



News Release

SIU Director Responds to New Regulation in the Police Services Act

Mississauga (23 June, 2011) --- The Government today enacted amendments to the regulations that govern investigations conducted by the Special Investigations Unit. The new regulation, scheduled to take effect on August 1, 2011, can be accessed via the following link to the announcement made by the Ministry of the Attorney General:

<http://www.news.ontario.ca/mag/en/2011/06/ontario-acts-on-recommendations.html>

Director Scott commented, "While I am glad the Government moved ahead on the LeSage recommendations, the newly amended regulations do not address a fundamental issue in SIU investigations – the independence of police officers' notes. These amended regulations regrettably do not confirm police officers' existing duty to prepare their notes independently and without conferring with a lawyer.

"In the words of retired Justice Roger Salhany who wrote the Taman Inquiry Report into police misconduct in Manitoba, 'The proper practice is for each officer to make his or her own independent set of notes.' The justice system, whether it is an investigation, a trial, inquest or tribunal hearing, relies on the evidence of police officers, who in turn rely upon the accuracy of their notes when they give evidence. Sometimes, police officers' notes are even used as original evidence in court proceedings. The law requires that these notes need to be reliable, and the hallmarks of their reliability are independence and contemporaneity. In other words, when notes are made close to the event in question and written independently of external sources, they are more likely to be reliable.

"In my view, the government should pass a new regulation to the Police Services Act to clearly confirm officers' duties with respect to notes, a recommendation made over ten years ago by Commissioner Kaufman in his Commission on Proceedings Involving Guy Paul Morin. A new regulation could say that notes are to be written as independently as possible. If there is conferral with others or reference to external sources, it should be noted in the notes. And the proposed regulation should confirm that conferral with a lawyer is prohibited because of the impossibility of ascertaining whether that communication has affected the accuracy of those notes – the communications are protected by solicitor-client privilege and cannot be probed by any investigator or court proceeding. I would be happy to work with the government in the preparation of such a regulation.

"I commend the Government and the Ministry for acting on the LeSage recommendations. This represents an important first step forward toward a more robust system of police accountability to civilian oversight."

The SIU is an arm's length agency that investigates reports involving police where there has been death, serious injury or allegations of sexual assault. Under the Police Services Act, the Director of the SIU must

- *consider whether an officer has committed a criminal offence in connection with the incident under investigation*
- *depending on the evidence, lay a criminal charge against the officer if appropriate or close the file without any charges being laid*
- *report the results of any investigations to the Attorney General.*

Frank Phillips

SIU Communications/Service des communications, UES

Telephone/No de telephone: 416-622-2342 or/ou 1-800-787-8529 extension 2342