

OTTAWA SMALL CLAIMS COURT

BETWEEN:

**ROBIN BROWNE, 613-819 BLACK HUB, SAM HERSH, JOSEPH EASTHAM,
OPIRG-GRIPO OTTAWA, OPIRG-CARLETON, JEFFREY BRADLEY,
CRIMINALIZATION AND PUNISHMENT EDUCATION PROJECT, COALITION
AGAINST MORE SURVEILLANCE and BLACK STUDENT LEADERS
ASSOCIATION**

Plaintiffs

-and-

OTTAWA POLICE SERVICES BOARD

Defendant

APPENDIX "A" TO THE PLAINTIFFS' CLAIM

1. The Plaintiffs claim a total of **\$27,500** pursuant to section 24(1) of the *Charter of Rights and Freedoms* ("the Charter") in the instant action as follows:
 - a) The Plaintiff, Robin Browne, seeks **\$5,000** for violations of his rights pursuant to section 2 of *the Charter*;
 - b) The Plaintiff, 613-819 Black Hub, seeks **\$2,500** for violations of its rights pursuant to section 2 of *the Charter*;
 - c) The Plaintiff, Sam Hersh, seeks **\$2,500** for violation of his rights pursuant to section 2 of *the Charter*;
 - d) The Plaintiff, Joseph Eastham, seeks **\$2,500** for violation of his rights pursuant to section 2 of *the Charter*;
 - e) The Plaintiff, OPIRG-GRIPO Ottawa, seeks **\$2,500** for violations of its rights

pursuant to section 2 of *the Charter*;

- f) The Plaintiff, OPIRG Carleton, seeks **\$2,500** for violations of its rights pursuant to section 2 of *the Charter*;
- g) The Plaintiff, the Coalition Against More Surveillance, seeks **\$2,500** for violations of its rights pursuant to section 2 of *the Charter*;
- h) The Plaintiff, Jeffrey Bradley, seeks **\$2,500** for violation of his rights pursuant to section 2 of *the Charter*;
- i) The Plaintiff, Criminalization and Punishment Education Project, seeks **\$2,500** for violation of its rights pursuant to section 2 of *the Charter*;
- j) The Plaintiff, the Black Students Leaders Association, seeks **\$2,500** for violation of its right pursuant to section 2 of *the Charter*;
- k) Pre-judgment interest pursuant to section 128 of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43.
- l) Post-judgment interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43.
- m) Their costs of this action.
- n) Such further and other relief as this Honourable Court deems just.

A. Parties

2. The Plaintiff, Robin Browne, is a Black man originally from Halifax whose parents were born in Trinidad and Antigua. He is a resident of Ottawa. He is the founder and co-leader of 613-819 Black Hub. Since January 2022, he has made public delegations at Ottawa Police Services Board ("**Board**") meetings almost every month and has an ongoing intention to make further presentations.
3. The Plaintiff, 613-819 Black Hub ("**the Black Hub**"), is an organization based in

Ottawa that convenes people of African descent in Ottawa-Gatineau to address anti-Black racism through systemic change primarily in education, justice, employment, business and politics. A salient concern for the Black Hub relates to justice and accountability in policing in Ottawa and its impact on Black and racialized communities. It has made presentations to the Board at its monthly meetings on several occasions and has an ongoing intention to make further presentations in the future.

4. The Plaintiff, Sam Hersh, is a resident of Ottawa. He is a grassroots community organizer in Ottawa concerned about public accountability in municipal institutions, corporate responsibility, housing, human rights and social and economic security of Ottawa residents. He has made presentations to the Board at its monthly meetings on several occasions and has an ongoing intention to make further presentations in the future.
5. The Plaintiff, OPIRG-GRIPO Ottawa (**“OPIRG Ottawa”**), is an Ottawa-based registered non-profit corporation that works on research, education and initiatives that support social, environmental and economic justice. It is a student-levied organization based at the University of Ottawa that facilitates and supports campus and community activism in Ottawa and that strives to work in anti-oppressive ways.
6. The Plaintiff, OPIRG-Carleton, is an Ottawa-based registered non-profit corporation based at Carleton University in Ottawa. It is a student funded organization that aims to educate and provide action on social and environmental justice by using a consensus-based space for student organizing and adopting a non-hierarchical structure.
7. The Plaintiff, the Coalition Against More Surveillance (**“CAMS”**), is a group of Ottawa residents, activists, and scholars concerned about the expansion of policing and surveillance in the City of Ottawa. Members of CAMS regularly made presentations to the Board at its monthly meetings and other public meetings and consultations. Its mandate and public profile, including the basis for its public concerns relating to

surveillance and policing, is set out on the website “CAMS Ottawa”, online at: <https://cams-ottawa.ca/>.

8. The Plaintiff, Criminalization and Punishment Education Project (“**CPEP**”), is an organization in Ottawa that brings together critical criminologists, students, researchers, community members, front-line workers, and those affected by criminalization and punishment, to carry out such public education, activism, and research in the hopes of creating social change. Particularly, CPEP members work to identify key issues to be the focus of criminological and social justice inquiry, develop collaborative research projects, and plan and carry out related public education and advocacy initiatives to support criminalized people and their families.
9. The Plaintiff, Jeffrey Bradley, is a resident of Ottawa. He is a PhD candidate in Legal Studies at Carleton University, in which his research interests include penal abolition, transformative justice, violence prevention, human rights and Indigenous justice. He is also a member of CPEP. He has made presentations to the Board at its monthly meetings on several occasions and has an ongoing intention to make further presentations in the future.
10. The Plaintiff, the Black Student Leader’s Association (“**BSLA**”), is a University of Ottawa-based organization founded in 2011. BSLA provides resources and methods of advocacy to combat anti-Black racism on campuses across Canada and in other environments. BSLA values the creation of a safe space for Black, African and Caribbean students both at the University of Ottawa and in the Ottawa region at large. Its mandate and constitution can be found on the “Black Student Leaders Association” website online at <https://www.bslalen.ca/about-1> .
11. The Defendant, Ottawa Police Services Board (“**the Board**”), is a seven (7) member civilian body that oversees the Ottawa Police Service. It is located in Ottawa, Ontario. As part of its mandate, the Board holds consultations with the public and conducts community outreach. The Board is responsible for recommending a budget for the Ottawa Police Service, which must be approved by Ottawa City Council.

B. Context of OPSB Public Consultation Meetings

12. The Defendant has historically held monthly meetings open to the public to receive input from Ottawa residents regarding matters affecting the public including concerns regarding the impact of policing on communities and issues affecting the health and safety of Ottawa residents. At these meetings, the public has been given the opportunity to make presentations, which are received by the members of the Board.
13. During the pandemic, the monthly meetings were switched to a solely online forum on the Zoom platform which allowed residents to join meetings virtually and to make submissions.
14. In or about November 2020, the Defendant convened its monthly meeting at which approximately one hundred public delegates spoke. Among the submissions from the public, several delegates raised concerns about the Board policy of not allowing public delegates to ask questions of Board members.
15. In or about June 2021, the Defendant hired two consulting firms — Public Affairs and Community Engagement (PACE) and Middle Ground Policy Research — to write a report addressing the manner of the Board's engagement with the public. In October 2021, the Defendant released a report ("**the Engagement Report**") which recommended that a forum be established for public consultation separate from monthly Board meetings.
16. The Plaintiff, Black Hub, and other concerned Plaintiffs responded to the Defendant's report by raising concerns that a separate forum would further marginalize direct communication and engagement with the Board and limit free and open democratic discussion.
17. Beginning in January 2022, as public health requirements became more permissive and the Defendant was set to return to in-person meetings, the Ottawa Freedom Convoy occupied downtown Ottawa until approximately February 18, 2022.

However, instead of holding the Board's scheduled February 28 meeting – which would have been the first one where public delegates could ask questions about the police and Board response to the occupation – the Defendant cancelled the meeting.

18. In the wake of the Freedom Convoy, the Engagement Report was not implemented as the Board faced restructuring and new appointments.

19. The new Board resumed in-person meetings in March 2022 but did not permit virtual delegations. As a result, among others, people who were immunocompromised and/or who did not have the ability or availability (for social and economic/ job-related reasons) to come to City Hall in person were precluded from attending. Despite several requests by Ottawa residents to permit virtual delegations, the Board refused to alter its approach and instead held meetings exclusively in-person between March and October 2022.

20. At the Board's April 25, 2022 meeting, Eli El-Chantiry, then Board chair, stated the following:

Going forward I will be ensuring all participants in our meeting abide by our procedural guidelines. This includes refraining from...making allegations against members of the police service or even members of the police board or staff.

The Plaintiffs understood this direction to mean that it was impermissible for anyone to publicly criticize either the Board or the Ottawa Police Service.

21. On November 30, 2022, the 613-819 Black Hub and others staged a non-violent act of civil disobedience at the meeting to protest the Board's restrictions on public delegations including its refusal to allow virtual delegations. None of the Plaintiffs were charged with any offense or arrested for their participation in the protest. The City of Ottawa did, however, ban the Plaintiff, Robin Browne ("**Browne**"), from all City Hall premises for one year.

22. The City of Ottawa reduced the ban to one year, from the City Council chamber only, after Browne challenged the breadth of the ban as an unnecessarily broad infringement on his democratic rights.

23. Following the November 30th demonstration, rather than revising its position on virtual delegations, the Defendant chose to cancel its December meeting.

C. Board Further Limits Public Consultation

24. On or about February 27, 2023, the Defendant approved the following public delegation restrictions by way of a motion passed in its proceedings (which is attached hereto as **Appendix “B”**):

- a) limiting delegations to one hour for all delegations combined;
- b) limiting delegations to three (3) minutes if more than 12 people register to speak during the hour;
- c) a written copy of the comments that are to be presented orally to the Board must be submitted no later than noon on the last full business day prior to the date of the proposed delegation;
- d) prioritizing delegates who have not spoken in the last three months;
- e) requiring delegates to submit their comments in writing beforehand.

25. In practice, the Board’s agenda is usually not posted until late afternoon/early evening on the Wednesday before the scheduled meeting, which is slated to occur on the following Monday at 4 pm. Accordingly, written comments must be submitted by noon on Friday, to meet the Board’s filing deadline. Therefore, people seeking to address an agenda item have less than 48 hours to completely familiarize themselves with the item and any documents attached to it and then write up a full delegation.

26. During the discussion of the motion on restricting public delegation, Board member Cathy Curry endorsed the importance of limiting the message of certain delegates stating the following: (which is captured in the attached screenshot of the YouTube broadcast containing auto-generated text of the February 27, 2023 Board meeting at **Appendix “C”**)

...I think there's other things we want to look at as well not just what's in this motion or this bylaw right now the concept that somebody might be able to only come once a year because they come and say the exact same thing month after month after month uh that is not helpful...

27. Although it is not included in the motion of February 27th, the Board directed delegates to provide their verbatim comments in advance of seeking to make an intervention as a public delegate.

28. The Plaintiffs state that the Defendant's actions and decisions since April 2022, including its motion of February 27th, curtail their expression and participation at Board meetings in several ways, including the following:

- a) Eli El-Chantiry directed public delegates not to publicly criticize the Board or the Ottawa Police Service (“**OPS**”), thereby limiting the content of expression of public delegates;
- b) A time limit has been placed on the duration of submissions to be made to the Board, whereas prior to February 27, 2023, there was no timed limit on submissions;
- c) Prior to February 27, 2023, public delegates were not required to submit the text of their submissions in advance of their presentation to the Board. The new requirement accordingly acts as a means of screening the message of public delegates and/or censoring their input;

d) The Plaintiffs feel chilled in their expression should they seek to raise criticism of the Board or the OPS;

29. As a result of the above-noted restrictions, there has been a marked decline in public delegations since April 2023.

30. In May 2023, Browne registered to speak at the June 2023 meeting of the Board; however, due to a scheduling conflict he was unable to attend and sought to have a colleague speak in his stead on behalf of the Black Hub.

31. On or about May 26, 2023, the Board informed Browne that, according to Board by-laws, his registration was neither transferrable nor deferrable and that the person who was to speak on Browne's behalf could not do so. He was thus asked to withdraw his request to attend in person or make his submission in writing. The Board had let the same person present on Browne's behalf at the Board's September 26, 2022 meeting.

32. As a result of the notice from the Board, Browne withdrew his request to participate, and the Black Hub did not make oral submissions at the May 2023 meeting of the Board.

33. Browne registered to participate at the Board's June 26 meeting. On Friday, June 23rd, he then received an email providing him with the Zoom link for the meeting, which was approved by the Board chair.

34. On June 26, 2023, Board chair, Dr. Gail Beck, declared a conflict of interest then called a point of order declaring Browne's delegation "inappropriate" in the way it characterized her. She then called for a vote to deny Browne the right to speak and the vote carried unanimously to deny Mr. Browne the right to speak.

35. Browne attempted to register to speak at the Board's July 24 meeting by submitting his full written remarks before the deadline, which was stipulated as being Friday July

21 at 12 noon. Browne's written submissions focused on the Ottawa Police Service role in the Guiding Council on Mental Health and Addiction.

36. On July 20, 2023, Board chair Gail Beck replied to Browne, stating the following: (see: email exchange at **Appendix "D"**)

Hello Mr. Browne. Thank you for submitting your delegation however, as noted in Procedural By-Law No. 3 of 2014, Section 31 on Delegations, a delegation, when not addressing an item on the agenda, must concern a 'matter within the jurisdiction of the Board'. Your delegation, focusing on the Guiding Council on Mental Health and Addictions, including how they operate, their recommendations, and the funding model for the Mental Health Pilot, is most appropriately delegated to the City of Ottawa's Community Services Committee, which is responsible for the Guiding Council's Mental Health Pilot.

37. The Plaintiffs state that the issue of mental health addictions falls within the jurisdiction of the Board and/or is not within the exclusive jurisdiction of another organ or committee of the City of Ottawa.

38. Chair Beck denied Browne the right to participate in-person as he had requested.

39. There were no oral public delegations presented to the Board for the May, June or July Board meetings.

D. Board's Actions Violate the Plaintiffs' Charter Rights

40. The Plaintiffs state that their submissions to the Board in the past and their ongoing right to make submissions to the Board constitute permissible expression and/or fall within the ambit of permissible expression as defined by section 2(b) of *the Charter*.

41. The Plaintiffs have previously provided submissions to the Board at its monthly meetings. They continue to have an interest in policing matters, particularly as they

affect vulnerable communities. Their submissions to the Board reflect social and public concerns relating to matters that fall within the purview of the Board, including but not limited to the following: public safety, racial profiling, policing budgets, police presence in schools, death and injury related to policing and police involvement in mental health checks.

42. The mandate of the Board requires public consultation.

43. The actions of the Board cited herein limit public expression of the Plaintiffs in a manner that departs from past practice defined by the Board. Additionally, the limits imposed by the Defendant curtail both the manner and content of expression of the Plaintiffs contrary to section 2(b) of *the Charter*.

44. The limits imposed by the Board also curtail the attendance of the Plaintiffs at in-person monthly OPSB meetings contrary to section 2(c) of *the Charter*.

E. Violation Not Saved by Section 1

45. The Plaintiffs state that the violations of their rights are not saved by section 1 of *the Charter* as there is no pressing and substantial objective that justifies the curtailment of the Plaintiffs' rights imposed by the Defendant. The Plaintiffs also state that the means adopted by the state are not proportionate to an arguable objective in a free and democratic society.

46. In particular, the Plaintiffs state that the actions of the Defendant diminish democratic discussion and debate in a manner inconsistent with the Board's mandate and contrary to the state authority to limit free expression in a free and democratic society.

47. The Plaintiffs state that the Defendant has chosen to limit expression to means that do not permit them to speak at public meetings and that impose unreasonable preconditions to their participation.

48. The Plaintiffs submit that the Defendant's restrictions exceed manner of expression

limitations as they also limit the content of presentation to the Board by requiring that submissions not criticize either the Board or the OPS. This constitutes a form of censorship of speech content that violates the minimal impairment criterion required under section 1 of *the Charter*.

49. The Plaintiffs submit that the actions of the Defendant have reduced its scheduled public consultations to mere “window dressing” as they have effectively separated meaningful public discussion from the deliberative process of the Board.

50. By virtue of the Defendant’s actions, it has created an atmosphere that serves to chill the Plaintiffs’ expression, which has significant and broad implications for the individual Plaintiffs as well as the thousands of Ottawa residents whom Black Hub, OPIRG Ottawa, OPIRG Carleton, CPEP, Coalition Against More Surveillance, Black Student Leaders Association, (**“the Mass Plaintiffs”**), represent as part of their advocacy and social service work. Many of the representative constituents of the Mass Plaintiffs are from marginalized communities, which lack the facility to appear before the Board.

F. *Charter* Damages

51. Damages under s. 24(1) of the *Charter* are just and appropriate in the circumstances to uphold the goals of compensation, vindication, and deterrence against the Defendant. The damages claimed by the Plaintiffs are proportionate to the gravity of the infringement of their fundamental rights viewed within the context of democratic public discussion relating to policing issues affecting the Plaintiffs and the Ottawa general public at large.

G. Applicable Statutes

52. The Plaintiffs plead and rely on the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, and specifically sections 2 and 24(1).

August 9, 2023

HAMEED LAW

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APPENDIX "B"

MOTION TO AMEND PROPOSED UPDATES TO PROCEDURE BY-LAW NO.3 OF 2014

Moved by: Member Carr

Seconded by: Member Curry

WHEREAS the Ottawa Police Services Board (Board) received and tabled a report on January 23, 2023, to amend its Procedure By-Law No.3 of 2014;

AND WHEREAS the intent of the amendments was to ensure the bylaw is up to date and reflective of existing practice and to ensure the current procedures are still assisting the Board in performing its governance and oversight responsibilities effectively and efficiently;

AND WHEREAS the amendments included changes to the section of the bylaw outlining procedures for the hearing of delegations, including a recommendation that delegations be heard during a separate session, prior to the Board's regular meetings;

AND WHEREAS some members of the public raised concerns around moving delegations to a separate session that falls outside of the Board's regular meeting agenda;

AND WHEREAS it was previously discussed that it would be helpful if Board members received a copy of a delegate's comments in writing, in advance of their oral presentation, so Board members have an opportunity to reflect on the comments and any possible questions they may wish to raise with the delegate;

THEREFORE BE IT RESOLVED that the Board amend the proposed updates to its Procedure By-law No.3 of 2014 concerning the hearing of delegations in order to keep the delegation session as part of the Board's regular meetings;

BE IT FURTHER RESOLVED that delegates be required to submit a written copy of the comments they intend to present to the Board in advance of the meeting;

BE IT FURTHER RESOLVED that the Chair be provided with the discretion to extend the time allotted for delegations at the Board's regular meetings;

BE IT FURTHER RESOLVED that should the Board determine the amended bylaw is not assisting the Board in performing its governance and oversight responsibilities effectively and efficiently, it will further review its procedures through the Policy and Governance Committee;

BE IT FURTHER RESOLVED that Committee Chairs be provided with discretion to determine if and when delegations will be permitted at specific Committee meetings;

BE IT FURTHER RESOLVED that Section 31 of the Board's Procedure Bylaw be repealed and substituted with the following:

HEARING OF DELEGATIONS

31.(1) The Board will set aside one (1) hour as part of its regular meetings to hear delegations from members of the public. Advance registration will be required for those who wish to present.

(2) Delegations wishing to address the Board during the delegation portion of the regular meetings may be heard with the approval of the Board. Requests must be made to the Executive Director and must include a written copy of the comments that will be presented. Such requests must be received in full no later than noon on the last full business day prior to the date of the proposed delegation. All requests will require approval by the Chair. The Chair will advise all Board members should a request to speak be declined and the reasons for declining the request.

(3) Written delegations will also be accepted and given the same consideration by the Board. The submission must be received no later than one full business day prior to the date of the regular meeting.

(4) Delegations will be considered on a first-come-first-serve basis, however priority will be given to delegates seeking to speak to agenda items on the upcoming agenda, as well as new delegates or those delegates who have not previously delegated within the preceding three months.

(5) Delegation topics that will be deemed in order will include items of business listed on the agenda for the corresponding regular meeting, with the exception of the Chair and Chief's Verbal Reports (which are presented verbally at the meeting). Delegates wishing to address comments made during a verbal report by the Chair or Chief will be in order at the subsequent regular meeting. Delegates may also register to speak to topics not listed as part of the items of business on the agenda, provided the subject matter is within the jurisdiction of the Board, and the previously stated conditions have been met.

(6) Delegations shall be restricted to presentations of five (5) minutes and shall address their remarks to the subject matter for which they received approval to speak. Should the Board receive more than 12 delegate requests for a single session, delegates will be restricted to three (3)

minutes. Notwithstanding the foregoing, the time allotted for delegations may be extended at the discretion of the Chair.

(7) If a delegation is registered to speak and is unable to attend the session, the delegation can either withdraw their delegation or submit their comments to the Board in writing through the Executive Director. Registrations are not transferable or deferrable.

(8) Upon the completion of a presentation to the Board by a delegation, any discourse between Members of the Board and the delegation shall be limited to Members asking questions for clarification and obtaining additional, relevant information only. Members of the Board shall not enter into debate with the delegation respecting the presentation. Delegations may not direct questions to the Board or the Service for a response.

(9) Delegations at Committee meetings will be invited and permitted at the discretion of the Committee Chair.

(10) No Delegation shall:

- (a) speak disrespectfully of any person;
- (b) use offensive words or un-parliamentary language;
- (c) speak on any subject other than the subject for which they have received approval to address the Board; or
- (d) disobey the rules of procedure or a decision of the Chair.

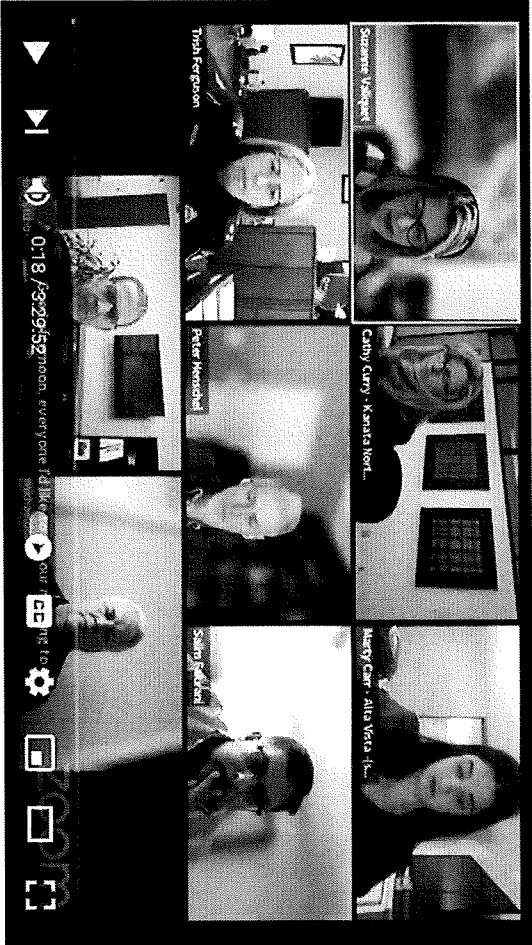
(11) The Chair may curtail any delegation, any questions of a delegation or debate during a delegation for disorder or any other breach of this by-law and, where the Chair rules that the delegation is concluded, the person or persons appearing shall immediately withdraw.

CARRIED as amended

APPENDIX "C"



ottawa police services board February 27 2023



Ottawa City Council
4.9K subscribers



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Ottawa Police Services Board Meeting: Agenda 75 Feb 27, 2023



Transcript

helpful

2:39:31 ... think there's other things we want to look at as well not just what's in this motion or this bylaw right now the concept that somebody might be able to only come once a year because they come and say the exact same thing month after month after month uh that is not helpful uh I think that's something we ...

2:50:44 ... very helpful um and the other question I have is uh the public consultation so there is reference to public consultations that will take place and if might English (auto-generated)

Live chat replay is not available for this video.

APPENDIX "D"



Robin Browne <consciousimages@gmail.com>

July 24 meeting delegation request

Chair, Ottawa Police Services Board / Président, Commission de services policiers d'Ottawa Thu, Jul 20, 2023 at
<ChairOttawaPSB@ottawa.ca> 12:01 PM
To: Robin Browne <consciousimages@gmail.com>
Cc: "Ferraro, Krista" <krista.ferraro@ottawa.ca>, "Ben Guedria, Randa" <randa.benguedria@ottawa.ca>

Hello Mr. Browne,

Thank you for submitting your delegation however, as noted in Procedural By-Law No. 3 of 2014, Section 31 on Delegations, a delegation, when not addressing an item on the agenda, must concern a "matter within the jurisdiction of the Board." Your delegation, focussing on the Guiding Council on Mental Health and Addictions, including how they operate, their recommendations, and the funding model for the Mental Health Pilot, is most appropriately delegated to the City of Ottawa's Community Services Committee, which is responsible for the Guiding Council's Mental Health Pilot.

I also wanted to note that as part of the Board's strategic planning process, I am meeting with community members to gather feedback to inform the Board's priorities. If you and a fellow representative of 613-819 Black Hub would like to meet with me as part of that process, I can have the Board office arrange a date and time to do so.

Regards,

Gail Beck, O.Ont., MD, CM, FRCPC

Chair, Ottawa Police Services Board

Ph: 613-560-1270

ChairOttawaPSB@ottawa.ca

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