September 21, 2015

The Honourable Yasir Naqvi  
Ministry of Community Safety and Correctional Services  
25 Grosvenor Street, 16th Floor  
Toronto ON  
M7A 1Y6

RE: Racial Profiling, Bias Free Policing in the Context of Crime  
Prevention, Solving and Reducing Crime

Dear Minister Naqvi,

The Hamilton Police Service welcomes the announcement that the Ontario Liberal Government is opening the Police Services Act. We welcome the opportunity to provide input during the community consultation process, with a view to making the greatest potential enhancements to community policing and public safety. This is an important step for the people of Ontario and the Government must be recognized and applauded.

One of the important steps taken was the announcement of the Minister of Community Safety and Correctional Services, Honourable Yasir Naqvi, to hold consultations on the important issue of Bias Free Policing, and more specifically, the submissions related to "carding". Minister Naqvi attended a community consultation meeting that was held in Hamilton on September 15, 2015 and was also attended by Chief De Caire and Deputy Girt. This meeting was a valuable opportunity to listen and hear the perspective of individual deputations.

As recognized by the government in its invitation for submissions, there is no common definition of "carding" that everyone in the community and in law enforcement across the province is working with. This is a significant challenge and one that cannot be easily rectified given the variety of perspectives across the diverse landscape of policing in Ontario.

It may be productive to start with some the areas of commonality. I speak for the Hamilton Police Service on the matters before you today.
I believe that it is a common position and goal that:

- Public safety is the responsibility of the entire community and does not fall just to the police service of jurisdiction,

- People, all people, want to live in peace and without fear of crime, violence, and victimization,

- Policing, as a service, shall be provided in a fair, equitable, bias-free manner and people will be treated with dignity, respect and fairness without consideration of race, colour, ethnic origin, heritage or any of the other prohibited grounds,

- Racial Profiling and discrimination are prohibited.

To state this in plain language, a police officer must not activate any of their policing authorities based on race. This has been the very clear message of our Service for many years and has been built into our training from the early 2000’s.

The issue of "carding" is complex and yet there are some very simple fundamentals involved.

First, it is not about a ‘card’ or a ‘notebook entry’ or a ‘direct data entry’ to a police database. It is about a process that some believe is activated by race, discrimination, prejudice and bias. This perception, reality, has significant opportunity to negatively impact the public trust and confidence in policing. We, as a community, must address the issue and balance the need for public safety, within the constitutional framework, and respect for the communities we serve and individual dignity.

Second, the Hamilton Police Service does not train our officers to participate in the random, indiscriminate stopping of our citizens for the purpose of identification based on race.

During my tenure as the Chief of Police in Hamilton for the last six years, the Service has hired over 200 officers, equating to almost 25% turnover of our Service. Every newly hired officer receives training in anti-racism, anti-discrimination, diversity, aboriginal issues, and racial profiling.
I have spoken to every new member upon their hire and at their initial graduation. They all have received the same consistent message.

'There is no issue which has a greater potential to undermine and destroy our relationship with the diverse people that we serve than the perception that we discriminate on the basis of race. Racial Profiling is the inappropriate consideration of race or ethnicity in deciding, when and where, to apply your policing authorities. AND IT IS PROHIBITED. We must be constantly vigilant against the influence that bias, in all its forms, can have on our decision-making.'

The Hamilton Police Service has focused on five key areas that guide our work in delivering policing service in our community. We focus on our People, Policy, Training, Supervision and Accountability. Our Policy in relation to Equal Opportunity, Anti-Racism and Anti-Discrimination clearly states and acknowledges that Racism, Racial Profiling and other biases exist in policing. We will work to create and support an environment which values the rights of all persons to live and work in a community free of bias, discrimination and harassment.

**Balancing the Tension of Policing**

During the recent federal election campaign one party identified, as an issue, the need to have increased officer presence working in neighbourhoods and communities facing increased violence. This announcement was made in a city that has experienced 36 shootings in a four month period. I assume the additional officers would enhance the safety of the public through their presence and visibility in this city but no doubt the goal is to find out who is responsible for the ongoing crime. This must be done by talking to people, gathering information, analyzing the information and then making arrests, searching places for weapons and getting the guns off the streets and out of the hands of these criminals. These criminals are individuals that not only possess a gun but an attitude of total disrespect for human life.

We have heard the argument before about ‘criminals shooting criminals’ but what about the innocent people in the area that can be injured or killed. I have lived this experience in my policing history and worked in a division that saw 10 shootings in two weeks resulting in 16 victims, 1 homicide and the indiscriminate gunfire striking and injuring a 4 year old boy on August 3, 2005. At that time and in a 7 month stretch 28 persons were shot and the front line divisional officers responded to 284 gun calls.

Most recently, here in Hamilton following a recent murder, a young woman provided a media interview to CHCH News and she said, 'When are the police going to come in here and put their foot down and stop the shootings?'
In order to answer this question, we must seek a balance. There is a fundamental tension between crime prevention and the gathering of criminal intelligence information. How do the police intervene to stop gun violence, get guns off the street, or dismantle criminal organizations without stopping and talking to people and recording their information?

Some opponents of “street checks” argue that the police should not be able to collect any information to use in any future investigation. This position is fundamentally incompatible with the community expectation for public safety. Sometimes, even a small, innocuous, encounter can lead to the arrest of a sexual predator or killer. We witnessed this in the Toronto / Peel Homicide investigation into the 2006 death of Cecilia Zhang.

We will not go into any community or neighbourhood as an occupying army to ‘put down our foot’. If we did, we would be highly criticized for this level of force and abuse of power. However, we will fully participate with the community to help solve problems. This strategic approach is already laid out in the provincial guideline on community policing in the publications, ‘Ontario’s Mobilization & Engagement Model of Community Policing’ and ‘Crime Prevention in Ontario: A Framework for Action’.

Hence, a fundamental tension exists between the balancing of individual rights against the interest in public safety.

**What is that balance?**

The balance is set out by the *Canadian Charter of Rights and Freedoms*, and the case law that has interpreted the Constitution. The court’s interpretation of the *Charter* guides our work and balances the issue. We have thoroughly trained our members in relation the case law decisions of the Supreme Court of Canada. The *Charter* outlines our basic rights as Canadians.

What has been absent from many deputations on this issue is that every constitutional right is subject to limitations. Section 1 of the *Charter* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Much of the tension surrounding the issue of “carding” surrounds the interaction between the police and the community in circumstances that do not meet the legal test for “detention” under the Charter. In R. v. Mann, R. v. Suberu, R. v. Grant and R. v. Harrison, the Supreme Court of Canada has provided guidance to police officers in the exercise of their authorities in this very complicated area. In addition, section 24 of the Charter provides for the appropriate remedy for individuals when the police violate those rights and freedoms.

For example, Section 8 of the Charter articulates ‘Everyone has the right to be secure against unreasonable search or seizure’ and Section 9 identifies ‘Everyone has the right not to be
arbitrarily detained or imprisoned’. Read without the interpretation of the Supreme Court of Canada (SCC) these rights would seem to have no limitations. However, the SCC has stated that the police can conduct random stops, arbitrary stops, in terms of impaired driving enforcement and have stated that the greater protection afforded the entire community by reducing impaired driving outweighs, and thus places a limitation, on the Charter right. All rights have limitations.

In finding the balance, what do you expect us to do?
On May 17, 2015 we know, from clear and independent video evidence, that at least two young black men stood in the middle of Main Street and East Street, Hamilton and opened fire on each other. It was a sunny Sunday afternoon and fortunately nobody got hurt. The community called for immediate police support to the area to help curb this troublesome violence. What does the community expect of the police in such a situation? When we send officers to this area in response to the shooting, we are going to be stopping, talking and investigating young black males. We are going to be stopping and talking to as many people as possible because we do not know who might be a suspect, person of interest, victim, witness or a person who may wish to be a confidential informant. We don’t know until we gather the information. We are going to be adding this information to our intelligence systems for analysis so we can identify relationships, links in information and our goal is the find the persons responsible for opening fire in our community in broad daylight and we clearly heard from the community that gun fire, anywhere and at any time, is not acceptable.

There is no temporal aspect of a criminal investigation or the authority that guides that investigation. As long as the matter is ‘unsolved’ then there is a requisite responsibility upon police to actively investigate and solve it. How is this impacted by 'street check' investigative options?

We have many issues to deal with in our communities. We have young men shooting each other. We have issues of territorial conflict in drug trade and related violence, as does every city. We have disenfranchised racially diverse young people that see no hope for their future. We have housing, poverty, education, drug and alcohol addictions, and mental health issues to tackle.

I am in agreement that there must be safeguards to protect our citizens as well as the police. The Hamilton Police Service has acknowledged that racism, racial profiling and other biases exist in policing. While we acknowledge these phenomena, we will not tolerate their existence within our Service. However, I am in full support of our officers exercising their discretion to stop, investigate, identify and record information of individuals in the appropriate circumstances. There is a variety of oversight protections within the current system including the Office of the Independent Police Review Director (OIPRD), Police Services Act – Code of Conduct, Criminal and Civil Courts and the Ontario Human Rights Tribunal.

Hamilton Police Service			September 21, 2015
A review of the Ontario Human Right Commission (OHRC) report, related to the MCSCS community consultation, recognizes the importance of officer discretion. Officer discretion must be used for a lawful purpose in carrying out the public safety mandate and in the interest of the administration of justice. Discretion is a major component of applying the law in a fair, consistent and bias free manner and must never be exercised to favour or to target an individual or group.

The OHRC report supports guidelines to inform officer discretion and circumscribing the limits to engaging in ‘carding’ as laid out in the position paper as items A – F.

The Hamilton Police Service supports the MCSCS in the development of regulations, adequacy standards to deal with the issue of street checks. The Charter of Rights and Freedoms, and the Supreme Court of Canada case law, accurately interprets those Rights and provides important guidance for officers. The Charter also currently protects members of the community from abuse with options available for remedy.

We must be aware of the intent of passing adequacy standards and equally aware of the unintended consequences of limiting this investigative aid. Information must be gathered before it can be analyzed and interpreted. The public expect us to solve crime. Abolition will lead to a loss of the ability to identify criminal organizations and gangs, detect drug enterprises and severely limit our ability to investigate those organizations.

Further, we must be cognizant of the potential for a negative impact to officer engagement in communities. This is being experienced in other jurisdictions and the result of reduced officer – community engagement can lead to increased crime, violence, injury and death.

Deputations have been presented that indicate the stops on the street often lead to nothing more than the arrest on an ‘unrelated’ warrant. Court administration offences make up a significant amount of our work. What does a criminal look like? How will warrants be executed?

Warrants of the court are orders to police officers that command the return of the person to court in order to be dealt with by law. Street Checks do lead to these warrants being executed. Persons that are the subject of warrants are often transient and move about within the city and between jurisdictions. It is not always possible to rely upon the address supplied with the warrant. Reducing the authority to conduct a Street Check will negatively impact the execution of criminal warrants.

We agree that there must be training for officers and this is why our Service has fully trained our members on the Charter and case law interpretations. We are an organization that works on the premise of activating our authorities based on ‘offences’. We support the OHRC in the position to have increased training on racial profiling for all officers.
We thank the MCSCS for the opportunity to provide input on this important public safety matter while we remain committed to finding the balance between individual rights, societal expectations and the important function of community policing.

**Recommendations for Consideration:**

- All recruits at the Ontario Police College will receive training in the Charter of Rights, Charter Limitations and Interpretations, Investigative Detention, Racial Biased Policing and the impact of Racial Profiling.

- Retention: Information legally collected can be retained and is guided by MFIPPA and federal requirements for criminal information can, in relation to some offences, be retained forever.

- It may be useful to graduate the retention of information. For example, Bylaw offences 2 years, HTA – 5 Years, Provincial Offences – 7 years, Criminal – 10 years.

- The information related to a street check should remain outside the scope of a records check or vulnerable sector screening check as they currently are in the Hamilton records check process.

- Supervisors are to review any information submitted, prior to database entry, to ensure proper collection authority and the appropriateness of the information collection.

In closing, the Hamilton Police Service wishes to thank the Ministry for the opportunity to participate in this important discussion on an issue that critically impacts our communities. We are focussed on the relentless pursuit of offenders and will work to prevent and solve crime as we balance the rights of individuals in line with the expectations of the public regarding their safety.

Sincerely,

Glenn De Caire
Chief of Police
Hamilton Police Service

GD/

Hamilton Police Service September 21, 2015