

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

BETWEEN:

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

APPELLANTS  
(Appellants)

-and-

**RUTH SCHAEFFER, EVELYN MINTY AND DIANE PINDER; IAN SCOTT,  
DIRECTOR OF THE SPECIAL INVESTIGATIONS UNIT; JULIAN FANTINO,  
COMMISSIONER OF THE ONTARIO PROVINCIAL POLICE**

RESPONDENTS  
(Respondents)

-and-

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CHIEF CIVILIAN DIRECTOR, URBAN ALLIANCE ON RACE RELATIONS and  
CANADIAN POLICE ASSOCIATION AND POLICE ASSOCIATION OF ONTARIO**

INTERVENERS

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**FACTUM OF THE INTERVENER**  
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(Pursuant to Rules 42 of the *Rules of the Supreme Court of Canada*)

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## PART I — OVERVIEW

[1] The question presented by this appeal is whether police officers involved in an SIU investigation are entitled to delay performing their duty to make timely notes in order to advance their private interests by consulting with counsel first. The Criminal Lawyers' Association ("CLA") respectfully submits that police officers who are physically and psychologically capable of making notes should not be permitted to delay note-taking for any reason.

[2] This result is justified by the unique context presented by an SIU investigation. That context is largely undisputed. No one could (or does) gainsay the importance of police accountability in maintaining the rule of law, and none of the parties to this case disputes that police officers involved in an SIU investigation have a public-law duty to make timely, independent notes.

[3] Nor does any party claim that there is a danger that the *Charter* rights of police officers will be infringed by the SIU regime. Police officers involved in an SIU investigation are mandated by statute to cooperate in the SIU's investigation—they do not have a right to silence. They are not arrested or detained within the meaning of s. 10 of the *Charter*. And, importantly, even the Appellant Officers do not contend that the production of notes, or the possibility that they might later be used in a disciplinary proceeding, infringes the principle against self-incrimination, since police are protected by a broad direct and derivative-use immunity. In other words, none of the constitutionally-protected rights of subject and witness officers—to liberty, silence, protection against self-incrimination, or consultation with counsel—are infringed by an SIU investigation. A police officer's jeopardy from being compelled to participate in an SIU investigation is limited to the employment consequences of his or her misconduct.

[4] Given this context, and particularly the (entirely justified) protections afforded to police officers to guard their fundamental rights, the CLA respectfully submits that the real question in this appeal is whether, as the Court of Appeal found, police officers will be unable to perform their police duties if they are not permitted to consult with counsel first. The CLA submits that police officers can, and should, be trained about their rights and responsibilities in an SIU investigation. The Court of Appeal's compromise position on the right to consult with counsel is therefore unnecessary: police officers, highly trained in the use of force and required by their

employment to be capable of understanding and enforcing the law, are rightly expected to know what to do when a civilian is hurt or killed.

[5] In reaching this conclusion, this Court should reject the claim that defence counsel will interfere, or will be seen to interfere, with an SIU investigation, and should reaffirm the right of non-police witnesses—who are not under any duty to cooperate, and are afforded no protections against self-incrimination—to consult with counsel freely.

## **PART II — POSITION ON QUESTIONS IN ISSUE**

[6] The CLA respectfully submits that the Court of Appeal erred in finding that police officers involved in an SIU investigation have a right to consult with counsel prior to preparing their notes.

## **PART III — ARGUMENT**

### **A. The singular importance of police accountability**

[7] Police officers are invested with extraordinary powers, in particular a near-monopoly on the lawful use of force. In return, it is essential that they be held accountable for their actions. The rule of law itself is undermined if those who are charged with enforcing the law are seen to be able to break it with impunity.

[8] But accountability requires cooperation from police officers themselves. This reality is explicitly recognized in the *Police Services Act*<sup>1</sup> and underpins the *SIU Regulations*. Accountability is only possible if police officers, especially witness officers, treat their duty to assist in the investigation of possible police wrongdoing—including their duty to make timely duty-book notes—at least on par with their duties to assist in the investigation of any other suspected offence. In order to maintain public confidence, an officer's cooperation should be free from any hint of impropriety or ulterior motive—his or her only legitimate concern is ensuring the integrity of the SIU's investigation.

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<sup>1</sup> *Police Services Act*, s. 113 (9): “Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations.”



**B. This case does not raise concerns about self-incrimination**

[9] No one suggests that the SIU regime, however it is interpreted, infringes the constitutionally-protected rights of affected officers—in particular, no one claims that the duty to make notes violates the principle against self-incrimination.

[10] The *SIU Regulations* mandate that two parallel and distinct investigations occur in the aftermath of a triggering incident, neither of which raises concerns about self-incrimination. The first is a criminal investigation conducted by the SIU. The notes provided to the SIU by witness officers do not raise concerns about self-incrimination since those officers are, by definition, not the targets of the investigation. Meanwhile, the duty-book notes of subject officers are kept from the SIU. If a witness officer is later reclassified, the SIU returns the notes to the officer who wrote them. What's more, as the Court of Appeal noted, "it is accepted by the Attorney General that the notes and interviews of subject officers are **involuntary statements** that may not be used to incriminate the subject officer"; this protection extends both direct and derivative-use immunity for any information obtained from a subject-officer's notes prior to their return.<sup>2</sup>

[11] The second investigation mandated by the SIU regime is, in essence, regulatory. The *SIU Regulations* require the Chief of Police to investigate the incident and produce a report. This report can result in a disciplinary hearing and, ultimately, employment consequences for the subject officer. But no one has suggested that the use of a subject officer's notes in this context is procedurally unfair or violates an officer's right against self-incrimination.

[12] The only tangible complaint the Appellants make to the contrary is to allege that a subject officer's notes *could* become available to a prosecuting Crown *if* the subject officer uses those notes to refresh his or her recollection prior to testifying in a criminal trial.<sup>3</sup> But it is far from clear that the Appellants' interpretation of the law is correct. The case that the Appellants cite, *Mugford*, concerned a witness who refreshed his memory using a document that was otherwise admissible.<sup>4</sup> As noted above, the same is not true for police duty-book notes made during an SIU investigation: those notes are treated by the Attorney General as involuntary, and should, in any

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<sup>2</sup> *Court of Appeal Reasons*, A.R., Vol. 1, Tab 5, at para. 78 (emphasis added).

<sup>3</sup> *Appellants' Factum*, para. 62.

<sup>4</sup> *R. v. Mugford* (1990), 58 C.C.C. (3d) 172 (Nfld. C.A.) at 177 – 178 [Book of Authorities ("BA") Tab 10].

event, qualify for use-immunity under the principles identified by this Court in *Fitzpatrick*<sup>5</sup> and *White*.<sup>6</sup> Either way, this Court has held that evidence excluded from use at trial—whether for being involuntary or by operation of the *Charter*— is inadmissible not only for substantive use, but also for the purpose of cross-examination.<sup>7</sup> As a result, the CLA submits that the better view is that duty-book notes made under statutory compulsion by a subject officer could not be used in the manner the Appellants suggest.

### C. Timely note taking is an indispensable public duty

[13] Police officers are, first and foremost, holders of a public office that imposes a “general duty to prevent and investigate crime recognized at common law and given statutory force by the *Police Services Act*.”<sup>8</sup> The CLA submits that so long as a police officer holds office, these duties to the administration of justice must override any private interests an officer may have while on duty.

[14] The timely preparation of notes is an indispensable part of that public duty, as the *SIU Regulations* clearly contemplate. The CLA submits that, as a general principle, a police officer’s public duty in any investigation is to make notes as soon as it is practicable to do so. This is hardly a radical proposition: the OPP’s own Orders affirm this to be the case, stating that notes must be made “during an investigation or as soon thereafter as practicable, but at all times, prior to the conclusion of the member’s daily tour of duty.”<sup>9</sup> The Taman Inquiry confirmed that police notes should be made “as soon as possible”.<sup>10</sup> Numerous judicial decisions have affirmed that good note-taking is essential to the investigation and eventual prosecution of offences.<sup>11</sup> The

<sup>5</sup> *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154 [BA Tab 2].

<sup>6</sup> *R. v. White*, [1999] 2 S.C.R. 417 at para. 51 [BA Tab 14].

<sup>7</sup> *R. v. G (B.)*, [1999] 2 S.C.R. 475 at para. 32 [BA Tab 3]; *R. v. Calder*, [1996] 1 S.C.R. 660 at 677 [BA Tab 1].

<sup>8</sup> *R. v. Simpson* (1993), 79 C.C.C. (3d) 482 (Ont. C.A.) at para. 18 [BA Tab 12].

<sup>9</sup> *OPP Orders*, SIU’s Record, Tab 4 at 50; *Court of Appeal Reasons*, A.R., Vol. 1, Tab 5, at 75, para. 75.

<sup>10</sup> Manitoba, Taman Inquiry into the investigation and prosecution of Derek Harvey-Zenk, *Report of the Taman Inquiry* (Library and Archives Canada, 2008) (Commissioner: Hon. Roger Salhany, Q.C.) at pp. 133 – 137, SIU Auth, Tab 68.

<sup>11</sup> For example, see *R. v. McKennon*, [2004] O.J. No. 5021 (S.C.J.) at para. 23 [BA Tab 8]; *R. v. Lozanovski*, 2005 ONCJ 112 at para. 14 [BA Tab 6]; *R. v. Mercer*, [2006] O.J. No. 5522 (O.C.J.) at paras. 9 – 10 [BA Tab 9]; *R. v. Khan*, [2006] O.J. No. 2717 (O.C.J.) at para. 17 [BA Tab 5]; *R. v. Odgers*, 2009 ONCJ 287 at para. 16 [BA Tab 11].

limit—an officer’s duty is not to wait until the last possible moment to write notes, but to do so in the manner most consistent with the best interests of the administration of justice.

[15] As in nearly every other policing context, the interests of the administration of justice in an SIU investigation are best served by having officers complete their notes as soon as practicable. Taking an officer’s private interests out of the equation, there could be little doubt that, when it comes to duty-book notes, the sooner, the better. When the *SIU Regulations* state that an officer involved in an SIU investigation must “complete in full the notes on the incident in accordance with his or her duty”, the public duty being referred to requires that notes be taken as soon as it is possible to do so.

[16] Of course, no one expects police officers to be oblivious to the consequences of their note-taking. Officers are potentially subject to disciplinary sanctions based on their conduct, including that described in their notes. But police do not prepare notes out of self-interest, or in order to vindicate their actions or the actions of their colleagues. Rather, police notes, like other fruits of an investigation, are not the private property of an officer created for his or her benefit, but “the property of the public to be used to ensure that justice is done”.<sup>12</sup>

#### **D. The potential problems with delay**

[17] The delay required to consult with counsel in an SIU investigation will not always be negligible. Unlike a detained accused who chooses to exercise his or her right to counsel, there is not necessarily anyone monitoring the diligence exercised by a police officer who delays making notes in order to first speak with a lawyer. The recent changes to the *SIU Regulations* prohibiting joint retainers between subject and witness officers, along with the recent Law Society direction cautioning lawyers against accepting joint retainers from any involved officers while segregation is still in effect,<sup>13</sup> are likely to make it more difficult for a police officer to locate a lawyer who will be in a position to provide legal advice in a timely fashion.

[18] Aside from the concerns about fading memory cited by the SIU Director, delay also raises concerns about the possibility of collusion. The *SIU Regulations* mandate that police officers be

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<sup>12</sup> *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 [BA Tab 13].

<sup>13</sup> *LSUC Guidance*, Appellants’ Book of Authorities, Tab 28.

segregated, but it can be difficult to enforce this rule in the immediate aftermath of a triggering incident. While the segregation requirements are not lifted once an officer makes his or her duty-book notes—segregation remains in place until the SIU has completed its interviews<sup>14</sup>—collusion is far less likely to occur after an officer has reduced his or her recollections to writing. Requiring notes to be produced as soon as practicable thus has the added benefit of removing much of the opportunity for collusion between involved officers. At the very least, delaying note-taking creates the perception that there is an extended opportunity for police collusion.

**E. It is reasonable to expect police officers to be aware of their duties during an SIU investigation**

[19] The CLA submits that the limited access to counsel proposed by the Court of Appeal is unnecessary. Police officers are highly trained. As this Honourable Court has held, they are expected to kept abreast of the law and understand the scope of their legal authority when carrying out their duties.<sup>15</sup> Police are also trained in the use of force. It would be simple enough to supplement this training by instructing police officers that their duties do not end when a civilian is hurt or killed. This is surely a reasonable burden to impose. In general, police seem to be quite capable of fulfilling their duties to assist in the investigation of crime—it is seemingly only when another police officer is the suspect that their ability to perform their routine duty to make notes is suddenly called into question.

[20] Better training about the duties police have during an SIU investigation might also have the salutary effect of reducing the frequency with which other provisions of the *SIU Regulations* are ignored. For example, in the Minty investigation notification of the SIU was delayed; in the Schaeffer investigation, it appears that it was not until an hour after the shooting that the two involved officers, P.C. Wood and A/Sgt. Pullbrook, were advised not to speak to one another.<sup>16</sup> Better training overall would ensure that officers involved in an SIU incident know what to do, which would serve the interests of police, the SIU, and the public.

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<sup>14</sup> *SIU Regulations*, s. 6 (1).

<sup>15</sup> See *e.g. R. v. Grant*, 2009 SCC 32 at para. 75 [BA Tab 4].

<sup>16</sup> See *Factum of SIU Director*, p. 4, footnote 14; *Factum of the Respondent Families*, p. 13, para. 28 and p. 15, paras. 33 – 34.

**F. This Court should reject the arguments premised on misconduct by defence counsel**

[21] Defence lawyers can be trusted to give proper advice to police officers, and to follow any guidelines or constraints this Court imposes. This Court should reject any argument that defence counsel will act improperly in advising a police client. The problem with the practice at issue here is not that counsel will act improperly, but that the delay to consult with a lawyer is inconsistent with an officer's public duty to assist in an SIU investigation, and unnecessary given the use immunity afforded to police officers and the ease with which police could be given the same information during their regular training.

[22] This Court should also reject the argument, advanced by the Families in cross-appeal, that counsel will be unable to manage their professional obligations if called upon to represent more than one witness or subject officer. The concern the Families refer to is essentially moot: the Law Society of Upper Canada recently issued formal guidance for lawyers which suggests that "it is difficult to see how segregated police officers can properly be jointly represented".<sup>17</sup> In deference to the independence of the bar, this Court should decline to comment on an issue of legal professionalism that is not integral to the disposition of this appeal.

[23] Finally, this Court should reject the claim, advanced by the SIU Director, that the public would view with suspicion the zone of confidentiality created by solicitor-client privilege. In their reply, the Appellants correctly observe that public confidence in the SIU regime should be looked at through the eyes of a reasonable, well-informed lay person. Such a person would appreciate that solicitor-client privilege is a "fundamental legal right" that "stretches beyond the parties and is integral to the workings of the legal system itself",<sup>18</sup> and that lawyers, as officers of the court, are duty-bound by rules of professionalism which prohibit any attempt to improperly influence a witness.

**G. This Court should reaffirm the rights of non-police witnesses to consult with counsel**

[24] Nothing in the CLA's position should be taken to undermine the right of non-police witnesses to consult with counsel prior to cooperating with a criminal investigation. Police officers receive broad use-immunity, which removes any concerns about self-incrimination.

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<sup>17</sup> See *LSUC Guidance*, Appellants' Book of Authorities, Tab 28.

<sup>18</sup> *R. v. McClure*, 2001 SCC 14 at paras. 25, 31 [BA Tab 7].

**G. This Court should reaffirm the rights of non-police witnesses to consult with counsel**

[24] Nothing in the CLA's position should be taken to undermine the right of non-police witnesses to consult with counsel prior to cooperating with a criminal investigation. Police officers receive broad use-immunity, which removes any concerns about self-incrimination. There is, in this respect, no need to try to balance an officer's public duty to provide notes with his individual right against self-incrimination. Private citizens asked to assist in a police investigation are under no legal duty to cooperate and benefit from no comparable protection against self-incrimination. And, unlike trained police officers, it is not reasonable to expect private citizen to receive regular training about their legal rights and duties in the event that they should happen to witness a crime.

**PART IV — COSTS**

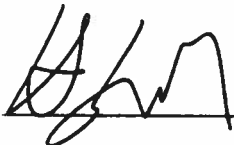
[25] The CLA requests that no costs be ordered.

**PART V — ORDER SOUGHT**

[26] The CLA seeks leave to make oral argument at the hearing of this appeal.

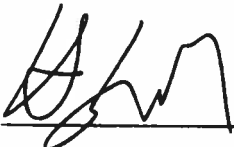
All of which is respectfully submitted

April 3, 2013



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**PER J. MICHAEL SPRATT**  
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**PART VI — TABLE OF AUTHORITIES**

<b>Case</b>	<b>Cited at ¶</b>
1. <i>R. v. Calder</i> , [1996] 1 S.C.R. 660 .....	12
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**PART VII — RELEVANT STATUTE AND REGULATIONS**

*Police Services Act*, R.S.O. 1990, c. P 15, s. s. 113 (9).

*Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, O. Reg. 267/10.

***Police Services Act, R.S.O. 1990, c. P 15, s. s. 113 (9).***

**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).

**Collaboration des corps de police**

(9) Les membres de corps de police collaborent entièrement avec les membres de l'unité au cours des enquêtes. L.R.O. 1990, chap. P.15, par. 113 (9).



***Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit, O. Reg. 267/10.***

**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.

## **Conduite et Obligations des Agents de Police en ce qui Concerne les Enquêtes de l'unité des Enquêtes Spéciales, Reg. 267/10**

### **Définitions et interprétation**

**1. (1)** Les définitions qui suivent s'appliquent au présent règlement.

«agent impliqué» Agent de police dont la conduite semble, de l'avis du directeur de l'UES, avoir causé le décès ou les blessures graves qui font l'objet d'une enquête. («subject officer»)

«agent témoin» Agent de police qui, de l'avis du directeur de l'UES, est en cause dans l'incident qui fait l'objet d'une enquête, mais qui n'est pas un agent impliqué. («witness officer»)

«UES» L'unité des enquêtes spéciales constituée en application de l'article 113 de la Loi. («SIU») Règl. de l'Ont. 267/10, par. 1 (1).

**(2)** Le directeur de l'UES peut désigner un enquêteur de l'UES pour agir à sa place et exercer les pouvoirs et fonctions que lui attribue le présent règlement et, s'il désigne un remplaçant, toute mention du directeur de l'UES dans le présent règlement, sauf le présent paragraphe, s'entend du directeur de l'UES ou de son remplaçant désigné. Règl. de l'Ont. 267/10, par. 1 (2).

**(3)** Pour l'application du présent règlement, une personne nommée à titre d'agent de police en vertu de la *Loi de 2009 sur les services policiers interprovinciaux* est réputée :

- a) membre de la Police provinciale de l'Ontario, si elle a été nommée à ce titre par un membre de ce corps de police;
- b) membre d'un corps de police municipal, si elle a été nommée par un membre de ce corps de police;
- c) membre du corps de police municipal qui relève d'une commission de police, si elle a été nommée par un membre de cette commission de police. Règl. de l'Ont. 267/10, par. 1 (3).

**(4)** L'agent de police nommé en vertu de la *Loi de 2009 sur les services policiers interprovinciaux* se conforme à toutes les directives qui lui sont données pour l'application du présent règlement par le chef de police du corps de police dont il est réputé membre ou par le remplaçant désigné de ce chef de police nommé en vertu du paragraphe 2 (1). Règl. de l'Ont. 267/10, par. 1 (4).

### **Remplaçant désigné du chef de police**

**2. (1)** Le chef de police peut désigner un membre du corps de police qui n'est pas un agent impliqué ou un agent témoin dans l'incident pour agir à sa place et exercer ses pouvoirs et fonctions dans toute affaire concernant un incident faisant l'objet d'une enquête de l'UES. Règl. de l'Ont. 267/10, par. 2 (1).

**(2)** Si le chef de police désigne un remplaçant en vertu du paragraphe (1), la mention du chef de police dans le présent règlement, sauf le présent article, s'entend du chef de police ou de son remplaçant désigné. Règl. de l'Ont. 267/10, par. 2 (2).

(3) La personne désignée en vertu du paragraphe (1) doit être un officier supérieur. Règl. de l'Ont. 267/10, par. 2 (3).

#### **Avis à l'UES**

**3.** Le chef de police avise immédiatement l'UES d'un incident mettant en cause un ou plusieurs de ses agents de police qui peut raisonnablement être considéré comme relevant du mandat d'enquête de l'UES, tel qu'il est énoncé au paragraphe 113 (5) de la Loi. Règl. de l'Ont. 267/10, art. 3.

#### **Protection des lieux de l'incident**

**4.** Le chef de la police veille à ce que le corps de police protège les lieux d'une manière conforme aux règlements, aux politiques et aux pratiques habituelles du corps de police concernant les incidents graves en attendant que l'UES prenne en charge les lieux de l'incident. Règl. de l'Ont. 267/10, art. 4.

#### **UES en tant qu'enquêteur principal**

**5.** L'UES est l'enquêteur en chef dans l'enquête sur l'incident et a préséance sur tout corps de police dans le cadre de l'enquête. Règl. de l'Ont. 267/10, art. 5.

#### **Isolement des agents de police en cause dans l'incident**

**6. (1)** Le chef de police isole les uns des autres, autant qu'il est matériellement possible de le faire, les agents de police en cause dans l'incident tant que l'UES n'a pas terminé ses entrevues. Règl. de l'Ont. 267/10, par. 6 (1).

**(2)** Un agent de police en cause dans l'incident ne doit pas communiquer, directement ou indirectement, avec un autre agent de police en cause dans l'incident au sujet de leur participation à l'incident tant que l'UES n'a pas terminé ses entrevues. Règl. de l'Ont. 267/10, par. 6 (2); Règl. de l'Ont. 283/11, art. 1.

#### **Droit à un avocat**

**7. (1)** Sous réserve du paragraphe (2), l'agent de police a le droit de consulter un avocat ou un représentant d'une association de policiers et a droit à la présence d'un avocat ou d'un représentant d'une telle association pendant son entrevue avec l'UES. Règl. de l'Ont. 267/10, par. 7 (1).

**(2)** Le paragraphe (1) ne s'applique pas si, de l'avis du directeur de l'UES, le fait d'attendre un avocat ou un représentant d'une association de policiers retarderait l'enquête de façon déraisonnable. Règl. de l'Ont. 267/10, par. 7 (2).

**(3)** Les agents témoins ne peuvent pas être représentés par le même avocat que les agents qui font l'objet d'une enquête. Règl. de l'Ont. 283/11, art. 2.

#### **Entrevue des agents témoins**

**8. (1)** Sous réserve des paragraphes (2) et (5) et de l'article 10, l'agent témoin rencontre l'UES et répond à toutes ses questions dès qu'il reçoit une demande d'entrevue de celle-ci et au plus tard 24 heures après la demande s'il existe des motifs valables de retarder l'entrevue. Règl. de l'Ont. 267/10, par. 8 (1).

**(2)** L'UES doit présenter la demande d'entrevue en personne. Règl. de l'Ont. 267/10, par. 8 (2).

**(3)** L'UES fait enregistrer l'entrevue et en donne une copie à l'agent témoin dès que celle-ci est disponible. Règl. de l'Ont. 267/10, par. 8 (3).

(4) L'entrevue ne doit pas être enregistrée sur bande sonore ou bande vidéo sans le consentement de l'agent témoin. Règl. de l'Ont. 267/10, par. 8 (4).

(5) Le directeur de l'UES peut demander qu'une entrevue ait lieu après le délai fixé au paragraphe (1). Règl. de l'Ont. 267/10, par. 8 (5).

#### **Notes sur l'incident**

**9. (1)** L'agent témoin rédige des notes complètes sur l'incident conformément à son obligation et, sous réserve du paragraphe (4) et de l'article 10, les fournit au chef de police au plus tard 24 heures après que l'UES en a fait la demande. Règl. de l'Ont. 267/10, par. 9 (1).

(2) Sous réserve du paragraphe (4) et de l'article 10, le chef de police fournit des copies des notes d'un agent témoin à l'UES à sa demande, au plus tard 24 heures après la demande. Règl. de l'Ont. 267/10, par. 9 (2).

(3) L'agent impliqué rédige des notes complètes sur l'incident conformément à son obligation, mais aucun membre du corps de police ne doit en fournir des copies à la demande de l'UES. Règl. de l'Ont. 267/10, par. 9 (3).

(4) Le directeur de l'UES peut autoriser le chef de police à fournir des copies des notes après le délai fixé au paragraphe (2). Règl. de l'Ont. 267/10, par. 9 (4).

(5) Les notes prises en vertu des paragraphes (1) et (3) doivent être terminées à la fin de la période de service de l'agent, sous réserve d'une autorisation contraire du chef de police. Règl. de l'Ont. 283/11, art. 3.

#### **Avis informant du statut d'agent impliqué ou d'agent témoin**

**10. (1)** Avant de demander une entrevue avec un agent de police ou avant de demander une copie de ses notes sur l'incident, l'UES avise par écrit le chef de police et l'agent de police du fait que ce dernier est considéré comme un agent impliqué ou un agent témoin. Règl. de l'Ont. 267/10, par. 10 (1).

(2) L'UES avise par écrit le chef de police et l'agent de police si, à un moment quelconque après les avoir d'abord avisés du fait que l'agent de police est considéré comme un agent impliqué ou un agent témoin, le directeur de l'UES décide que l'agent qui était considéré comme un agent impliqué est désormais considéré comme un agent témoin ou que l'agent qui était considéré comme un agent témoin est désormais considéré comme un agent impliqué. Règl. de l'Ont. 267/10, par. 10 (2).

(3) Si, après avoir fait passer une entrevue à un agent de police qui était considéré comme un agent témoin lorsque l'entrevue a été demandée ou après avoir obtenu une copie des notes d'un agent de police qui était considéré comme un agent témoin lorsque les notes ont été demandées, le directeur de l'UES décide que l'agent de police est un agent impliqué, l'UES :

- a) avise par écrit le chef de police et l'agent de police du fait que ce dernier est désormais considéré comme un agent impliqué;
  - b) remet à l'agent de police l'original et toutes les copies de l'enregistrement de l'entrevue;
  - c) remet au chef de police l'original et toutes les copies des notes de l'agent de police.
- Règl. de l'Ont. 267/10, par. 10 (3).

(4) Le chef de police conserve l'original et toutes les copies des notes de l'agent de police reçues en application de l'alinéa (3) c) pour utilisation dans son enquête visée à l'article 11. Règl. de l'Ont. 267/10, par. 10 (4).

#### **Enquête du chef de police**

**11. (1)** Le chef de police fait également mener une enquête sans délai sur tout incident à l'égard de laquelle l'UES a été avisée, sous réserve du rôle prépondérant de l'UES dans l'enquête sur l'incident. Règl. de l'Ont. 267/10, par. 11 (1).

(2) L'enquête du chef de police a pour but d'examiner les politiques du corps de police ou les services qu'offre celui-ci et la conduite de ses agents de police. Règl. de l'Ont. 267/10, par. 11 (2).

(3) Tous les membres du corps de police collaborent entièrement à l'enquête du chef de police. Règl. de l'Ont. 267/10, par. 11 (3).

(4) Le chef de police d'un corps de police municipal fait rapport à la commission de police de ses constatations et de toute mesure prise ou recommandée au plus tard 30 jours après que le directeur de l'UES l'avise qu'il a fait rapport des résultats de l'enquête de l'UES au procureur général. La commission de police peut rendre public le rapport du chef de police. Règl. de l'Ont. 267/10, par. 11 (4).

(5) Le commissaire de la Police provinciale de l'Ontario dresse un rapport de ses constatations et de toute mesure prise au plus tard 30 jours après que le directeur de l'UES l'avise qu'il a fait rapport des résultats de l'enquête de l'UES au procureur général. Le commissaire peut rendre le rapport public. Règl. de l'Ont. 267/10, par. 11 (5).

#### **Divulgence de renseignements**

**12. (1)** Le corps de police peut divulguer à toute personne le fait que le directeur de l'UES a été avisé d'un incident et qu'il fait enquête à ce sujet. Règl. de l'Ont. 267/10, par. 12 (1).

(2) Le corps de police et les membres d'un corps de police ne doivent pas, au cours d'une enquête de l'UES sur un incident, divulguer à qui que ce soit des renseignements sur l'incident ou l'enquête sauf dans l'un ou l'autre des cas suivants :

- a) dans la mesure permise par le présent règlement;
- b) un agent de police nommé en vertu de la *Loi de 2009 sur les services policiers interprovinciaux* peut divulguer les renseignements à son commandant extraprovincial pendant l'enquête;
- c) le chef de police du corps de police dont un agent de police nommé en vertu de la *Loi de 2009 sur les services policiers interprovinciaux* est réputé membre peut divulguer les renseignements pendant l'enquête :
  - (i) soit au commandant extraprovincial de l'agent de police,
  - (ii) soit à un agent de nomination au sens de cette loi si le chef de police n'est pas un agent de nomination et que l'enquête porte sur l'agent de police. Règl. de l'Ont. 267/10, par. 12 (2).



**Déclarations publiques**

**13.** L'UES ne doit pas, pendant son enquête, faire de déclaration publique sur l'enquête, à moins que la déclaration n'ait pour but de préserver l'intégrité de l'enquête. Règl. de l'Ont. 267/10, art. 13.

**Non-application du présent règlement**

**14.** Le chef de police ou l'agent de police ne doit pas être tenu de se conformer à une disposition du présent règlement si, de l'avis du directeur de l'UES, cela n'est pas possible pour des raisons indépendantes de la volonté du chef de police ou de l'agent de police. Règl. de l'Ont. 267/10, art. 14.

**15.** Omis (abrogation d'autres règlements). Règl. de l'Ont. 267/10, art. 15.

**16.** Omis (entrée en vigueur des dispositions du présent règlement). Règl. de l'Ont. 267/10, art. 16.