - c. S. 9 "arbitrary detention" particularly as it relates to racial profiling
 - d. S. 10 "right to counsel" particularly as it relates to the obligation of the police to facilitate the exercise of the right to counsel
 - e. S. 11(b) "right to be tried within a reasonable time" particularly as it relates to the necessity of the police completing investigations and providing disclosure in a timely fashion
 - f. S. 24 "enforcement of guaranteed rights and freedoms" particularly as it relates to the consequences of the failure of the police to comply with the requirements of the *Canadian Charter of Rights and Freedoms*, including any effect on sentencing
 - iv. Any other section of the *Canadian Charter of Rights and Freedoms* which the Chair considers helpful to the Board
2. Steve Buist from the Hamilton Spectator to present the mechanism by which he identified Charter Rights violations in his investigative report on the matter in 2022;
3. That each invited speaker address the Board for no more than 30 minutes;
4. That the Auction Account Fund be used to provide an honorarium to any invited speaker who is not a full-time employee of the Ministry of the Attorney General;

(B) That the Board Administrative Director prepare a report of any of the Big 12 Police Service Boards with current policies on Charter Rights violations;

(C) That the Hamilton Police Service report back to the Board a summary of:

1. All criminal cases in which charges were dropped or evidence was excluded as a consequence of a Hamilton Police Service member failing to uphold Charter rights;
2. The mechanisms by which the Hamilton Police Service became aware of these cases;
3. The actions in terms of changes to procedures and training that were subsequently taken;

(D) The Hamilton Police Service in their annual report to the Board from their Professional Standards Branch include a summary of disciplinary actions taken regarding Charter Rights violations.