

MOTION

HAMILTON POLICE SERVICE BOARD

June 26, 2025

Monitoring Violations of the Canadian Charter of Rights and Freedoms

MOVED BY Member A. Menezes

SECONDED BY Member C. Kroetsch

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

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

WHEREAS CSPA (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 -

- (1) 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.
- (2) 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 ...”.

- (3) 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 conducted an illegal search.

WHEREAS Charter Rights violations can be complex to track comprehensively as the ruling in R. v. Grant, 2009 noted (para 75) “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”; and

WHEREAS Charter Rights violations decrease public trust in policing, negatively impact public safety, and can create a considerable risk of litigation.

THEREFORE, BE IT RESOLVED -

- (1) That the Executive Director report back to the Board with a list of individuals for its approval who could deliver training to Board members on common Charter Rights violations, including but not limited to -
 - (a) A criminal lawyer; and
 - (b) A representative from the Office of the Crown Attorney.
- (2) That the training include reference to the following sections of the Charter of Rights and Freedoms -
 - (a) Section 7 - “life, liberty and security of the person” particularly as it relates to disclosure obligations.
 - (b) Section 8 - “unreasonable search or seizure” particularly as it relates to searches with and without warrant.
 - (c) Section 9 - “arbitrary detention” particularly as it relates to racial profiling.

- (d) Section 10 - “right to counsel” particularly as it relates to the obligation of the police to facilitate the exercise of the right to counsel.
 - (e) Section 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) Section 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.
 - (g) Any other section of the Canadian Charter of Rights and Freedoms which those providing training may think it important for the Board to learn about.
- (3) That former Hamilton Spectator journalist Steve Buist be invited to speak to the Board about his experience reporting on Charter Rights violations.
 - (4) That each speaker address the Board for no more than 30 minutes.
 - (5) That the Executive Director report back to the Board with a recommended funding source to provide an honorarium to any invited speaker who is not a full time employee of the Ministry of the Attorney General.
 - (6) That starting in Q4 2025 the Hamilton Police Service issue twice annual written reports to the Board in Q2 and Q4 of each year including -
 - (a) A summary of each individual criminal case in which charges were dropped or evidence was excluded as a consequence of a Hamilton Police Service member failing to uphold Charter Rights;
 - (b) An outline of the manner in which the Hamilton Police Service became aware of each individual case;
 - (c) An outline of the actions the Hamilton Police Service will take to change any procedures to prevent further Charter Rights violations; and

- (d) An outline of any training that was provided and taken in each individual case.
- (7) That 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.