

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for the Province of Ontario)

BETWEEN:

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

Appellants/Respondents on Cross-Appeals
(Respondents)

-and-

RUTH SCHAEFFER, EVELYN MINTY AND DIANE PINDER

Respondents/Appellant on Cross-Appeal
(Appellants)

-and-

IAN SCOTT, DIRECTOR OF THE SPECIAL INVESTIGATIONS UNIT

Respondent/Appellant on Cross-Appeal
(Respondent)

-and-

**JULIAN FANTINO, COMMISSIONER OF THE
ONTARIO PROVINCIAL POLICE**

Respondent/Respondent on Cross-Appeals
(Respondent)

**FACTUM OF THE RESPONDENT/RESPONDENT ON CROSS-APPEALS
JULIAN FANTINO, COMMISSIONER OF THE
ONTARIO PROVINCIAL POLICE**

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Part I: OVERVIEW AND FACTS

Overview of the Commissioner's Position

1. Policing is a challenging profession. In the interests of public or officer safety, police officers may, if necessary, resort to the use of force that results in death or serious injury. When that happens, the officers involved in such incidents must not only secure the scene and deal with the personal impact of the event, but must also comply with the legislative scheme and policies that govern cooperation with the Special Investigations Unit (the "SIU"). The rights and obligations of officers involved in such incidents are complex and the potential repercussions are significant.

2. The recording of independent and contemporaneous notes is a fundamental duty of a police officer. Independent and contemporaneous notes taken by officers involved in an incident giving rise to involvement by the SIU are crucial for ensuring the integrity of the SIU investigation as well as the subsequent investigation conducted by the involved police service. Such notes are vital to the rule of law and the proper administration of justice as they may be referred to in subsequent criminal, civil or disciplinary proceedings or coroners inquests.

3. It is the position of the Respondent Julian Fantino, Commissioner of the OPP (the “**Commissioner**”)¹, that the legislative scheme² at issue provides officers involved in an SIU investigation with a right to counsel but does not authorize officers to receive legal advice on the content of their notes. It is fair and just, and consistent with the right to counsel set out in the legislative scheme, that officers are able to access legal advice about their rights and responsibilities prior to completing their notes. However, the right to counsel is not unlimited in this context. It is crucial that an officer draft his or her own notes without input, advice, suggestions or questions from a lawyer so as to ensure that the notes truly reflect the independent recollection of that officer. Involvement by a lawyer in the note-making process would compromise the independence of the notes, as well as the appearance of independence of the notes, and is contrary to the legislative purpose of ensuring public confidence in this process.

4. The Ontario Court of Appeal (the “**Court of Appeal**”) accepted the Commissioner’s interpretation of the legislative framework and the importance of shielding officers from communications that might compromise the independent recollection of the officer. The Court of Appeal’s declaration in this regard is consistent with fundamental principles of statutory interpretation, existing jurisprudence and sound public policy. In coming to this conclusion, the Court of Appeal neither erred in law nor created an unworkable solution.

¹ Julian Fantino served as OPP Commissioner from 2006-2010. He is currently a Member of Parliament and Minister for International Cooperation. The current OPP Commissioner is Christopher D. Lewis. While Julian Fantino is named in the style of cause, instructions in respect of this appeal come from the Office of the Commissioner.

² The legislative scheme includes section 113 of the *Police Services Act*, R.S.O. 1990, c. P.15 and Ontario Regulation 267/10 *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit* (the “**SIU Regulation**”).

5. On his cross-appeal, the Cross-Appellant Ian Scott, Director of the Special Investigations Unit (the “SIU Director”) takes the position that the Court of Appeal erred in permitting involved officers to access *any* legal advice prior to completion of their notes. The cross-appeal should be dismissed. It is fair and just that an officer involved in a serious incident giving rise to SIU involvement has an opportunity to immediately speak to a lawyer about his or her rights, responsibilities and the investigative process. Such advice will compromise neither the independence nor the contemporaneity of the notes and respects an officer’s right to counsel set out in the legislative scheme. The SIU Director’s interpretation of the legislative scheme represents an unnecessary intrusion into the right to counsel set out in the legislative scheme.

Facts

6. The Commissioner accepts the facts as set out by the Appellants.

Part II: RESPONSE TO QUESTIONS IN ISSUE

7. The Commissioner takes the following positions on the issues identified by the Appellants:

Questions 1 and 2: The legislative scheme at issue provides officers involved in an SIU investigation with a right to counsel but, properly interpreted in its full legislative context and in accordance with good public policy, that right to counsel does not authorize officers to receive legal advice on the content of their notes. The Court of Appeal's interpretation of the legislative framework is consistent with fundamental principles of statutory interpretation, existing jurisprudence and sound public policy.

Question 3: The Court of Appeal's interpretation of the legislative scheme is not "unworkable". The parameters established by the Court of Appeal set out clearly defined boundaries to guide lawyers in providing legal advice to officers involved in such incidents.

Question 4 (SIU Director's Cross-Appeal): The legislative scheme permits officers involved in an SIU investigation to obtain legal advice prior to completing their notes. The scope of permissible legal advice is consistent with the right to counsel set out in section 7(1) of the SIU Regulation and does not compromise the independence and contemporaneity of notes.

Part III: STATEMENT OF ARGUMENT

Questions 1 & 2: The right to counsel set out in section 7 (1) of the SIU Reg., interpreted in its full legislative context and in accordance with good public policy, does not permit officers to receive legal advice on the content of their notes

8. The Court of Appeal's interpretation of the legislative framework is consistent with fundamental principles of statutory interpretation, long-standing jurisprudence and sound public policy.

A. Statutory Interpretation

9. This Court has several times identified the appropriate approach to interpreting legislation:

The question is one of statutory interpretation and the object is to seek the intent of Parliament by reading the words of the provision in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament.

Canada (Canadian Human Rights Commission) v. Canada (Attorney General), 2011 SCC 53 at para. 33 (QL) – Commissioner's Book of Authorities, Tab 2

Rizzo & Rizzo Shoes Inc. Ltd. (Re), [1998] 1 S.C.R. 27 at para. 21 (QL) – Commissioner's Book of Authorities, Tab 3

10. Although often formulated in relation to statutes, this approach applies also to the interpretation of regulations.

Contino v. Leonelli-Contino, 2005 SCC 63 at para. 19 (QL) – Commissioner's Book of Authorities, Tab 4

i. Purpose

11. Unlike with a statute, there is no Hansard that could act as an external aid in identifying the purposes of a regulation such as the SIU Regulation. A regulation was recommended by the May 14, 1998, Consultation Report of the Honourable George Adams (the “**Consultation Report**”), however, and the predecessor of the current SIU Regulation was made later in 1998.

Ontario, 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 (Toronto: Ministry of the Attorney General, 1998) at 90-91 – Commissioner’s Book of Authorities, Tab 12

12. Recommendation 11 of the Consultation Report recommended that: “The regulation should stipulate that an officer is entitled to representation by legal counsel and/or a police association, provided the availability of such advisors will not lead to an unwarranted delay.” The minimal discussion related to this recommendation refers only to representation at SIU interviews. There is no reference to counsel reviewing an officer’s notes.

Consultation Report, *ibid*, at 90-91– Commissioner’s Book of Authorities, Tab 12

13. The Honourable George Adams produced a Review Report dated February 26, 2003 evaluating the implementation of his Consultation Report. The Review Report refers with concern to counsel reviewing an officer’s notes. It states, “In some cases, officers have received legal advice to refrain from completing their notes until they have

consulted with their lawyers. This is very problematic.” This suggests that, at least with respect to the report leading to the SIU Regulation, such review is not consistent with the purpose of the regulation.

Ontario, *Review Report on the Special Investigations Unit Reforms Prepared for the Attorney General for Ontario by the Honourable George W. Adams, Q.C.*, (Toronto: Ministry of the Attorney General, 2003) at 55 – Commissioner’s Book of Authorities, Tab 13

14. The Appellants argue that the Court of Appeal erred by adopting an “overly narrow view” of the legislative purpose that does not appropriately balance the need for an independent, impartial and effective investigation with the protection of the rights of police officers subject to investigation. The Appellants correctly assert that subject and witness officers are afforded rights pursuant to the legislative scheme. Those rights are important and ensure that officers are treated fairly. However, those rights are not the *purpose* of the legislation.

Reasons of the Court of Appeal (November 15, 2011) at para. 58 – Commissioner’s Book of Authorities, Tab 1

15. In *Browne v. Ontario (Civilian Commission on Police Services)*, the Ontario Court of Appeal concluded that the general legislative purpose of the *Police Services Act* is to increase public confidence in the provision of police services. This case related to a consideration of the complaint process (since replaced with a new public complaints system) under Part V of the *Police Services Act*. While officers are afforded procedural rights pursuant to Part V, those rights do not form part of the legislative purpose of the

Police Services Act. The Court of Appeal's view of the legislative purpose in this case is consistent with the approach in *Browne*.

Browne v. Ontario (Civilian Commission on Police Services), [2001] O.J. No. 4573 at paras. 66-67 (C.A.) (QL) – Commissioner's Book of Authorities, Tab 5

16. The legislative scheme was created not for the primary purpose of protecting police officers but to provide for an independent and impartial review of complaints to ensure public confidence and trust in the system. An interpretation of the legislative scheme that restricts officers from obtaining legal advice on the content of their notes is consistent with this purpose and gives effect to the overall scheme. Permitting legal advice on the content of an officer's notes creates a perception that an officer's personal interests trump his or her public duties and compromises the independence of the notes. This runs contrary to an effective and independent investigation that ensures public trust and confidence. The Court of Appeal's declaration is consistent with the purpose of the legislation.

Reasons of the Court of Appeal (November 15, 2011) at paras. 58, 76-78 – Commissioner's Book of Authorities, Tab 1

Peel (Regional Municipality) Police v. Ontario (Director, SIU), [2012] O.J. No. 2008 at paras. 34-40 (C.A.) (QL) [*Peel (Regional Municipality) Police*] – Commissioner's Book of Authorities, Tab 6

17. Even if the legislative purpose was more broadly defined as submitted by the Appellants³, an interpretation that officers can receive legal advice on their rights and responsibilities in the context of an SIU investigation but not on the content of their notes is consistent with that broader purpose. In such a scenario, officers still receive meaningful and timely legal advice. The Court of Appeal's declaration strikes the appropriate balance between the societal interest in an effective and independent investigation while affording procedural fairness to officers.

ii. Legislative Context

18. The meaning of the right to counsel set out in subsection 7(1) of the SIU Regulation must be considered and interpreted in the full context of the legislative scheme. Subsection 7(1) of the SIU Regulation does not exist in isolation. Its meaning must be discerned with reference to other provisions of the SIU Regulation and with a view to achieving a "harmonious and coherent interpretation of the entire scheme".

19. The legislative scheme does not provide an unlimited right to counsel. Subsection 7(1) does not expressly provide for legal advice at the note-taking stage. Subsection 7(2) of the SIU Regulation provides that the right to counsel does not apply if it would cause unreasonable delay in the SIU investigation. Subsection 7(3) provides that witness officers may not be represented by the same legal counsel as subject officers. These other subsections of section 7 provide context which suggests that the right to counsel in

³ The Appellants argue at paragraph 45 of their factum that the legislative purpose should reflect the Legislature's desire to balance society's interest in an independent and effective investigation with the need to accord fundamental rights and procedural fairness to witnesses and subject officers.

subsection 7(1) is intended to be limited so that it does not undermine the efficacy of the SIU investigation. In addition, as noted by the Court of Appeal, even the constitutional right to counsel set out in section 10(b) of the *Charter* is subject to reasonable limitation which need not be explicitly stated in legislation. Preserving the independence of notes by precluding involvement of counsel is certainly a reasonable limitation to subsection 7(1) considering no such power is expressly provided.

Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit, O. Reg.283/11, s. 7

Reasons of the Court of Appeal (November 15, 2011) at paras. 61-65, 77-78 – Commissioner’s Book of Authorities, Tab 1

Peel (Regional Municipality) Police, *supra* para. 16, at paras. 26-27 – Commissioner’s Book of Authorities, Tab 6

20. In considering the full legislative context, the presumption of coherence must also be considered:

It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically or to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal.

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5ed. (Markham, Ont.: LexisNexis, 2008) at 325 – Commissioner’s Book of Authorities, Tab 14

21. Subsection 7(1) of the SIU Regulation provides officers with the right to counsel in the context of an SIU investigation. Section 9 of the SIU Regulation compels officers to complete their notes “in accordance with his or her duty”. It is implicit that an officer’s duty pursuant to section 9 extends to producing notes that meet the traditional

hallmarks of reliability – the notes must reflect his or her own observations without influence or suggestion from others. Subsection 7(1) cannot be interpreted in a manner that compromises the officer's duty as set out in section 9. It should be interpreted to work logically with that section. The restrictions to the right to counsel built in to subsections 7 (1), (2) and (3) of the SIU Regulation do not compromise the officer's duty in section 9. The interpretation submitted by the Appellants, however, is not only contrary to the legislative purpose but is inconsistent with section 9. As set out in detail below, the involvement of a lawyer in the note-making process compromises the independence, and hence reliability, of notes as such notes will not truly reflect the observations of the officer without influence or suggestion from the lawyer.

SIU Regulation, *supra* para. 19, ss. 7(1), 9

22. Section 11 provides a further contextual reason for interpreting section 9 as not permitting an officer to seek legal advice on the content of his or her notes. These notes are used both by the SIU and by the chief of police. Section 11 of the SIU Regulation requires the chief of police to conduct investigations of incidents giving rise to SIU involvement. The purpose of such investigations is to review the conduct of involved officers as well as police service policies. In discharging this duty, the chief of police must be able to rely on the notes and the recollection of the officers based on those notes. The findings of the chief of police could result in disciplinary proceedings and sanctions against involved officers in addition to policy changes. If officers are found guilty of misconduct, they could face sanctions up to and including demotion and dismissal. The

reliability of the notes is necessary for this purpose as well as the purpose of the SIU investigation. Officers' notes that are neither independent nor seen to be independent negatively impact the credibility of investigations conducted by the SIU and the Commissioner.

SIU Regulation, *supra* para. 19, s. 11

Police Services Act, R.S.O. 1990, c. P-15, ss. 76, 85

B. *Jurisprudence and Public Policy*

23. All parties and intervenors to this appeal agree with the basic proposition that independent and contemporaneous notes are fundamental to the professional role of a police officer. The fair and proper administration of criminal justice requires that notes prepared by a police officer be reliable. It is a fundamental public duty of a police officer to prepare such notes.

Reasons of the Court of Appeal (November 15, 2011) at paras. 67, 69 – Commissioner's Book of Authorities, Tab 1

24. To ensure reliability, notes must be prepared independently and as soon as possible after the event. The jurisprudence recognizes that if an officer obtains information about the observations of other witnesses prior to preparing his or her notes, the notes may, consciously or unconsciously, become tainted with the observations of others, thus reducing the reliability of the notes and evidence from those notes. An officer's notes are an integral part of the information considered at critical stages of

decision-making in the criminal justice process. Where liberty and other important interests are at stake, it is crucial that decisions on whether or not to prosecute or to plead guilty following disclosure be based on reliable information. In addition, trials must be conducted with proper and reliable evidence so as to improve the likelihood of a just outcome and reduce the likelihood of wrongful convictions or other miscarriages of justice.

Reasons of the Court of Appeal (November 15, 2011) at paras. 69-70 – Commissioner’s Book of Authorities, Tab 1

R. v. Green, [1998] O.J. No. 3598 at paras. 19-24 (Ont. Ct. J. (Gen. Div.)) (QL) – Commissioner’s Book of Authorities, Tab 7

R. v. Walker, [2005] O.J. No. 6158 at para. 43 (S.C.J.) (QL) – Commissioner’s Book of Authorities, Tab 8

R. v. McKennon, [2004] O.J. No. 5021 at paras. 23-26, 35 (S.C.J.) (QL) – Commissioner’s Book of Authorities, Tab 9

25. Independent and contemporaneous notes also are important to ensure accountability of those who are assigned the powers of a police officer. As noted by the Ontario Superior Court of Justice in *R. v. Schertzer*:

... Police officers are given broad and extensive powers over their fellow citizens. It is important therefore that an accurate record of their use of those powers be made so that, among other things, at any later date, the manner in which they exercised those powers can be reasonably assessed. The requirement to make notes serves to protect both the officer and the citizen by requiring a contemporaneous record to be made of the events in which the officer is involved. The notes also assist in the proper prosecution of criminal and other offences because they are intended to

provide a reliable and timely record of the events underlying those offences.

R. v. Schertzer, [2007] O.J. No. 3560 at para. 16 (S.C.J.) (QL) - Commissioner's Book of Authorities, Tab 10

26. The Appellants submit that subsection 7(1) of the SIU Regulation permits a lawyer to become involved in the note-making process, whether through the provision of advice or assisting in fleshing out the content of the notes. As canvassed above, this position is inconsistent with proper principles of statutory interpretation. In addition, permitting such involvement is contrary to jurisprudence and is bad public policy as it would compromise the reliability of the notes and also create a perception in the minds of the public that the lawyer's involvement has influenced its content. Public confidence in the system would be undermined.

SIU Regulation, *supra* para. 19, s. 7(1)

27. It is noted, for example, that judicial decisions have recognized, as a matter of common experience and common sense (and confirmed by studies) that when a police officer, before creating his or her notes, confers with another person such as a colleague, there is a real risk that recollection will be innocently contaminated, other person's perspectives will be inadvertently incorporated and important elements can be subconsciously (or, on rare occasions, deliberately) suppressed.

R (on the application of Saunders and another) v Independent Police Complaints Commission and others, [2009] 1 All. E.R. 379 at paras. 12-13 (Q.B.) – Commissioner's Book of Authorities, Tab 11

28. While the officer's lawyer is not a witness to the incident, he or she is in a fiduciary relationship with his or her client officer. Lawyers are generally seen as trusted advisors. In such a position, a lawyer will have a significant amount of influence over his or her client. Questions, suggestions or comments by the lawyer will likely impact the content of the notes, even sub-consciously. Certain facts will likely be emphasized over other facts. The notes in some cases will reflect more of a justification for the officer's conduct than a factual account of the events.

29. A lawyer in this context is there to represent his or her client, the officer. Consequently, their concern, and obligation, is with respect to protecting his or her client's personal interests. In many instances, those interests may not necessarily be consistent with the public interest and the criminal justice system's need for reliable, comprehensive and factual notes. Notes that have been influenced by such consultation will inevitably reflect the legal advice provided or the questions asked by the lawyer. The resulting notes will not be truly independent because it has been influenced by an outside party and will not be perceived to be truly independent. The Commissioner simply cannot trust the reliability of notes prepared in such a fashion. As described by the Court of Appeal:

... A lawyer would only be doing his or her job in providing the police officer with information as to the ingredients of an offence or possible legal defence. Such advice is likely to influence how the police officer writes his notes. Consequently, the notes would not be a straightforward record of the officer's independent recollection but would reflect the lawyer's legal advice. An officer eager to have a sound basis

for a prosecution or a legally valid explanation for his or her own conduct would naturally emphasize and present the facts in accordance with the lawyer's advice.

In my view, the lawyer-induced refinements or qualifications that would almost certainly flow from lawyer involvement in the note-making process would undermine the very purpose of a police officer's notes, namely, to record the officer's independent and contemporaneous record of the incident. ...

Reasons of the Court of Appeal (November 15, 2011) at paras. 71-74 – Commissioner's Book of Authorities, Tab 1

30. Prohibiting officers from obtaining legal advice on the content of their notes, while permitting legal advice about officers' rights and responsibilities, strikes the proper balance between the public interest in an independent and effective investigation into possible misconduct by a police officer with an officer's private interests regarding possible criminal investigation and prosecution. It is good public policy in that it ensures that notes are independent and contemporaneous and are seen to be independent and contemporaneous.

Question 3: The Court of Appeal's interpretation of the legislative scheme is not "unworkable"

31. The Appellants refer to the Court of Appeal's interpretation as a "protocol". The Commissioner rejects this characterization. The "protocol" is simply the declaration resulting from the Court of Appeal's reasonable interpretation of the legislative scheme at issue. The use of the terms "protocol" by the Appellants and "compromise" by the SIU

Director is misleading as they suggest that the declaration is nothing more than a policy choice rather than a reasonable interpretation of the legislative scheme. The Court of Appeal simply states what is, and what is not, permissible pursuant to the legislative scheme. It also happens to be good public policy.

32. Officers are professional note-takers. The declaration made by the Court of Appeal is not complex or “unworkable”:

- Police officers involved in an SIU investigation are prohibited from having a lawyer vet their notes or assist in the preparation of their notes. The lawyer cannot advise the officer what to include in the notes other than that they should provide a full and honest account of the officer’s recollection of the incident in the officer’s words. This is straightforward and uncomplicated.
- Police officers are able to obtain legal advice as to the nature of their rights and duties with respect to SIU investigations, so long as such advice does not delay the completion of their notes before the end of their tour of duty. This is straightforward and uncomplicated.
- Police supervisors, as a matter of course, are prohibited from authorizing subject and witness officers to refrain from preparing notes to permit consultation with counsel regardless of the expiry of the officer’s shift. This is straightforward and uncomplicated.

33. In the immediate aftermath of a serious incident, a reminder to prepare full and comprehensive notes and advice as to that officer's rights and responsibilities is not "meaningless" as suggested by the Appellants. Such advice should help eliminate any confusion as to the process that will unfold so that the officer can focus on the important task of completing his or her notes while understanding what will happen with the notes and what is expected of the officer.

34. The Appellants, at paragraph 71 of their factum, list a series of questions which purport to set out questions that cannot be asked under the Court of Appeal's "protocol" but that should be asked to ensure that notes are complete. These are questions that could and should be asked by the SIU investigator. As professional note-takers, officers are trained to provide a proper account of the incident. While some of the questions may technically be open-ended, they may suggest potential defences to the officer. For the reasons set out in the previous section, the mere asking of those questions compromises the independence, and reliability, of the notes.

35. Lawyers are regularly called upon to make difficult professional and ethical decisions in the course of discharging their duty to their clients. In its *Rules of Professional Conduct* (the "**Rules**"), the Law Society of Upper Canada (the "**Law Society**") makes it clear that lawyers need to balance various interests and have a duty to more than just their client.

36. The Law Society regulates lawyers in the public interest. As part of that mandate, it imposes various restrictions on the activities of lawyers and sets out restrictions on the type of advice that can be provided to clients. In the context of criminal law, lawyers regularly deal with complex ethical issues while giving advice, interviewing witnesses and conducting trials. The parameters of appropriate legal advice in the context of an SIU investigation as set out by the Court of Appeal are relatively simple to follow. The Court of Appeal's interpretation does not prevent the provision of meaningful legal advice.

Rules, supra at para. 35, r. 2.02 (5)

Austin M. Cooper, "The 'Good' Criminal Law Barrister" (2004) 23:2 Advocates' Soc J 7 at paras. 7-14 – Commissioner's Book of Authorities, Tab 15

Question 4 (Cross-Appeal): The legislative scheme permits officers involved in an SIU investigation to obtain legal advice prior to completing their notes

37. Police officers involved in an SIU investigation have statutory authority to consult with legal counsel and have counsel present during an interview. A lawyer's advice to an officer to prepare full and comprehensive notes of the incident is consistent with an officer's duty pursuant to section 9 of the SIU Regulation. Such legal advice is consistent with the subsection 7(1) right to counsel and helps ensure fairness to the officers. There is nothing explicit or implicit in the SIU Regulation that would deny a police officer the right to legal advice as to the nature of his or her rights and obligations. Lawyers are not witnesses to the incident giving rise to the investigation. The provision of such legal

advice in this context compromises neither the independence nor the contemporaneity of an officer's notes, nor does it undermine the legislative scheme.

SIU Regulation, *supra* para. 19, s. 9

Reasons of the Court of Appeal (November 15, 2011) at para. 81 – Commissioner's Book of Authorities, Tab 1

38. It is the SIU Director's position that involvement of counsel prior to the preparation of notes will taint the officer's memory and consequently the independence of the notes. That position presupposes that counsel will not follow the Court of Appeal's declaration and, even perhaps unwittingly, provide advice that will compromise the reliability of the officer's notes. As stated above, lawyers regularly restrict the content of their legal advice in accordance with the *Rules* and ethical guidelines. As noted by the Court of Appeal:

As both counsel for the respondent officers and counsel for the Criminal Lawyers Association submitted, lawyers have an ethical obligation to advise clients in accordance with the law. I have confidence in the ethical standards of the legal profession and I am confident that a lawyer called upon to give the type of advice I have outlined in these reasons would not misuse or abuse the opportunity by providing improper assistance with regard to the content of the officer's notes.

Reasons of the Court of Appeal (November 15, 2011) at para. 83 – Commissioner's Book of Authorities, Tab 1

39. The Commissioner agrees with the Appellants that the obligations of a police officer may expose an officer to the risk of serious physical and psychological harm. The

use of lethal or near-lethal force by an officer will likely result in a criminal investigation by the SIU and a disciplinary investigation by the Commissioner. Officers are obliged by statute to cooperate with an investigation by the SIU wherein they or their colleagues face potential jeopardy. In the immediate aftermath of an incident serious enough to give rise to SIU involvement, it is fair and just, and consistent with the legislative scheme, that officers have the benefit of legal advice so as to help them understand their obligation to produce notes and their rights and responsibilities in this context.

Police Services Act, supra para. 22, s. 113(9)

40. Unlike the SIU Director, the Commissioner believes that counsel can provide basic advice of this nature without compromising the reliability of an officer's notes.

41. For the reasons set out above, the Court of Appeal's declaration permitting the provision of legal advice in respect of a police officer's rights and responsibilities pursuant to an SIU investigation is consistent with proper principles of statutory interpretation and with sound public policy.

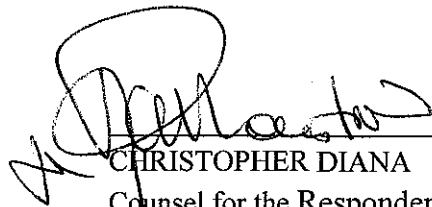
Part IV: COSTS

42. The Commissioner is not seeking costs.

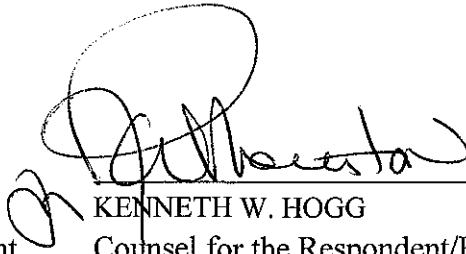
Part V: ORDER SOUGHT

43. The Commissioner respectfully requests that the appeal and cross-appeal be dismissed.

DATED at Orillia, this 1st day of February, 2013.



CHRISTOPHER DIANA
Counsel for the Respondent/Respondent
on Cross-Appeals, Julian Fantino,
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Part VI: AUTHORITIES CITED

<u>Authority Cited</u>	<u>Paragraph</u>
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<i>Contino v. Leonelli-Contino</i> , 2005 SCC 63 (QL)	10
<i>Peel (Regional Municipality) Police v. Ontario (Director, SIU)</i> , [2012] O.J. No. 2008 C.A.) (QL)	19
<i>R. v. Green</i> , [1998] O.J. No. 3598 (Ont. Ct. J. (Gen. Div.)) (QL)	24
<i>R. v. McKennon</i> , [2004] O.J. No. 5021 (S.C.J.) (QL)	24
<i>R. v. Schertzer</i> , [2007] O.J. No. 3560 (S.C.J.) (QL)	25
<i>R (on the application of Saunders and another) v Independent</i> <i>Police Complaints Commission and others</i> , [2009] 1 All. E.R. (Q.B.)	27
<i>R. v. Walker</i> , [2005] O.J. No. 6158 at para. 43 (S.C.J.) (QL)	24
<i>Rizzo & Rizzo Shoes Inc. Ltd. (Re)</i> , [1998] 1 S.C.R. 27 (QL)	9
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- Ontario, *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* (Toronto: Ministry of the Attorney General, 1998) 11, 12
- Ontario, *Review Report on the Special Investigations Unit Reforms Prepared for the Attorney General for Ontario by the Honourable George W. Adams, Q.C.*, (Toronto: Ministry of the Attorney General, 2003) 13
- Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5ed. (Markham, Ont.: LexisNexis, 2008) 20

Part VII: RELEVANT LEGISLATIVE PROVISIONS

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

...

Complaints by chief

76. (1) A chief of police may make a complaint under this section about the conduct of a police officer employed by his or her police force, other than the deputy chief of police, and shall cause the complaint to be investigated and the investigation to be reported on in a written report. 2007, c. 5, s. 10; 2009, c. 30, s. 57.

Same

(2) A chief of police who makes a complaint under subsection (1) is not a complainant for the purposes of this Part. 2007, c. 5, s. 10.

Notice

(3) Upon making a complaint about the conduct of a police officer, the chief of police shall promptly give notice of the substance of the complaint to the police officer unless, in the chief of police's opinion, to do so might prejudice an investigation into the matter. 2007, c. 5, s. 10.

Investigation assigned to another police force

(4) A municipal chief of police may, with the approval of the board and on written notice to the Commission, ask the chief of police of another police force to cause the complaint to be investigated and to report, in writing, back to him or her at the expense of the police force to which the complaint relates. 2007, c. 5, s. 10.

Same, re O.P.P. officer

(5) In the case of a complaint about the conduct of a police officer who is a member of the Ontario Provincial Police, the Commissioner may, on written notice to the Commission, ask the chief of police of another police force to cause the complaint to be investigated and to report, in writing, back to him or her at the expense of the Ontario Provincial Police. 2007, c. 5, s. 10.

Same, more than one force involved

(6) If the complaint is about an incident that involved the conduct of two or more police officers who are members of different police forces, the chiefs of police whose police officers are the subjects of the complaint shall agree on which police force, which may be one of the police forces whose police officer is a subject of the complaint or another police force, is to investigate the complaint and report, in writing, back to the other chief or chiefs of police and how the cost of the investigation is to be shared. 2007, c. 5, s. 10.

Same

(7) If the chiefs of police cannot agree under subsection (6), the Commission shall decide how the cost of the investigation is to be shared and,

- (a) shall decide which of the chiefs of police whose police officer is a subject of the complaint shall cause the complaint to be investigated and report in writing back to the other chief or chiefs of police; or
- (b) shall ask another chief of police to cause the complaint to be investigated and to report back in writing to the chiefs of police. 2007, c. 5, s. 10.

Unsubstantiated complaint

(8) If at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police is of the opinion that the complaint is unsubstantiated, the chief of police shall take no action in response to the complaint and shall notify the police officer who is the subject of the complaint in writing of the decision, together with a copy of the written report. 2007, c. 5, s. 10.

Hearing to be held

(9) Subject to subsection (10), if at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police believes on reasonable grounds that the police officer's conduct constitutes misconduct as defined in section 80 or unsatisfactory work performance, he or she shall hold a hearing into the matter. 2007, c. 5, s. 10.

Informal resolution

(10) If at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the chief of police may resolve the matter informally without holding a hearing, if the police officer consents to the proposed resolution. 2007, c. 5, s. 10.

Consent of police officer

(11) A police officer who consents to a proposed resolution under subsection (10) may revoke the consent by notifying the chief of police in writing of the revocation no later than 12 business days after the day on which the consent is given. 2007, c. 5, s. 10.

Disposition without a hearing

(12) If an informal resolution of the matter is attempted but not achieved, the following rules apply:

1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.
2. Subject to paragraph 3, the chief of police may impose on the police officer a penalty described in clause 85 (1) (d), (e) or (f) or any combination thereof and may take any other action described in subsection 85 (7) and may cause an entry concerning the matter, the penalty imposed or action taken and the police officer's reply to be made in his or her employment record.
3. If the police officer refuses to accept the penalty imposed or action taken, the chief of police shall not impose a penalty or take any other action or cause any entry to be made in the police officer's employment record, but shall hold a hearing under subsection (9). 2007, c. 5, s. 10.

Employment record expunged

(13) An entry made in the police officer's employment record under paragraph 2 of subsection (12) shall be expunged from the record two years after being made if during that time no other entries concerning misconduct or unsatisfactory work performance have been made in the record under this Part. 2007, c. 5, s. 10.

Agreement

(14) Nothing in this section affects agreements between boards and police officers or associations that permit penalties or actions other than those permitted by this section, if the police officer in question consents, without a hearing under subsection (9). 2007, c. 5, s. 10.

...

Powers at conclusion of hearing by chief of police, board or Commission

85. (1) Subject to subsection (4), the chief of police may, under subsection 84 (1),

- (a) dismiss the police officer from the police force;
- (b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;
- (c) demote the police officer, specifying the manner and period of the demotion;
- (d) suspend the police officer without pay for a period not exceeding 30 days or 240 hours, as the case may be;
- (e) direct that the police officer forfeit not more than three days or 24 hours pay, as the case may be;
- (f) direct that the police officer forfeit not more than 20 days or 160 hours off, as the case may be; or
- (g) impose on the police officer any combination of penalties described in clauses (c), (d), (e) and (f). 2007, c. 5, s. 10.

Same

(2) Subject to subsection (4), the board may, under subsection 84 (2),

- (a) dismiss the chief of police or deputy chief of police from the police force;
- (b) direct that the chief of police or deputy chief of police be dismissed in seven days unless he or she resigns before that time;
- (c) demote the chief of police or deputy chief of police, specifying the manner and period of the demotion;
- (d) suspend the chief of police or deputy chief of police without pay for a period not exceeding 30 days or 240 hours, as the case may be;

- (e) direct that the chief of police or deputy chief of police forfeit not more than three days or 24 hours pay, as the case may be;
- (f) direct that the chief of police or deputy chief of police forfeit not more than 20 days or 160 hours off, as the case may be;
- (g) impose on the chief of police or deputy chief of police any combination of penalties described in clauses (c), (d), (e) and (f). 2007, c. 5, s. 10.

Same

(3) The board shall promptly take any action that the Commission directs it to take under subsection 84 (3). 2007, c. 5, s. 10.

Notice needed

(4) The chief of police or board, as the case may be, shall not impose the penalties of dismissal or demotion under subsection (1) or (2) unless the notice of hearing or a subsequent notice served on the chief of police, deputy chief of police or other police officer indicated that they might be imposed if the complaint were proved on clear and convincing evidence. 2007, c. 5, s. 10.

Calculation of penalties

(5) Penalties imposed under clauses (1) (d), (e) and (f) and (2) (d), (e) and (f) shall be calculated in terms of days if the chief of police, deputy chief of police or other police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day. 2007, c. 5, s. 10.

Same

(6) If a penalty is imposed under clause (1) (e) or (2) (e), the chief of police, deputy chief of police or other police officer, as the case may be, may elect to satisfy the penalty by working without pay or by applying the penalty to his or her vacation or overtime credits or entitlements. 2007, c. 5, s. 10.

Additional powers

(7) In addition to or instead of a penalty described in subsection (1) or (2), the chief of police or board, as the case may be, may under subsection 84 (1) or (2),

- (a) reprimand the chief of police, deputy chief of police or other police officer;
- (b) direct that the chief of police, deputy chief of police or other police officer undergo specified counselling, treatment or training;
- (c) direct that the chief of police, deputy chief of police or other police officer participate in a specified program or activity;
- (d) take any combination of actions described in clauses (a), (b) and (c). 2007, c. 5, s. 10.

Notice of decision

(8) The chief of police or board, as the case may be, shall promptly give written notice of any penalty imposed or action taken under subsection (1), (2), (3) or (7), with reasons,

- (a) to the chief of police, deputy chief of police or other police officer who is the subject of the complaint;
- (b) in the case of a penalty imposed or action taken by a municipal chief of police, to the board; and
- (c) in the case of a penalty imposed or action taken in respect of a complaint made by a member of the public, to the complainant. 2007, c. 5, s. 10.

Employment record

(9) The chief of police or board, as the case may be, may cause an entry concerning the matter, the action taken and the reply of the chief of police, deputy chief of police or other police officer against whom the action is taken, to be made in his or her employment record, but no reference to the allegations of the complaint or the hearing shall be made in the employment record, and the matter shall not be taken into account for any purpose relating to his or her employment unless,

- (a) misconduct as defined in section 80 or unsatisfactory work performance is proved on clear and convincing evidence; or
- (b) the chief of police, deputy chief of police or other police officer resigns before the matter is finally disposed of. 2007, c. 5, s. 10.

Restriction on employment

(10) No person who is dismissed under section 84, or who resigns following a direction under section 84, may be employed as a member of a police force unless five years have passed since the dismissal or resignation. 2007, c. 5, s. 10; 2009, c. 33, Sched. 2, s. 60 (2).

...

Special investigations unit

113. (1) There shall be a special investigations unit of the Ministry of the Solicitor General. R.S.O. 1990, c. P.15, s. 113 (1).

Composition

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under Part III of the *Public Service of Ontario Act, 2006*. R.S.O. 1990, c. P.15, s. 113 (2); 2006, c. 35, Sched. C, s. 111 (4).

Idem

(3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators. R.S.O. 1990, c. P.15, s. 113 (3).

Acting director

(3.1) The director may designate a person, other than a police officer or former police officer, as acting director to exercise the powers and perform the duties of the director if the director is absent or unable to act. 2009, c. 33, Sched. 2, s. 60 (3).

Peace officers

(4) The director, acting director and investigators are peace officers. R.S.O. 1990, c. P.15, s. 113 (4); 2009, c. 33, Sched. 2, s. 60 (4).

Investigations

(5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. R.S.O. 1990, c. P.15, s. 113 (5).

Restriction

(6) An investigator shall not participate in an investigation that relates to members of a police force of which he or she was a member. R.S.O. 1990, c. P.15, s. 113 (6).

Charges

(7) If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution. R.S.O. 1990, c. P.15, s. 113 (7).

Report

(8) The director shall report the results of investigations to the Attorney General. R.S.O. 1990, c. P.15, s. 113 (8).

Co-operation of police forces

(9) Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations. R.S.O. 1990, c. P.15, s. 113 (9).

Co-operation of appointing officials

(10) Appointing officials shall co-operate fully with the members of the unit in the conduct of investigations. 2009, c. 30, s. 60.

Police Services Act

**Conduct and Duties of Police Officers Respecting Investigations by the
Special Investigations Unit**

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.

Ontario, *Rules of Professional Conduct*, L.S.U.C. (25 October 2012) Rule 1.03

1.03 INTERPRETATION

Standards of the Legal Profession

- 1.03 (1)** These rules shall be interpreted in a way that recognizes that
- (a) a lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public, and other legal practitioners honourably and with integrity,
 - (b) a lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario,
 - (c) a lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations, and institutions,
 - (d) the rules are intended to express to the profession and to the public the high ethical ideals of the legal profession,
 - (e) the rules are intended to specify the bases on which lawyers may be disciplined, and
 - (f) rules of professional conduct cannot address every situation, and a lawyer should observe the rules in the spirit as well as in the letter.

General Principles

- (2)** In these rules, words importing the singular number include more than one person, party, or thing of the same kind and a word interpreted in the singular number has a corresponding meaning when used in the plural.

2.02 QUALITY OF SERVICE

...

Dishonesty, Fraud etc. by Client or Others

- (5)** A lawyer shall not
- (a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;
 - (b) advise a client or any other person on how to violate the law and avoid punishment.

(5.0.1) A lawyer shall not act or do anything or omit to do anything in circumstances where he or she ought to know that, by acting, doing the thing or omitting to do the thing, he or she is being used by a client, by a person associated with a client or by any other person to facilitate dishonesty, fraud, crime or illegal conduct.