

May 25, 2020

Chief Nishan Duraiappah
Chief of Police
Peel Regional Police
7150 Mississauga Road
Mississauga, ON L5N 8M5

Mr. Ron Chatha
Chair
Regional Municipality of Peel
Police Services Board
10 Peel Centre Drive
Brampton, ON L6T 4B9

Sirs:

Re: Systemic Issues Regarding Investigative Detention & the Right to Counsel

The mandate of the Office of the Independent Police Review Director includes a statutory obligation to monitor and respond to issues in policing signaling systemic failings. In this context, I write to ensure awareness of the Court of Appeal's findings last month in *R v Thompson*, 2020 ONCA 264.

In its decision, the Court of Appeal reviewed the conduct of Peel Regional Police officers and alleged breaches of sections 9 and 10(b) of the *Canadian Charter of Rights and Freedoms*. The Court found, amongst other things, that your officers seemed unaware that their actions in relation to Mr. Thompson constituted an investigative detention, and that they failed to discharge their obligation to immediately provide him with his right to counsel.

Most significantly, the Court of Appeal echoed the trial court's concern about the pervasive and serious systemic failures by the Peel Regional Police to comply with their *Charter* obligations. In *Thompson*, the Court found that the breaches of section 10(b) were "rooted in a systemic disregard by the Peel Regional Police for their constitutional obligations."

The Court listed almost two dozen cases in the past three years as evidence of Peel Regional Police officers' continued failure to respect the obligation to provide the right to counsel. It found this situation existed despite clear and repeated guidance from the Supreme Court of Canada about the obligations of police officers in detaining individuals.

In this instance, I find it unnecessary to invoke my statutory authority to conduct a systemic review because the Court has already clearly identified the systemic failures and the best use of our resources is collaborating with you in resolving them.

In order to assist, I have included the following recommendations, which are based on the OIPRD's experience conducting systemic reviews:

- The Chief could establish a system to track and monitor judicial findings of violations of the *Charter*, and proactively take measures to address the issues raised, when appropriate. Such measures may range from additional supervision or training where the delict is a performance issue, to reprimand and disciplinary proceedings in more egregious cases;
- The Chief could consider conducting an internal review to determine the extent of his officers' knowledge of their sections 9 and 10 *Charter* obligations;
- The Chief could create a comprehensive training module aimed squarely at police obligations relating to sections 9 and 10 of the *Charter*. The module could be delivered as part of the officers' annual training, or as a standalone initiative. On-going training is a crucial aspect of policing, which can increase officers' understanding of their authority and enable them to properly apply the law;
- The Chief could ensure that its policies on arrest and detentions expressly set out officers' obligations under the *Charter*, with emphasis on defining "without delay" in the section 10(b) context, and the objective nature of psychological detention; and
- The Peel Regional Police Services Board could provide appropriate direction to the Chief with respect to development and delivery of periodic training for its members on police *Charter* obligations.

I hope that the Chief and the Board find these recommendations useful in resolving the systemic issues identified by the Court and look forward to your collective response.

Respectfully submitted,



Stephen Leach
Independent Police Review Director

Encl.