

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)

BETWEEN:

**POLICE CONSTABLE KRIS WOOD, ACTING SERGEANT MARK PULLBROOK,
POLICE CONSTABLE GRAHAM SEGUIN**

APPELLANTS/RESPONDENTS ON CROSS-APPEAL

-and-

RUTH SCHAEFFER, EVELYN MINTY AND DIANE PINDER

RESPONDENTS/APPELLANTS ON CROSS-APPEAL

-and-

IAN SCOTT, DIRECTOR OF THE SPECIAL INVESTIGATIONS UNIT

RESPONDENT/APPELLANT ON CROSS-APPEAL

-and-

JULIAN FANTINO, COMMISSIONER OF THE ONTARIO PROVINCIAL POLICE

RESPONDENT

**FACTUM OF THE INTERVENER BRITISH COLUMBIA CIVIL LIBERTIES
ASSOCIATION**

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART 1: OVERVIEW AND FACTS

i) Overview

1. In the British Columbia Civil Liberties Association's (the "BCCLA") submission, the real issue raised for determination on this appeal is whether the Legislature intended to hold police officers who are witnesses in investigations into the use of force by other police officers to a lower standard of duty than prevails in "ordinary" criminal investigations, thereby denying the Special Investigations Unit (the "SIU") access to the contemporaneous notes of witness officers, which may be the only independent record of the facts surrounding police-involved deaths and serious injuries. Consistent with the purpose underlying the *SIU Regulation*, this question should be answered "no", and this appeal ought to be dismissed.

2. When police officers, authorized by the state to use deadly force, kill or harm a citizen whom they have been charged with protecting, their actions interfere with life, liberty, and security of the person. When state agents interfere with these core constitutional values, the rule of law requires that they be subjected to impartial and probing scrutiny in the same fashion they scrutinize the lives of those whom they investigate. To be legitimate, police use of force must be subjected to open, transparent, and effective review.

3. As the Respondent Mr. Fantino has observed, "[e]vidence very often evaporates, witnesses walk away, stories change ... scenes change". In short, "evidence can disappear and degenerate as quickly as it is created"¹. Effective investigations therefore require timely access to the best available evidence: contemporaneous and independent notes, which police officers are obliged to and do create in the course of their duties. If accepted, the Appellants' position would interfere with the ability of the SIU to effectively investigate, impairing the clear object and intent of its enabling legislation. The legislation should be interpreted to promote rather than frustrate this end.

¹ Julian Fantino, Commissioner of the Ontario Provincial Police, quoted in André Marin, *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility* (Toronto, Ombudsman Ontario, 2008), at pg. 31 [*"Oversight Unseen"*].

4. In the BCCLA's submission, the duties of a witness officer² do not change because one of their own is under investigation. Indeed, the policy underlying the legislation in issue is to provide assurance to the public that the conduct of police is subject to careful examination by an independent and impartial body, which is capable of conducting a thorough and accurate examination of the facts. It is unacceptable to treat police witnesses any differently where it is their colleagues who are being investigated, rather than a civilian. As the Ontario Court of Appeal found, it is not the practice of police officers to consult with legal counsel before preparing their notes in non-SIU investigations - indeed, the Court accepted that doing so would be inconsistent with the purpose of police notes and the duty imposed on police officers to prepare them.³

ii) Relevant Background

5. For many years, public inquiries, policy papers, and studies conducted in Ontario, British Columbia, and other jurisdictions have exposed significant problems with "police investigating police". Two recurring concerns have been identified: (1) bias (real or perceived) in the course of internal investigations; and (2) the ineffectiveness of investigations into police related deaths and injuries, where in many cases complaints are reduced to a police officer's word against the word of a complainant, assuming the victim has not been killed by the use of force at issue. These twin shortcomings have caused a lack of public confidence in both the process and outcome of investigations into deaths and serious injuries caused by the police.

6. The SIU was established in 1990 with the objective of remedying these mischiefs, a legislative response to a body of evidence created by commissions and social scientists, and the growing national and international consensus that "the public interest can only be fully satisfied by having a strong civilian oversight body in place to impartially verify whether those charged with upholding the law have crossed over the line into breaking it".⁴

² The Appellants' emphasis on "subject officers" is misplaced. Such officers cannot be compelled to produce their notes to the SIU, and if the classification of an officer changes from witness to subject officer, his or her notes must be returned: *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, O. Reg. 267/10, ss. 9(3), 10(3) ["Regulation"].

³ *Schaeffer v. Wood*, 2011 ONCA 716, 341 D.L.R. (4th) 481 at para. 71 ["Schaeffer"].

⁴ André Marin, *The Ontario Special Investigations Unit: Securing Independence and Impartiality*, in *Police Involved Deaths: The Need for Reform*, David MacAlister et. al. eds. (Vancouver: British Columbia Civil Liberties Association, 2012), at pg. 101 ["Police Involved Deaths"].

7. The Legislature intended the SIU to be an independent and effective body, “to ensure that the law and policy on the use of deadly force is not only complied with, but so seen by the public”.⁵ As found by the Ontario Court of Appeal, the purpose underlying the SIU’s enabling legislation “is clear and unequivocal: to maintain and foster public confidence in the rule of law and the administration of justice by ensuring that when police actions result in the death of or serious injury to civilians, they are subject to an independent, impartial and effective investigation the conclusions of which are accessible and transparent”.⁶

8. Historically, this purpose has been frustrated. Mr. Justice Ground has referred to the “almost pavlovian reaction against a civilian agency investigating the conduct of police officers in carrying out their duties”.⁷ In response, and consistent with the legislative purpose identified above, Ontario enacted regulations governing the conduct and duties of police officers during SIU investigations, which, *inter alia*, require an officer to complete notes “in accordance with his or her duty”, and co-operate in other “areas that presented major problems arising from police obstructing efforts by the SIU to fulfil its mandate in the early years of that unit’s operation”.⁸ Resistance to the SIU remains, however. The Court below accepted that the specific instance of resistance raised on this appeal, the failure of witness officers to create contemporaneous and independent notes of incidents involving the use of force against civilians, hinders the SIU from conducting effective and reliable investigations.⁹

PART II: STATEMENT OF POSITION

9. The BCCLA disagrees with the Appellants’ characterization of the issues arising on this appeal, and with their submission that effective investigation is not the primary purpose of the *SIU Regulation*, but is secondary to “the need to accord fundamental rights and procedural fairness to witness and subject officers”.¹⁰ This appeal is not about the right to counsel, or the

⁵ Race Relations Policing Task Force, *The Report of the Race Relations and Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1989), at 146-47 (Chair: Clare Lewis).

⁶ *Schaeffer* at para. 58; *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292 at paras. 35-36.

⁷ *Wiche v. Ontario* (2001), 38 Admin. L.R. (3d) 194, [2001] O.J. No. 1850 (S.C.J.), at para. 61.

⁸ *Regulation*, s. 9(1); *Police Involved Deaths* at pg. 181.

⁹ *Schaeffer*, at paras. 20, 71, 74.

¹⁰ Appellants Factum, paragraph 37.

protections afforded to those under criminal investigation.¹¹ It is about the public law duty of witness officers to complete independent and contemporaneous notes in all cases, including those where it is their colleagues who are under investigation.

10. It is the position of the BCCLA that an independent but ineffective SIU offers but meagre improvement over the regime the Ontario Legislature discarded. The decision under appeal correctly identified the purpose of the legislation at issue: to ensure the independent and effective investigation of the use of police force causing death or serious injury and to foster public confidence in such investigations and in the integrity of the police. From this legislative purpose, the conclusion that an officer must independently and contemporaneously create notes without any assistance from counsel or any other third party (in other words, in “accordance with his or her duty”) necessarily flows. On that basis, the BCCLA supports the position of the Respondent, Ian Scott, Director of the SIU, and respectfully submits that this Honourable Court ought to dismiss the appeal and allow the cross-appeal.

PART III: ARGUMENT

11. The BCCLA’s submissions focus on the factors necessitating the creation of independent investigative agencies and the mischief which occurred by permitting police to investigate themselves, to support a conclusion that in creating the SIU, the Legislature intended to establish an effective agency, with access to all relevant facts to discharge its important mandate.

i) Principles of Statutory Interpretation

12. Though important issues of public law are raised, at its core, this appeal turns on questions of statutory interpretation. This task requires courts to discover the intention of the Legislature by applying the “modern principle” of purposive analysis. As part of this exercise, the court must consider the consequences of a suggested interpretation, to determine whether the practical effects of this interpretation are consistent with the object of the legislation and the intention of the Legislature.¹²

¹¹ Only witness officers, who face no threat of criminal sanction, must provide their notes to the SIU. *SIU Regulation*, s. 9.

¹² Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008) at pp. 317-18 [*Sullivan*].

13. The enactment of legislation is not an academic exercise. It is a response to circumstances in the real world and “it necessarily operates within an evolving set of institutions, material circumstances, and cultural assumptions”, necessitating reference to the setting in which it was originally enacted and the setting in which it currently operates to discern the object of the legislation and the intention of the Legislature.¹³ This court has emphasized that “an integral aspect of discovering Parliamentary intention is the precept that Parliament must be taken to be aware of the social and historical context in which it makes its intention known”. In this exercise, the court is entitled to refer to evidence which (1) illuminates the purpose and background of legislation, including its social, economic and cultural context;¹⁴ (2) provides “an informed basis for the court’s analysis of legislative purpose”;¹⁵ and (3) allows the court to determine the “problem which faced the legislators and which they must have sought to meet in the new statute.”¹⁶

ii) Past Failures and Lessons Learned: The Context Behind the SIU

14. The SIU did not spring out of a vacuum. A large body of independent studies, commission reports, and hard lessons learned from the failure of past investigative models coalesced into a recognition by the Legislature, and the public, of the fundamental and overriding importance of effective and independent oversight and investigation of police powers.

15. For many years, public inquiries, policy papers, and studies have exposed significant problems with “police investigating police”. These problems, which have been widely publicised, undermine the public’s trust in the administration of justice. In the *Frank Paul Inquiry*, which investigated the death of a homeless aboriginal man who died from hypothermia after being left by a police officer in a back alley in winter while severely intoxicated, Commissioner Davies observed:

[W]hen a death occurs in these types of circumstances, there is understandable public concern. Given the authority that our society vests in police officers to use force when necessary to enforce our laws and ensure the safety of our communities, the public is

¹³ *Sullivan* at pg. 355.

¹⁴ *Willick v. Willick*, [1994] 3 SCR 670 at 699-707, per L’Heureux-Dubé J. for the minority; *Re Canada 3000 Inc.*, [2006] 1 S.C.R. 865 at paras. 36-37.

¹⁵ *Sullivan* at pg. 567.

¹⁶ *Laidlaw v. Metro Toronto*, [1978] 2 S.C.R. 736 at 743; *Sullivan* at pp. 600, 618.

entitled to an assurance that the officer's conduct was proper and, if force was used, that it was reasonable.¹⁷

16. In the past, the public has not had confidence in such investigations, often for good reason. In a 2005 White Paper, British Columbia's Police Complaints Commissioner Dirk Ryneveld, Q.C. wrote:

For example, on this issue most members of the public would likely assume that when a serious incident takes place in which a police officer causes death or serious injury to a civilian, protocols are in place akin to those in regular investigations, whereby the officer is questioned promptly, and steps are taken to avoid advertent or inadvertent collaboration between officers present at the scene. However, the experience of this office has been that on too many occasions, protocols on such basic investigative matters are either lacking or not followed.¹⁸

17. In the BCCLA's submission, a consensus has emerged that the trust of the public can "only be restored and preserved if the police complaints process is conducted by an independent third party".¹⁹ Indeed, the SIU was created in direct response to an erosion of public confidence in situations where "police investigated police," to ensure effective, transparent, and impartial investigations will occur where police misconduct is at issue, just as the public expects police officers to conduct effective investigations where civilians are alleged to have committed ordinary crimes. In the *Frank Paul Inquiry*, based on the evidence before him, Commissioner Davies commented on the "markedly different" preferential treatment accorded to subject officers:

There are... significant differences between how the department investigates police-related deaths specifically, and how it investigates deaths from possible homicide generally. First, in a police-related death, the investigating officers do not normally attempt to interview the subject officer. Instead, they rely on the officer's written duty report, which the officer has at least five business days to prepare, after a maximum of 10 hours of consultation with a lawyer (paid for by the department)...

When a civilian is suspected of causing a death, the practice of the police is to arrest the suspect, advise them of their rights under the Charter of Rights and Freedoms and then take them to the police station. Should the suspect request an opportunity to consult with legal counsel, the police must hold off their questioning until that consultation has taken place. Thereafter, it has been held to be lawful for police officers to aggressively question

¹⁷ Inquiry into the Death of Frank Paul, *Alone and Cold – Interim Report* (British Columbia: The Davies Commission, 2008) at 203 (Commissioner: William H. Davies, Q.C.) [*"Frank Paul Report"*].

¹⁸ *Police Act Reform: White Paper and Draft Police Complaint Act*, (British Columbia: March 1, 2005) at 11 (Police Complaint Commissioner Dirk Ryneveld, Q.C.).

¹⁹ *Police Involved Deaths*, at pg. 154

a suspect, notwithstanding repeated assertions by the suspect that he or she does not want to talk to them. In the case of a police-related death, the situation is markedly different.²⁰

18. These considerations underscore the paramount importance of the role (and efficacy) of the SIU. There is an inextricable link between democracy, the rule of law and police accountability. Police discharge public duties, and are given extensive powers to perform their function. In the discharge of their duties, they occupy a position of public trust. The extensive powers and unique position of police officers, who have an institutional power to exercise force,²¹ require effective civilian oversight processes for addressing allegations of individual or systemic instances of police misconduct. When an agent of the state, empowered to use force (and provided with forms of immunity from legal proceedings, both civil and criminal, and afforded a defence, where others would not be),²² takes someone's life or causes serious injury, the incident must be investigated thoroughly, impartially, transparently, and effectively.

19. By virtue of the significant powers granted and trust reposed in them by society, police officers owe duties to the public to ensure the effective administration of justice occurs not only when they investigate crimes committed by civilians, but also when the SIU investigates crimes allegedly perpetrated by police officers. This requirement has been referred to by domestic commissions of inquiry, and has achieved recognition internationally, the European Court of Human Rights concluding that Article 2 of the *European Convention on Human Rights*, which parallels s. 7 of the *Charter*, requires "an effective official investigation" in all cases of deaths involving state agents.²³

20. The BCCLA submits that these contextual factors necessitate an interpretation of the *SIU Regulation* which maximizes the effectiveness of independent investigations.

iii) The Importance of Notes: The Purposive Approach Applied

21. Effective investigations start with and are dependent upon the existence of a reliable factual record in the form of police officers' notes. In the BCCLA's submission, the Appellants'

²⁰ *Frank Paul Report* at 17, 212-213.

²¹ Egon Bittner, *The Functions of the Police in Modern Society* (Washington: National Institute of Mental Health, 1970), at pp. 40, 41, 46

²² *Police Services Act*, R.S.O. 1990, c. P.15, s. 50; *Police Act*, R.S.B.C. 1996, c. 367, ss. 20-21; *Criminal Code*, R.S.C. 1985, c. C-46, ss. 25, 33.

²³ *Fedorchenko and Lozenko v. Ukraine*, [2012] ECHR 1721 at para. 41 (20 Sept. 2012).

position, if accepted, would hinder the SIU's discharge of its duties, and impair the legislative objective identified above. Involving a lawyer in the preparation of a police officer's notes, particularly where that lawyer remains free to act for multiple witness officers (as described in paragraph 15 of Director Scott's factum), and to make inquiries of third parties as to the facts of an incident, poses a real risk that the contents of an officer's recollection will be filtered, or inadvertently contaminated.

22. This in turn defeats the purpose of police officers' notes, which are to serve as a reliable and independent record of the facts surrounding an incident, where the only witnesses may be the police officers involved, the subject of their use of force being deceased. Police work is largely unobserved. An objective and impartial investigator will not overcome the problems set out above unless he or she has access to objective and impartial evidence.²⁴ Recognizing the importance of notes, and the fact that contemporaneity is the key hallmark of reliability, the Legislature has required officers to complete their notes in accordance with their duties as police officers, and the responsibilities they owe to the public.

23. Notes should be made immediately upon the occurrence of an incident, as a police officer does and is expected to do for any other investigation that arises in the course of his or her duties. In all cases police officers who witness criminal conduct are subject to a public law duty to complete independent and contemporaneous notes. An officer who witnesses a bank robbery does not seek legal advice before completing the notes his or her duty requires. The fact that an investigation may implicate another officer should not alter this normal practice, or require consultation with counsel, who may have discussed the incident with other witness officers and investigators, providing a perspective and information to his or her client which can colour the contents and form of their notes.

24. As found by commissions which have addressed this issue, the immediate creation of independent notes is important from a practical perspective, and a failure to complete notes in accordance with a police officer's duty can significantly impair an effective, transparent, and impartial investigation. Preparing accurate and contemporaneous notes is the "duty and

²⁴ *Police Involved Deaths*, pp. 87, 92.

responsibility of a competent investigator”²⁵, and without reliable notes, an investigation can be stymied, and the truth never found.

25. The Braidwood Inquiry provides a striking illustration of this. When the officers involved in the 2007 tasing death of Polish traveller Robert Dziekanski at the Vancouver International Airport contacted their superior, they were told to “sit down, shut up, and make notes”.²⁶ They failed to do so. Commissioner Braidwood observed that note taking is a basic duty of an officer, and that the public deserves accurate and reliable notes, so the truth seeking function of investigations is not undermined:

I think the public is entitled to expect that officers involved in a serious investigation, especially a police related death, will apply care and professional judgement in how they record their recollection of important events, especially when giving a statement to a homicide investigator. These two officers failed that test miserably.²⁷

26. While the officers in that case were found to have intentionally misled the Commission, their failure to take notes started the problems. This, and other failures, would have prevented the truth from being determined, but for the fortuitous existence of a videotape created by a civilian:

The initial claims by all four officers in their police notes and statements to IHIT investigators that they wrestled Mr. Dziekanski to the ground has been shown, by the Pritchard video, to be untrue. These were either innocent inaccuracies by the four officers or deliberate misrepresentations of what had happened. In my view, they were the latter, and they were made for the purpose of justifying their actions. But for the Pritchard video, we would likely never have learned what really happened, and these officers’ revisionist accounts would have lived on.²⁸

iv) The Cross-Appeal

27. Officers do not consult lawyers or other third parties in the normal course of performing their duty to take notes. In the BCCLA’s submission, the legislative requirement that a witness officer complete his or her notes “in accordance with his or her duty” compels a finding that notes relating to an incident where another officer has used force and caused death or serious

²⁵ Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk, *Report of the Taman Inquiry* (Library and Archives Canada, 2008) (Commissioner: Hon. Roger Salhany, Q.C.) at 133.

²⁶ Braidwood Commission on the Death of Robert Dziekanski, *Why? – The Robert Dziekanski Tragedy* (Vancouver: Braidwood Commission on the Death of Robert Dziekanski, 2010), (Commissioner: Thomas R. Braidwood, Q.C.) at 173 [“*Braidwood Report*”].

²⁷ *Braidwood Report* at 243.

²⁸ *Braidwood Report* at 256.

injury are to be created at the time of an incident or as soon as possible thereafter, without the intervention or involvement of any third party at all (including a lawyer) who would not be contacted in the discharge of this duty in any other case.

28. As Director Scott points out, s. 7(1) of the *SIU Regulation* creates a statutory entitlement to counsel. The entitlement is, however, expressly limited by s. 7(2), which provides that the right does not apply if the SIU director forms the opinion that waiting for counsel “would cause an unreasonable delay in the investigation”. Both a plain and contextual reading of s. 7 shows that it was intended to apply to advice prior to and representation at an SIU interview, and not to advice concerning witness officers’ notes, since note making could not cause an unreasonable delay in the SIU’s investigation, as they are to be completed at the latest by the end of the officer’s tour of duty, unless excused by the chief of police.

PART IV: SUBMISSIONS CONCERNING COSTS

29. Pursuant to the order of Justice Wagner, the interveners shall pay to the appellants and respondents any additional disbursements occasioned by their interventions. Beyond this, the BCCLA requests that no order for costs be made against it and seeks no costs.

PART V: ORDER SOUGHT AND PERMISSION TO PRESENT ORAL ARGUMENT

30. The BCCLA seeks an order that the appeal be dismissed and the cross-appeal be allowed, on the terms proposed by Director Scott. In addition, the BCCLA seeks leave to present ten (10) minutes of oral argument at the hearing of the within appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March 27, 2013
Vancouver, British Columbia

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PART VI

TABLE OF AUTHORITIES

Jurisprudence	Paragraph
1. <i>Fedorchenko and Lozenko v. Ukraine</i> , [2012] ECHR 1721 (20 Sept. 2012).	
2. <i>Laidlaw v. Metro Toronto</i> , [1978] 2 S.C.R. 736	
3. <i>Peel (Police) v. Ontario (Special Investigations Unit)</i> , 2012 ONCA 292	
4. <i>Re Canada 3000 Inc.</i> , [2006] 1 S.C.R. 865	
5. <i>Schaeffer v. Wood</i> , 2011 ONCA 716, 341 D.L.R. (4th) 481	
6. <i>Wiche v. Ontario</i> (2001), 38 Admin. L.R. (3d) 194, [2001] O.J. No. 1850 (S.C.J.)	
7. <i>Willick v. Willick</i> , [1994] 3 S.C.R. 670	
Legislation	
8. <i>Criminal Code</i> , R.S.C. 1985, c. C-46, ss. 25, 33	
9. <i>Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit</i> , O. Reg. 267/10, as amended by O. Reg. 283/11, ss. 9, 10	
10. <i>Police Act</i> , R.S.B.C. 1996, c. 367, ss. 20-21	
11. <i>Police Services Act</i> , R.S.O. 1990, c. P.15, s. 50	
Secondary Sources	
12. André Marin, <i>Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility</i> (Toronto, Ombudsman Ontario, 2008), pp. 31, 74	
13. Braidwood Commission on the Death of Robert Dziekanski, <i>Why? – The Robert Dziekanski Tragedy</i> (Vancouver: Braidwood Commission on the Death of Robert Dziekanski, 2010) (Commissioner: Thomas R. Braidwood, Q.C.), pp. 173, 243, 256.	
14. David MacAlister et. al. eds., <i>Police Involved Deaths: The Need for Reform</i> (Vancouver: British Columbia Civil Liberties Association, 2012),	

pp. 87, 92, 101, 154, 181.

15. Egon Bittner, *The Functions of the Police in Modern Society* (Washington: National Institute of Mental Health, 1970), pp. 40, 41, 46
16. Inquiry into the Death of Frank Paul, *Alone and Cold – Interim Report* (British Columbia: The Davies Commission, 2008) (Commissioner: William H. Davies, Q.C.), pp. 17, 203, 212-213.
17. *Police Act Reform: White Paper and Draft Police Complaint Act*, (British Columbia: March 1, 2005) (Police Complaint Commissioner Dirk Ryneveld, Q.C.), pg. 11.
18. Race Relations Policing Task Force, *The Report of the Race Relations and Policing Task Force* (Toronto: Race Relations and Policing Task Force, 1989) (Chair: Clare Lewis), pg. 146-47.
19. Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008) , pp. 317-18, 355, 567, 600, 618.
20. Taman Inquiry into the Investigation and Prosecution of Derek Harvey-Zenk, *Report of the Taman Inquiry* (Library and Archives Canada, 2008) (Commissioner: Hon. Roger Salhany, Q.C.), pg. 133.

PART VII

RELEVANT LEGISLATIVE PROVISIONS

Criminal Code, R.S.C. 1985, c. C-46

<p><i>Protection of persons acting under authority</i> 25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law</p> <p>(a) as a private person,</p> <p>(b) as a peace officer or public officer,</p> <p>(c) in aid of a peace officer or public officer, or</p> <p>(d) by virtue of his office,</p> <p>is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.</p> <p><i>Idem</i> (2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.</p> <p><i>When not protected</i> (3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.</p>	<p><i>Protection des personnes autorisées</i> 25. (1) Quiconque est, par la loi, obligé ou autorisé à faire quoi que ce soit dans l'application ou l'exécution de la loi :</p> <p>a) soit à titre de particulier;</p> <p>b) soit à titre d'agent de la paix ou de fonctionnaire public;</p> <p>c) soit pour venir en aide à un agent de la paix ou à un fonctionnaire public;</p> <p>d) soit en raison de ses fonctions,</p> <p>est, s'il agit en s'appuyant sur des motifs raisonnables, fondé à accomplir ce qu'il lui est enjoint ou permis de faire et fondé à employer la force nécessaire pour cette fin.</p> <p><i>Idem</i> (2) Lorsqu'une personne est, par la loi, obligée ou autorisée à exécuter un acte judiciaire ou une sentence, cette personne ou toute personne qui l'assiste est, si elle agit de bonne foi, fondée à exécuter l'acte judiciaire ou la sentence, même si ceux-ci sont défectueux ou ont été délivrés sans juridiction ou au-delà de la juridiction.</p> <p><i>Quand une personne n'est pas protégée</i> (3) Sous réserve des paragraphes (4) et (5), une personne n'est pas justifiée, pour l'application du paragraphe (1), d'employer la force avec l'intention de causer, ou de nature à causer la mort ou des lésions corporelles graves, à moins qu'elle n'estime, pour des motifs raisonnables, que cette force est nécessaire afin de se protéger elle-même ou de protéger toute autre personne sous sa protection, contre la mort ou</p>
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<p><i>When protected</i></p> <p>(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if</p> <p>(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;</p> <p>(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;</p> <p>(c) the person to be arrested takes flight to avoid arrest;</p> <p>(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and</p> <p>(e) the flight cannot be prevented by reasonable means in a less violent manner.</p> <p><i>Power in case of escape from penitentiary</i></p> <p>(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if</p> <p>(a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and</p> <p>(b) the escape cannot be prevented by reasonable means in a less violent manner.</p>	<p>contre des lésions corporelles graves.</p> <p><i>Usage de la force en cas de fuite</i></p> <p>(4) L'agent de la paix, ainsi que toute personne qui l'aide légalement, est fondé à employer contre une personne à arrêter une force qui est soit susceptible de causer la mort de celle-ci ou des lésions corporelles graves, soit employée dans l'intention de les causer, si les conditions suivantes sont réunies :</p> <p>a) il procède légalement à l'arrestation avec ou sans mandat;</p> <p>b) il s'agit d'une infraction pour laquelle cette personne peut être arrêtée sans mandat;</p> <p>c) cette personne s'enfuit afin d'éviter l'arrestation;</p> <p>d) lui-même ou la personne qui emploie la force estiment, pour des motifs raisonnables, cette force nécessaire pour leur propre protection ou celle de toute autre personne contre la mort ou des lésions corporelles graves — imminentes ou futures;</p> <p>e) la fuite ne peut être empêchée par des moyens raisonnables d'une façon moins violente.</p> <p><i>Usage de la force en cas d'évasion d'un pénitencier</i></p> <p>(5) L'agent de la paix est fondé à employer contre un détenu qui tente de s'évader d'un pénitencier — au sens du paragraphe 2(1) de la Loi sur le système correctionnel et la mise en liberté sous condition — une force qui est soit susceptible de causer la mort de celui-ci ou des lésions corporelles graves, soit employée dans l'intention de les causer, si les conditions suivantes sont réunies :</p> <p>a) il estime, pour des motifs raisonnables, que ce détenu ou tout autre détenu représente une menace de mort ou de lésions corporelles</p>
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<p><i>Duty of officers if rioters do not disperse</i> 33. (1) Where the proclamation referred to in section 67 has been made or an offence against paragraph 68(a) or (b) has been committed, it is the duty of a peace officer and of a person who is lawfully required by him to assist, to disperse or to arrest persons who do not comply with the proclamation.</p> <p><i>Protection of officers</i> (2) No civil or criminal proceedings lie against a peace officer or a person who is lawfully required by a peace officer to assist him in respect of any death or injury that by reason of resistance is caused as a result of the performance by the peace officer or that person of a duty that is imposed by subsection (1).</p> <p><i>Section not restrictive</i> (3) Nothing in this section limits or affects any powers, duties or functions that are conferred or imposed by this Act with respect to the suppression of riots.</p>	<p>graves pour lui-même ou toute autre personne; b) l'évasion ne peut être empêchée par des moyens raisonnables d'une façon moins violente.</p> <p><i>Obligation des agents si les émeutiers ne se dispersent pas</i> 33. (1) Lorsque la proclamation mentionnée à l'article 67 a été faite ou qu'une infraction prévue à l'alinéa 68a) ou b) a été commise, un agent de la paix et une personne, à qui cet agent enjoint légalement de lui prêter main-forte, sont tenus de disperser ou d'arrêter ceux qui ne se conforment pas à la proclamation.</p> <p><i>Protection des agents</i> (2) Il ne peut être intenté aucune procédure civile ou pénale contre un agent de la paix, ou une personne à qui un agent de la paix a légalement enjoint de lui prêter main-forte, à l'égard de tout décès ou de toute blessure qui, en raison d'une résistance, est causé par suite de l'accomplissement, par l'agent de la paix ou cette personne, d'une obligation qu'impose le paragraphe (1).</p> <p><i>Article non restrictif</i> (3) Le présent article n'a pas pour effet de limiter ni de modifier les pouvoirs ou fonctions que la présente loi confère ou impose relativement à la répression des émeutes</p>
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Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit, O. Reg. 267/10

<p><i>Notes on incident</i></p> <p>9. (1) A witness officer shall complete in full the notes on the incident in accordance with his or her duty and, subject to subsection (4) and section 10, shall provide the notes to the chief of police within 24 hours after a request for the notes is made by the SIU.</p> <p>(2) Subject to subsection (4) and section 10,</p>	<p><i>Notes sur l'incident</i></p> <p>9. (1) L'agent témoin rédige des notes complètes sur l'incident conformément à son obligation et, sous réserve du paragraphe (4) et de l'article 10, les fournit au chef de police au plus tard 24 heures après que l'UES en a fait la demande.</p> <p>(2) Sous réserve du paragraphe (4) et de</p>
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<p>the chief of police shall provide copies of a witness officer's notes to the SIU upon request, and no later than 24 hours after the request.</p> <p>(3) A subject officer shall complete in full the notes on the incident in accordance with his or her duty, but no member of the police force shall provide copies of the notes at the request of the SIU.</p> <p>(4) The SIU director may allow the chief of police to provide copies of the notes beyond the time requirement set out in subsection (2).</p> <p>(5) The notes made pursuant to subsections (1) and (3) shall be completed by the end of the officer's tour of duty, except where excused by the chief of police.</p> <p><i>Notice of whether subject officer or witness officer</i></p> <p>10. (1) The SIU shall, before requesting an interview with a police officer or before requesting a copy of his or her notes on the incident, advise the chief of police and the officer in writing whether the officer is considered to be a subject officer or a witness officer.</p> <p>(2) The SIU shall advise the chief of police and the police officer in writing if, at any time after first advising them that the officer is considered to be a subject officer or a witness officer, the SIU director decides that an officer formerly considered to be a subject officer is now considered to be a witness officer or an officer formerly considered to be a witness officer is now considered to be a subject officer.</p> <p>(3) If, after interviewing a police officer who was considered to be a witness officer when the interview was requested or after obtaining a copy of the notes of a police officer who was</p>	<p>l'article 10, le chef de police fournit des copies des notes d'un agent témoin à l'UES à sa demande, au plus tard 24 heures après la demande.</p> <p>(3) L'agent impliqué rédige des notes complètes sur l'incident conformément à son obligation, mais aucun membre du corps de police ne doit en fournir des copies à la demande de l'UES.</p> <p>(4) Le directeur de l'UES peut autoriser le chef de police à fournir des copies des notes après le délai fixé au paragraphe (2).</p> <p>(5) Les notes prises en vertu des paragraphes (1) et (3) doivent être terminées à la fin de la période de service de l'agent, sous réserve d'une autorisation contraire du chef de police.</p> <p><i>Avis informant du statut d'agent impliqué ou d'agent témoin</i></p> <p>10. (1) Avant de demander une entrevue avec un agent de police ou avant de demander une copie de ses notes sur l'incident, l'UES avise par écrit le chef de police et l'agent de police du fait que ce dernier est considéré comme un agent impliqué ou un agent témoin.</p> <p>(2) L'UES avise par écrit le chef de police et l'agent de police si, à un moment quelconque après les avoir d'abord avisés du fait que l'agent de police est considéré comme un agent impliqué ou un agent témoin, le directeur de l'UES décide que l'agent qui était considéré comme un agent impliqué est désormais considéré comme un agent témoin ou que l'agent qui était considéré comme un agent témoin est désormais considéré comme un agent impliqué.</p> <p>(3) Si, après avoir fait passer une entrevue à un agent de police qui était considéré comme un agent témoin lorsque l'entrevue a été demandée ou après avoir obtenu une copie des</p>
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<p>considered to be a witness officer when the notes were requested, the SIU director decides that the police officer is a subject officer, the SIU shall,</p> <p>(a) advise the chief of police and the officer in writing that the officer is now considered to be a subject officer;</p> <p>(b) give the police officer the original and all copies of the record of the interview; and</p> <p>(c) give the chief of police the original and all copies of the police officer's notes.</p> <p>(4) The chief of police shall keep the original and all copies of the police officer's notes received under clause (3) (c) for use in his or her investigation under section 11.</p>	<p>notes d'un agent de police qui était considéré comme un agent témoin lorsque les notes ont été demandées, le directeur de l'UES décide que l'agent de police est un agent impliqué, l'UES :</p> <p>a) avise par écrit le chef de police et l'agent de police du fait que ce dernier est désormais considéré comme un agent impliqué;</p> <p>b) remet à l'agent de police l'original et toutes les copies de l'enregistrement de l'entrevue;</p> <p>c) remet au chef de police l'original et toutes les copies des notes de l'agent de police.</p> <p>(4) Le chef de police conserve l'original et toutes les copies des notes de l'agent de police reçues en application de l'alinéa (3) c) pour utilisation dans son enquête visée à l'article 11.</p>
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Police Act, R.S.B.C. 1996, c. 367

Liability for torts

20 (1) Subject to an agreement under section 18 (1) or 23 (2),

(a) a municipality is jointly and severally liable for a tort that is committed by any of its municipal constables, special municipal constables, designated constables, enforcement officers, bylaw enforcement officers or employees of its municipal police board, if any, if the tort is committed in the performance of that person's duties, and

(b) a regional district, government corporation or other prescribed entity is jointly and severally liable for a tort that is committed by any of its designated constables or enforcement officers, if the tort is committed in the performance of that person's duties.

(2) If it is alleged or established that any municipal constable, special municipal constable, designated constable, enforcement officer, bylaw enforcement officer or employee referred to in subsection (1) has committed a tort in the performance of his or her duties, the respective board and any members of that board are not liable for the claim.

(3) Despite subsection (2), if it is alleged or established that any municipal constable, special municipal constable, designated constable, enforcement officer, bylaw enforcement officer or employee referred to in subsection (1) has committed a tort in the performance of his or her duties, the respective municipality, regional district, government corporation or other prescribed entity on behalf of which that person is employed may, in the discretion of the following, pay an

amount that it considers necessary to settle the claim or a judgment against that person and may reimburse him or her for reasonable costs incurred in opposing the claim:

- (a) in the case of a municipality, the council of the municipality;
- (b) in the case of a regional district, the board of the regional district;
- (c) in the case of a government corporation or other prescribed entity, that entity itself.

Personal liability

21 (1) In this section, "police officer" means either of the following:

- (a) a person holding an appointment as a constable under this Act;
- (b) an IIO investigator.

(2) No action for damages lies against a police officer or any other person appointed under this Act for anything said or done or omitted to be said or done by him or her in the performance or intended performance of his or her duty or in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power.

(3) Subsection (2) does not provide a defence if

- (a) the police officer or other person appointed under this Act has, in relation to the conduct that is the subject matter of action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
- (b) the cause of action is libel or slander.

(4) Subsection (2) does not absolve any of the following, if they would have been liable had this section not been in force, from vicarious liability arising out of a tort committed by the police officer or other person referred to in that subsection:

- (a) a municipality, in the case of a tort committed by any of its municipal constables, special municipal constables, designated constables, enforcement officers, bylaw enforcement officers or an employee of its municipal police board, if any;
- (b) a regional district, government corporation or prescribed entity, in the case of a tort committed by any of its designated constables or enforcement officers;
- (c) the minister, in a case to which section 11 applies.

Police Services Act, R.S.O. 1990, c. P.15, s. 50

<i>Liability for torts</i>	<i>Responsabilité délictuelle</i>
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<p>50. (1) The board or the Crown in right of Ontario, as the case may be, is liable in respect of torts committed by members of the police force in the course of their employment. Indemnification of member of municipal police force</p> <p><i>Indemnification of member of municipal police force</i></p> <p>(2) The board may, in accordance with the guidelines established under clause 31 (1) (h), indemnify a member of the police force for reasonable legal costs incurred,</p> <p>(a) in the defence of a civil action, if the member is not found to be liable;</p> <p>(b) in the defence of a criminal prosecution, if the member is found not guilty;</p> <p>(c) in respect of any other proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.</p> <p><i>Agreement</i></p> <p>(3) A majority of the members of a police force and the board may, in an agreement made under Part VIII, provide for indemnification for the legal costs of members of the police force, except the legal costs of a member who is found guilty of a criminal offence; if such an agreement exists, the board shall indemnify members in accordance with the agreement and subsection (2) does not apply.</p> <p><i>Council responsible for board's liabilities</i></p> <p>(4) The council is responsible for the liabilities incurred by the board under subsections (1), (2) and (3).</p> <p><i>Indemnification of member of O.P.P.</i></p>	<p>50. (1) La commission de police ou la Couronne du chef de l'Ontario, selon le cas, est responsable des délits civils commis par les membres du corps de police pendant qu'ils occupent leur poste.</p> <p><i>Indemnisation des membres d'un corps de police municipal</i></p> <p>(2) La commission de police peut, conformément aux lignes directrices établies aux termes de l'alinéa 31 (1) h), indemniser un membre d'un corps de police des frais de justice raisonnables qu'il engage dans les cas suivants :</p> <p>a) pour sa défense dans une instance civile, s'il est conclu qu'il n'est pas responsable;</p> <p>b) pour sa défense dans une instance criminelle, s'il est conclu qu'il n'est pas coupable;</p> <p>c) dans toute autre instance mettant en cause la façon dont il a exercé les fonctions reliées à son poste, s'il est conclu qu'il a agi de bonne foi.</p> <p><i>Convention</i></p> <p>(3) La majorité des membres d'un corps de police et la commission de police peuvent, dans une convention conclue aux termes de la partie VIII, prévoir l'indemnisation des membres du corps de police pour les frais de justice qu'ils engagent, sauf dans le cas d'un membre qui est déclaré coupable d'une infraction criminelle; s'il existe une telle convention, la commission de police indemnise les membres conformément à celle-ci et le paragraphe (2) ne s'applique pas.</p> <p><i>Responsabilité du conseil à l'égard des obligations de la commission de police</i></p> <p>(4) Le conseil assume les obligations</p>
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<p>(5) The Minister of Finance may indemnify, out of the Consolidated Revenue Fund, a member of the Ontario Provincial Police for reasonable legal costs incurred,</p> <p>(a) in the defence of a civil action, if the member is not found to be liable;</p> <p>(b) in the defence of a criminal prosecution, if the member is found not guilty;</p> <p>(c) in respect of any other proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.</p> <p><i>Agreement</i></p> <p>(6) The Ontario Provincial Police Association and the Crown in right of Ontario may, in an agreement made under the Ontario Provincial Police Collective Bargaining Act, 2006 or under a predecessor of that Act, including Part II of the Public Service Act as it read immediately before its repeal, provide for indemnification for the legal costs of members of the police force, except the legal costs of a member who is found guilty of a criminal offence; if such an agreement exists, the Minister of Finance shall indemnify members in accordance with the agreement and subsection (5) does not apply.</p> <p><i>Exception, officer appointed under the Interprovincial Policing Act, 2009</i></p> <p>(7) This section does not apply in respect of a police officer appointed under the Interprovincial Policing Act, 2009.</p>	<p>qu'engage la commission de police en vertu des paragraphes (1), (2) et (3).</p> <p><i>Indemnisation des membres de la Police provinciale</i></p> <p>(5) Le ministre des Finances peut indemniser, en prélevant les sommes sur le Trésor, un membre de la Police provinciale de l'Ontario des frais de justice raisonnables qu'il engage dans les cas suivants :</p> <p>a) pour sa défense dans une instance civile, s'il est conclu qu'il n'est pas responsable;</p> <p>b) pour sa défense dans une instance criminelle, s'il est conclu qu'il n'est pas coupable;</p> <p>c) dans toute autre instance mettant en cause la façon dont il a exercé les fonctions reliées à son poste, s'il est conclu qu'il a agi de bonne foi.</p> <p><i>Convention</i></p> <p>(6) L'Association de la Police provinciale de l'Ontario et la Couronne du chef de l'Ontario peuvent, dans une convention conclue aux termes de la Loi de 2006 sur la négociation collective relative à la Police provinciale de l'Ontario ou de dispositions législatives qu'elle remplace, y compris la partie II de la Loi sur la fonction publique, telle qu'elle existait juste avant son abrogation, prévoir l'indemnisation des membres du corps de police pour les frais de justice qu'ils engagent, sauf dans le cas d'un membre qui est déclaré coupable d'une infraction criminelle; s'il existe une telle convention, le ministre des Finances indemnise les membres conformément à celle-ci et le paragraphe (5) ne s'applique pas.</p> <p><i>Exception : agent de police nommé en vertu de la Loi de 2009 sur les services policiers interprovinciaux</i></p>
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	<p>(7) Le présent article ne s'applique pas à un agent de police nommé en vertu de la Loi de 2009 sur les services policiers interprovinciaux.</p>
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