

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

RUTH SCHAEFFER, EVELYN MINTY and DIANE PINDER

Appellants  
(Applicants)

and

POLICE CONSTABLE KRIS WOOD, ACTING SERGEANT MARK  
PULLBROOK, POLICE CONSTABLE GRAHAM SEGUIN, JULIAN  
FANTINO, COMMISSIONER OF THE ONTARIO PROVINCIAL POLICE,  
IAN SCOTT, DIRECTOR OF THE SPECIAL INVESTIGATIONS UNIT and  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (MINISTRY OF  
COMMUNITY SAFETY AND CORRECTIONAL SERVICES)

Respondents  
(Respondents)

APPLICATION UNDER Rule 14.05(3) of the Rules of Civil Procedure

---

**FACTUM OF THE INTEVENOR  
URBAN ALLIANCE ON RACE RELATIONS**

---

August 15, 2011

**STEVENSONS LLP**  
Barristers  
15 Toronto Street  
Suite 202  
Toronto, Ontario M5C 2E3

Richard Macklin  
J. Daniel McConville

416-599-7900  
416-599-7910

Lawyers for the Urban Alliance on Race  
Relations

## **PART I - OVERVIEW OF APPEAL**

1. The intervenor, the Urban Alliance on Race Relations ("Urban Alliance") is a thirty-five year old, non-profit, multi-racial public interest organization. The Urban Alliance has a long history of fostering communication between the police and racialized groups, and played an important role in the inception and development of the Special Investigations Unit ("SIU").

2. The underlying application in this matter is seeking certain relief regarding how police respond to investigations from the SIU. The SIU is responsible for investigating incidents of serious injury or death caused by police in the course of police work. In particular, the appellants (family members of the individuals who were shot and killed by police) are seeking declarations stating that certain conduct, exemplified by the conduct of the police officers in two cases, failed to comply with statutory rules.

3. In both the Schaeffer and Minty matters, the director of the SIU wrote strongly worded reports to the Attorney General and letters to the Police Commissioner complaining that the police officers involved in the incidents prevented the SIU from reviewing important evidence.

4. The lower court justice dismissed the appellants' application on grounds that the application was not justiciable and that the families did not have public interest standing to sue for declarations regarding police conduct.

5. Thus, this appeal is first and foremost about whether families of individuals shot and killed by police have standing to challenge police action by way of declaratory

relief. The Urban Alliance will focus its submissions on the public interest standing issue, which entails an application of the well-established public interest standing doctrine developed in *Finlay v. Canada* (indeed, all parties acknowledge that *Finlay* is the decisive authority).

6. The Urban Alliance respectfully submits that a purposive application of the *Finlay* test results in a finding that the learned applications court justice erred in dismissing the application on standing grounds.

7. Following the issuance of the notice of appeal in this case, only 10 weeks prior to the hearing of this appeal, the Ontario Government enacted amendments to O.Reg. 673/98 (the "SIU Regulations") which govern the procedure during SIU investigations, including obligations on police officers who are designated as subject or witness officers in investigations.

8. While the Urban Alliance welcomes these developments as a step forward in establishing proper police oversight in Ontario, the amendments do not address all of the areas of alleged infractions. Specifically, it is respectfully submitted that, at a minimum, the declarations sought by the appellants at paragraphs 2. (A)(iii), (B), E(iii) and (E)(iv) of their notice of application are unaffected by the amendments to the SIU Regulations.

9. The respondents on appeal argue that the amendments to the SIU Regulations render this appeal moot and that the Courts will have to wait until police breach the new regulation before it can adjudicate a challenge to the police conduct. In response, the Urban Alliance adopts the appellants' submissions that the appeal is not moot, has not been

rendered moot by the promulgation of the amendments and, in the alternative, to the extent any of the issues on the appeal are moot, this Honourable Court should exercise its discretion to hear the appeal.

10. Put in other words, there have always been rules for how police conduct themselves when they are being investigated in the case of their use of force on a citizen. Nonetheless, as set out below in the legislative facts section of this factum, there is a long-standing community perception that the rules in such cases are broken by police. These perceptions have been deemed credible enough that the Legislature has responded to them with legislative amendments (such as those contained in the amended O.Reg 673/98). Yet, notwithstanding these amendments, there remains a perception in various communities that the rules are not followed. Thus, the Urban Alliance submits that the main question in this appeal – based on the manner in which the case was adjudicated below – is whether families can challenge police misconduct in such instances. If so, this Honourable Court should hear argument on the substance of that challenge. It is further respectfully submitted that this Honourable Court ought not hold off on adjudicating these issues solely on the basis that there has been yet another legislative amendment effort directed at “fine-tuning” police co-operation with the SIU.

## PART II – ARGUMENT

### I. Legislative Facts

11. The SIU was created largely in response to complaints and perceptions among racial minorities that they were not treated fairly by the police and the police complaint process was insufficient. In 1988, after an incident where police fatally shot two Black men, the Ontario Government created the Task Force on Race Relations and Policing chaired by Clare Lewis. The task force recommended an independent agency to investigate police shootings.<sup>1</sup>

12. In response to the task force's recommendations, the Province enacted a new *Police Services Act* in 1990 and made sweeping changes to police accountability structures. The new act established the SIU, which was given exclusive jurisdiction in respect of investigating deaths and serious injuries arising in the course of police work.<sup>2</sup>

13. Controversy surrounding the SIU began immediately. Stephen Lewis' *Report of the Advisor on Race Relations* in 1992, dealt squarely with the SIU. At the outset of his report Mr. Lewis stated:

If I've ever felt two solitudes in life, it's the apparent chasm between the Metropolitan Toronto Police and many representatives of the Black community. ...

A similar, though less pronounced distance echoed in the words I heard from many other racial minority representatives in Toronto.<sup>3</sup>

---

<sup>1</sup> Ontario, Report on the Race Relations and Policing Task Force (Toronto: Queen's Printer, 1989) (Chair: Clare Lewis) at 146 to 150.

<sup>2</sup> G.W. Adams, Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit (14 May 1998) at 11-12.

<sup>3</sup> Stephen Lewis, Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae, June 9, 1992, at 4.

14. Mr. Lewis went on to state: "I have heard incessantly, and critically, of the Special Investigations Unit.... there was rarely a charitable word uttered either about its various findings or its investigative capacity." Mr. Lewis recommended that the SIU be re-fashioned as an arms-length agency reporting to the Attorney General and that it be better funded to ensure its independence.<sup>4</sup>

15. The controversy surrounding the SIU continues to this day, and is exacerbated by evidence that racialized communities continue to be overrepresented as victims in SIU investigations. A recent study by Scot Wortley at the University of Toronto found that African Canadians, while representing only 3.6% of the Ontario population, represent 12% of all SIU cases, 15.8% of investigations into police use of force and 27.4% of investigations into police shootings. Aboriginals, while representing 1.7% of the provincial population, represented 6.8% of all civilians involved in investigations into police use of force and 8.1% of deaths from police shootings. Wortley concludes "the results presented in the above section strongly indicate that African Canadians and Aboriginals are grossly over-represented in police use of force statistics in general – and police shooting incidents in particular."<sup>5</sup>

16. Regardless of whether there is a racial bias to SIU incidents, there is a perception from racialized groups that they are more vulnerable. In their 1995 report, the Commission on Systemic Racism in the Criminal Justice System in Ontario stated:

[f]indings of opinion are no less important than data about differential outcomes. What people think about the criminal justice system matters

---

<sup>4</sup> *Lewis, ibid*, at 8.

<sup>5</sup> Scot Wortley, "Police Use of Force in Ontario: An examination of data from the Special Investigations Unit - Final Report" (Toronto: Centre of Criminology at University of Toronto, 2006) at 41-46; see also David Bruser and Michele Henry, "Are These Cops Above the Law?" *Toronto Star*, October 28, 2010.

because the justice system, more than many other institutions, depends on the confidence of the community.”<sup>6</sup>

17. The Urban Alliance respectfully submits that it is in a unique position in these proceedings to represent the voice of those communities that feel the most vulnerable to improper oversight of police use of force.

18. Indeed, one need not look far past recent events in London, England, to understand the importance of community perceptions as they relate to the manner in which police officers are investigated following their use of force against a citizen.

## II. Public Interest Standing and *Finlay v. Canada*: General Principles

19. In *Principles of Administrative Law*, David Jones and Anne de Villers state the following with regard to public interest standing in the context of lawsuits requesting injunctions or declarations as to government conduct:

A more liberal standing requirement for these remedies, when sought in a public law context seems both sensible and justifiable, given the fundamentally different task of remedies in public law – not only do they serve to protect private interests from *ultra vires* government action but they also serve to vindicate the public interest in holding government to the legal limits of its powers.<sup>7</sup>

20. The Urban Alliance will focus its submissions on the appellants’ right to obtain public law standing to challenge the actions of the police services in this case. The governing law is that which has developed through the "trilogy" and *Finlay v. Canada* judgments.

---

<sup>6</sup> Ontario, Commission on Systemic Racism in the Ontario Criminal Justice System: A Community Summary (Toronto: Queen’s Printer, 1995) (Co-Chairs: Margaret Gittens, David Cole) at 10.

<sup>7</sup> David Phillip Jones, Anne De Villers, *Principles of Administrative Law* (2009: Carswell, Toronto) at 765.

21. The modern test for public interest standing evolved through three judgments of the Supreme Court of Canada; *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138; *Nova Scotia Board of Censors v. McNeil*, [1976] 2 S.C.R. 265; *Minister of Justice of Canada v. Borowski*, [1981] 2 S.C.R. 575 (“the trilogy”). Those cases concerned challenges to the constitutionality of legislation. As a result of the trilogy, an increasingly permissive test for standing was developed on the policy ground that it was important “in a federal state that there be [public interest] access to the courts to challenge the constitutionality of legislation”.<sup>8</sup>

22. In 1986 the Supreme Court of Canada was faced with a challenge to the legality of the Province of Manitoba’s social welfare scheme, brought by a recipient of social assistance (*Finlay v. Canada, supra*). The central issue in *Finlay* was whether the test for public interest standing that applied to constitutional challenges to the validity of legislation, should be extended to challenges of government administrative action. Patently, the extension of the doctrine in this fashion would expose considerably more public decision-making to challenge by persons who, while not having a direct right to sue, would be able to elevate their status by virtue of fitting a “public interest” test. These were weighty considerations indeed. As stated by the Court in *Finlay, supra*:

This question raises again the policy considerations underlying judicial attitudes to public interest standing, and in particular, whether the same value is to be assigned to the public interest in the maintenance of respect for the limits of administrative authority as was assigned by this Court in *Thorson*, *McNeil* and *Borowski* to the public interest in the maintenance of respect for the limits of legislative authority.<sup>9</sup>

---

<sup>8</sup> *Finlay v. Canada*, [1986] 2 S.C.R. 607 at para. 28

<sup>9</sup> *Finlay, ibid.*, at para. 31

23. The Court in *Finlay* was unanimous in finding that “respect for the limits of administrative authority” ought to have the same high value as “public interest in the maintenance of respect for the limits of legislative authority”. The public interest standing doctrine was extended to challenges to purely administrative action. Thus, the three-point test that emerged from the “trilogy”, as articulated at paragraph 26 of the *Finlay* judgment, now applied to those persons who sought public interest standing in administrative action cases. Paragraph 26 of the *Finlay* judgment states as follows:

In Borowski, Martland J., delivering the judgment of the majority, summed up what Thorson and McNeil stood for as follows at p. 598:

I interpret these cases as deciding that to establish status as a plaintiff in a suit seeking a declaration that legislation is invalid, if there is a **serious issue as to its invalidity**, a person need only to show that he is affected by it directly **or that he has a genuine interest as a citizen in the validity of the legislation** and that **there is no other reasonable and effective manner in which the issue may be brought before the Court.**<sup>10</sup> [Emphasis added]

24. Justice Le Dain in *Finlay* made clear that the controlling policy rationale behind the three-point test, and the key basis upon which the Court was prepared to expand the doctrine of public interest standing, was the judiciary’s ability to control its process and ensure that frivolous lawsuits would be kept out of the justice system:

The traditional judicial concerns about the expansion of public interest standing may be summarized as follows: the concern about the allocation of scarce judicial resources and the need to screen out the mere busybody; the concern that in the determination of issues the courts should have the benefit of contending points of view of those most directly affected by them; and the concern about the proper role of the courts and their constitutional relationship to the other branches of government.<sup>11</sup>

---

<sup>10</sup> *Finlay, supra*, at para. 26.

<sup>11</sup> *Finlay, supra*, at para 32.

### III. Application of the *Finlay* Test to the Judgment in the Case at Bar

25. In dismissing the application, the learned applications court judge held that the police conduct in question was not administrative action and therefore, not eligible for a challenge by way of a public interest litigant (see paragraphs 84-88 of the judgment). Her Honour also held that there were alternative avenues to bring the matter before a Court (see paragraphs 89-90).<sup>12</sup> The Urban Alliance respectfully submits as follows on these two findings:

**(i) The Learned Applications Court Judge Erred regarding the Definition of "Administrative Action"**

26. Justice Low found that a police officer retaining counsel is a private act, and similarly concluded that the failure to draft notes by the end of an officer's shift was a private "employment issue" and that neither was administrative action. Justice Low effectively privatized conduct that strikes at the heart of public accountability. The legality of police services' response to SIU investigations (which are governed by the SIU Regulations) is an issue of public law. Police officers are public figures exercising public power. In contravening SIU Regulations during an investigation, police officers are acting in their public capacities. Moreover, it is clear from the evidence that much of the impugned conduct constitutes, at a minimum, informal police policy.

27. The Learned Application Judge's narrow interpretation of "administrative action" is, with respect, not correct. Such an approach is not in line with the expansion of public interest standing in *Finlay*, will exacerbate the isolation and alienation of many

---

<sup>12</sup> *Schaeffer v. Woods*, 2010 ONSC 3647, at para. 84-90 [*Schaeffer*].

members of racialized communities, and will limit the ability of the individual citizen and community groups to bring about responsible and legal conduct by public officials.

28. It does not appear that administrative action has been defined in the public interest standing context. As a starting point, it is submitted that "administrative action" means more than simply action that occurs in the course of judicial or *quasi* judicial administrative tribunals. Rather, it is submitted, the demarcation line between administrative action and non-administrative action is the same line that distinguishes public law from private law.

29. In *Minister of National Revenue v. Coopers & Lybrand*, Dickson J. described a range of administrative decision making:

Administrative decision does not lend itself to rigid classification of function. Instead, one finds realistically a continuum. As paradigms, at one end of the spectrum are rent tribunals, labour boards and the like, the decisions of which are eligible for judicial review. At the other end are such matters as the appointment of the head of a Crown corporation, or the decision to purchase a battleship, determinations inappropriate to judicial intervention.<sup>13</sup>

30. It is submitted that the manner in which police officers prepare their notes in the course of their public duty is fundamental to the administration of justice in the criminal justice system and is a matter of public law. Police officers are in the unique position to witness incidents of central importance to criminal trials. As submitted by the Director of the SIU in these proceedings, contemporaneous notes are an essential feature of the officer's duty and an integral part of a successful investigation and prosecution of an accused. OPP policy (and the recently amended SIU Regulations) require officers to make notes by the end of an officer's shift. However, as demonstrated by the undisputed facts in the Minty and

---

<sup>13</sup> *Minister of National Revenue v. Coopers & Lybrand* (1979), 92 D.L.R. (3d) 1 (S.C.C.) at 505.

Schaeffer investigations, senior officers instruct officers involved in the incidents, including witness officers, not to complete notes of the incident. This policy, whether implicit or explicit, led to officers in the Minty and Schaeffer incidents drafting notes one or two days after the incidents, and drafting two sets of notes: one for their lawyer and one for the SIU.<sup>14</sup> The practice of senior officers instructing witness and subject officers not to complete their note taking duties is clearly an administrative action. Moreover, the amended SIU Regulations do not properly address the situation because officers with delegated authority from the Chief of Police can continue this practice.

31. Furthermore, in *Odhavji*, the Supreme Court found that a cause of action for misfeasance in public office existed against police officers who were being investigated by the SIU for their conduct during that investigation. The *Odhavji* decision makes clear that the officers continue to act in their public roles, even when being investigated by the SIU (otherwise they could not be liable for abuse of *public* office). Justice Low failed to take into account this ruling in finding that the officers were not acting in a public capacity. It is impossible to reconcile the fact that officers can be sued in a public capacity for their conduct during an SIU investigation, and Justice Low's interpretation that such conduct is private.<sup>15</sup>

---

<sup>14</sup> Professional Standards Bureau Investigation Report, Tab 5C of Application Record, at pg 249-250; D/Sgt. Wellock's Notes, Tab 2 of the Supplementary Application Record at pg. 4; P.C. Woods Notes, Tab 4H Application Record at pg 173; Notes of Sgt. Burton, Tab 5D Application Record at pgs 266, 271-272

<sup>15</sup> *Odhavji Estate v. Woodhouse* [2003] 3 S.C.R. 263 at para 33-42.

**(ii) No other reasonable and effective way of bringing the issue before the court**

32. The application judge found that alternative avenues existed for the applicants to bring the issue before the court: they could initiate an action for misfeasance in public office, they could complain to the Law Society of Upper Canada, and they could file police complaints against the officers involved and the Commissioner.

33. It is respectfully submitted that this finding illustrates a misapprehension by the Learned Applications Court Judge of the case that was before her. Her Honour misapprehended the no-fault nature of the relief sought by the applicants (a ruling that officers are not complying with their statutory duties (at the misguided but perhaps "bad faith free" direction of senior officers)) and the fault-based findings that would have to accompany a successful misfeasance in public office law suit (see *Odhavji, supra* at paragraph 31) or successful discipline prosecution (see *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 at para. 23). The applicants are not seeking to punish the officers in question; they seek to clarify the law to ensure that other families do not suffer their fate due to institutionalized police conduct that frustrates SIU investigations. Malice-based intentional tort actions or professional discipline complaints (where there is an express or implied need to establish *mala fides* and where such allegations will almost invariably be disputed) are not, it is submitted, reasonable alternatives or in any manner analogous to the Rule 14 application the appellants did bring where fault findings are not sought and no facts are in dispute.

**IV. Additional Policy Considerations**

34. The problems of perception between the police and racialized groups in Ontario are just as significant today as they were when Stephen Lewis wrote in 1992 that he

felt “two solitudes” in the relationship between the African Canadian community and the Toronto police.<sup>16</sup> This is important in light of the salutary observation in 1995 by The Commission into Systemic Racism in the Ontario Criminal Justice System that “[w]hat people think about the criminal justice system matters because the justice system, more than many other institutions, depends on the confidence of the community”.<sup>17</sup>

35. The Urban Alliance submits that withholding public standing in this application will have an adverse effect on members of vulnerable communities with legitimate state accountability concerns. Specifically, such individuals:

- (a) face greater challenges regarding access to justice;
- (b) face greater challenges with securing legal representation than do state interests responding to allegations and concerns, such as an investigation of a policing incident by the SIU;
- (c) may be barred by virtue of inaccessibility or ineffectiveness of a fractured alternative process (i.e., complaints process) to address any or all the issues raised, to make submissions, or entitle them to participate at any hearing to determine the merits of the complaint; or
- (d) may be barred by the prohibitive cost of obtaining relief across multiple administrative processes or litigation in a civil action.

36. If public interest standing is refused, private citizens affected by police conduct will have the sense that they do not have the right to challenge the police to obey

---

<sup>16</sup> Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae*, June 9, 1992, at 4.

<sup>17</sup> Ontario, Commission on Systemic Racism in the Ontario Criminal Justice System: A Community Perspective. (Toronto: Queen's Printer, 1995) (Co-Chairs: Margaret Gittens, David Cole) at 10.

their governing regulations and policies. The Court will also appear to be tacitly endorsing the impugned conduct. If Courts are to refuse to hear these types of applications on the technical grounds that police conduct does not amount to "administrative action", the public (and minority communities in particular) will feel further disillusioned by the lack of accountability of our police forces.

37. It is further submitted that Rule 14 of the Rules of Civil Procedure is an appropriate route to challenge the conduct of the officers in this case, relative to their statutory duties. The Rule allows a party to seek the assistance of a Court in respect of an interpretation of statutory instruments (Rule 14.05(3)(d)) or in respect of **any matter** where, as in this case, there are no material facts in dispute (Rule 14.05(3)(h)). In the case at bar, the courts should not use the concept of efficiency (as Justice Low did at paragraphs 82-90 of the Judgment), to prevent a meritorious claim from access to the courts. As noted by U.S. commentator Justice Robert Carter, the undercutting of *bona fide* public law issues from being heard on grounds of efficiency masks a hidden agenda of the powerful against the powerless. Justice Carter wrote on the use of the "floodgates" arguments in the United States to limit access to the courts in the context of actions seeking civil rights remedies or injunctions against government action. In arguing that the courts should move away from their philosophy of striking claims on technical grounds, he states:

"...it is hard to dispute ... that courts function best when they resolve substantive controversies on the basis of substantive law.

....

I have tried to suggest that the doomsday cries of the efficiency mongers mask a hidden agenda, an agenda that seeks to limit the access to justice of some rights-holders but not others.... **it is the role of the courts to protect the rights of politically excluded minorities; yet precisely in these times, when the protection**

**of courts is most needful, it is the disempowered who are sacrificed on the altar of a substantively biased notion of efficiency."**<sup>18</sup> [Emphasis added.]

38. Police services are given the extraordinary power to intrude on individuals' liberty by interrogation, arrest, and the use of force. Such powers require the highest levels of accountability. To refuse to rule on the legality of police conduct because their actions do not amount to "administrative action" or because parties must seek fault-finding avenues for their relief, flies in the face of the public accountability that must, in a free and democratic society, accompany these extraordinary powers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15<sup>th</sup> DAY OF AUGUST, 2011

---

Richard Macklin

---

Dan McConville

**STEVENSONS LLP**

Lawyers for the Intervenor, Urban Alliance on  
Race Relations

---

<sup>18</sup> Robert L. Carter, The Federal Rules of Civil Procedure as a Vindicator of Civil Rights, 137 U.Pa.L. Rev 2179 1988-89 at 2195.

**SCHEDULE "A"- TABLE OF AUTHORITIES**

<b>Tab</b>	<b>Case</b>
1	Ontario, Report on the Race Relations and Policing Task Force (Toronto: Queen's Printer, 1989) (Chair: Clare Lewis)
2	G.W. Adams, Consultation Report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General Concerning Police Cooperation with the Special Investigations Unit (14 May 1998)
3	Stephen Lewis, Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae, June 9, 1992
4	Scot Wortley, "Police Use of Force in Ontario: An examination of data from the Special Investigations Unit - Final Report" (Toronto: Centre of Criminology at University of Toronto, 2006)
5	David Bruser and Michele Henry, "Are These Cops Above the Law?" Toronto Star, October 28, 2010
6	Ontario, Commission on Systemic Racism in the Ontario Criminal Justice System: A Community Summary (Toronto: Queen's Printer, 1995) (Co-Chairs: Margaret Gittens, David Cole)
7	David Phillip Jones, Anne De Villers, Principles of Administrative Law (2009: Carswell, Toronto).
8	<i>Finlay v. Canada</i> , [1986] 2 S.C.R. 607
9	<i>Schaeffer v. Woods</i> , 2010 ONSC 3647
10	Minister of National Revenue v. Coopers & Lybrand (1979), 92 D.L.R. (3d) 1 (S.C.C.)
11	<i>Odhavji Estate v. Woodhouse</i> [2003] 3 S.C.R. 263
12	<i>R. v Wigglesworth</i> [1987] 2 S.C.R. 541.
13	Robert L. Carter, The Federal Rules of Civil Procedure as a Vindicator of Civil Rights, 137 U.Pa.L. Rev 2179 1988-89

**SCHEDULE "B" - STATUTES**

Police Services Act

ONTARIO REGULATION 267/10

CONDUCT AND DUTIES OF POLICE OFFICERS RESPECTING  
INVESTIGATIONS BY THE SPECIAL INVESTIGATIONS UNIT

Last amendment: O. Reg. 283/11.

*This is the English version of a bilingual regulation.*

**Definitions and interpretation**

**1. (1)** In this Regulation,

“SIU” means the special investigations unit established under section 113 of the Act; (“UES”)

“subject officer” means a police officer whose conduct appears, in the opinion of the SIU director, to have caused the death or serious injury under investigation; (“agent impliqué”)

“witness officer” means a police officer who, in the opinion of the SIU director, is involved in the incident under investigation but is not a subject officer. (“agent témoin”) O. Reg. 267/10, s. 1 (1).

(2) The SIU director may designate an SIU investigator to act in his or her place and to have all the powers and duties of the SIU director under this Regulation and, if the SIU director appoints a designate, any reference to the SIU director in this Regulation, excluding this subsection, means the SIU director or his or her designate. O. Reg. 267/10, s. 1 (2).

(3) For the purposes of this Regulation, a person appointed as a police officer under the *Interprovincial Policing Act, 2009* is deemed to be,

- (a) if the person was so appointed by a member of the Ontario Provincial Police, a member of that police force;
- (b) if the person was so appointed by a member of a municipal police force, a member of that police force; or
- (c) if the person was so appointed by a member of a board, a member of the municipal police force for which the board is responsible. O. Reg. 267/10, s. 1 (3).

(4) A police officer appointed under the *Interprovincial Policing Act, 2009* shall comply with all directions given to him or her for the purposes of this Regulation by the chief of police of the police force of which the officer is deemed to

be a member or by the designate of that chief of police appointed under subsection 2 (1). O. Reg. 267/10, s. 1 (4).

#### **Designate of chief of police**

2. (1) The chief of police may designate a member of the police force who is not a subject officer or witness officer in the incident to act in the place of the chief of police and to have all the powers and duties of the chief of police in any matter respecting an incident under investigation by the SIU. O. Reg. 267/10, s. 2 (1).

(2) If the chief of police appoints a designate under subsection (1), any reference to the chief of police in this Regulation, excluding this section, means the chief of police or his or her designate. O. Reg. 267/10, s. 2 (2).

(3) The person appointed under subsection (1) must be a senior officer. O. Reg. 267/10, s. 2 (3).

#### **Notice to SIU**

3. A chief of police shall notify the SIU immediately of an incident involving one or more of his or her police officers that may reasonably be considered to fall within the investigative mandate of the SIU, as set out in subsection 113 (5) of the Act. O. Reg. 267/10, s. 3.

#### **Securing scene of incident**

4. The chief of police shall ensure that, pending the SIU taking charge of the scene of the incident, the police force secures the scene in a manner consistent with all standing orders, policies and usual practice of the police force for serious incidents. O. Reg. 267/10, s. 4.

#### **SIU as lead investigator**

5. The SIU shall be the lead investigator in the investigation of the incident and shall have priority over any police force in the investigation. O. Reg. 267/10, s. 5.

#### **Segregation of police officers involved in incident**

6. (1) The chief of police shall, to the extent that it is practicable, segregate all the police officers involved in the incident from each other until after the SIU has completed its interviews. O. Reg. 267/10, s. 6 (1).

(2) A police officer involved in the incident shall not communicate directly or indirectly with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews. O. Reg. 267/10, s. 6 (2); O. Reg. 283/11, s. 1.

#### **Right to counsel**

**7. (1)** Subject to subsection (2), every police officer is entitled to consult with legal counsel or a representative of a police association and to have legal counsel or a representative of a police association present during his or her interview with the SIU. O. Reg. 267/10, s. 7 (1).

**(2)** Subsection (1) does not apply if, in the opinion of the SIU director, waiting for legal counsel or a representative of a police association would cause an unreasonable delay in the investigation. O. Reg. 267/10, s. 7 (2).

**(3)** Witness officers may not be represented by the same legal counsel as subject officers. O. Reg. 283/11, s. 2.

### **Interview of witness officers**

**8. (1)** Subject to subsections (2) and (5) and section 10, immediately upon receiving a request for an interview by the SIU, and no later than 24 hours after the request if there are appropriate grounds for delay, a witness officer shall meet with the SIU and answer all its questions. O. Reg. 267/10, s. 8 (1).

**(2)** A request for an interview by the SIU must be made in person. O. Reg. 267/10, s. 8 (2).

**(3)** The SIU shall cause the interview to be recorded and shall give a copy of the record to the witness officer as soon as it is available. O. Reg. 267/10, s. 8 (3).

**(4)** The interview shall not be recorded by audiotape or videotape except with the consent of the witness officer. O. Reg. 267/10, s. 8 (4).

**(5)** The SIU director may request an interview take place beyond the time requirement as set out in subsection (1). O. Reg. 267/10, s. 8 (5).

### **Notes on incident**

**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. O. Reg. 267/10, s. 9 (1).

**(2)** Subject to subsection (4) and section 10, 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. O. Reg. 267/10, s. 9 (2).

**(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. O. Reg. 267/10, s. 9 (3).

**(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). O. Reg. 267/10, s. 9 (4).

(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. O. Reg. 283/11, s. 3.

#### **Notice of whether subject officer or witness officer**

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. O. Reg. 267/10, s. 10 (1).

(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. O. Reg. 267/10, s. 10 (2).

(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 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,

- (a) advise the chief of police and the officer in writing that the officer is now considered to be a subject officer;
- (b) give the police officer the original and all copies of the record of the interview; and
- (c) give the chief of police the original and all copies of the police officer's notes. O. Reg. 267/10, s. 10 (3).

(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. O. Reg. 267/10, s. 10 (4).

#### **Investigation caused by chief of police**

11. (1) The chief of police shall also cause an investigation to be conducted forthwith into any incident with respect to which the SIU has been notified, subject to the SIU's lead role in investigating the incident. O. Reg. 267/10, s. 11 (1).

(2) The purpose of the chief of police's investigation is to review the policies of or services provided by the police force and the conduct of its police officers. O. Reg. 267/10, s. 11 (2).

(3) All members of the police force shall co-operate fully with the chief of police's investigation. O. Reg. 267/10, s. 11 (3).

(4) The chief of police of a municipal police force shall report his or her findings and any action taken or recommended to be taken to the board within 30 days after the SIU director advises the chief of police that he or she has reported the results of the SIU's investigation to the Attorney General, and the board may make the chief of police's report available to the public. O. Reg. 267/10, s. 11 (4).

(5) The Commissioner of the Ontario Provincial Police shall prepare a report of his or her findings and any action taken within 30 days after the SIU director advises the Commissioner that he or she has reported the results of the SIU's investigation to the Attorney General, and the Commissioner may make the report available to the public. O. Reg. 267/10, s. 11 (5).

### **Disclosure of information**

**12. (1)** The police force may disclose to any person the fact that the SIU director has been notified of an incident and is conducting an investigation into it. O. Reg. 267/10, s. 12 (1).

(2) The police force and members of a police force shall not, during the course of an investigation by the SIU into an incident, disclose to any person any information with respect to the incident or the investigation,

(a) except as permitted by this Regulation;

(b) except that a police officer appointed under the *Interprovincial Policing Act, 2009* may disclose the information to his or her extra-provincial commander during the course of the investigation; or

(c) except that the chief of police of the police force of which a police officer appointed under the *Interprovincial Policing Act, 2009* is deemed to be a member may disclose the information during the course of the investigation to,

(i) the extra-provincial commander of the officer, or

(ii) an appointing official as defined in that Act if the chief of police is not such an official and the investigation relates to the officer. O. Reg. 267/10, s. 12 (2).

### **Public statements**

**13.** The SIU shall not, during the course of an investigation by the SIU, make any public statement about the investigation unless the statement is aimed at preserving the integrity of the investigation. O. Reg. 267/10, s. 13.

### **Non-application of this Regulation**

**14.** A chief of police or police officer shall not be required to comply with a provision of this Regulation if, in the opinion of the SIU director, compliance is not

possible for reasons beyond the chief of police's or police officer's control. O. Reg. 267/10, s. 14.

15. Omitted (revokes other Regulations). O. Reg. 267/10, s. 15.

16. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 267/10, s. 16.

**R.R.O. 1990, REGULATION 194**  
**RULES OF CIVIL PROCEDURE**

APPLICATIONS — BY NOTICE OF APPLICATION

*Notice of Application*

**14.05 (1)** The originating process for the commencement of an application is a notice of application (Form 14E, 68A or 73A) or an application for a certificate of appointment of an estate trustee (Form 74.4, 74.5, 74.14, 74.15, 74.21, 74.24, 74.27 or 74.30). R.R.O. 1990, Reg. 194, r. 14.05 (1); O. Reg. 484/94, s. 5.

*Information for Court Use*

**(1.1)** Form 14F (Information for court use) shall be filed together with a notice of application in Form 14E, 68A or 73A. O. Reg. 260/05, s. 2.

*Application under Statute*

**(2)** A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, r. 14.05 (2); O. Reg. 292/99, s. 1 (2).

*Application under Rules*

**(3)** A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

- (a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
- (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
- (c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;
- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

- (f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
- (g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;
- (g.1) for a remedy under the *Canadian Charter of Rights and Freedoms*; or
- (h) in respect of any matter where it is unlikely that there will be any material facts in dispute. R.R.O. 1990, Reg. 194, r. 14.05 (3); O. Reg. 396/91, s. 3.