Court File No. 33959

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

WAYNE PENNER

Appellant
(Plaintiff)

and

REGIONAL MUNICIPALITY OF NIAGARA REGIONAL POLICE SERVICES BOARD, GARY E. NICHOLLS, NATHAN PARKER, PAUL KOSCINSKI and ROY FEDERKOW

Respondents
(Defendants)

FACTUM OF THE INTERVENER, THE ATTORNEY GENERAL FOR ONTARIO

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

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TABLE OF CONTENTS

PART I – OVERVIEW

1. By order dated October 7, 2011, this Honourable Court granted the Attorney General for Ontario ("Ontario") leave to intervene in this Appeal.

2. The parties before this Court have raised significant competing policy considerations concerning the application of issue estoppel in civil proceedings to issues decided in police disciplinary proceedings. The Appellant claims that the application of issue estoppel will discourage police complaints, reduce accessibility and increase costs for complainants, frustrate the police disciplinary process, and supplant the court's traditional role as a check on police conduct. If issue estoppel is not applied, the Respondents claim that there will be a risk of inconsistent decisions, increased cost and delay, a lack of finality, and unfairness in being harassed twice in the same cause.

3. The balancing of these policy considerations is of considerable importance to the Province of Ontario. The Crown legislates the police complaints process, and is responsible for torts committed by the Ontario Provincial Police which is the largest police force in Ontario.[1] The Attorney General for Ontario further conducts and regulates all litigation for and against the Crown, and is responsible for the administration of justice in the province.[2]

4. Balancing the competing policy considerations cannot be best achieved by a sweeping rigid rule barring issue estoppel in civil proceedings solely because the issue was decided in a police disciplinary proceeding. Discretion is necessary for the courts to balance the applicable policy considerations and advance justice according to the circumstances of the case.

5. Discretion is also necessary in the result or remedy to be applied. By producing an "all or nothing" result of complete preclusion of re-litigation, or complete re-litigation, issue estoppel does not provide courts with sufficient flexibility to advance justice in all circumstances. Ontario proposes that a new step be added to the issue estoppel analysis that provides courts with

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[1] *Police Services Act*, R.S.O. 1990, c. P.15 ("*PSA*"), s. 50, **Appellant's Book of Authorities ("A.B.A."), Vol. III, Tab 53, p. 526-527**

[2] *Ministry of the Attorney General Act*, R.S.O. 1990, c. M.17, s. 5, **Ontario Intervener's Book of Authorities ("O.B.A."), Tab 13, pp. 97-98**

discretion to apply a new result or remedy to advance justice as more particularly described below.

PART II – INTERVENER'S POSITION ON THE QUESTIONS

6. Ontario does not take a position on the facts or whether the Ontario Court of Appeal erred in exercising its discretion to apply issue estoppel in the particular circumstances of this case.

7. Ontario takes the position that this Court should not prescribe a rigid rule barring the application of issue estoppel in civil proceedings solely because the issues were decided in police disciplinary proceedings. However, in exercising its discretion, courts should have regard to the result or remedy developed in this Court's decision in *British Columbia (Attorney General v. Malik*.[3] Specifically, where the pre-conditions of issue estoppel are met, but applying it would work an injustice, courts should then consider as a matter of law whether a just remedy is to admit the findings and conclusions of the prior proceeding into evidence, subject to the right of the prejudiced party to lead evidence to contradict or lessen the weight of those findings and conclusions.

8. Ontario further takes the position that the statutory privilege provisions in the *Police Services Act*[4] do not prohibit reliance on police disciplinary decisions in subsequent civil proceedings.

9. Finally, Ontario submits that this court should reject the broad suggestion of the Respondents, that if issue estoppel is not applied in this case then it cannot be applied for any administrative tribunal governed by Ontario's *Statutory Powers and Procedures Act*[5]; and the suggestion of the Appellant, that only in exceptional circumstances should issue estoppel be applied in the tribunal-to-court context.

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[3] *British Columbia (Attorney General) v. Malik*, 2011 SCC 18, **O.B.A., Tab 2, pp. 8-29**
[4] *Police Services Act, supra*, **A.B.A., Vol. III, Tab 53, pp. 489-581**
[5] *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, **Respondents' Book of Authorities ("R.B.A."), Tab 39, pp. 227-242**

PART III – ARGUMENT

a) The Need for Balance in Issue Estoppel

10. The Court of Appeal's decision to apply issue estoppel turned on six factors particular to the circumstances of this case.[6] In submissions before this court, the parties have raised additional policy considerations distinct to policing and to issue estoppel generally.

i) Appellant's Policy Considerations

11. In addition to addressing the particular circumstances of this case, the Appellant and supporting interveners[7] rely on the following policy considerations for the position that issue estoppel should never be applied to issues decided in police disciplinary proceedings:

i) Complainants will be discouraged from filing complaints and participating fully in police disciplinary hearings for fear of being issue estopped in a subsequent civil proceeding and effectively denied their "day in court". This consequence would chill or frustrate the effectiveness of the police disciplinary system.

ii) Complainants that nevertheless file complaints will be required to participate fully potentially incurring the cost of counsel to decrease the risk of an adverse finding that will be binding on them in a civil proceeding. This consequence has the effect of reducing accessibility for complainants and increasing cost and delay.

iii) The lack of independence/institutional bias in police disciplinary proceedings favouring the police defendants makes it unfair to bind complainants to issues decided in these proceedings.

iv) The role of courts as a check on police would be usurped by the police disciplinary process if the courts were to apply issue estoppel to issues decided in police disciplinary proceedings.

ii) Respondents' Policy Considerations

12. To the contrary, in addition to addressing the particular circumstances of this case, the Respondents and the intervener Canadian Police Association cite the following policy considerations for applying issue estoppel to issues decided in police disciplinary proceedings:

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[6] Reasons for Judgment of the Court of Appeal for Ontario ("Reasons for Judgment") at paras. 42-53, **Appellant's Record ("A.R."), Tab 3, pp. 18-22:** The six factors considered by the Court were the different purposes of the proceedings, lack of a financial stake in the discipline proceeding, expertise of the decision maker, procedure in the disciplinary proceeding, participation by the complainant in the disciplinary proceedings, and the right of appeal.

[7] Canadian Civil Liberties Association, Urban Alliance on Race Relations, Criminal Lawyers Association (Ontario), and British Columbia Civil Liberties Association.

i) Permitting the re-litigation of issues decided in police disciplinary proceedings suggests that these proceedings are inconclusive or a lesser form of justice and would decrease public confidence in police disciplinary proceedings.

ii) The risk of inconsistent results in a police disciplinary proceeding and subsequent civil proceeding may undermine public confidence in police disciplinary proceedings.

iii) The risk of inconsistent results in a police disciplinary proceeding and subsequent civil litigation further undermines public confidence in police accountability because disciplinary proceedings are designed to promote police accountability.

iv) There should be an end to litigation and a party should not be harassed twice in the same cause.

v) Preventing the re-litigation of issues reduces cost and delay.

iii) Reconciling the Policy Considerations

13. Both the Appellant and Respondent raise some valid competing policy considerations regarding the application of issue estoppel in the policing context. Discretion in the application of issue estoppel is necessary to maintain the balance between the competing policy considerations and to permit justice to be done having regard to all the circumstances of the case.[8]

14. A rigid rule that in all cases issue estoppel cannot be applied where the issues have been decided in a police disciplinary proceeding has a greater potential to hamper, not advance, fairness and justice. Maintaining the discretion of courts to apply issue estoppel is necessary to advance the policy goals of preventing a multiplicity of proceedings, finality, judicial economy, avoiding inconsistent results, and reducing cost and delay.

15. Notably, the Ontario Human Rights Tribunal has considered the dismissal of applications on the basis that the issues in the Human Rights proceeding had been "appropriately dealt with" in a police disciplinary proceeding. The Tribunal has exercised its discretion and in some circumstances applications have been dismissed, while in others they have not.[9]

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[8] *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, paras. 64-65, **O.B.A., Tab 2, p. 29**; *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, para. 15, **O.B.A., Tab 12, p. 95**; *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, paras. 21, 33, **A.B.A., Vol. I, Tab 9, pp. 128-129, 135**

[9] *Human Rights Code*, R.S.O. 1990, c. H.19, s. 45.1, **O.B.A., Tab 14, p. 106**. Applications dismissed as "appropriately dealt with" where a complaint under the *PSA* was dismissed without a hearing following a police investigation showing a lack of reasonable basis or air of reality to the complaint and review of the investigation by

16. However, in some cases, the circumstances and the policy considerations may not be able to be reconciled in the application or non-application of issue estoppel. The difficulty lies in striking a balance between the competing policy considerations when the application of issue estoppel or its non-application produces decidedly unbalanced results. Specifically, issue estoppel is either applied and re-litigation of issues is completely precluded, or issue estoppel is not applied and there is complete re-litigation of the issues.

17. This "all or nothing" result of issue estoppel may not produce a just and fair outcome that appropriately balances the competing policy considerations. Both the complete preclusion of re-litigation or complete re-litigation may be unfair to a party and produce negative policy consequences.

18. A "middle ground" or result that is fair to the individual parties and balances the applicable policy considerations is needed. This Court identified such a middle ground or result in *British Columbia (Attorney General) v. Malik*, released after the Court of Appeal's decision in the present proceeding. This Court held as follows:

> …a judgment in a prior civil or criminal case is admissible (if considered relevant by the chambers judge) as evidence in subsequent interlocutory proceedings as proof of its findings and conclusions, provided the parties are the same or were themselves participants in the prior proceedings on similar or related issues. It will be for that judge to assess its weight. The prejudiced party or parties will have an opportunity to lead evidence to contradict it or lessen its weight (unless precluded from doing so by the doctrines of *res judicata*, issue estoppel or abuse of process).[10]

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the Ontario Civilian Commission on Police Services ("OCCPS"): *Qiu v. Neilson*, [2009] O.H.R.T.D. No. 2116; *Pamula v. Ontario Provincial Police*, [2010] O.H.R.T.D. No. 62, reconsideration request denied, [2010] O.H.R.T.D. No. 959. Applications allowed to proceed where a complaint made under the *PSA* was dismissed without a hearing following a police investigation: *A.F. (Litigation Guardian) v. Durham Regional Police Services Board*, [2010] O.H.R.T.D. No. 1503; *Byaruhanga v. Toronto Police Services Board*, [2010] O.H.R.T.D. No. 2277. Five decisions are pending on the effect of *PSA* proceedings on HRTO proceedings: *Claybourn v. Toronto Police Service*, [2011] O.H.R.T.D. No. 1403; *Shallow v. Toronto Police Services Board*, [2011] O.H.R.T.D. No. 1404; *Leong v. Peel Regional Police Services Board*, [2011] O.H.R.T.D. No. 1750; *Ferguson v. Toronto Police Services Board*, [2011] O.H.R.T.D. No. 1812; *de Lottinville v. Her Majesty the Queen in Right of Ontario as Represented by the Minister of Community Safety and Correctional Services (Ontario Provincial Police)*, [2011] O.H.R.T.D. No. 1751. The applications to dismiss in the five proceedings will be heard together in May 2012, **O.B.A., Tabs 1 and 4-11, pp. 1-7 and 50-87**

[10] *Malik*, *supra*, para. 7, **O.B.A., Tab 2, p. 13**

19. The tribunal-to-court context was not explicitly addressed by this Court in *Malik*, although for the reasons set out in this Court's decision in *Danyluk* more fully addressed below, there is no principled reason for not applying this Court's ruling in *Malik* in the tribunal-to-court context.[11]

20. While this Court's ruling in *Malik* applies to interlocutory proceedings, this Court stated that it may also be applicable to trials on the merits "…depend[ing] on the purpose for which the prior decision is put forward and the use sought to be made of its findings and conclusions".[12] This Court further endorsed the following statement supporting the admission of prior findings and conclusions in subsequent proceedings:

> Probably the trend of evolution will be toward the admission generally against a present party of any judgment or finding in a former civil or criminal case if the party had an opportunity to defend.[13]

21. Considering the above, Ontario submits that a third step to the issue estoppel analysis be added to permit courts further discretion to choose a remedy that is just and fair in the circumstances of the case. With this added third step the issue estoppel analysis to be applied would be as follows:

i) Do the three preconditions for the application of issue estoppel apply? (i.e. same question has been decided in earlier proceedings; the earlier judicial decision was final; and the parties to the decision or their privies are the same in both proceedings).

ii) If so, would the application of issue estoppel nevertheless work an injustice in the circumstances of the case?[14]

iii) If the application of issue estoppel would work an injustice in the circumstances of the case, would it be just to admit the findings and conclusions of the prior proceeding into evidence, subject to the prejudiced party's right to lead evidence to contradict or lessen the weight of those findings and conclusions?

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[11] *Malik*, *supra*, para 46, **O.B.A., Tab 2, p. 25**; *Danyluk*, *supra*, para. 21-22, **A.B.A., Vol. I, Tab 9, pp. 128-129**

[12] *Malik*, *supra*, para 46, **O.B.A., Tab 2, p. 25**; Bryant, Lederman and Fuerst, *The Law of Evidence in Canada*, 3rd ed. (Markham, ON: LexisNexis Canada Inc., 2009), p. 1347, **O.B.A., Tab 15, p. 113**

[13] *Malik*, *supra*, para 44, **O.B.A., Tab 2, pp. 24-25**; See also *British Columbia (Workers' Compensation Board)*, *supra*, paras. 37 and 49, **O.B.A., Tab 3, pp. 40 and 43-44**, wherein the majority emphasized that the factors to consider in determining whether a complaint had been "appropriately dealt with" were whether the previous process provided an opportunity to the parties or their privies to know the case to be met and have a chance to meet it, whether the issue decided was essentially the same, and whether the previous adjudicator had concurrent authority to decide the matter.

[14] In the court-to-court context there is only a limited discretion not to apply issue estoppel. See *Danyluk*, *supra*, para. 62, **A.B.A., Vol. I, Tab 9, p. 146**

22. Although this third step is evidentiary based and not necessarily conducive to pure issues of law, it is conducive to prior findings and conclusions of facts or mixed fact and law (e.g. reasonable use of force by a police officer). Notably, early support for such a result is in the Ontario Court of Appeal's decision in *McIntosh v. Parent* wherein the court stated:

> Some think that this judgment must be specially pleaded (Cooper v. Molsons Bank (1896), 26 Can. S.C.R. 611), and will then be an estoppel, but there is high authority that, even when not pleaded, the judgment may be given in evidence, and will, as evidence, prove the facts quite apart from the doctrine of estoppel: Southern Pacific Railroad Co. v. United States (1897), 168 U.S. 1.[15]

23. Whether viewed as a third step in the issue estoppel analysis, or as its own doctrine such as the "Prior Proceeding Admissibility Doctrine" or "Malik Doctrine", this approach can assist courts in reaching the most just result. By way of example, applying this new remedy can have the benefit of balancing the policy considerations in the policing context in a manner that the "all or nothing" approach of issue estoppel cannot:

i) The concern of complainants not filing legitimate police complaints or exercising their full party rights thereby chilling or frustrating the police disciplinary system would be diminished because findings in the police disciplinary proceeding would not be binding. Complainants would still get their "day in court".

ii) If the findings and conclusions in the police disciplinary proceeding are not binding then there is less concern that complainants must fully participate in the disciplinary proceeding at additional cost.

iii) Courts, in addition to judicial review proceedings available following a police disciplinary proceeding, will continue to be an additional check on police conduct through the civil proceeding.

iv) While the litigation would not end with the police disciplinary proceeding and the defendants would have to face the same allegations in the civil proceeding, the defendants would have the benefit of the prior findings and conclusions from the disciplinary proceeding.

v) Admitting the findings and conclusions of the police disciplinary proceeding is respectful of the justice provided in that proceeding.

vi) While not as cost effective and time saving as issue estoppel, the admission of the findings and conclusions of the police disciplinary proceeding in the civil proceeding may still significantly reduce cost and delay.

vii) An inconsistent result or departure from the police disciplinary proceeding would need to be explained in the civil proceeding thus diminishing the adverse effect on

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[15] *McIntosh v. Parent*, [1924] O.J. No. 59, para. 14, **R.B.A., Tab 12, p. 49**; Bryant et. al, *The Law of Evidence in Canada, supra*, p. 1347, **O.B.A., Tab 15, p. 113**

> the administration of justice of inconsistent results, and any adverse effects regarding public confidence in police disciplinary proceedings and police accountability.

24. While in some cases it may be just to apply issue estoppel, and in others to not apply it, courts should not be limited to the traditional two "all or nothing" results of issue estoppel. Retaining the court's residual discretion to apply issue estoppel to preclude the re-litigation of issues decided in police disciplinary proceedings, and giving courts another remedy or tool that permits the court to appropriately balance the applicable policy considerations, best advances the court's ultimate goal of achieving a just and fair result in the litigation.

(b) The *Police Services Act* Does Not Bar Issue Estoppel

25. Ontario agrees with the Respondents' position that the statutory privilege provisions in the *Police Services Act* ("*PSA*") do not bar the application of issue estoppel. Specifically, the *PSA* does not contain a prohibition on the reliance or admissibility of a decision and such decisions are not secret.[16] Practically, disciplinary decisions are publicly available online through the Office of the Independent Police Review Director, the Ontario Civilian Police Commission, and the courts on judicial review. Ontario will not further add to the fulsome submissions of the Respondents on this issue.[17]

(c) Consequences of Not Applying Issue Estoppel in this Case

26. Ontario disputes the broad claim of the Respondents that the non-application of issue estoppel in this case means that issue estoppel can never be applied in the tribunal-to-court context if the tribunal is governed by Ontario's *Statutory Powers and Procedures Act* ("*SPPA*").[18]

27. The *SPPA* applies to many administrative tribunals in Ontario and sets out basic procedural requirements for tribunals.[19] However, each tribunal is empowered to develop its

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[16] *Police Services Act*, *supra*, s. 83 and 95, **A.B.A., Vol. III, Tab 53, p. 553-555 and 562**; *Police Services Act*, R.S.O. 1990, c. P.15, historical version January 1, 2003 to March 8, 2005, s. 69 and 80, **A.B.A., Vol. III, Tab 52, pp. 467-468 and 473**

[17] See Respondents' Factum, paras. 74-81

[18] See Respondents' Factum, paras. 61 and 90; *Statutory Powers and Procedures Act*, *supra*, **R.B.A., Tab 39, pp. 227-242**

[19] *Statutory Powers and Procedures Act*, *supra*, s. 3, **R.B.A., Tab 39, pp. 223-224**

own rules of procedure that may elaborate or expand on the procedural requirements of the Act.[20] Simply because the Tribunal is governed by the *SPPA* is not an adequate reason to refuse to apply issue estoppel. Each tribunal must be assessed on its own rules and the application of those rules, along with all the other applicable considerations.[21]

(d) Issue Estoppel in the Tribunal-to-Court Context

28. Ontario submits that this Court should reject the suggestion of the Appellant that only in exceptional circumstances should issue estoppel be applied in the tribunal-to-court context.[22]

29. Such a broad sweeping proposition to all administrative tribunals is untenable given the "…enormous range and diversity of the structures, mandates and procedures of administrative decision makers."[23] This Court further recognized the harm to the integrity of the administrative tribunal system of such an approach in *Danyluk*:

> These rules were initially developed in the context of prior court proceedings. They have since been extended, with some necessary modifications, to decisions classified as being of a judicial or quasi-judicial nature pronounced by administrative officers and tribunals. In that context the more specific objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided.[24]

30. Justice does not only spring from court rules of civil procedure. Provided parties receive adequate procedural safeguards there is no principled reason for categorizing justice before administrative tribunals as second tier or some lesser form of justice.

31. Indeed, while in the tribunal-to-tribunal context, this Court recently cautioned against an overemphasis on the procedure of the administrative tribunal in determining whether to apply a statutory provision curtaining the re-litigation of issues:

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[20] *Statutory Powers and Procedures Act*, *supra*, s. 25.1, **R.B.A., Tab 39, pp. 236-237**
[21] *Danyluk*, *supra*, para. 67, **A.B.A., Vol. I, Tab 9, p. 148**; *Schweneke v. Ontario*, [2000] O.J. No. 298 (C.A.), paras. 41-42, **R.B.A., Tab 31, pp. 134-135**
[22] Appellant's Factum, paras. 45 and 47
[23] *Danyluk*, *supra*, para. 62, **A.B.A., Vol. I, Tab 9, p. 146**, Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 3rd ed. (Markham, ON: LexisNexis Canada Inc., 2010) at p. 227-229, **O.B.A., Tab 16, pp. 116-118**
[24] *Danyluk*, *supra*, para. 21, **A.B.A., Vol. I, Tab 9, pp 128-129**

> The procedural or substantive correctness of the previous proceeding is not meant to be bait for another tribunal with a concurrent mandate…While the Tribunal may inquire into whether the parties had notice of the case to be met and were given an opportunity to respond, that does not mean that it can require that the prior process be a procedural mimic of the Tribunal's own, more elaborate one… As long as the complainants had a chance to air their grievances before an authorized decision-maker, the extent to which they received traditional "judicial" procedural trappings should not be the Tribunal's concern.[25]

32. After reviewing the common law finality doctrines this Court similarly stated as follows:

> These are the principles…[s]ingly and together, they are a rebuke to the theory that access to justice means serial access to multiple forums, or that more adjudication necessarily means more justice…[26]

PART IV – SUBMISSIONS ON COSTS

33. Ontario does not request costs and requests that no costs be awarded against it.

PART V – REQUEST FOR PERMISSION TO PRESENT ORAL ARGUMENT

34. Ontario requests permission to present oral argument not to exceed 10 minutes. The issues in this appeal will have a profound effect on the administration of justice in Ontario so it is important that Ontario have the opportunity to make oral submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, this 25th day of November, 2011

DENNIS W. BROWN, Q.C. **MALLIHA WILSON**

CHRISTOPHER P. THOMPSON

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[25] *British Columbia (Workers' Compensation Board)*, *supra,* paras. 38 and 49, **O.B.A., Tab 3, pp. 40 and 43-44**; see also *Rasanen v. Rosemount Instruments Ltd.*, [1994] O.J. No. 200 (C.A.), para. 37, **R.B.A., Tab 20, pp. 84-85**; *Schweneke*, *supra*, paras. 40-42, **R.B.A., Tab 31, pp. 134-135**

[26] *British Columbia (Workers' Compensation Board)*, *supra,* para. 35, **O.B.A., Tab 3, p. 40**; *Toronto (City)*, *supra*, paras. 44 and 51, **R.B.A., Tab 33, pp. 147 and 149**

PART VI – TABLE OF AUTHORITIES

PART VII - STATUTES AND REGULATIONS

***Police Services Act*, R.S.O. 1990, c. P.15 ("*PSA*"), ss. 50, 83, 95**

Liability for torts

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. R.S.O. 1990, c. P.15, s. 50 (1).

Indemnification of member of municipal police force

(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,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(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. R.S.O. 1990, c. P.15, s. 50 (2).

Agreement

(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. R.S.O. 1990, c. P.15, s. 50 (3); 1997, c. 8, s. 31 (1).

Council responsible for board's liabilities

(4) The council is responsible for the liabilities incurred by the board under subsections (1), (2) and (3). R.S.O. 1990, c. P.15, s. 50 (4).

Indemnification of member of O.P.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,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(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. R.S.O. 1990, c. P.15, s. 50 (5); 1997, c. 8, s. 31 (2).

Agreement

(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. R.S.O. 1990, c. P.15, s. 50 (6); 1997, c. 8, s. 31 (3); 2006, c. 35, Sched. C, s. 111 (3).

Exception, officer appointed under the *Interprovincial Policing Act, 2009*

(7) This section does not apply in respect of a police officer appointed under the *Interprovincial Policing Act, 2009*. 2009, c. 30, s. 51.

[…]

Hearings, procedure

83. (1) A hearing held under subsection 66 (3), 68 (5), 69 (8), 76 (9) or 77 (7) shall be conducted in accordance with the *Statutory Powers Procedure Act*. 2007, c. 5, s. 10.

Application of this section

(2) Subsections (3), (4), (5), (6), (11), (12), (13), (14), (15) and (16) apply to any hearing held under this Part. 2007, c. 5, s. 10.

Parties

(3) The parties to the hearing are the prosecutor, the police officer who is the subject of the hearing and, if the complaint was made by a member of the public, the complainant. 2007, c. 5, s. 10.

Notice and right to representation

(4) The parties to the hearing shall be given reasonable notice of the hearing, and each party may be represented by a person authorized under the *Law Society Act* to represent the party. 2007, c. 5, s. 13 (6).

Examination of evidence

(5) Before the hearing, the police officer and the complainant, if any, shall each be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence. 2007, c. 5, s. 10.

Police officer not required to give evidence

(6) The police officer who is the subject of the hearing shall not be required to give evidence at the hearing. 2007, c. 5, s. 10.

Non-compellability

(7) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties under this Part, except at a hearing held under this Part. 2007, c. 5, s. 10.

Inadmissibility of documents

(8) No document prepared as the result of a complaint made under this Part is admissible in a civil proceeding, except at a hearing held under this Part. 2007, c. 5, s. 10.

Inadmissibility of statements

(9) No statement made during an attempt at informal resolution of a complaint under this Part is admissible in a civil proceeding, including a proceeding under subsection 66 (10), 69 (12), 76 (12) or 77 (9), or a hearing under this Part, except with the consent of the person who made the statement. 2007, c. 5, s. 10.

Recording of evidence

(10) The oral evidence given at the hearing shall be recorded and copies of transcripts shall be provided on the same terms as in the Superior Court of Justice. 2007, c. 5, s. 10.

Release of exhibits

(11) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. 2007, c. 5, s. 10.

No communication without notice

(12) Subject to subsection (13), the person conducting the hearing shall not communicate directly or indirectly in relation to the subject matter of the hearing with any person, unless the parties receive notice and have an opportunity to participate. 2007, c. 5, ss. 10, 13 (7).

Exception

(13) The person conducting the hearing may seek legal advice from an advisor independent of the parties, and in that case the nature of the advice shall be communicated to them so that they may make submissions as to the law. 2007, c. 5, s. 10.

If Crown Attorney consulted

(14) If a Crown Attorney has been consulted, the person conducting the hearing may proceed to deal with the part of the complaint that, in his or her opinion, constitutes misconduct as defined in section 80 or unsatisfactory work performance, unless the Crown Attorney directs otherwise. 2007, c. 5, s. 10.

Hearing to continue

(15) If the police officer who is the subject of the hearing is charged with an offence under a law of Canada or of a province or territory in connection with the conduct that was the subject of the complaint, the hearing shall continue unless the Crown Attorney advises the chief of police or board, as the case may be, that it should be stayed until the conclusion of the proceedings dealing with the offence. 2007, c. 5, s. 10.

Photography at hearing

(16) Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* (photography at court hearing) apply with necessary modifications to the hearing and a person who contravenes subsection 136 (1), (2) or (3) of the *Courts of Justice Act*, as it is made to apply by this subsection, is guilty of an offence and on conviction is liable to a fine of not more than $2,000. 2007, c. 5, s. 10.

Six-month limitation period, exception

(17) If six months have elapsed since the day described in subsection (18), no notice of hearing shall be served unless the board, in the case of a municipal police officer, or the Commissioner, in the case of a member of the Ontario Provincial Police, is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. 2007, c. 5, s. 10.

Same

(18) The day referred to in subsection (17) is,

(a) in the case of a hearing in respect of a complaint made under this Part by a member of the public about the conduct of a police officer other than a chief of police or deputy chief of police,

(i) the day on which the chief of police received the complaint referred to him or her by the Independent Police Review Director under clause 61 (5) (a) or (b), or

(ii) the day on which the complaint was retained by the Independent Police Review Director under clause 61 (5) (c);

(b) in the case of a hearing in respect of a complaint made under this Part by a member of the public about the conduct of a chief of police or deputy chief of police, the day on which the board received the complaint referred to it by the Independent Police Review Director under subsection 61 (8); or

(c) in the case of a hearing in respect of a complaint made under this Part by a chief of police or board, the day on which the facts on which the complaint is based first came to the attention of the chief of police or board, as the case may be. 2007, c. 5, s. 10.

[…]

Confidentiality

95. Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations;

(b) to his or her counsel;

(c) as may be required for law enforcement purposes; or

(d) with the consent of the person, if any, to whom the information relates. 2007, c. 5, s. 10.

***Loi sur les services policiers*, L.R.O. 1990, c. P.15, ss. 50, 83, 95**

Responsabilité délictuelle

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. L.R.O. 1990, chap. P.15, par. 50 (1).

Indemnisation des membres d'un corps de police municipal

(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 :

a) pour sa défense dans une instance civile, s'il est conclu qu'il n'est pas responsable;

b) pour sa défense dans une instance criminelle, s'il est conclu qu'il n'est pas coupable;

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. L.R.O. 1990, chap. P.15, par. 50 (2).

Convention

(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. L.R.O. 1990, chap. P.15, par. 50 (3); 1997, chap. 8, par. 31 (1).

Responsabilité du conseil à l'égard des obligations de la commission de police

(4) Le conseil assume les obligations qu'engage la commission de police en vertu des paragraphes (1), (2) et (3). L.R.O. 1990, chap. P.15, par. 50 (4).

Indemnisation des membres de la Police provinciale

(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 :

a) pour sa défense dans une instance civile, s'il est conclu qu'il n'est pas responsable;

b) pour sa défense dans une instance criminelle, s'il est conclu qu'il n'est pas coupable;

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. L.R.O. 1990, chap. P.15, par. 50 (5); 1997, chap. 8, par. 31 (2).

Convention

(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. L.R.O. 1990, chap. P.15, par. 50 (6); 1997, chap. 8, par. 31 (3); 2006, chap. 35, annexe C, par. 111 (3).

Exception : agent de police nommé en vertu de la *Loi de 2009 sur les services policiers interprovinciaux*

(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*. 2009, chap. 30, art. 51.

[…]

Audiences et procédure

83. (1) Une audience tenue en application du paragraphe 66 (3), 68 (5), 69 (8), 76 (9) ou 77 (7) se déroule conformément à la *Loi sur l'exercice des compétences légales*. 2007, chap. 5, art. 10.

Application du présent article

(2) Les paragraphes (3), (4), (5), (6), (11), (12), (13), (14), (15) et (16) s'appliquent à toute audience tenue en application de la présente partie. 2007, chap. 5, art. 10.

Parties

(3) Sont parties à l'audience le poursuivant, l'agent de police qui fait l'objet de l'audience et, si la plainte a été déposée par un membre du public, le plaignant. 2007, chap. 5, art. 10.

Préavis et droit à un représentant

(4) Il est donné aux parties à l'audience un préavis raisonnable de l'audience, et chaque partie peut se faire représenter par une personne autorisée à la représenter en vertu de la *Loi sur le Barreau*. 2007, chap. 5, par. 13 (6).

Examen de la preuve

(5) Avant l'audience, l'agent de police et le plaignant, s'il y en a un, ont chacun la possibilité d'examiner toute preuve matérielle ou documentaire qui sera produite ou tout rapport dont le contenu sera présenté en preuve. 2007, chap. 5, art. 10.

Témoignage non obligatoire de l'agent de police

(6) L'agent de police qui fait l'objet de l'audience n'est pas tenu de témoigner à l'audience. 2007, chap. 5, art. 10.

Non-contraignabilité

(7) Nul n'est tenu de témoigner dans une instance civile relativement à des renseignements qu'il a obtenus dans l'exercice des fonctions que lui attribue la présente partie, sauf dans le cadre d'une audience tenue en application de la présente partie. 2007, chap. 5, art. 10.

Inadmissibilité des documents

(8) Aucun document préparé par suite du dépôt d'une plainte déposée en vertu de la présente partie n'est admissible dans une instance civile, sauf dans le cadre d'une audience tenue en application de la présente partie. 2007, chap. 5, art. 10.

Inadmissibilité des déclarations

(9) Aucune déclaration faite au cours d'une tentative de règlement à l'amiable d'une plainte entreprise en vertu de la présente partie n'est admissible dans une instance civile, y compris une instance tenue aux termes du paragraphe 66 (10), 69 (12), 76 (12) ou 77 (9), ou une audience prévue à la présente partie, sans le consentement de son auteur. 2007, chap. 5, art. 10.

Enregistrement des témoignages

(10) Les témoignages oraux recueillis à l'audience sont enregistrés et des copies de la transcription sont fournies suivant les mêmes conditions qu'à la Cour supérieure de justice. 2007, chap. 5, art. 10.

Remise de pièces

(11) Dans un délai raisonnable après le règlement définitif de l'affaire, les documents et objets présentés en preuve à l'audience sont rendus sur demande à la personne qui les a produits. 2007, chap. 5, art. 10.

Interdiction de communiquer sans préavis

(12) Sous réserve du paragraphe (13), la personne qui dirige l'audience ne communique ni directement ni indirectement avec aucune personne à propos de l'objet de l'audience, sauf si les parties sont préalablement avisées et ont la possibilité de participer. 2007, chap. 5, art. 10 et par. 13 (7).

Exception

(13) La personne qui dirige l'audience peut demander des conseils juridiques à un conseiller indépendant des parties, auquel cas la teneur des conseils leur est communiquée pour leur permettre de présenter des observations relatives au droit applicable. 2007, chap. 5, art. 10.

Cas où un procureur de la Couronne a été consulté

(14) Si un procureur de la Couronne a été consulté, la personne qui dirige l'audience peut traiter la partie de la plainte qui, à son avis, constitue un cas d'inconduite, au sens de l'article 80, ou d'exécution insatisfaisante du travail, sauf directive contraire du procureur de la Couronne. 2007, chap. 5, art. 10.

Poursuite de l'audience

(15) Si l'agent de police qui fait l'objet de l'audience est inculpé d'une infraction à une loi du Canada, d'une province ou d'un territoire relativement à la conduite qui faisait l'objet de la plainte, l'audience se poursuit à moins que le procureur de la Couronne n'indique au chef de police ou à la commission de police, selon le cas, qu'il y aurait lieu de la suspendre jusqu'à l'issue de l'instance portant sur l'infraction. 2007, chap. 5, art. 10.

Photographies à l'audience

(16) Les paragraphes 136 (1), (2) et (3) de la *Loi sur les tribunaux judiciaires* (photographies à l'audience) s'appliquent, avec les adaptations nécessaires, à l'audience et quiconque contrevient au paragraphe 136 (1), (2) ou (3) de cette loi, tel qu'il est rendu applicable par l'effet du présent paragraphe, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 $. 2007, chap. 5, art. 10.

Délai de prescription de six mois, exception

(17) S'il s'est écoulé six mois depuis le jour décrit au paragraphe (18), aucun avis d'audience n'est signifié à moins que la commission de police, dans le cas d'un agent de police municipal, ou le commissaire, dans le cas d'un membre de la Police provinciale de l'Ontario, n'estime qu'il était raisonnable, dans les circonstances, de retarder la signification de l'avis d'audience. 2007, chap. 5, art. 10.

Idem

(18) Le jour visé au paragraphe (17) correspond :

a) dans le cas d'une audience sur une plainte déposée par un membre du public en vertu de la présente partie au sujet de la conduite d'un agent de police autre qu'un chef de police ou un chef de police adjoint :

(i) soit au jour où le chef de police a reçu la plainte que lui a renvoyée le directeur indépendant d'examen de la police en application de l'alinéa 61 (5) a) ou b),

(ii) soit au jour où la plainte a été retenue par le directeur indépendant d'examen de la police en application de l'alinéa 61 (5) c);

b) dans le cas d'une audience sur une plainte déposée par un membre du public en vertu de la présente partie au sujet de la conduite d'un chef de police ou d'un chef de police adjoint, au jour où la commission de police a reçu la plainte que lui a renvoyée le directeur indépendant d'examen de la police en application du paragraphe 61 (8);

c) dans le cas d'une audience sur une plainte déposée par un chef de police ou une commission de police en vertu de la présente partie, en le jour où le chef de police ou la commission de police, selon le cas, a pris connaissance des faits sur lesquels se fonde la plainte. 2007, chap. 5, art. 10.

[…]

Secret professionnel

95. La personne qui participe à l'application de la présente partie est tenue au secret à l'égard des renseignements qu'elle obtient dans l'exercice des fonctions que lui attribue la présente partie et elle ne doit les communiquer à personne sauf, selon le cas :

a) dans la mesure où l'exige l'application de la présente loi et des règlements;

b) à son avocat;

c) dans la mesure où l'exige l'exécution de la loi;

d) avec le consentement de la personne en cause, le cas échéant. 2007, chap. 5, art. 10.

***Police Services Act*, R.S.O. 1990, c. P.15, ss. 69 and 80 (historical version January 1, 2003 to March 8, 2005)**

Hearings, procedure

***Statutory Powers Procedure Act* applies to hearings by chief or board**

69. (1) A hearing held under subsection 64 (7) or 65 (9) shall be conducted in accordance with the *Statutory Powers Procedure Act*. 1997, c. 8, s. 35.

Application of this section to hearings under this Part

(2) Subsections (3), (4), (5), (6), (7), (12), (13), (14), (15), (16) and (17) apply to any hearing held under this Part. 1997, c. 8, s. 35.

Parties

(3) The parties to the hearing are the prosecutor, the police officer who is the subject of the hearing and, if the complaint was made by a member of the public, the complainant. 1997, c. 8, s. 35.

Notice to parties and right to counsel

(4) The parties to the hearing shall be given reasonable notice of the hearing and each party may be represented by counsel or an agent. 1997, c. 8, s. 35.

Examination of evidence

(5) Before the hearing, the police officer shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence. 1997, c. 8, s. 35.

Same

(6) If the hearing is being conducted as a result of a public complaint, the complainant shall likewise be given an opportunity to examine evidence and reports before the hearing. 1997, c. 8, s. 35.

Police officer not required to give evidence

(7) The police officer who is the subject of the hearing shall not be required to give evidence at the hearing. 1997, c. 8, s. 35.

Non-compellability

(8) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under this Part. 1997, c. 8, s. 35.

Inadmissibility of documents

(9) No document prepared as the result of a complaint is admissible in a civil proceeding, except at a hearing held under this Part. 1997, c. 8, s. 35.

Inadmissibility of statements

(10) No statement made during an attempt at informal resolution of a complaint is admissible in a civil proceeding, including a proceeding under subsection 64 (15) or 65 (17) or a hearing held under this Part, except with the consent of the person who made the statement. 1997, c. 8, s. 35.

Recording of evidence

(11) The oral evidence given at the hearing shall be recorded and copies of transcripts shall be provided on the same terms as in the Superior Court of Justice. 1997, c. 8, s. 35; 2002, c. 18, Sched. N, s. 66.

Release of exhibits

(12) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. 1997, c. 8, s. 35.

No communication without notice to parties

(13) The person conducting the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or person's counsel or agent, unless the parties receive notice and have an opportunity to participate. 1997, c. 8, s. 35.

Exception

(14) However, the person conducting the hearing may seek legal advice from an advisor independent of the parties, and in that case the nature of the advice shall be communicated to them so that they may make submissions as to the law. 1997, c. 8, s. 35.

Hearing may proceed on part if Crown Attorney consulted

(15) If a Crown Attorney has been consulted, the person conducting the hearing may proceed to deal with the part of the complaint that, in his or her opinion, constitutes misconduct, as defined in section 74, or unsatisfactory work performance, unless the Crown Attorney directs otherwise. 1997, c. 8, s. 35.

Hearing to continue

(16) If the police officer who is the subject of the hearing is charged with an offence under a law of Canada or of a province or territory in connection with the conduct that was the subject of the complaint, the hearing shall continue unless the Crown Attorney advises the chief of police or board, as the case may be, that it should be stayed until the conclusion of the proceedings dealing with the offence. 1997, c. 8, s. 35.

Photography at hearing

(17) Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* (photography at court hearing) apply with necessary modifications to the hearing and a person who contravenes subsection 136 (1), (2) or (3) of the *Courts of Justice Act*, as it is made to apply by this

subsection, is guilty of an offence and on conviction is liable to a fine of not more than $2,000. 1997, c. 8, s. 35.

Six-month limitation period, exception

(18) If six months have elapsed since the facts on which a complaint is based first came to the attention of the chief of police or board, as the case may be, no notice of hearing shall be served unless the board (in the case of a municipal police officer) or the Commissioner (in the case of a member of the Ontario Provincial Police) is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. 1997, c. 8, s. 35.

[…]

Confidentiality, exceptions

80. Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations;

(b) to his or her counsel;

(c) as may be required for law enforcement purposes; or

(d) with the consent of the person, if any, to whom the information relates. 2002, c. 18, Sched. N, s. 70.

***Ministry of the Attorney General Act*, R.S.O. 1990, c. M.17, s. 5**

Functions

5. The Attorney General,

(a) is the Law Officer of the Executive Council;

(b) shall see that the administration of public affairs is in accordance with the law;

(c) shall superintend all matters connected with the administration of justice in Ontario;

(d) shall perform the duties and have the powers that belong to the Attorney General and Solicitor General of England by law or usage, so far as those duties and powers are applicable to Ontario, and also shall perform the duties and have the powers that, until the *Constitution Act, 1867* came into effect, belonged to the offices of the Attorney General and Solicitor General in the provinces of Canada and Upper Canada and which, under the provisions of that Act, are within the scope of the powers of the Legislature;

(e) shall advise the Government upon all matters of law connected with legislative enactments and upon all matters of law referred to him or her by the Government;

(f) shall advise the Government upon all matters of a legislative nature and superintend all Government measures of a legislative nature;

(g) shall advise the heads of the ministries and agencies of Government upon all matters of law connected with such ministries and agencies;

(h) shall conduct and regulate all litigation for and against the Crown or any ministry or agency of Government in respect of any subject within the authority or jurisdiction of the Legislature;

(i) shall superintend all matters connected with judicial offices;

(j) shall perform such other functions as are assigned to him or her by the Legislature or by the Lieutenant Governor in Council. R.S.O. 1990, c. M.17, s. 5.

***Loi sur le ministère du Procureur general*, L.R.O. 1990, c, M.17, s. 5**

Fonctions

5. Le procureur général :

a) est l'avocat du Conseil exécutif;

b) veille à ce que l'administration des affaires publiques soit conforme à la loi;

c) surveille tout ce qui touche l'administration de la justice en Ontario;

d) possède les pouvoirs et exerce les fonctions que la loi et les usages confèrent au procureur général et au solliciteur général d'Angleterre dans la mesure où ces attributions sont applicables à l'Ontario et, en outre, possède les pouvoirs et exerce les fonctions qui, jusqu'à l'entrée en vigueur de la *Loi constitutionnelle de 1867*, incombaient au procureur général et au solliciteur général dans les provinces du Canada et du Haut-Canada et qui, en vertu de cette loi, relèvent de la compétence de la Législature;

e) conseille le gouvernement sur toutes les questions de droit qui sont reliées à la législation et sur toutes les questions de droit qui lui sont renvoyées par le gouvernement;

f) conseille le gouvernement sur toutes les questions de nature législative et surveille l'application de toutes les mesures gouvernementales de nature législative;

g) conseille les chefs des ministères et organismes du gouvernement sur toutes les questions de droit qui les touchent;

h) assure ou dirige le déroulement des litiges pour et contre la Couronne ou des ministères et organismes du gouvernement relativement à toute question relevant de la compétence de la Législature;

i) surveille tout ce qui touche les charges judiciaires;

j) exerce les autres fonctions que lui confient la Législature ou le lieutenant-gouverneur en conseil. L.R.O. 1990, chap. M.17, art. 5.

***Human Rights Code*, R.S.O. 1990, c. H.19, s. 45.1**

Dismissal in accordance with rules

45.1 The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.

***Code des droits de la personne*, L.R.O. 1990, c. H.19, s. 45.1**

Rejet d'une requête conformément aux règles

45.1 Le Tribunal peut rejeter une requête, en tout ou en partie, conformément à ses règles, s'il estime que le fond de la requête a été traité de façon appropriée dans une autre instance. 2006, chap. 30, art. 5.

***Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 3 and 25.1**

Application of Act

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

Where Act does not apply

(2) This Act does not apply to a proceeding,

(a) before the Assembly or any committee of the Assembly;

(b) in or before,

(i) the Court of Appeal,

(ii) the Superior Court of Justice,

(iii) the Ontario Court of Justice,

(iv) the Family Court of the Superior Court of Justice,

(v) the Small Claims Court, or

(vi) a justice of the peace;

(c) to which the Rules of Civil Procedure apply;

(d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;

(e) at a coroner's inquest;

(f) of a commission appointed under the *Public Inquiries Act, 2009*;

(g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the

person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make; or

(h) of a tribunal empowered to make regulations, rules or by-laws in so far as its power to make regulations, rules or by-laws is concerned. R.S.O. 1990, c. S.22, s. 3 (2); 1994, c. 27, s. 56 (6); 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2009, c. 33, Sched. 6, s. 87.

[…]

Rules

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

Application

(2) The rules may be of general or particular application. 1994, c. 27, s. 56 (38).

Consistency with Acts

(3) The rules shall be consistent with this Act and with the other Acts to which they relate. 1994, c. 27, s. 56 (38).

Public access

(4) The tribunal shall make the rules available to the public in English and in French. 1994, c. 27, s. 56 (38).

***Legislation Act, 2006*, Part III**

(5) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 27, s. 56 (38); 2006, c. 21, Sched. F, s. 136 (1).

Additional power

(6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

***Loi sur l'exercice des compétences légales*, L.R.O. 1990, c. S.22, s. 3 et 25.1**

Champ d'application de la Loi

3. (1) Sous réserve du paragraphe (2), la présente loi s'applique aux instances tenues par un tribunal dans l'exercice de la compétence légale de décision qui lui est conférée par une loi de la Législature ou en vertu de celle-ci, s'il est tenu, par cette loi de la Législature ou en vertu de celle-ci ou autrement par la loi, d'entendre les parties ou de leur donner l'occasion d'être entendues avant de rendre une décision. L.R.O. 1990, chap. S.22, par. 3 (1); 1994, chap. 27, par. 56 (5).

Non-application de la Loi

(2) La présente loi ne s'applique pas :

a) aux instances devant l'Assemblée législative ou ses comités;

b) aux instances devant :

(i) la Cour d'appel,

(ii) la Cour supérieure de justice,

(iii) la Cour de justice de l'Ontario,

(iv) la Cour de la famille de la Cour supérieure de justice,

(v) la Cour des petites créances,

(vi) les juges de paix;

c) aux instances auxquelles s'appliquent les Règles de procédure civile;

d) aux instances devant un arbitre auxquelles s'applique la *Loi sur l'arbitrage* ou la *Loi sur les relations de travail*;

e) aux instances tenues dans le cadre des enquêtes de coroners;

f) aux travaux d'une commission nommée en vertu de la *Loi de 2009 sur les enquêtes publiques*;

g) aux travaux de la personne ou des personnes chargées de procéder à une enquête et de soumettre un rapport, accompagné ou non de recommandations, lorsque ce rapport vise à renseigner ou à conseiller la personne à laquelle il est destiné, et ne limite juridiquement pas la décision que cette personne a le pouvoir de rendre;

h) aux travaux d'un tribunal investi du pouvoir de prendre des règlements ou d'adopter des règles ou des règlements administratifs, en ce qui concerne l'exercice de ce pouvoir. L.R.O. 1990, chap. S.22, par. 3 (2); 1994, chap. 27, par. 56 (6); 2006, chap. 19, annexe C, par. 1 (1), (2) et (4); 2009, chap. 33, annexe 6, art. 87.

[…]

Règles

25.1 (1) Le tribunal peut adopter ses propres règles de pratique et de procédure. 1994, chap. 27, par. 56 (38).

Champ d'application

(2) Les règles peuvent être d'application générale ou particulière. 1994, chap. 27, par. 56 (38).

Compatibilité avec les lois

(3) Les règles sont compatibles avec la présente loi et avec les autres lois auxquelles elles se rapportent. 1994, chap. 27, par. 56 (38).

Accès au public

(4) Le tribunal met ses règles à la disposition du public en français et en anglais. 1994, chap. 27, par. 56 (38).

***Loi de 2006 sur la législation*, partie III**

(5) Les règles adoptées en vertu du présent article ne sont pas des règlements au sens de la partie III (Règlements) de la *Loi de 2006 sur la législation*. 1994, chap. 27, par. 56 (38); 2006, chap. 21, annexe F, par. 136 (1).

Pouvoir additionnel

(6) Le pouvoir que confère le présent article s'ajoute à tout pouvoir d'adoption de règles qu'une autre loi peut conférer au tribunal. 1994, chap. 27, par. 56 (38).