

Court File No. DC-23-00001401-00JR

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

B E T W E E N:

COURTNEY D'ARTHENAY

Applicant

and

ONTARIO PROVINCIAL POLICE and COMMISSIONER OF THE ONTARIO  
PROVINCIAL POLICE

Respondents

and

CANADIAN CIVIL LIBERTIES ASSOCIATION and PC JAIMEE MCBAIN

Intervenors

APPLICATION UNDER the *Judicial Review Procedure Act*

**FACTUM OF THE INTERVENOR, THE  
CANADIAN CIVIL LIBERTIES ASSOCIATION**

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5

William C. McDowell (28554G)

Tel: (416) 865-2949

Email: [wmcdowell@litigate.com](mailto:wmcdowell@litigate.com)

Alexa Jarvis (81765K)

Tel: (416) 865-3557

Email: [ajarvis@litigate.com](mailto:ajarvis@litigate.com)

Lawyers for the Intervenor,  
Canadian Civil Liberties Association

TO: **STOCKWOODS LLP**  
Barristers and Solicitors  
77 King Street West, Suite 4130  
P.O. Box 140  
TD North Tower, Toronto-Dominion Centre  
Toronto ON M5K 1H1

Justin Safayeni (58427U)  
Tel: (416) 593-3494  
Email: [justins@stockwoods.ca](mailto:justins@stockwoods.ca)

Tel: (416) 593-7200

Lawyers for the Applicant

AND **MINISTRY OF THE SOLICITOR GENERAL**  
TO: 655 Bay Street  
Suite 501  
Toronto ON M7A 0A8

Jason Tam (56960V)  
Email: [jason.tam@ontario.ca](mailto:jason.tam@ontario.ca)

Tel: (416) 526-1355

Lawyers for the Respondents, Ontario Provincial Police and  
Commissioner of the Ontario Provincial Police

AND **ONTARIO PROVINCIAL POLICE ASSOCIATION**  
TO: 119 Ferris Lane  
Barrie, ON L4M 2Y1

James A. Girvin (49785M)  
Email: [jgirvin@oppa.ca](mailto:jgirvin@oppa.ca)

Tel: (416) 526-1355

Lawyers for the Intervenor, PC Jaimee McBain

## **FACTUM OF THE INTERVENOR, THE CANADIAN CIVIL LIBERTIES ASSOCIATION**

### **PART I - INTRODUCTION**

1. The Canadian Civil Liberties Association (the “CCLA”) is a national, non-profit, independent, nongovernmental organization dedicated to promoting respect for and observance of fundamental human rights and civil liberties in Canada.

2. The CCLA has contributed to several proceedings concerning the scope of police powers.<sup>1</sup> In furtherance of its objective to promote police accountability in Canadian society, the CCLA offers brief submissions in this matter.

3. The CCLA submits that public complaints adjudicated under the *Police Services Act* (the “PSA”)<sup>2</sup> attract a high degree of procedural fairness. The content of that duty of fairness includes informative and transparent reasons in the context of police misconduct proceedings.

4. In addition to informing complainants, meaningful reasons in response to public complaints against police officers are critical to demonstrate to the public that such allegations are taken seriously and dealt with fairly. Reasons provide a way to allow the public to assess whether justice has been done.

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<sup>1</sup> See, for example, *Tadros v Peel Regional Police Services*, [2009 ONCA 422](#).

<sup>2</sup> *Police Services Act*, [R.S.O. 1990, c. P.15](#) (the “PSA”).

5. The CCLA further submits that the PSA, including section 68, which is at issue in this matter, must be interpreted and applied in a manner that is consistent with the broader purpose of the legislation: to promote public confidence in police and policing.

## **PART II - SUMMARY OF FACTS**

### **The Incident**

6. On September 29, 2020, Ontario Provincial Police (the “**OPP**”) Constable Jaimee McBain (“**Constable McBain**”) was operating a marked OPP vehicle in Midland, Ontario.<sup>3</sup> While approaching an intersection on Highway 12 and Jones Road, she struck Mr. Tyler Dorzyk with her vehicle.<sup>4</sup> Additional police officers arrived on the scene, including Sergeant Amy Thompson, as well as Emergency Medical Services. The paramedics attempted CPR on Mr. Dorzyk, however, he was pronounced dead at 12:22 am.<sup>5</sup>

7. Shortly thereafter, Mr. Dorzyk’s spouse, Courtney D’Arthenay, was informed of her partners passing.<sup>6</sup>

### **The SIU Investigation**

8. On December 21, 2020, the Special Investigations Unit (“**SIU**”) shared their report on the incident with the OPP Commissioner, Thomas Carrique (the “**Commissioner**”). The SIU

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<sup>3</sup> Investigative Report of the Office of Independent Police Review Director (“**OIPRD Report**”) at p. 39, Application Record of the Applicant dated November 15, 2023 (“**Applicant Record**”), Tab 8, p. 112.

<sup>4</sup> OIPRD Report at p. 39, Applicant Record, Tab 8, p. 112.

<sup>5</sup> OIPRD Report at p. 39, Applicant Record, Tab 8, p. 112

<sup>6</sup> OIPRD Report at p. 42, Applicant Record, Tab 8, p. 115.

concluded that there were “no grounds in the evidence to proceed with criminal chargers against” Constable McBain.

### **The Complaint**

9. On April 9, 2022, Ms. D’Arthenay filed a public complaint with the Office of the Independent Police Review Director (“the **OIPRD**”) pursuant to section 58 (1) of the PSA, alleging misconduct on the part of Constable McBain and other officers involved in the incident.<sup>7</sup>

10. Shortly thereafter, the OIPRD conducted an investigation into the complaint. The OIPRD completed its investigation on March 29, 2023, and shared their findings with the Commissioner in an “Investigative Report.”<sup>8</sup> The Report was also shared with Ms. D’Arthenay.<sup>9</sup>

11. The OIPRD concluded with respect to the allegations raised against Constable McBain that “reasonable grounds exist that misconduct occurred”.<sup>10</sup> The OIPRD similarly concluded that “reasonable grounds exist that misconduct occurred”<sup>11</sup> regarding Sergeant Thompson’s behavior.

12. The OIPRD advised the Commissioner that pursuant to section 68(3) of the PSA, the Commissioner could “hold a hearing into the matter unless [they] are of the opinion that the misconduct is not of a serious nature”.<sup>12</sup> The relevant section of the PSA reads as follows:

If on the review of the written report 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

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<sup>7</sup> D’Arthenay Affidavit at para 3, Applicant Record, p. 24.

<sup>8</sup> OIPRD Report at p. 35, Applicant Record, Tab 8, p. 108.

<sup>9</sup> Office of Professionalism, Respect, Inclusion and Leadership letter dated April 19, 2023 (the “**Decision**”), Applicant Record, p. 22.

<sup>10</sup> OIPRD Report at p. 38, Applicant Record, Tab 8, p. 148.

<sup>11</sup> OIPRD Report at p. 38, Applicant Record, Tab 8, p. 148

<sup>12</sup> OIPRD Report, p. 36, Applicant Record, Tab 8, p. 109.

informally without holding a hearing if the police officer and the complainant consent to the proposed resolution.<sup>13</sup>

### **The Commissioner Decision**

13. The Commissioner delegated his power of decision to determine whether the misconduct alleged against the two officers was serious.

14. On April 19, 2023, the OPP's Office of Professionalism, Respect, Inclusion and Leadership sent a letter to Ms. D'Arthenay on behalf of the Commissioner enclosing the OIPRD Report (the "**Decision**"). Superintendent T. Dobbin advised on behalf of the Commissioner as follows:

After careful consideration, on behalf of Commissioner Thomas Carrique, and in accordance with subsection 68(6) and 68(7) of the PSA, **it is my decision the misconduct was not of a serious nature and this matter can be addressed informally without holding a hearing.** In cases of substantiated misconduct I consider many mitigating and aggravating factors to determine the seriousness. These factors may include, but are not limited to: the public interest, intentions of the officer, consistency of dispositions, acknowledgement/remorse of the officer, any personal gain on behalf of the officer, a lack of understanding, the consequences/impact of the misconduct, employment history, deceit/dishonesty, duration of misconduct (single incident or protracted over time), rank and where the behaviour falls on the spectrum of misconduct.<sup>14</sup>

15. Ms. D'Arthenay did not consent to this resolution (despite the requirement for consent of the complainant expressly stated in section 68 (6)).

16. Pursuant to subsection 71(1) of the PSA, if a complainant is notified under subsection 66 (5) that the conduct complained of has been determined to be "not of a serious nature" then "the

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<sup>13</sup> PSA at s. 68 (6).

<sup>14</sup> Decision at p. 92, Applicant Record, Tab 2, p. 22 [E.A.]

complainant may within 30 days of such notification, ask the Independent Police Review Director to review the decision”.<sup>15</sup>

17. On July 5, 2023, Ms. D’Arthenay became aware of the option to challenge the Decision through Judicial review.<sup>16</sup> Ms. D’Arthenay commenced this Application for Judicial Review shortly thereafter, on August 1, 2023.

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

18. The CCLA has been granted leave to make submissions on the following two points:

- (i) It is both reasonable and necessary to demand a high degree of procedural fairness from decisions made by the Commissioner – specifically, the need for adequate reasons.
- (ii) The PSA ought to be interpreted and applied in a way that is consistent with its stated purpose.

- (a) **It is both reasonable and necessary to demand a high degree of procedural fairness from the OPP**

19. The CCLA submits that a high degree of procedural fairness is required with respect to decisions rendered by the Commissioner – particularly, the need for adequate reasons. This is justified by the public rights at stake and the nature of the PSA.

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<sup>15</sup> PSA at s. 71(1).

<sup>16</sup> D’Arthenay Affidavit at para 18, Applicant Record, p. 28.

20. The Supreme Court of Canada has repeatedly stated that public authorities making administrative decisions that affect the rights, privileges and interests of individuals owe a duty of procedural fairness.<sup>17</sup> The more important a decision is to the life of an affected individual, the greater the level of procedural fairness required.<sup>18</sup>

21. The precise content of the duty of procedural fairness is “flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected.”<sup>19</sup> The Supreme Court of Canada determined in *Baker v Canada* that, in certain circumstances, including when the decision has important significance for the individual, the duty of procedural fairness will require a written explanation for a decision.<sup>20</sup> The Court may consider a variety of factors in determining the degree of procedural fairness owed, including the nature of the decision, the statutory scheme and the rights affected.<sup>21</sup>

22. The regulation of occupations that engage the public generally attracts a higher degree of procedural fairness in the context of administrative proceedings. For example:

- (a) Courts have held that regarding proceedings under the *Medicine Act*, and the *Regulated Health Professions Act*, physicians subject to disciplinary proceedings are owed a “high degree of procedural fairness”.<sup>22</sup> This is further supported by the College itself in its own internal rules and procedures.<sup>23</sup> The *Regulated Health*

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<sup>17</sup> *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at para 14.

<sup>18</sup> *Angara v. Canada (Citizenship and Immigration)*, 2021 FC 376 at para 32.

<sup>19</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (“*Baker*”) at para 22.

<sup>20</sup> *Baker* at para 43.

<sup>21</sup> *Baker* at paras 23-26.

<sup>22</sup> *College of Physicians and Surgeons of Ontario v McIntyre*, 2017 ONSC 116 at para 19.

<sup>23</sup> *College of Physicians and Surgeons of Ontario v McIntyre*, 2017 ONSC 116 at para 19.



*Professions Act* expressly states that healthcare professions are to be regulated in the “public interest”.<sup>24</sup>

- (b) A high degree of procedural fairness is owed with respect to proceedings under the *Immigration and Refugee Protection Act*. Given the nature of decisions made by immigration officers (e.g., whether individuals can remain in Canada or not), more than minimal procedural fairness is owed. The *Immigration and Refugee Protections Act* expressly states that the *Act* is to be construed in a manner that “promotes accountability and transparency by enhancing public awareness” and that decisions should be made in a way that reflects the values of the *Canadian Charter of Rights and Freedoms*.<sup>25</sup>
- (c) Lawyers subject to disciplinary proceedings are owed procedural fairness at both the investigation and hearing stages. This is supported by the fact that the *Law Society Act* and *Regulations* confer power on the Law Society to regulate lawyers “in the public interest”.<sup>26</sup>

23. When disciplinary action is taken by administrative bodies in these contexts, transparency of reasons is critical from the public’s perspective. Immigration officers decide whether individuals can live or work in Canada; physicians protect our health; and lawyers protect our fundamental legal rights. When a member of these occupations is accused of misconduct, the public is entitled to assurance that those complaints are taken seriously. As stated by the Supreme

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<sup>24</sup> *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18 at s. 3.

<sup>25</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 3(3)(b) and (d).

<sup>26</sup> *Edwards v. Law Society of Upper Canada*, [2000 CanLII 5748](#) (ONCA), dismissed on appeal ([2001 SCC 80](#)).

Court in *Sheppard*, through adequate reasons, “interested members of the public can satisfy themselves that justice has been done, or not”.<sup>27</sup>

24. The Court of Appeal recently held in *Penate v. Martoglio* that reasons are essential to ensuring a fair adjudicative process:

Adequate reasons are not merely a precondition for deference but are also a basic entitlement of every litigant. [...] Providing adequate reasons also respects the dignity of losing litigants by demonstrating that the trial judge has considered their arguments and taken the time to explain why they lost, thereby increasing the likelihood that losing litigants will feel that they were treated fairly and appropriately [...] Conclusory reasons are not adequate. Reasons cannot merely repeat “stock phrases of what a trial judge is expected to do”: [...] The Supreme Court of Canada has held that such “responsive reasons” are the “primary mechanism by which decision makers demonstrate that they have actually listened to the parties”.<sup>28</sup>

25. There is perhaps no occupation that attracts greater public attention than policing. The Supreme Court has observed:

Police officers are tasked with fulfilling many important duties in Canadian society. These include preserving the peace, preventing crime, and protecting life and property. The execution of these duties sometimes necessitates interference with the liberty of individuals. **However, a free and democratic society cannot tolerate interference with the rights of law-abiding people as a measure of first resort. There is a line that cannot be crossed. The rule of law draws that line.** It demands that, when intruding on an individual’s freedom, the police can only act in accordance with the law.<sup>29</sup>

26. When members of the public submit complaints alleging police misconduct, they expect that a thorough investigation will be done and adequate reasons provided – especially when the rights at stake involve the lives of innocent civilians.

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<sup>27</sup> *R v. Sheppard*, 2002 SCC 26 at para 24.

<sup>28</sup> *Penate v Martoglio*, 2024 ONCA 166 at para 21-22.

<sup>29</sup> *Fleming v. Ontario*, 2019 SCC 45 at para 2 [E.A].

27. To require reasons “in brief compass”<sup>30</sup> explaining the basis for the Commissioner’s finding that the misconduct was “not of a serious nature” would not create an onerous obligation. Contrary to the submissions of some of the parties, the CCLA is not advocating that the Commissioner meet a standard of perfection, nor does the CCLA insist that this Court conduct a “line-by-line treasure hunt for error”.<sup>31</sup>

28. The CCLA submits that the reasons provided to the public and to the applicant must disclose the basic reasoning of the Commissioner in reaching the decision in relation to the misconduct alleged. Informative reasons ensure that members of the public also have an opportunity to understand and assess the decision rendered. This is especially important in cases where the underlying incident involves the death of a civilian through the actions of a duty police officer.

29. The scheme of the PSA also suggests a need for heightened degrees of procedural fairness. Beyond the Statement of Principles in Section 1 of the PSA, many elements of the statute reflect the importance of the public interest, for example:

- (a) Part II, which creates an independent review director (separate from the police);<sup>32</sup>
- (b) Subsection 26.1(5), which prevents police directors from being appointed to the office of the Independent Police Review Director;<sup>33</sup>

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<sup>30</sup> *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002 SCC 26 at para [32](#).

<sup>31</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para [102](#).

<sup>32</sup> PSA, at Part II.

<sup>33</sup> PSA, s. 26.1(5)

- (c) Subsection 26.1(8), which requires the Independent Police Review Director to file an annual report on its affairs which is made available to the public;<sup>34</sup>
- (d) Subsection 35(1), which requires meetings and hearings of Municipal Police Services Boards to be open to the public;<sup>35</sup>
- (e) Subsection 56(2), which requires the procedural rules established by the Independent Police Review Director to be made available to the public;<sup>36</sup>
- (f) Subsection 60 (7), which requires the Independent Police Review Director to provide written reasons in the event that they elect not to deal with a complaint;<sup>37</sup> and
- (g) Subsection 61(6), which requires the Independent Police Review Director to consider the nature of the complaint and the “public interest”.<sup>38</sup>

30. It follows that a high degree of procedural fairness should be required. The public has a strong interest in holding police accountable for potential misconduct – this is why the public interest is extensively baked into various aspects of the PSA. This Court has described the competing interests within the PSA as follows:

In a statutory regime that has transparency and public accountability as its fundamental purpose and where, in the legislation, there is no distinction between the procedural rights afforded to the officer and the procedural rights afforded to the complainant, natural justice

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<sup>34</sup> PSA, s. 26.1(8)

<sup>35</sup> PSA, s. 35(1)

<sup>36</sup> PSA, s. 56(2)

<sup>37</sup> PSA, s. 60 (7).

<sup>38</sup> PSA, s. 61(6)

and procedural fairness require that the complainant be afforded the same opportunities as the officer.<sup>39</sup>

31. Section 71 of the PSA permits complainants to challenge decisions of the Commissioner through the OIPRD, which reinforces the need for intelligible reasons. As held in *Baker*, written reasons take on importance where “the decision has important significance [and] when there is a statutory right of appeal”.<sup>40</sup> If individuals pursue their right to challenge a decision, for example, through section 71, the reviewing board must have adequate information to fully assess the underlying situation on the merits. This is necessary for the effective functioning of the reviewing boards, and for the public’s confidence in the complaints process under the PSA.

32. In *Wall v. Office of the Independent Police Review Director* a member of the public made a complaint against an arresting officer. Upon receipt of the investigative report, he learned that higher-ranking officers were involved. Mr. Wall then filed a complaint against the Chief of Police. In very brief reasons, the Director advised that he would not be proceeding with the complaint. This Court quashed the Director’s decision. The Director appealed to the Court of Appeal. The Court of Appeal emphasized the need for cogent and transparent reasons in the context of complaints filed by civilians under the PSA:

**Complaints regarding police misconduct raise issues that are important to society, both from the perspective of the complainant and that of the police services.** It is generally in the public interest that complaints which are not frivolous or vexatious or made in bad faith -- grounds upon which any complaint, timely or not, may be screened out -- be reviewed. [...] **The Director's reasons for screening out a complaint under s. 60(2) of the Police Services Act need not be lengthy. They need not be complex. But, as the Divisional Court observed, they must at least answer the question "Why?"** The complainant, and the court (for purposes of review), are entitled to know the rudiments of

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<sup>39</sup> *Figueiras v. (York) Police Services Board*, 2013 ONSC 7419 at para 43.

<sup>40</sup> *Baker* at para 43.

the explanation for why the complaint has been screened out. The Director's notification to Mr. Wall fails that test.<sup>41</sup> [E.A]

33. Similarly, *Figueiras v. (York) Police Services Board*, this Court described the need for transparency of reasons in the context of public complaints as follows:

The Board gave no reasons for its decision to deny the Delay Application. Similarly, the Board gave no reasons for declining to give the Applicant notice of the application or to receive submissions from him. [...] **The decision at issue is significant for the complainant since it terminated his right to pursue his complaint of mistreatment by the police; this was a complaint the OIPRD had determined was worthy of a hearing. It was given in the context of a statutory framework designed to increase the transparency of and public accountability for the way in which the conduct of the police is dealt with.** It is also a decision that is subject to judicial review. All these factors dictate that procedural fairness would require that the Board provide some reasons for its decision to deny the Delay Application.<sup>42</sup> [E.A]

34. Transparency of reasons is of great importance when a complaint made by a member of the public is dismissed, especially in a situation in which the OIPRD had determined that there was a substantial basis to believe that the officers had engaged in misconduct, but the Commissioner determined that any misconduct was not significant.

35. A complaining member of the public has a right to know why the death of a civilian is not considered significant. Without intelligible reasons, the complainant may be left feeling that police are afforded different or elevated rights under the PSA.

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<sup>41</sup> *Wall v. Office of the Independent Police Review Director*, 2014 ONCA 884 at paras [46, 62](#).

<sup>42</sup> *Figueiras v. (York) Police Services Board*, 2013 ONSC 7419 at para [62](#).

(b) **The OPP ought to interpret and apply section 68 in accordance with the broader legislative purpose of the PSA**

36. The CCLA further submits that the Commissioner has an obligation to interpret and exercise his discretion under section 68 of the PSA in accordance with its broader legislative purpose.

37. The fundamental principle of statutory interpretation in Canada is that “the words of an act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament”.<sup>43</sup>

38. As noted above, subsection 68 (6) permits the Commissioner to resolve a matter informally if there was misconduct that was “not of a serious nature”. In examining this provision specifically, it is worth noting that “misconduct of a serious nature” is not defined anywhere in the PSA.

39. Rather, section 80 of the PSA provides that a police officer is guilty of misconduct if they engage in any of 11 categories of proscribed activity.<sup>44</sup> The PSA does not characterize any of these categories as serious or not serious. No category of misconduct is defined as being necessarily serious. Accordingly, the decision about seriousness is left initially to the Director, and ultimately to the Commissioner. The PSA does not provide any guidance as to when a matter is or is not serious.

40. Given the apparent lack of guidance on what constitutes misconduct of a “serious nature”, the broader purpose of the legislative scheme must be considered by the Commissioner when

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<sup>43</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para [21](#).

<sup>44</sup> PSA at s. 80 (1).

exercising their discretion under this provision. Section 1 of the PSA sets out the following “Declaration of Principles”:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The need for co-operation between the providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve.<sup>45</sup>

41. These principles suggest that what constitutes “misconduct of a serious nature” must be interpreted in accordance with the broader purpose of serving the public and protecting our rights

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<sup>45</sup> PSA at s. 1.



as articulated in the *Charter*, such as the “right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”<sup>46</sup>

42. In *Ontario v. Browne*, for example, the Ontario Court of Appeal described the purpose of the PSA as follows:

The legislative purpose is demonstrably to increase public confidence in the provision of police services, including the processing of public complaints. That confidence is further protected legislatively by assigning to the Commission, under s. 72(8), responsibility for reviewing the decision of a chief of police regarding complaints from the public. [...] In the case of public complaints different considerations apply. The public may well feel that the police response will be more protective when a member of the public makes a complaint against an officer than when it is the chief of police himself or herself who complains. The public needs to feel confident in the complaints process. This means that its complaints justify different -- and more transparent -- processes than those internally driven.<sup>47</sup>

43. Similarly, in *Nobody v. Ontario (Civilian Police Commission)*, this Court identified the legislative purpose of the PSA as being to “create a complaints system that [is] transparent and accessible, in order to promote public confidence in police and policing.”<sup>48</sup> Accordingly, subsection 68 (6) ought to be interpreted in way that maintains transparent processes with respect public allegations of misconduct against police officers.

44. The CCLA submits that section 68 ought to be interpreted and applied in relation to three key considerations. First, the right to life and security of the person is not only a fundamental *Charter* right, but protection of the public is also the fundamental purpose of policing. Absent

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<sup>46</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 91(24), s. 7.

<sup>47</sup> *Ontario (Civilian Commission on Police Services) v. Browne*, 2001 CanLII 3051 (ONCA) at para 67.

<sup>48</sup> *Nobody v. Ontario (Civilian Police Commission)*, 2016 ONSC 7261 at para 14.

extraordinary circumstances, police misconduct that causes or contributes to the death of a citizen must be considered “serious”.

45. Second, subsection 68 (6) expressly states that to resolve a complaint informally without a hearing, “the police officer and the complainant” must “consent to the proposed resolution”.<sup>49</sup> The requirement of consent from the complainant serves as a means to ensure that the resolution process is transparent and fair. This requires input from the complainant. Failure to do so would seriously undermine public confidence in the complaints process under the PSA and directly undermine its legislative purpose.

46. Third, if the Commissioner fails to provide adequate reasons, this seriously undermines the PSA’s goal of creating transparent and fair complaints processes. A decision must identify which mitigating or aggravating factors were considered, the ways in which the Commissioner considered the findings of the OIPRD, or what disciplinary action, if any, will be taken. Any decision rendered must therefore reflect the underlying values and goals of the PSA, which are to create a transparent complaints process that galvanizes public confidence in police accountability.

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<sup>49</sup> PSA at s. 68 (6).

**PART IV - ORDER REQUESTED**

47. The CCLA makes these submissions to assist the Court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11 day of March, 2024.

*Alexa Jarvis*

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William C. McDowell / Alexa Jarvis

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

William C. McDowell (28554G)

Tel: (416) 865-2949

Email: [wmcowell@litigate.com](mailto:wmcowell@litigate.com)

Alexa Jarvis (81765K)

Tel: (416) 865-3557

Email: [ajarvis@litigate.com](mailto:ajarvis@litigate.com)

Lawyers for the Intervenor,  
Canadian Civil Liberties Association

## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *Tadros v. Peel Regional Police Services*, [2009 ONCA 442](#)
2. *Cardinal v. Director of Kent Institution*, [\[1985\] 2 S.C.R. 643](#)
3. *Angara v. Canada (Citizenship and Immigration)*, [2021 FC 376](#)
4. *Baker v. Canada (Minister of Citizenship and Immigration)*, [\[1999\] 2 SCR 817](#)
5. *College of Physicians and Surgeons of Ontario v. McIntyre*, [2017 ONSC 116](#)
6. *Edwards v. Law Society of Upper Canada*, [2000 CanLII 5748 \(ONCA\)](#)
7. *Penate v. Martoglio*, [2024 ONCA 166](#)
8. *Fleming v. Ontario*, [2019 SCC 45](#)
9. *R v. Sheppard*, [2002 SCC 26](#)
10. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#)
11. *Figueiras v. (York) Police Services Board*, [2013 ONSC 7419](#)
12. *Wall v. Office of the Independent Police Review Director*, [2014 ONCA 884](#)
13. *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [\[1998\] 1 SCR 27](#)
14. *Ontario (Civilian Commission on Police Services) v. Browne*, [2001 CanLII 3051 \(ONCA\)](#)
15. *Nobody v. Ontario (Civilian Police Commission)*, [2016 ONSC 7261](#)

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

*Police Services Act*, [R.S.O. 1990, c. P.15](#)

#### **Declaration of principles**

**1** Police services shall be provided throughout Ontario in accordance with the following principles:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The need for co-operation between the providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve. R.S.O. 1990, c. P.15, s. 1.

#### **Restriction**

**26.1 (5)** A person who is a police officer shall not be appointed as an employee in the office of the Independent Police Review Director. 2007, c. 5, s. 8.

#### **Annual report**

**26.1 (8)** After the end of each year, the Independent Police Review Director shall file with the Attorney General an annual report on the affairs of the office of the Independent Police Review Director, and shall make the report available to the public. 2007, c. 5, s. 8.

#### **Meetings**

**35 (1)** The board shall hold at least four meetings each year.

### **Publicly available**

**56** (2) Procedural rules established by the Independent Police Review Director under clause (1) (a) shall be in writing and shall be made available to the public in a readily accessible manner. 2007, c. 5, s. 10.

### **Notice**

**60** (7) If the Independent Police Review Director decides not to deal with a complaint, other than a complaint described in subsection (9), in accordance with this section, he or she shall notify the complainant and the chief of police of the police force to which the matter relates in writing of the decision, with reasons, and in the case of the chief of police, shall also give notice of the substance of the complaint. 2009, c. 30, s. 53 (1).

### **Same**

**61** (6) In exercising his or her discretion under subsection (5) or (5.1), the Independent Police Review Director shall consider the nature of the complaint and the public interest. 2009, c. 30, s. 54.

### **Complaints about police officer's conduct, Independent Police Review Director investigation**

**68** (1) The Independent Police Review Director shall cause every complaint retained by him or her under clause 61 (5) (c) to be investigated and the investigation to be reported on in a written report. 2007, c. 5, s. 10.

### **Unsubstantiated complaint**

**68** (2) If at the conclusion of the investigation the Independent Police Review Director is of the opinion that the complaint is unsubstantiated, he or she shall report that opinion in writing to the chief of police of the police force to which the complaint relates and the chief of police shall take no action in response to the complaint and shall notify the complainant and 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.

### **Matter referred to chief of police**

**68** (3) If at the conclusion of the investigation the Independent Police Review Director believes on reasonable grounds that the conduct of the police officer who is the subject of the complaint constitutes misconduct as defined in section 80 or unsatisfactory work performance, he or she shall refer the matter, together with the written report, to the chief of police of the police force to which the complaint relates. 2007, c. 5, s. 10.

### **Same**

**68** (4) If the Independent Police Review Director is of the opinion that the conduct of the police officer constitutes misconduct or unsatisfactory work performance that is not of a serious nature,

he or she, in referring the matter to the chief of police under subsection (3), shall so indicate. 2007, c. 5, s. 10.

### **Chief of police to hold hearing**

**68** (5) Subject to subsection (6), the chief of police shall hold a hearing into a matter referred to him or her under subsection (3) by the Independent Police Review Director. 2007, c. 5, s. 10.

### **Informal resolution**

**68** (6) If on the review of the written report 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 and the complainant consent to the proposed resolution. 2007, c. 5, s. 10.

### **Same**

**68** (7) Subsections 66 (8), (9), (10), (11), (12) and (13) apply, with necessary modifications, in relation to an informal resolution under subsection (6). 2007, c. 5, s. 10.

### **Request for review by Independent Police Review Director**

**71** (1) If a complainant has been notified under subsection 66 (2) that his or her complaint is unsubstantiated or under subsection 66 (5) that the conduct he or she complained of has been determined to be not of a serious nature, the complainant may, within 30 days of such notification, ask the Independent Police Review Director to review the decision. 2007, c. 5, s. 10.

### **Misconduct**

**80** (1) A police officer is guilty of misconduct if he or she,

- (a) commits an offence described in a prescribed code of conduct;
- (b) contravenes [section 46](#) (political activity);
- (c) engages in an activity that contravenes [subsection 49 \(1\)](#) (secondary activities) without the permission of his or her chief of police or, in the case of a municipal chief of police, without the permission of the board, being aware that the activity may contravene that subsection;
- (d) contravenes [subsection 55 \(5\)](#) (resignation during emergency);
- (e) commits an offence described in [subsection 79 \(1\)](#) or [\(2\)](#) (offences, complaints);
- (f) contravenes [section 81](#) (inducing misconduct, withholding services);
- (g) contravenes [section 117](#) (trade union membership);

- (h) deals with personal property, other than money or a firearm, in a manner that is not consistent with [section 132](#);
- (i) deals with money in a manner that is not consistent with [section 133](#);
- (j) deals with a firearm in a manner that is not consistent with [section 134](#);
- (k) contravenes a regulation made under paragraph 15 (equipment), 16 (use of force), 17 (standards of dress, police uniforms), 20 (police pursuits) or 21 (records) of subsection 135 (1). 2007, c. 5, s. 10.

***Regulated Health Professions Act, [1991, S.O. 1991, c. 18](#)***

**Duty of Minister**

**3** It is the duty of the Minister to ensure that the health professions are regulated and co-ordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board. 1991, c. 18, s. 3.

***Immigration and Refugee Protection Act, [S.C. 2001, c. 27](#)***

**Application**

**3** (3) This Act is to be construed and applied in a manner that

...

(b) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;

...

(d) ensures that decisions taken under this Act are consistent with the Canadian Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;

***Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), [1982, c 11, s 91\(24\)](#)***

**Life, liberty and security of person**

**7** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.



COURTNEY D'ARTHENAY  
Applicant

-and- ONTARIO PROVINCIAL POLICE et al  
Respondents

Court File No. DC-23-00001401-00JR

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT OSHAWA

**FACTUM OF THE INTERVENOR,  
CANADIAN CIVIL LIBERTIES ASSOCIATION**

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5

William C. McDowell (28554G)

Tel: (416) 865-2949

Email: [wmcowell@litigate.com](mailto:wmcowell@litigate.com)

Alexa Jarvis (81765K)

Tel: (416) 865-3557

Email: [ajarvis@litigate.com](mailto:ajarvis@litigate.com)

Lawyers for the Intervenor,  
Canadian Civil Liberties Association

Email for parties served:

Justin Safayeni: [justins@stockwoods.ca](mailto:justins@stockwoods.ca)

Jason Tam: [jason.tam@ontario.ca](mailto:jason.tam@ontario.ca)

James A. Girvin: [jgirvin@oppa.ca](mailto:jgirvin@oppa.ca)