

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DONALD BEST

Moving Party (Appellant)

and

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES A.K.A. PHILIP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN AND ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED AND LIFE OF BARBADOS LIMITED C.O.B. AS LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICE WATERHOUSE COOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD., AND COMMONWEALTH CONSTRUCTION INC.

Respondents

---

**MOTION RECORD  
(ADJOURNMENT/DIRECTIONS)**

---

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9  
Tel: (416) 536-1220; Fax (416) 536-8842  
  
Counsel for the Moving Party (Appellant)

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DONALD BEST

Appellant (Moving Party)

and

RICHARD IVAN COX, ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, KINGSLAND ESTATES LIMITED, FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS EAST CARIBBEAN FIRM,

Respondents

MOTION RECORD

VOLUME I

<b>TAB</b>	<b><u>Table of Contents</u></b>	<b>Pages</b>
<b>A.</b>	<b>AMMENDED NOTICE OF MOTION</b>	<b>A1-A58</b>
	<b>NOTICE OF MOTION</b>	<b>1-58</b>
<b>B.</b>	<b>AFFIDAVIT OF CHE CLAIRE SWORN FEBRUARY 11, 2014</b>	<b>59-483</b>
<b>Exhibit 1.</b>	BSSG Ontario Corporation Profile Report, dated January 30, 2014	<b>81-89</b>
<b>Exhibit 2.</b>	BSSG mission statement, Copyright 2013-2014	<b>90-91</b>
<b>Exhibit 3.</b>	BSSG "About Us" webpage, Copyright 2013-2014	<b>92-94</b>
<b>Exhibit 4.</b>	BSSG "Services" webpage, Copyright 2013-2014	<b>95-97</b>
<b>Exhibit 5.</b>	BSSG "Reid J. Meloy profile page", Copyright 2013-2014	<b>98-99</b>
<b>Exhibit 6.</b>	BSSG "Tracey Marshall profile page", Copyright 2013-2014	<b>100-101</b>
<b>Exhibit 7.</b>	"Tracey Marshall Resume", undated	<b>102-110</b>
<b>Exhibit 8.</b>	BSSG "Peter Collins profile page", Copyright 2013-2014	<b>111-112</b>
<b>Exhibit 9.</b>	"Peter Collins CV", dated December 21, 2007	<b>113-123</b>
<b>Exhibit 10.</b>	University of Toronto "Dr. Peter I Collins page", undated	<b>124-127</b>
<b>Exhibit 11.</b>	Wikipedia "Peter Collins page", dated January 1, 2014	<b>128-133</b>
<b>Exhibit 12.</b>	"Tamara Williamson LinkedIn profile", undated	<b>134-136</b>
<b>Exhibit 13.</b>	"BSSG contact us page", Copyright 2013-2014	<b>137-138</b>
<b>Exhibit 14.</b>	"Sharon Smith CV", undated	<b>139-148</b>
<b>Exhibit 15.</b>	"Sharon Smith LinkedIn profile", undated	<b>149-152</b>



<b>Exhibit 16.</b>	“Threat Triage LLC About Us” webpage, undated	153-154
<b>Exhibit 17.</b>	“Forensic Psycholinguistics Products and Services” webpage, undated	155-157
<b>Exhibit 18.</b>	“BSSG Van Allen profile” webpage, Copyright 2013-2014	158-159
<b>Exhibit 19.</b>	Rotary Voice”, dated March 20, 2009	160-164
<b>Exhibit 20.</b>	“Jim Van Allen CV”, dated December 30, 2013	165-167
<b>Exhibit 21.</b>	Transcript of call between 'Ray Metivier' and Jim Van Allen on December 30, 2013	168-171
<b>Exhibit 22.</b>	MP3 digital recording of call between 'Ray Metivier' and Jim Van Allen on December 30, 2013	172-173
<b>Exhibit 23.</b>	email from Jim Van Allen to 'Raymond Metivier', dated December 31, 2013	174-176
<b>Exhibit 24.</b>	“Toronto Police Service careers webpage”, undated	177-181
<b>Exhibit 25.</b>	Discussion Paper prepared for the Police Complaint Commissioner of B.C., dated June 2000	182-210
<b>Exhibit 26.</b>	R.C.M.P. External Review Committee discussion paper 'Conflict of Interest', dated September 30, 1991	211-299

## **VOLUME II**

<b>Exhibit 27.</b>	R.C.M.P. External Review Committee discussion paper 'Off-Duty Conduct' undated	300-367
<b>Exhibit 28.</b>	R.C.M.P. website, “Values and Ethics” subpage, November 20, 2006	368-374
<b>Exhibit 29.</b>	Sarnia Observer newspaper article titled ‘Police work at second jobs’, dated May 6, 2011	375-378
<b>Exhibit 30.</b>	“OPP 2013 Cost-Recovery Formula Update”, dated November 15, 2013	379-391
<b>Exhibit 31.</b>	Orillia Police Services Board Responsibilities webpage, Copyright 2011	392-395
<b>Exhibit 32.</b>	ISN ‘investigations’ webpage, undated	396-398
<b>Exhibit 33.</b>	ISN “About Us – Our Team” subpage, undated	399-402
<b>Exhibit 34.</b>	Jim Van Allen’s LinkedIn profile, undated	403-407
<b>Exhibit 35.</b>	Tamara Williamson’s LinkedIn profile with an endorsement by R.W. (Rob) Goodfellow, undated	408-410
<b>Exhibit 36.</b>	“IRG website Executive page”, Copyright 2009-2014	411-413
<b>Exhibit 37.</b>	“IRG Directors webpage”, Copyright 2009-2014	414-415

<b>Exhibit 38.</b>	Toronto Star articles re charges vs. Sartorelli, dated December 7 & 8, 1989	416-419
<b>Exhibit 39.</b>	T.E.R.M.S. associate profile page, Copyright 2009	420-423
<b>Exhibit 40.</b>	T.E.R.M.S. Van Allen C.V. , undated	424-426
<b>Exhibit 41.</b>	Screen capture of metadata of Exhibit 40 October 11, 2009	427-428
<b>Exhibit 42.</b>	Jim Van Allen webpage of The Alpha Group Center for Crime & Intelligence Analysis Training.	429-431
<b>Exhibit 43.</b>	Alpha Group online brochure, undated	432-436
<b>Exhibit 44.</b>	Fax from Donald Best to RCMP Commissioner Bob Paulson, dated December 10, 2012	437-438
<b>Exhibit 45.</b>	Fax from Donald Best to RCMP Commissioner Bob Paulson, dated January 16, 2013	439-441
<b>Exhibit 46.</b>	Fax from the RCMP and P.M. Dionne of the Canadian Police Information Centre (CPIC) to Donald Best, dated January 17, 2013	442-447
<b>Exhibit 47.</b>	Email from Donald Best to OPP Inspector Marty Kearns and Sgt. Major Jeff Vibert, dated January 17, 2013	448-449
<b>Exhibit 48.</b>	Email from Donald Best to Inspector George Dmytruk of the D.R.P.S. Professional Standards Unit and St. Major Jeff Vibert of the OPP Professional Standards Unit, dated February 6, 2013	450-454
<b>Exhibit 49.</b>	Email from Inspector Dmytruk, dated February 7, 2013	455-456
<b>Exhibit 50.</b>	Email from Donald Best to Inspector Dmytruk, dated February 15, 2013	457-458
<b>Exhibit 51.</b>	Email from Sgt. Laurie Rushbrook to Donald Best and Best's reply February 19, 2013	459-460
<b>Exhibit 52.</b>	Four emails from Best to Sgt. Rushbrook dated March 13, 2013	461-463
<b>Exhibit 53.</b>	Email exchange between Donald Best and Sgt. Rushbrook on March 20, 2013.	464-465
<b>Exhibit 54.</b>	Email from Best to Sgt. Rushbrook and attachments, dated March 27, 2013	466-472
<b>Exhibit 55.</b>	Email to Jim Van Allen, dated February 8, 2014	473-474
<b>Exhibit 56.</b>	Fax from Van Allen to Mr. Slansky, dated February 8, 2014	475-477
<b>Exhibit 57.</b>	Email from Che Claire to Jim Van Allen, dated Feb. 9, 2014	478-480
<b>Exhibit 58.</b>	CD recording of November 17, 2009 conversation	481-482



COURT OF APPEAL FOR ONTARIO  
BETWEEN:  
DONALD BEST

Moving Party  
(Appellant)

and

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES A.K.A. PHILIP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN AND ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED AND LIFE OF BARBADOS LIMITED C.O.B. AS LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICE WATERHOUSE COOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD., AND COMMONWEALTH CONSTRUCTION INC.

Respondents

---

---

**AMMENDED NOTICE OF MOTION**

---

**TAKE NOTICE THAT** the Moving Party (Appellant) will apply to a judge of this Honourable Court on **Monday February 24, 2014**, at 10 am, or as soon after that time as is possible in the Court of Appeal for Ontario, 130 Queen St. West, Toronto, for the adjournment of the review/appeal of motions to a panel scheduled for February 27, 2014 and other scheduling adjustments or adjournments that may flow from this adjournment and for the addition to the record on the review/appeal and appeal a copy of the recording of a November 17, 2009 conversation that was an Exhibit in proceedings under appeal.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE APPLICATION IS FOR AN ORDER:**

1. Adjourning the motion scheduled for February 27, 2014;
2. Re-scheduling of the motion to be heard:
  - a) with the main appeal on June 2, 2014; or
  - b) on June 2, 2014 with the adjournment the appeal hearing date to a date after June 2, 2014.
3. Adding a copy of the recording of a November 17, 2009 conversation to the record on the review/appeal and the main appeal.



**THE GROUNDS FOR THIS MOTION ARE:**

**(A) REASON FOR THE ADJOURNMENT REQUEST**

1. The Appellant has recently discovered evidence that one of the most important pieces of evidence relied upon below, an affidavit to obtain substituted service and ratification of service, sworn by a private investigator, Jim Van Allen in October 2009, was the product of criminal and/or quasi-criminal misconduct. It is alleged that Mr. Ranking, and likely Mr. Silver, Respondents' Counsel, were aware of this situation and were thereby parties to these offences. The Appellant has applied for summonses to two (2) witnesses returnable for examination on February 19, 2014 in relation to Mr. Van Allen and Tamara Williamson to obtain further evidence of this misconduct and evidence of Respondents' Counsel knowledge. Further summonses and examinations will be needed. There is insufficient time to conduct these examinations and obtain transcripts for use on a fresh evidence application on the review/appeal to remove counsel for misconduct, conflict of interest and as witnesses, presently scheduled for February 27, 2014.
2. In particular, it is an offence for a serving police officer to act as a private investigator. The affidavit disclosed Ministry of Transportation ("MTO") information and Toronto Police Association information and other personal information, including identity information, about the Appellant. The Appellant, being concerned that his life and the life of his family was being endangered by the public disclosure of this information, in light of his former duties as an undercover police officer and an investigator in the private sector, which endangerment became a reality, made enquiries about how this information came to be in the affidavit of a private investigator, who himself was a former police officer. The Appellant was told by the O.P.P. that Van Allen, was a former O.P.P. police officer who had retired in 2008. What has recently been discovered is that this was a lie. In fact, Van Allen was a

serving police officer, with likely official police involvement in this very case, until 2010.

3. It is alleged that Counsel, Gerald Ranking, who retained Van Allen and Counsel, Lorne Silver, who relied upon the affidavit, knew that Van Allen was a serving police officer at the time. Accordingly, they were parties to the criminal and/or quasi criminal offences.
4. This would be important fresh evidence supporting the motion to remove counsel that is the subject of the review/appeal scheduled for February 27, 2014.
5. A summons has been issued for Van Allen and Tamara Williamson, another corporate director, returnable in Barrie on February 19, 2014. An attempt to serve the summons at the Investigation Company corporate headquarters in Orillia was made on February 7 and 10, 2014.
6. Counsel for the Appellant with carriage of the case is in the middle of pre-trial motions on a Superior Court terrorism trial, *R. v. Hersi* and will be, except for February 19 and 21, until near the end of the month. Jury selection is set for the beginning of March and the trial is expected to go until the end of May, 2014.
7. The main appeal is set for June 2, 2014.

**(B) HISTORY/BACKGROUND:**

8. By way of summary, the Moving Party ("Appellant") was a director and shareholder of Nelson Barbados Group Limited ("NBGL") at the time of the action and contempt proceedings. NBGL was the plaintiff in an action brought in Ontario. The Honourable Mr. Justice Shaughnessy ("Justice



Shaughnessy" or the "Court") granted a motion of the Respondents brought to stay the action on the basis of an inadequate jurisdictional connection to Ontario. This motion was successful. On November 2, 2009, a proceeding was scheduled to determine costs against NBGL to the Respondents on the motion. The Appellant had indicated by letter to Justice Shaughnessy dated October 30, 2009 that he would not be attending on behalf of the plaintiff on the motion and that he was content to leave the matter of costs against NBGL in the hands of the Court.

9. Unbeknownst to the Appellant and without prior service or even attempted service on Best, the Respondents brought a motion returnable on November 2, 2009 to require that the Appellant provide documents allegedly relevant to the issue of costs on the action (week prior to examination on November 17, 2009 (November 10, 2009) and require that he attend to answer questions allegedly relevant to costs on November 17, 2009. Notwithstanding the fact that there had been no notice to the Appellant, based on the affidavit of Jim Van Allen, falsely alleging that the Appellant was trying to evade service, the Court indicated a willingness to make such an order on November 2, 2009 and signed such an order on November 12 or 13, 2009.
10. The Respondents asserted that they had served a draft order on the Appellant by mailing it on November 6 to a post office box.
11. Evidence later filed makes it clear that the Appellant left the country on November 11, 2009 out of concern for his safety and the safety of his family and that he did not receive the November 2 materials or the order. In a letter to the trial coordinator dated November 16, 2009, he explained that he called her, as he did from time to time, to see what had happened on the costs motion on November 2, 2009. He indicated in that letter that he discovered for the first time during that telephone conversation that he had been ordered to attend for examination the next day. Being out of the country, it was not

feasible to attend in Canada for examination the next day. Instead, he called the office of the special examiner (Victory Verbatim) on November 17, 2009 and advised Counsel for some of the Respondents that:

- he did not receive the November 2, 2009 order or the materials in support of the application;
- he did not know of examination until the day before;
- asked about who had retained a private investigator, who disclosed confidential information about the Appellant which was reported in a website which endangered himself and his family.

The Appellant offered to conduct the examination by telephone and indicated a willingness to answer questions addressed in the November 2, 2009 order. The Respondents refused to conduct the examination by telephone.

12. The Appellant recorded the conversation on November 17, 2009 which confirms the foregoing. This recording has been authenticated and the authenticity has been conceded. An electronic copy on CD was entered as an Exhibit in the proceedings below. However, when attempting to perfect the appeal, the Appellant's agents were told that the recording could not be filed without bringing a motion. This motion is, *inter alia*, for this purpose.
13. Respondents' Counsel made a "Statement for the Record" on November 17, 2009 at Victory Verbatim after the call, in which they purported to summarize aspects of the November 17 conversation. They said that the Appellant:
  - admitted that he had a copy of the order;
  - that he knew of the November order before the call to the trial coordinator on November 16 (this knowledge was the reason for the call); and
  - that he had refused to answer questions on November 17, 2009.



This Statement for the Record was sent to the Appellant along with a letter and a Notice of Examination for November 25, 2009 and was received on November 24, 2009. The Appellant sent two letters (one sent to Mr. Ranking, copied to all counsel and one to the Court) dated December 1, 2009. In the letters, the Appellant pointed out in detail that and how the November 17, 2009 Victory Verbatim "Statement for the Record" contained clear and deliberate falsehoods.

14. On that same day, Van Allen was scheduled to be examined by other parties, including counsel for NBGL's former counsel. Van Allen was not produced for examination. In the recorded call, in the presence of Mr. Ranking, Mr. Silver denied knowing who had retained the private investigator.
15. On December 2, 2009, on an *ex parte* basis, an application was brought by the Respondents to have the Appellant found in contempt of the November 2, 2009 order and the November 25 examination and sought an order for the same relief as the November 2, 2009 order (except that the examination was to be before Justice Shaughnessy). The Respondents, through counsel Ranking and Silver, filed the "Statement for the Record" from Victory Verbatim on November 17, 2009 and indicated that it was correct and the Appellant's version in the December 1 letters was false. They asserted that the Appellant knew about the examination because he was served by mailing it to the post office box and because of his November 16 letter and his call on November 17, 2009. Respondents' Counsel lied about the issue of whether and when the Appellant received a signed order, as opposed to a draft order. The issue was never about a signed order versus a draft order. In the November 17 discussion, that was recorded, the Appellant said that he did not receive the materials purportedly sent on November 6, 2009. The materials sent on November 6, 2009 could not have contained the signed order since it was not signed until later. The Appellant was clearly saying that he never received ANY order, draft or signed. The Court accepted the

Respondents' position and rejected the position of the Appellant that he had not received the November 2 order, communicated in the Dec. 1, 2009 letter, and proceeded on the basis that the Appellant knew of the orders to provide documents and to attend for examination. He did so in large measure based on the affidavit of Van Allen and the Statement for the Record, both of which were the product of criminal and/or quasi-criminal acts by Respondents' counsel. A contempt hearing was set for January 15, 2010.

16. On January 15, 2010, in the absence of the Appellant, the Court found the Appellant in contempt (civil) of court for not providing the documents or attending for examination. The Court failed in its duty to require that a trial of the issue regarding knowledge be held to determine issues of credibility on contested facts. This was done in relation to the November 2, 2009 order on the basis of knowledge inferred from the alleged mailing of the order on November 6, 2009 (based on the Van Allen affidavit), the November 17, 2009 Victory Verbatim Statement for the Record and the letter dated November 16 to the trial coordinator. This was done in relation to the November 25 Notice of Examination and the December 2, 2009 order based on purported compliance with substituted service orders. The former was an unreasonable finding not supported by the record and, in fact, was perverse and capricious. Both findings were invalid in light of the law as set out in by the SCC in *Bhatnager* which requires personal service or knowledge (or wilful blindness), not substituted service. Accordingly, separate and apart from new evidence, the contempt order should never have been made in 2010.
17. The Appellant did not learn of the contempt finding until a few months later, when he was outside of Canada. He retained counsel to apply to have the finding of contempt on January 15, 2010 set aside. There was delay by his counsel in bring the application, which was not filed until August 2012. Clear and uncontradicted evidence was presented which demonstrated that:

- he left the country out of concern for his safety and the safety of his family on November 11, 2009;
- he never received information regarding any order to produce documentation on November 10, 2009 until November 16, 2009;
- he first heard of an order requiring that he attend for examination on November 16, 2009 from the trial coordinator and he was unable to attend in person that day because he was out of the country;
- that he offered to be examined by telephone on November 17, 2009 but the Respondents refused to accept this procedure;
- he did not receive the November materials, any November 2, 2009 order (draft or signed) or the Notice of Examination for November 25, 2009 until November 24, 2009, when he was still outside of the country;
- the Victory Verbatim November 17, 2009 Statement for the Record was false in stating that he had admitted on November 17 that he had a copy of the November 2, 2009 order, knowledge of the November 2, 2009 order before the call to the trial coordinator on November 16, 2009 and that he had refused to answer questions;
- That he did not receive notice of the December 2, 2009 or January 15, 2010 proceedings or materials in support of such proceedings until June 2010.

Based on this evidence, the Court should have set aside the contempt order on April 30, 2013, when the application to set aside the order was heard. Instead, the Court unduly restricted the scope of its review and refused to consider whether Respondents counsel misled the Court, saying that this was a matter for the Court of Appeal. Notwithstanding the fresh evidence detailed above, the Court found there to be no new evidence and no basis to set aside the original order. This is the primary basis for the appeal.

18. The Court was never told that the Van Allen affidavit was the product of a criminal or quasi-criminal act. The Appellant did not know at the time. The



Respondents Counsel never advised the Court in the affidavit itself or otherwise.

19. The proceedings in respect of which the documents and examination of the Appellant were sought, and in relation to which he was found in civil contempt, were solely in respect to seeking costs from the Appellant personally on the main action. In April 2010, the costs of the action were settled and paid. Accordingly, in 2012 and 2013, when the Application to set aside the finding of contempt was brought, the issue of costs of the action was moot. The Respondents opposed the application for a reason that amounted to an abuse of process: to gather information in respect of other litigation or potential litigation abroad. This was admitted by Counsel for the Respondents below and on appeal. Justice Feldman found this to be a meritorious ground of appeal on a motion for security for costs heard together with the removal of counsel motion.
20. The Respondent, a former police officer, served 45 days in jail before being released on bail pending appeal.
21. The Respondents represented by Mr. Roman (Miller, Thompson LLP) and Ms. Lang (Stikeman, Elliot LLP) have indicated by email that their clients will not be participating in the appeal.
22. The Appeal was perfected on September 5, 2013.
23. In light of the history and ongoing misbehaviour of counsel for the Respondents, Messrs. Ranking and Silver, the Appellant did and does not trust them to fairly deal with him fairly as prosecutors of the civil contempt appeal. He asked them to remove themselves from the case. They refused. A motion was brought for this purpose and was heard by the Honourable

Madam Justice Feldman. This process and the review of her decisions is described in the factum of the Appellant filed on the review/appeal.

24. The application for removal was based on misconduct by Counsel for the Respondents, Messrs. Ranking and Silver below and on appeal. The bases were the misconduct itself and the consequent conflicts of interest that flowed from it. Justice Feldman dismissed the motion based on deference to the findings of Justice Shaughnessy below. This was so notwithstanding the clear statement by Justice Shaughnessy that he was not going to consider the allegations of misconduct made against counsel and notwithstanding the clear indication, albeit not recognized by Justice Shaughnessy, that he had in fact been misled by counsel. As set out in the factum on the review/appeal, this was an error. However, no issue was raised regarding the unlawfulness of the Van Allen affidavit, which was relied upon before Justice Feldman, because this was unknown at the time.

**C. FRESH EVIDENCE**

**1. Overview**

25. The fresh evidence shows, *inter alia*, that the Respondents' primary witness below, Jim Van Allen, was in fact a serving Ontario Provincial Police officer, unlawfully hired by counsel and illegally working 'on the side' as an unlicensed private investigator. To date, Detective Sergeant Van Allen's true status and primary expertise have been concealed from the Applicant, from the court below, from the Court of Appeal and from the individual Justices who have heard various motions including Justices Goudge, Tulloch, MacFarland, Feldman, and Blair.
26. As a direct result of the past refusals of the respondents to present Detective Sergeant Van Allen for cross-examination, there has never been any cross-

examination of the affiant or testing of his evidence that was used to convict the Appellant, Donald Best.

27. The appellant discovered a 'secret police investigation', an undocumented and unofficial investigation by Durham Regional Police, in anticipation of a finding of contempt, during at least the last quarter of 2009, prior to the contempt hearing in January 2010. This was brought to the lower court's attention by Donald Best in his affidavit sworn April 29, 2013 when he was an unrepresented litigant. As related herein, there is also some evidence raising suspicion that the 'secret police investigation' may have been initiated as early as 2007 and likely involved Van Allen in his duties as a Police officer.
28. Generally, the newly discovered fresh evidence is centred around the purported 'private investigator', Mr. Jim Van Allen, an affiant below who was retained in the employ of Fasken Martineau DuMoulin LLP ("Faskens") and lawyers Gerald Ranking and Sebastien J. Kwidzinski. Mr. Van Allen's October 21, 2009 affidavit and invoices were integral and important evidence used to convict and sentence the Appellant, Donald Best, of contempt of court in 2010 and used to reaffirm that conviction in 2013.
29. Newly discovered evidence shows that, unbeknownst to the appellant, to the court below, and to date unbeknownst to the Appeal Court of Ontario: the private investigator/affiant James Arthur 'Jim' Van Allen was at the time of his October 21, 2009 Nelson Barbados affidavit, and for a year afterwards until October of 2010, a serving police officer, a Detective Sergeant in full time employment with the Ontario Provincial Police (OPP).

30. As described in further detail herein, by working as a private investigator for Faskens, Detective Sergeant Van Allen was in violation of various laws including, *inter alia*, the *Police Services Act* and the *Private Security and Investigative Services Act* and the *Criminal Code*.
31. Further, there is newly discovered evidence showing that Detective Sergeant Van Allen had serious direct and potential conflicts of interest that specifically precluded him from working on the Nelson Barbados case in any capacity outside of his official police duties.
32. Further, as detailed herein, there is newly discovered evidence showing that Detective Sergeant Van Allen was as early as 2008, and remains today, part of a business network of retired and still-serving police officers and other justice system personnel, where some persons are clearly, and others might be, in violation of various conflict of interest rules and other laws by virtue of their cooperative 'on the side' business activities. There is evidence that Detective Sergeant Van Allen illegally accessed and illegally presented as evidence in his October 21, 2009 affidavit, confidential personal and identity information sourced from police and/or other government agencies (MTO, CPIC and Toronto Police Services). It is not known whether he accessed this information himself or through this network.
33. Further, as detailed herein, these circumstances present a strong circumstantial basis to infer knowledge that Faskens counsel, in particular Mr. Ranking, knew that his affiant/private investigator was, at the time, a police officer. Messrs. Ranking and Silver closely cooperated in the motions for examination and the contempt motion. Mr. Silver was aware of and relied upon the affidavit of Van Allen as reflected in the record below. Yet, he lied about not knowing about the private investigator in the recorded November 17, 2009 conversation, on the very date that Van

Allen was scheduled to be examined. This a basis, albeit a weaker basis, to infer knowledge by Mr. Silver.

34. As presented in more detail later, all this newly discovered evidence was not available to the Appellant before now, as much of it is newly created by Van Allen himself, and is newly made available by Van Allen personally and on the internet. Further, some of the evidence was in the past deliberately concealed from the appellant and from the courts as detailed herein.
35. Further, the truth about Detective Sergeant Van Allen was also concealed from the appellant by senior officers of the Professional Standards Unit of the Ontario Provincial Police in March, 2013. It is now known that these Professional Standards Unit OPP officers knowingly communicated false information to the Appellant directly on February 4, 2013 and otherwise between January and April 2013: communicating that Detective Sergeant Van Allen retired from the OPP in 2008 instead of the truth that he retired in October 2010.

2. **Evidence of Jim Van Allen was placed before the Court**

36. Three exhibits were filed by Mr. Gerald Ranking in the Nelson Barbados Group Ltd. vs Cox et al ('Nelson Barbados case') civil case costs hearing. These three exhibits have to do with Mr. Jim Van Allen, the purported private investigator and affiant below employed by Faskens, Gerald Ranking and Sebastien Kwidzinski in 2009 to conduct investigations, to report to Mr. Ranking and Mr. Kwidzinski and to swear an affidavit in the Nelson Barbados case. One of these is the affidavit of Jim Van Allen, sworn October 21, 2009 and filed with the court below in support of applications for substituted service, ratification of service and contempt. The second and third are copies of redacted invoices dated October 24, 2009 and November



7, 2009 from 'Behavioural Science Solutions Group Inc.' to Faskens and Gerald Ranking and hand signed "With Thanks. J Van Allen".

3. Detective Sergeant Jim Van Allen was employed as a private investigator and was directed by Faskens, Ranking and Kwidzinski

37. Detective Sergeant Van Allen's invoices and affidavit indicate that he was hired to investigate as well as offer the 'expert' opinions contained in his affidavit.
38. Paragraph 6 of Jim Van Allen's October 21, 2009 affidavit is headed 'B. Investigation Regarding Donald Best' and indicates that Gerald Ranking of Fasken Martineau DuMoulin LLP personally contacted and hired Van Allen on October 7, 2009 to perform an investigation regarding Donald Best.
39. Van Allen's two known Behavioural Science Solutions Group Inc. invoices for investigation are directed to 'Fasken Martineau DuMoulin LLP, Mr. Gerald Ranking.' The invoices are apparently heavily redacted but still contain enough information to determine that Van Allen was invoicing for performed private investigations.
40. The October 24, 2009 invoice states in part: "Unsuccessful lead investigation..." and "(redacted) information checks, (redacted) checks, (redacted) record check, (redacted) checks, (redacted) telephone interviews of (redacted)". In light of the content of the affidavit, including information from MTO, CPIC and Toronto Police Services, these checks were likely done through the access given in the capacity as a police officer, and was used for private investigation purposes.

41. The November 7, 2009 invoice is also heavily redacted, but shows a trip of 834km to perform "(redacted) area check", make 'Inquiry' and perform other duties that are redacted from the invoice.
42. Mr. Van Allen's Ontario corporation, Behavioural Science Solutions Group Inc. (BSSG), was formed October 20, 2008. James Arthur Van Allen and Tamara Jean Williamson are the only Directors. (BSSG Ontario Corporation Profile Report).
43. Van Allen's affidavit and invoices together indicate that Detective Sergeant Van Allen received directions from both Gerald Ranking and another Fasken Martineau DuMoulin LLP lawyer, Sebastien Kwidzinski, and that both Ranking and Kwidzinski were involved in the preparation of Van Allen's affidavit.
44. In various oral and written submissions to the lower court, Mr. Ranking refers many times to Jim Van Allen as his "private investigator", as do Lorne Silver and Justice Shaughnessy. This is clear in the following portions of the record:
  - November 2, 2009 court transcript, page 36, line 12;
  - December 2, 2009 court transcript, page 18, line 28;
  - the January 15, 2010 court transcript (page 15, line 14; page 18, line 14; page 59, line 6;
  - the January 11, 2013 cross-exam of Best transcript page 164, line 23
  - the authenticated transcript of the recording of the November 17, 2009 phone call between the Appellant Donald Best, and lawyers including Gerald Ranking and Lorne Silver (pages 8, 15, 16)
  - On April 30, 2013, transcript page 17, line 3; page 43, line 18; page 70, lines 7, 14; page 73, line 27, 28; page 80, lines 6, 21; page 107, line 16; page 108, lines 9, 13; page 109, line 6;

- On May 3, 2013, transcript, page 26, line 31;
- In the current proceedings before the Court of Appeal for Ontario, Mr. Ranking, Mr. Silver and Mr. Pendrith refer to Jim Van Allen as a 'private investigator':
  - In their October 2, 2013 Joint Factum of the Moving Respondents, Mr. Ranking and Mr. Silver state 'Jim Van Allen, a private investigator retained by PwC' (Joint Factum, Oct 2/13, paragraphs 18, 45).
  - Colin Pendrith refers to 'Jim Van Allen, a private investigator retained by PWC' in his Sept 26, 2013 affidavit (page 20, para 53).

**4. Detective Sergeant Van Allen's affidavit and Invoices were important evidence in the costs and contempt proceedings**

45. The court transcripts of November 2, 2009, December 2, 2009 and January 15, 2010, shows that Justice Shaughnessy relied upon Van Allen's evidence, and the oral and written submissions by counsel relating to Van Allen's evidence, to convict Donald Best of Contempt of Court on January 15, 2010, and also in determining costs in the contempt motion brought by the defendants.
46. The Respondents continued to refer to the unfounded and false opinions of Van Allen that the Appellant was trying to hide to evade service. In fact, had it been revealed that Van Allen was in fact a threat assessor for the OPP, it would have been clear that Van Allen knew that the reason for the efforts of the Appellant was not to evade service but to protect himself as a result of his police and private undercover duties.
47. Jim Van Allen's affidavit evidence as 'an experienced private investigator', including his observations and expert opinions about Donald Best, was an integral and important part of the evidence placed before Justice

Shaughnessy on November 2, 2009, December 2, 2009 and January 15, 2010 concerning:

(a): justifying validation of documents supposedly already served upon Donald Best and future substituted service of documents upon Mr. Best, and  
 (b): Mr. Best's supposed motivations for using mail boxes and otherwise concealing his true whereabouts, and by implication, Mr. Best's supposed motivations in not attending court, and the resultant conviction for contempt of court.

48. Van Allen's redacted invoices were also used as evidence, placed before the court by Mr. Ranking on January 15, 2010, as noted in the court transcript, page 59, line 4.
49. Jim Van Allen's October 21, 2009 affidavit was part of a motion first placed before Justice Shaughnessy on Nov 2, 2009, Dec. 2, 2009 and in January 2010 and was used extensively in making submissions to the Court:
  - On Nov. 2, 2009, Mr. Ranking used Van Allen's evidence to justify asking the court for substituted service on Donald Best:
    - Ranking: "Well, the difficulty, Your Honour, is I have had my own firm try to find him, I've had private investigator try to find him." (Nov 2/09 transcript page 36 line 10);
    - Ranking also told Justice Shaughnessy: "...with respect to the whole issue of validating service with respect to serving Mr. Best, until we were here today I have no way of serving Mr. Best, that's why we're seeking an order for substituted service." (Nov 2/09 transcript page 29 line 7);
  - Van Allen's evidence was also relied upon by Mr. Sebastien Kwidzinski in his October 27, 2009 affidavit and was relied upon in the December 2 2009 proceedings:
    - "Mr. Van Allen, an experienced private investigator was also unable to locate Mr. Best, despite extensive efforts" (paragraph 39). This Kwidzinski affidavit was before Justice Shaughnessy on November 2, 2009 and was referred to by Mr. Ranking in his oral submissions on December 2, 2009:

- The December 2, 2009 transcript shows that Mr. Ranking spoke extensively about the Kwidzinski Affidavit and the investigation of Donald Best on pages 18, 21, 22, 24, 28, 32, 33, 34 and 35;
- Van Allen's evidence was extensively referred to by Gerald Ranking again on the Dec 2/2009 court date in justifying substituted service upon Donald Best. (December 2, 2009 court transcript, pages 18, 19, 20)
- The January 15, 2010 transcript shows that
  - Mr. Ranking and Mr. Silver made extensive submissions about the Kwidzinski Affidavit and the investigation of Donald Best by Van Allen on pages 18, 37, 38, 60 and 61;
  - Mr. Ranking again referred to Van Allen's investigations and evidence in his oral submissions. (January 15, 2010 court transcript, page 15 – line 14, page 18 – line 14, page 58 – line 22, page 59 – line 6);
  - Further, on January 15, 2010, Mr. Ranking spoke about the extensive costs that his client incurred, including the hiring of "the private investigator, Mr. Van Allen." In this context, I note that on page 58 of the January 15, 2010 transcript, Mr. Ranking indicates that the investigation also involved social insurance numbers:

"RANKING: I can tell Your Honour that, you know, with respect to trying to get into social insurance numbers and telephone numbers and driver's licences, and things of that nature, we did a lot of work and that is what is reflected through this material."

No information about investigations regarding social insurance numbers is revealed in Mr. Van Allen's affidavit, in his redacted invoices or in any of the materials filed before the court. This secret investigation of Social Insurance Numbers by a serving Ontario Provincial Police officer has never been explained.



50. Further, Justice Shaughnessy relied upon the affidavit of Van Allen in accepting substituted service, in validating service, in finding the Appellant in Contempt of Court and in dismissing the application to set it aside:

- In his December 2, 2009 endorsement, (AB Vol 1 pp 162) Justice Shaughnessy in paragraph 12 states in obvious reference to the Van Allen evidence:

"Extensive investigations have not resulted in a location where he resides. I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best. In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted."

(Also referenced December 2, 2009 transcript, page 60, line 2);

- In the January 25, 2010 'Reasons on Motion for Contempt' (AB Vol 1 pp 181-194), Justice Shaughnessy in paragraph 12 states in obvious reference to the Van Allen evidence:

"Extensive investigations have not resulted in locating where he (Best) resides. I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best. In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted."

In paragraph 31 Justice Shaughnessy refers to Van Allen's affidavit evidence of Best's motor vehicle license and MTO address searches and information:

"The affidavit material filed on this motion indicates that a motor vehicle license search was conducted on "Donald Robert Best" and which disclosed an address of 122- 250 The East Mall, [REDACTED] which is the address for the mailbox of the UPS store located in the Cloverdale Mall in Toronto."

- In May 2013, Justice Shaughnessy extensively quotes from and reaffirms his January 25, 2010 reasons.

5. Fresh Evidence: The 'private investigator' and affiant Jim Van Allen, was working as a private investigator at the time his evidence was placed before the court when he was also a serving police officer with the Ontario Provincial Police, and remained so until October 2010

51. The evidence that Detective Sergeant Jim Van Allen was a sworn police officer actively serving with the Ontario Provincial Police ('OPP') at the time he was hired by Fasken Martineau DuMoulin LLP and Gerald Ranking, performed the private investigation into Donald Best, swore his October 21, 2009 affidavit and delivered his invoices is as follows:

- a) On December 30, 2013, during a pretext telephone conversation with a prospective client using the name 'Ray Metivier', Jim Van Allen stated that he retired from the OPP in October of 2010 after thirty-one and a half years service. This conversation was digitally recorded and the recording and a draft transcript of the conversation is are attached to the affidavit in support of the motion;
- b) On December 31, 2013, Jim Van Allen sent an email to 'Ray Metivier' with a current CV. This C.V. states that he was appointed to the OPP in May of 1979 and retired in October 2010. This is a time period of 31 years and 6 months, which is the same as stated orally by Jim Van Allen during the 'Ray Metivier' recorded telephone conversation ("I was thirty one and a half years with the Ontario Provincial Police...").
- c) It is also noteworthy that Van Allen's current CV also indicates that he was appointed as the 'Manager, Criminal Profiling Unit' in June, 1995.
- d) In Jim Van Allen's current 'LinkedIn' CV is now available online. Mr. Van Allen again states that he was the 'Former Manager - Criminal

Profiling Unit, Ontario Provincial Police, June 1995-October 2010 (15 years 5 months)". This is consistent with Mr. Van Allen's October 2010 retirement date indicated in his current CV and December 30, 2013 recorded oral statements and other recently obtained materials.

- e) In a current flyer distributed by 'The Alpha Group', and available online, Jim Van Allen is advertised as giving an upcoming presentation on March 17-21, 2014 in Fort Myers, Florida on the subject 'Assessing Threats of Targeted Violence'. In the 'About Your Trainer' section, the flyer states that Jim Van Allen "served 31.5 years with The Ontario Provincial Police and for 15 years was the Manager of the Criminal Profiling Unit." (Exhibit 9) This is consistent with Mr. Van Allen's October 2010 retirement date and active service as Manager with OPP Criminal Profiling Unit indicated in his current CV and his December 30, 2013 recorded oral statements and other recently obtained materials.

7. **Detective Sergeant Van Allen violated various laws**

- 52. When Detective Sergeant Van Allen was employed as a private investigator by Faskens, Ranking and Kwidzinski in 2009, Van Allen was acting in violation of various laws, including the *Police Services Act*, the *Ontario Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34, and the *Criminal Code*, Section 120 (Bribery of Officers) and/or Section 122 (Breach of Trust).

a) **Police Services Act, RSO 1990**

- 53. The conduct of personnel of both municipal police services and the Ontario Provincial Police (OPP) is governed by, inter alia, the *Police Services Act*, RSO 1990, cP.15 ('PSA').

54. The PSA applies not only to sworn police officers, but also to civilian personnel of police services in Ontario (jointly referred to in the PSA as 'members').

55. Detective Sergeant Jim Van Allen was in violation of sections of the PSA having to do with prohibited secondary activities, non-disclosure of such prohibited secondary activities, conflict of interest and the unauthorized disclosure of personal information by police.

(i) Secondary Activities of Members of Police Services

56. Under the Police Services Act of Ontario, 'secondary activities' of Members of Police Services (including secondary employment) are considered to be of sufficient importance that the Police Services Act requires members of police services (both sworn police officers like Van Allen, and civilian employees), chiefs of police and police boards to do certain things in respect of secondary activities of members of police services.

57. There are restrictions upon secondary activities set by the PSA, and also further restrictions set by the individual police services (OPP and municipal) under authority of the PSA.

58. Generally in relation to secondary activities, including secondary employment, the PSA places certain restrictions upon members' activities, and requires that members (like Detective Sergeant Jim Van Allen) disclose the full particulars of any secondary activity that may in the future, or may already have, contravene the restrictions.

59. The PSA restrictions upon secondary activities are described in Section 49:

#### Restrictions on secondary activities

49. (1) A member of a police force shall not engage in any activity,  
 (a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;  
 (b) that places him or her in a position of conflict of interest, or is likely to do so;  
 (c) that would otherwise constitute full-time employment for another person; or  
 (d) in which he or she has an advantage derived from being a member of a police force. R.S.O. 1990, c. P.15, s. 49 (1); 2009, c. 30, s. 50 (1).

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

(1.1) Clause (1) (c) does not apply to a police officer appointed under the Interprovincial Policing Act, 2009. 2009, c. 30, s. 50 (2).

#### Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force. R.S.O. 1990, c. P.15, s. 49 (2).

#### Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board. R.S.O. 1990, c. P.15, s. 49 (3); 1997, c. 8, s. 30 (1).

#### Decision of chief of police or board

(4) The chief of police or the board, as the case may be, shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision. R.S.O. 1990, c. P.15, s. 49 (4); 1997, c. 8, s. 30 (2).

60. Although secondary employment as a private investigator is not specifically named as prohibited in the PSA, (no specific employment is named as prohibited in the PSA) there is a long-standing policy which characterizes police employment as private investigators or in other similar lines of work (process servers, skip tracers, credit collections), as



such secondary employment as violation of PSA, sections 49 (1) (a), (b) and (d).

61. Separate and apart from police policy and directives, secondary employment as a private investigator or in other similar investigative professions is prohibited because it creates potential and actual conflicts of interest between a police officer's duty to the public, the police service and the courts, and a private investigator's and business person's natural desire to obtain results for clients, to ensure the secondary employment is profitable, and to attract more clients and more investigations.
62. Secondary employment as a private investigator is also prohibited as it creates temptations and conflicts of interest in respect of improper access to, and misuse of, confidential police data, reports, sources, resources, specialized techniques and investigative tools. This appears to have happened in this case.
63. Victims, witnesses and other persons and entities, as well as the Crown and the Courts, rely upon the independence and discretion of the police. Any doubts about an individual police officer's divided loyalties, whether proven or not, undermines not only the public's trust of that police officer, but of the involved police service and even the entire policing profession in Ontario.
64. The public must trust and have confidence in the ability of the police to protect and restrict access to and the use of, confidential information that is provided to the police by the public, institutions or other government agencies. This trust and confidence is undermined when serving police officers act as private investigators.

65. For all of these above reasons, police services in Ontario and across Canada have had a long-standing prohibition against police officers acting as private investigators, and against licensed private investigators serving in any capacity (even as volunteers) with police services. In *Calgary Police Association v. Calgary Police Commission*, 1987 ABCA 239, the Calgary Police 'Rule 87' prohibition against police personnel engaging in various secondary employment including as a private investigator and process server was addressed and the Court of Appeal said: "Clearly Rule 87 is supportable to prevent possible conflicts with the recognized duties and responsibilities of police officers generally." In particular, the O.P.P. Standing Committee on Secondary Employment indicates that the OPP Commissioner has final approval on secondary activities.

(ii) Mandatory Disclosure of Secondary Activities

66. Under PSA 49(3), as an Ontario Provincial Police officer Detective Sergeant Jim Van Allen was required to disclose "full particulars" of secondary activity as a private investigator to the Commissioner of the Ontario Provincial Police.
67. PSA 49(3) states:
- (3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board. R.S.O. 1990, c. P.15, s. 49 (3); 1997, c. 8, s. 30 (1).
68. In light of the obvious conflict and the general policy that is improper to do so, it is a certainty that Detective Sergeant Jim Van Allen did not disclose to the OPP Commissioner in 2009 that he was acting as a private investigator in the employ of Faskens, Ranking and Kwidzinski.

69. It is a certainty that Detective Sergeant Van Allen did not disclose to the OPP Commissioner that he swore to an affidavit detailing his private investigations for use as evidence in an Ontario civil court case, and especially for the Nelson Barbados case, in light of the fact that the O.P.P., and perhaps his unit, had been dealing with a open criminal investigation in relation to the case since 2007.
70. While Van Allen may (or may not) have disclosed to the OPP that he had created an Ontario corporation in 2008 and was engaged in various non-prohibited secondary activities such as teaching, or authoring books, it is a certainty that Van Allen did not disclose "full particulars" of his activities as a private investigator since the full particulars would have disclosed that his activities were prohibited.
71. As an experienced and senior police officer with three decades of police experience, and as the manager of the OPP's elite Criminal Profiling Unit investigating serial murders, abductions and other serious crimes, Detective Sergeant Jim Van Allen knew or should have known that his secondary activities as a private investigator were prohibited by the PSA and the Ontario Provincial Police. He could not, and did not, disclose and obtain permission beforehand as required by PSA 49(3). He also knew or should have known that to report his private investigation activities afterwards would bring his professional reputation into disrepute in the OPP, and would almost certainly result in charges, convictions and even potential dismissal under the PSA.
72. It is also a certainty that Detective Sergeant Van Allen would not disclose the "full particulars" that he was working as a private investigator on one side of a civil case where the Ontario Provincial Police had on file an open criminal occurrence in an area of his expertise: threats. It is a certainty that Detective Sergeant Van Allen did not disclose that he was working for

defendants in a civil case where such defendants were reported to the OPP in 2007 as suspects in criminal activities against witnesses, lawyers and other persons associated with Nelson Barbados Group Ltd.

(iii) Detective Sergeant Van Allen's Actual Conflict of Interest

73. There were other reasons why Van Allen may have specifically concealed his 'on the side' activities in the Nelson Barbados case. Van Allen knew, or should have known, that his private investigation work on the Nelson Barbados case for Faskens and lawyers Ranking and Kwidzinski and purported defendant 'PricewaterhouseCoopers East Caribbean Firm' was a direct conflict of interest with an open Ontario Provincial Police criminal investigation, where his private clients had been reported as suspects in a crime.
74. Detective Sergeant Van Allen knew, or should have known, that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd. ("NBGL"), the plaintiff in the Nelson Barbados v. Cox civil case.
75. Barrister and Solicitor, and former counsel for NBGL, William McKenzie, and his family members, reported this criminal occurrence to the OPP in Orillia, Ontario in 2007. OPP investigators interviewed the McKenzies several times and received complete information, including the names of the suspects that generally included all defendants in the Nelson Barbados Group Ltd. v. Cox civil case.
76. Mr. McKenzie reported to the OPP that he, and others, including witnesses associated with Nelson Barbados Group Ltd., had been criminally threatened during third-party phone calls by a defendant from Barbados, Peter Simmons.

77. This specific threat from Peter Simmons is of note because Faskens and Mr. Ranking in 2007 hired Dr. Sharon Smith who testified as an expert witness before Justice Shaughnessy to rebut evidence regarding Peter Simmons' threats. Dr. Smith was then, and remains, one of Jim Van Allen's long-time business associates.
78. Further, McKenzie reported to the OPP the long history of threats, harassment, violence and other criminal acts against witnesses, lawyers and their family members in the Nelson Barbados Group Ltd. case. Mr. McKenzie also reported threatening and harassing actions against his family home in Orillia that were timed to coincide with litigation events in the Nelson Barbados case: including anonymous phone calls to his wife to let her know that the caller knew she was home alone and that Mr. McKenzie was traveling to do with the Nelson Barbados case.
79. As evident from Van Allen's CV, Detective Sergeant Jim Van Allen was in 2007, when the criminal complaint was made, and in 2009 when he worked for the Nelson Barbados defendants, the manager of the OPP's Criminal Profiling Unit. According to the OPP website, the Behavioural Sciences and Analysis Services unit where Van Allen worked is also responsible for Threat Assessments. It may even be that Detective Sergeant Jim Van Allen or members of his unit officially worked on the Nelson Barbados criminal threatening occurrence, or was in the chain of command and/or communications distribution network.
80. Whether Detective Sergeant Van Allen personally worked on the OPP criminal complaint by Mr. McKenzie or not, his working for the suspects and against the victims in an open OPP criminal occurrence is a direct conflict of interest.



81. Dr. Sharon Smith, a threats expert witness for the defendants in the Nelson Barbados case, presented by Faskens and Gerald Ranking, worked together with Jim Van Allen on a long term basis as policing professionals, and also as business associates. Their current websites indicate that they are still working together.
82. Given the apparent long standing professional and business relationship between former FBI Agent Dr. Sharon Smith and serving OPP Detective Sergeant Jim Van Allen, and the role of both as expert witnesses for the defence hired by Gerald Ranking in the Nelson Barbados case, there are serious unanswered questions concerning conflicts of interest, and how Mr. Ranking came to hire each. This is especially true considering that Detective Sergeant Jim Van Allen's true status as a serving police officer, threats expert and manager of the OPP criminal profiling unit was concealed from the Appellant and from the Court.
- (iv) Disclosure of personal information by police.
83. While the disclosure of personal information is not newly discovered, the fact that it was a police officer who accessed the information and disclosed it is newly discovered.
84. Under the Police Services Act of Ontario, the disclosure of personal information by police is considered to be of sufficient importance that the PSA regulates which members of police services are allowed to disclose personal information. Section 41 of the PSA also mandates that the disclosure 'shall' be done for one of eight purposes:

Power to disclose personal information

41 (1.1) Despite any other Act, a chief of police, or a person designated by him or her for the purpose of this subsection, may disclose personal information about an individual in accordance with the regulations.

Purpose of disclosure

(1.2) Any disclosure made under subsection (1.1) shall be for one or more of the following purposes:

1. Protection of the public.
2. Protection of victims of crime.
3. Keeping victims of crime informed of the law enforcement, judicial or correctional processes relevant to the crime that affected them.
4. Law enforcement.
5. Correctional purposes.
6. Administration of justice.
7. Enforcement of and compliance with any federal or provincial Act, regulation or government program.
8. Keeping the public informed of the law enforcement, judicial or correctional processes respecting any individual.

85. Detective Sergeant Jim Van Allen disclosed the Appellant's personal information to the public by placing Best's Ontario driver's license number, date of birth and Ontario Ministry of Transport address history into an affidavit that was filed in the Nelson Barbados case without redaction. Detective Sergeant Van Allen's 'private investigation' reports containing Donald Best's personal information were also distributed to the public. The information from Van Allen's reports and affidavit itself were published on the internet, starting on October 30, 2009, three days prior to the November 2, 2009 costs hearing. The actual affidavit was published on the internet in January 2010.
86. Copies of Detective Sergeant Van Allen's affidavit and Donald Best's personal information disclosed by Van Allen, remain posted on the internet in 2014.
87. Detective Sergeant Van Allen's disclosure of Best's personal information directly resulted in acts of violence, threats, harassment and other criminal

acts against Mr. Best and his family members. Mr. Best was ambushed and assaulted on the street. His family members were frightened and worried about violence and identity theft. One of his children was approached, shown a printout from the internet and threatened, and had to deny the Donald Best was their father. Anonymous persons on the internet called for criminals and gang members Mr. Best had prosecuted to hunt down Best and his family. Some persons called for the defendants to illegally hire an off-duty police officer to track down Mr. Best and his family. Unknown persons shot up a Best family vehicle parked near the family home. (Best Affidavit April 2012).

88. It is a certainty that Detective Sergeant Jim Van Allen was not authorized by the OPP Commissioner to release Donald Best's personal information, and therefore Detective Sergeant Van Allen was in violation of PSA 41(1.1).
89. Further, it seems apparent that Van Allen's release of Best's personal information was not in accordance with the authorized purposes under PSA 41 (1.2), and therefore Van Allen was again in violation of the PSA.

**(b) Private Security and Investigative Services Act**

90. The mandatory separation between the professions of police officer and private investigator is further illustrated by Sections 39 and 40 of the Ontario Private Security and Investigative Services Act, 2005, S.O. 2005, c. 34:

Holding out as police

39. No person who holds a licence under this Act shall hold himself, herself or itself out as providing services or performing duties connected with police. 2005, c. 34, s. 39.

Certain terms prohibited

40. No private investigator, security guard or person who engages in the business of selling the services of private investigators or security guards shall use the following terms or variations of them:

1. Detective or Private Detective.
2. Law enforcement.
3. Police.
4. Officer

91. Section 6 of the Act states:

PART III PROHIBITIONS  
Individual licence

6. No person shall act as a private investigator or a security guard or hold himself or herself out as one unless the person holds the appropriate licence under this Act and,

(a) is employed by a licensed business entity, a registered employer under section 5, or an employer that is not required to be registered; or

(b) is the sole proprietor of a licensed business entity or is a partner in a licensed business entity. 2005, c. 34, s. 6.

Licence to engage in the business

7. (1) No person shall sell the services of private investigators or security guards or hold themselves out as available to sell such services, unless,

(a) the person holds the appropriate licence under this Act; or

(b) the person is an employee of a licensee described in clause (a) and is acting on behalf of that licensee in the normal course of his or her duties.

92. Detective Sergeant Van Allen did not, and could not as a serving police officer, hold an appropriate license under the Ontario Private Security and Investigative Services Act when he acted as a private investigator, employed by Faskens/Ranking/Kwidzinski.

(c) **Bribery of Officers: Criminal Code Section 120**

93. The section of the Criminal Code of Canada dealing with Bribery of Officers states:

Bribery of officers

120. Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).

94. In October 2009 Detective Sergeant Jim Van Allen was a 'Peace Officer', and that with Faskens/Ranking/Kwidzinski he agreed to, and obtained 'money' and 'employment', as evident in his affidavit and invoices filed with the court.
95. Detective Sergeant Jim Van Allen 'interfered' with the administration of justice when he offered evidence of an affidavit and two invoices in the Nelson Barbados civil case, when his participation in the case was prohibited by various laws. The 'interference' resulted from Detective Sergeant Van Allen's unauthorized and illegal participation in the Nelson Barbados civil case. Detective Sergeant Jim Van Allen's evidence contained significant omissions, deceptive and misleading statements and opinions and, regarding one issue, was arguably false.
96. Detective Sergeant Jim Van Allen, as a direct result of being employed by Faskens/Ranking/Kwidzinski and receiving or being promised money, committed offenses against the *Police Services Act*, and against the Ontario *Private Security and Investigative Services Act*.
97. In 2009, Detective Sergeant Jim Van Allen was employed by defendants in the Nelson Barbados case, who were reported to the OPP in 2007 as criminal

suspects in a criminal-threatening occurrence relating to the Nelson Barbados case. Detective Sergeant Van Allen was in 2007 and 2009 a manager in the OPP unit tasked with assessing criminal threatening occurrences.

98. There are serious concerns that Detective Sergeant Van Allen's employment and payment of money by Faskens/Ranking/Kwidzinski could be perceived as an attempt, or means to: "protect from detection or punishment a person who has committed or who intends to commit an offence". There is an obvious benefit to criminal suspects if they are able to secretly hire a police officer who has or could have knowledge of the police investigation into them.

99. Further, there are serious concerns that the persons and entities who offered or provided Detective Sergeant Van Allen employment and money to work for defendants in the Nelson Barbados civil case, could be perceived as "directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii)."

8. Durham Regional Police Secret Investigation and cover-up of Van Allen's illegal activities

100. In the April 29, 2013 affidavit of Donald Best detailing the Durham Regional Police Service's discovery of what Durham Police and Best called "an 'undocumented', secret, private or 'on the side' " investigation of Best by a Durham Regional Police court constable in December of 2009 in anticipation of a guilty verdict against Best to happen in a trial to take place over a month later on January 15, 2010.



101. As related in Mr. Best's affidavit, an investigation of this court constable by the Professional Standards Unit of the Durham Regional Police Service showed that the investigation of Best was "entirely undocumented and that no official or unofficial notes, emails, reports, files or records of this court police investigation exist with the Durham Regional Police or at the Court, including in the administrative records of the court in Barrie and Oshawa, or in the Nelson Barbados Group Ltd. court file and court transcripts."
102. Further, Sergeant Laurie Rushbrook of the Durham Regional Police, Professional Standards Unit advised Best that the investigation was "most likely in assistance to the court."
103. In the April 30, 2013 hearing in relation to the application to set aside the contempt order, the Appellant submitted the April 29, 2013 affidavit to the court and made oral submissions before Justice Shaughnessy. Mr. Best spoke of a cover-up and said (page 10, line 23):

"The facts that were explained to me recently by Sergeant Rushbrook and my own experience as a police sergeant and veteran of internal investigations call for an immediate and thorough examination of this court process and court police investigation. The fact that no electronic or paper records, official or otherwise, of this investigation exist with the Durham Police, such as police notes, files, documents, occurrence numbers - nothing exists in the court file and Your Honour, that speaks further of a cover-up or a conspiracy in order to prevent a full hearing and it adds to already serious concern that this has been a miscarriage of justice and abuse from the beginning."
104. The Appellant also informed the court in the affidavit and orally that the Durham Regional Police Professional Standards Unit advised that they did not know how deep the undocumented or private police investigation went, what came of it, who requested it, who received the product of the investigation, or who provided Donald Best's name, date of birth and other information to the Court Constable. The Durham Police Court Constable retired a matter of a few days after first being spoken to by Sergeant Rushbrook and could no longer be compelled to talk.

105. On page 15 of the April 30, 2013 transcript, Mr. Ranking replied, stating:
- "I have no idea what my friend is talking about and I can tell you that neither Mr. Silver nor I, nor our respective clients, had anything to do with any of the allegations set out in Mr. Best's affidavit concerning Mr. Rushton, Sergeant Rushton, that he has handed across today, number one."
106. In fact, Mr. Ranking knew, or should have known, that by employing Detective Sergeant Van Allen as a 'private investigator', or 'private police officer', Mr. Ranking had in effect commissioned a secret police investigation of Donald Best, and he had done so in the same general time frame as the secret police investigation that Mr. Best was informed about by Durham Regional Police.
107. Further, in answering Mr. Ranking's oral submissions to the court, Donald Best mentioned Mr. Ranking's private investigator, and how Van Allen had unlawful access to police records. On April 30, 2013, Mr. Best did not know that Jim Van Allen had been a serving police officer engaged in a secret police investigation of Mr. Best in 2009. Mr. Best stated (Page 16, starting line 32):
- "MR. BEST: Well, I responded to his (Mr. Ranking's) first point that he said and he's also assuring us that his clients don't know and I would remind you that Mr. Ranking's private investigator, by his own admission in his affidavit, accessed secret police records which he should not have, which the people who hold those records, the police association, say was a criminal offence that he did it. That was..."
- THE COURT: That goes to the main argument that you are making in this case.
- MR. BEST: So, Mr. Ranking saying that his client doesn't know is - you know, it carries very little weight."
108. Mr. Ranking knew or should have known that his private police officer had improperly accessed confidential police files on Mr. Ranking's behalf,

provided him with the information gleaned and placed at least some of that information into an affidavit. Further, Mr. Ranking knew or should have known that Detective Sergeant Jim Van Allen might have contacted the Durham Regional Court Constable and provided him with Donald Best's confidential and personal information as part of Detective Sergeant Van Allen's investigations and tasks for Mr. Ranking.

109. Mr. Best asked the court to perform a full investigation of the secret police investigation, which the court refused, saying that it was a matter for the Durham Regional Police to investigate.

9. Ranking and Silver knew or should have known that Van Allen was a police officer working unlawfully and that he was unlawfully accessing police information

(a) **Ranking**

110. Mr. Ranking retained a private investigator who was a 'former' police officer and relied upon his expertise. It is inconceivable that a competent senior counsel would not ask his affiant when he left the police, whether he was a licensed private investigator and how he got or was getting access to police data. In preparing the affidavit in this case, these questions would certainly have been asked. While it is possible that Detective Sergeant Van Allen lied to Mr. Ranking, it is extremely unlikely in light of the fact that information from police information checks were included in the affidavit and the editing of the invoices included edits regarding such checks. It is not possible that Mr. Ranking did not see the unedited versions of those invoices since, if Van Allen was hiding the information from Mr. Ranking, there would have been no need to include the information and then excise it. The details would merely have been omitted in the first place. Further, the drafting of the affidavit is carefully crafted to avoid revealing the fact that Van Allen was a

serving police officer. The fact that Mr. Ranking had earlier retained Dr. Smith, an associate of Van Allen, increases the likelihood that Mr. Ranking knew of Van Allen's status as a serving police officer. Mr. Ranking mentioning searches using to a Social Insurance Number also increases this likelihood. Finally, the fact that Van Allen was not produced by Mr. Ranking for cross-examination suggests that Mr. Ranking knew that there was a risk of exposure of this fact by cross-examination.

(i) Structure of Van Allen's evidence conceals his true status

111. The structure and content of private investigator/affiant Jim Van Allen's evidence (Van Allen's affidavit and invoices) had the effect of concealing from the Appellant and from the courts, the witnesses' true status as a serving OPP Detective Sergeant, and his primary expertise as a threats and risk assessment professional.
112. The October 24, 2009 invoice indicates that Mr. Ranking and Mr. Kwidzinski were involved in the preparation of the Van Allen affidavit.
113. The October 24, 2009 and November 7, 2009 invoices were placed before the court by Mr. Ranking on January 15, 2010. The invoices have extensive redactions, including redactions of what types of 'checks' and 'record checks' were performed by Mr. Van Allen. As Mr. Van Allen signed the invoices and probably prepared them, it is probable that Van Allen delivered them to Mr. Ranking in an unredacted form, and that Mr. Ranking or his staff upon Mr. Ranking's instructions would have redacted the invoices before filing them with the court. The converse is illogical. If Van Allen had wanted to hide his status as a police officer from Mr. Ranking, he would not have raised red flags by editing in respect of checks, the substance of which reveals that this was information accessible by the police. Rather, he would not have included the detail in the first

place and there would have been no need to edit (i.e., just "checks"; not X "checks, requiring an edit).

114. During his January 11, 2013 cross-examination by Mr. Silver and Mr. Ranking, Donald Best stated that Mr. Ranking redacted Mr. Van Allen's invoices, to which Mr. Silver replied "Maybe he redacted it because it was privileged." The entire exchange is in the record (January 11, 2013 transcript page 168, 169). This is an admission that he edited the invoices. There could not have been any privilege attaching to the edited parts of the invoices.
115. In Detective Sergeant Jim Van Allen's affidavit paragraph 1, Van Allen identifies himself as President of BSSGI, "an Ontario corporation that provides investigative analytical services..." Missing is the fact that neither BSSGI nor Van Allen himself were licensed to provide private investigation services as required under Sections 6 and 7 of the Ontario *Private Security and Investigative Services Act*, and that both Van Allen and his corporation were in violation of the Act.
116. In Jim Van Allen's affidavit paragraphs 2 through 5 under the heading "Background and Experience", Van Allen omits and conceals from the court the following facts that were true when he swore to his affidavit on October 21, 2009:
  - a. Jim Van Allen was (from May 1979 until October 2010) in full-time employment as a serving police officer, a Detective Sergeant with the Ontario Provincial Police.
  - b. Detective Sergeant Van Allen was (until October 2010) the manager of the OPP Criminal Profiling Unit where he had been assigned since 1995.
  - c. Detective Sergeant Van Allen selectively omitted any and all information about his professional expertise and training in threats, stalking, harassment and risk assessment. When compared with Van Allen's normal 2009 CV, normal 2013 CV and other materials

including his LinkedIn Profile and the current Alpha flyer a large amount of information was selectively omitted. The specific exclusion of this type of information is significant given the long history of threats, harassment, violence and other criminal acts against persons associated with the Nelson Barbados plaintiff.

- d. Detective Sergeant Van Allen did not reveal that his employment as a private investigator was illegal, a violation of the *Police Services Act*.
  - e. Detective Sergeant Van Allen did not reveal that his disclosure of Donald Best's personal information (date of birth, address history, drivers license number etc.) was illegal, a violation of the *Police Services Act*.
  - f. Detective Sergeant Van Allen did not reveal that his employment to perform an investigation for a defendant in the Nelson Barbados civil case was a direct conflict of interest for himself and for the Ontario Provincial Police. Van Allen did not reveal that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd., the plaintiff in the Nelson Barbados v. Cox civil case. Detective Sergeant Van Allen did not reveal that since 1995 he was assigned to the OPP unit in charge of threat assessments and threat occurrences for the entire province, nor did he reveal that some defendants in the Nelson Barbados case were listed as potential suspects in the OPP open crime occurrence.
  - g. Detective Sergeant Van Allen did not reveal his long-term professional police relationship and also his business relationship with another of Mr. Ranking's expert witnesses, Dr. Sharon Smith, who had provided evidence about threats in the Nelson Barbados case in January 2008.
  - h. Further, Detective Sergeant Jim Van Allen's affidavit is written in an unusual 'passive' voice, and are presented by Van Allen without a definitive commitment that the affiant performed the action himself. For instance in paragraph 12, Van Allen states "Inquiries of the Toronto Police Association, of which Mr. Best was a member, only reveal the former address in Hamilton, namely, 123 Mountain Park Road," and in paragraph 9 "Internet searches of various types were also unhelpful in locating any residential addresses for Mr. Best." Paragraph 10: "Other searches have also failed to disclose Donald Best's whereabouts."
117. Mr. Ranking, Mr. Kwidzinski, Mr. Silver and others knew prior to the creation of Detective Sergeant Van Allen's affidavit that the Nelson Barbados case had seen many allegations of threats, violence and other



criminal acts against the appellant's witnesses. The lawyers also knew that there was forensic evidence that some of the anonymous threats originated from defendants and also from the law firm of Miller Thomson. The omission of any mention of Van Allen's extensive background in threat assessment would be surprising in light of this situation, unless this was a conscious effort to conceal the fact that that Van Allen was a serving police officer who was likely aware of the case as a result of his police duties.

118. Further, the incorrectness of Van Allen's conclusions regarding motivation to hide (to evade service per Van Allen; vs. safety as an former undercover police officer) are more clear when one considers the nature of Van Allen's expertise. For instance, throughout Section B 'Investigation Regarding Donald Best', Detective Sergeant Van Allen, one of the foremost threat and risk assessment police officers in Canada, is mystified and seemingly cannot imagine why Donald Best, whom he knew to be a former police officer and deep undercover investigator against organized crime, would use mailboxes to hide his home address, and have no listed telephone.
119. Further, in paragraph 15, Detective Sergeant Jim Van Allen states: "Very few people demonstrate the strenuous efforts (over a number of years) to create and convey a false address history, as reflected by the repeated use of false addresses and/or post office box numbers used by Donald Best. In my investigative experience, he is among very few individuals to go to this length to conceal his address." In light of his expertise and the fact that he was a police officer himself, Detective Sergeant Van Allen knew or should have known that Donald Best's hiding of his home address was normal and commonly practiced by police officers and other at risk persons.

120. Detective Sergeant Van Allen would have known that this concealment of residence is common and acceptable practice not only for police officers, but also for many Crown Prosecutors, judges, parole officers, health care workers, women's shelter workers, private investigators and a host of other at risk professions.
121. Detective Sergeant Van Allen would also have known that the names, addresses and phone numbers of undercover police officers are often concealed within policing organizations themselves as the policing community knows that Organized Crime and others are sometimes able to penetrate police and government databases. Van Allen would know that these breaches of data security happen when unethical police personnel illegally work for private interests: exactly as Detective Sergeant Van Allen was doing himself.
122. In paragraph 9, Detective Sergeant Van Allen notes that Donald Best used the word "suite" to describe a UPS United Parcel Service box address and that "I cannot explain the different terminology but it would certainly suggest an intention to portray a "mailbox" as an actual residential address."
123. Van Allen's purported bewildered state over why Donald Best would use the word 'suite' in this manner appears contrived to be sinister because Van Allen did not inform the court that he himself had a UPS United Parcel Service box in Orillia, to conceal his own home address. Van Allen did not inform the court that he also used the word "Suite" in relation to his own UPS box (per Van Allen's 2009 CV).
124. In paragraph 14 and 15, Detective Sergeant Van Allen uses the word 'false' to describe Donald Best's UPS mail box addresses. Van Allen states that Best exhibits "repeated use of false addresses and/or post office

box numbers". None of the addresses and UPS boxes are false. The appellant used each of them to receive mail. In the case of the East Mall address the appellant has rented the UPS box for almost 20 years. The use of the word 'false' by Detective Sergeant Jim Van Allen is in itself a demonstrably false statement. Van Allen knew that he supplied an affidavit that he must have known was deceitful, deceptive and outright false in paragraphs 14 and 15.

- (ii) Gerald Ranking indicated that Investigations into Donald Best included Social Insurance Numbers.

125. I note that on page 58 of the January 15, 2010 transcript, Mr. Ranking indicates to the court that the private investigation also involved Mr. Best's social insurance number, saying:

"RANKING: I can tell Your Honour that, you know, with respect to trying to get into social insurance numbers and telephone numbers and driver's licences, and things of that nature, we did a lot of work and that is what is reflected through this material."

126. There is no reference to the use of Social Insurance Numbers in any of the materials filed before the court. It is possible though, that the redacted October 24, 2009 and November 7, 2009 Van Allen invoices or a report or letter contained some information about the Social Insurance Number investigations, prior to redaction.

127. It therefore seems apparent that Mr. Ranking's oral submission to the court is further indication that there are facets of the private investigation that Mr. Ranking is aware of, but withheld from the appellant and from the court.

128. Certain types of investigations and searches involving Social Insurance Numbers (such as credit reports) are prohibited without the written permission of the subject of the search or unless they are done for a

'permissible purpose'. There could be no 'permissible purpose' during investigation by Detective Sergeant Van Allen.

(iii) Lawyers actions had the effect of concealing truth about Van Allen from the Appellant and the Court.

129. At no time during the Nelson Barbados or Donald Best proceedings in lower court, or in the current proceedings in the Court of Appeal, did Mr. Ranking, Mr. Kwidzinski, Mr. Silver or anyone inform the court that the affiant Jim Van Allen was in fact an OPP Detective Sergeant, and one of the foremost threat and risk assessment professionals in Canada.
130. Mr. Ranking, Mr. Kwidzinski and Mr. Silver have always referred to Jim Van Allen as a 'private investigator' or similar term in written and oral submissions to the courts, in conversation with the Appellant during the recorded November 17, 2009 phone call, in inter-lawyer communications and during cross-examinations.
131. On November 17, 2009, both 'private investigator' Jim Van Allen and lawyer Sebastien Kwidzinski were to be cross-examined at Victory Verbatim in Toronto on their affidavits as presented to the court on November 2, 2009 (November 12, 2009 letter that is Exhibit V to Best's January 10, 2013 Affidavit).
132. Gerald Ranking refused to present Van Allen and Kwidzinski for cross-examination. This refusal was the subject of conversation between Mr. Ranking and the other lawyers, as shown in the digital voice recording made by Best at the time, and the associated certified transcript of the recording. All the lawyers in the room, including Ranking, Kwidzinski and Silver knew that Mr. Ranking had refused to present Van Allen and Kwidzinski for cross examination.

133. On November 17, 2009, Mr. Best called Victory Verbatim from overseas to be cross-examined, and spoke with Mr. Ranking and Mr. Silver on speaker phone while Mr. Kwidzinski and the other lawyers in the room listened. The voice recording and transcript show that when Mr. Best accused Mr. Silver of hiring the private investigator, Mr. Silver denied doing so. Mr. Best then asked of Mr. Silver ""Well well. Who was it then? Sir, who hired the private investigator?" Mr. Silver replied to Mr. Best, "I have no idea". Mr. Ranking, Mr. Kwidzinski and all the other lawyers in the room heard Mr. Silver say this to Mr. Best, yet remained silent about this issue as shown in the voice recording and the associated transcript.

134. As an experienced and senior lawyer, Mr. Ranking knew, or should have known, that had he presented Van Allen for cross-examination on Van Allen's affidavit, the first few basic questions would have forced Van Allen to admit that he was a serving OPP Detective Sergeant or to commit perjury or mislead.

(b) Silver

135. While Mr. Silver did not retain Van Allen, the positions advanced by Messrs. Ranking and Silver were done in cooperation. Mr. Silver repeatedly relied upon the Van Allen affidavit. It is highly unlikely that Mr. Silver was unaware of Van Allen's status as a police officer at the time. The fact that he denied knowledge of who hired the private investigator on the very day he was scheduled for cross-examination supports this position.

(c) **Criminal or Quasi Criminal Liability**

136. Under the *Criminal Code* and the *Provincial Offences Act* ("P.O.A.") a person may be a party to the criminal or quasi-criminal act of another if he aided and abetted that person. As stated above, the preparation and filing of an affidavit of a private investigator, who was a serving police officer, who accessed police data and who released that data to the public is violation of Provincial Statutes and an offence under the P.O.A. and the *Criminal Code*. The hiring of Van Allen by Mr. Ranking to do so was abetting. The drafting of the affidavit by Mr. Ranking was aiding. The knowing failure to divulge these circumstances and the reliance on the affidavit was also aiding and abetting by Messrs. Ranking and Silver and a criminal obstruction of justice by misleading the court.
137. In addition there are specific provisions for liability that flow from the legislation. In respect of the *Police Services Act*, section 81 of the *Police Services Act* states:
- Inducing misconduct and withholding services
- Inducing misconduct
81. (1) No person shall,
- (a) induce or attempt to induce a member of a police force to withhold his or her services; or
- (b) induce or attempt to induce a police officer to commit misconduct.
- Withholding services
- (2) No member of a police force shall withhold his or her services.
- Offence
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.
- Consent of Solicitor General
- (4) No prosecution shall be instituted under this section without the consent of the Solicitor General.
138. Detective Sergeant Van Allen's activities as a private investigator while under the employ of Faskens/Ranking/Kwidzinski, amounted to misconduct



under the Police Services Act. Detective Sergeant Van Allen's affidavit states that it was Gerald Ranking who contacted Van Allen with the offer of employment, and not the other way around. If Mr. Ranking was aware that Van Allen was a police officer, he was in violation of 81 (1) (b) 'induce or attempt to induce a police officer to commit misconduct'.

139. Section 120 of the Criminal Code also makes a person liable based on direct or indirect conduct.
140. The knowledge that Van Allen was a serving police officer when he purported to investigate as a private investigator may have been an obstruction of justice in respect of an investigation. However, clearly when the affidavit was filed with the court and relied upon in civil and contempt proceedings, as officers of the Court, both Messrs. Ranking and Silver were obliged to reveal that this purported private investigator was violating at the least the *Police Act* and the *Private Security and Investigative Services Act* and that he was not a licensed private investigator. The failure to do so misled the Court and therefore constituted criminal obstruction of justice under s.139(2) of the *Criminal Code*. The misleading of a Court by a lawyer is an obstruction of justice (*R. v. Doz*, (1984) 12 C.C.C.(3d) 200 (Ata. C.A.), at para 28; *R. v. Wijesinha*, [1995] 3 S.C.R. 422; *R. v. Murray*, [2000] O.J. No. 2182 (S.C.J.)). Any misleading of a Court the misleading of "judicial proceeding" as defined in section 118 and is an obstruction of the "course of justice" (*Wijesinha, supra*). This is so even in respect of a provincial offence (*R. v. Kalick v. The King* (1920), 61 S.C.R. 175, *R. v. Spezzano* (1977), 15 O.R.(2d) 489 (C.A.)) or civil proceedings (*Wijesinha, supra*). It would certainly include misleading the Court in respect of a civil contempt proceeding which is criminal or quasi criminal.

10. Evidence was not discoverable through due diligence until recently

141. The fresh evidence was obtained on December 30 and 31, 2013, that proves purported 'private investigator' Jim Van Allen was, at the time of his 2009 investigations and sworn affidavit for Ranking, Faskens and PWCECF in the Nelson Barbados civil case, a sworn police officer with the rank of Detective Sergeant, who was actively serving in full time employment with the Ontario Provincial Police.
142. Until recently, the Appellant had been effectively misled by the lies of the OPP who covered for their former colleague by saying that Van Allen had retired from the OPP in 2008.
143. The lie was uncovered as a result of suspicions that led to a person contacting Van Allen as a potential client on December 30, 2013 and a December 31, 2013 email. This information was not available earlier. The c.v. was created on December 30, 2013 and could not be found on the internet. The materials available online lack crucial details about Van Allen, such as his retirement date, or even the fact that he was a police officer at the time.
144. The Appellant exercised due diligence in seeking to determine how Van Allen got his personal information from November 2012 through April 2013. Senior police officers from the Professional Standards Units of the Ontario Provincial Police and the Durham Regional Police Service officially informed Donald Best that Detective Sergeant Van Allen had retired from the OPP in 2008. This information was false.
145. On November 9, 2012 Donald Best spoke with Inspector John MacDonald of the RCMP Professional Standards Unit.

146. On December 10, 2012 the Appellant sent a fax to RCMP Commissioner Bob Paulson, requesting an investigation into illegal /unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data. Mr. Best states that the (unnamed) suspects are a retired OPP Sergeant "and presumably still-serving OPP personnel who supplied him with the data."
147. On January 17, 2013, a fax was sent from the RCMP and P.M. Dionne of the Canadian Police Information Centre (CPIC), and also attaching 3 faxes from Donald Best to the RCMP Commissioner, including a January 16, 2013 fax informing Commissioner Paulson that Donald Best had received a voice mail from OPP Professional Standards Inspector Kearns.
148. On January 17, 2013, the Appellant called and spoke with OPP Professional Standards Officers Inspector Marty Kearns. A January 17, 2013 email from the Appellant to OPP Professional Standards Officers Inspector Marty Kearns and Sgt. Major Jeff Vibert, attaching the Van Allen October 21, 2009 affidavit, the two invoices from Behavioural Science Solutions Group Inc. to Faskens and Gerald Ranking, and the October 12, 2012 Order of Justice Shaughnessy staying the execution of the arrest warrant for Donald Best.
149. On Monday February 4, 2013, Donald Best spoke on the phone to Sgt. Major Vibert during several calls, wherein Vibert advised Best that:
- a. The OPP Professional Standards Unit had completed their investigation of Jim Van Allen and found that there were no information checks made on Donald Best by any OPP officer.
  - b. A Durham Regional Police officer had made two CPIC checks of Donald Best on December 17, 2009.
  - c. Peel Regional Police had performed a CPIC check on Donald Best on January 29, 2010.

- d. Detective Sergeant Jim Van Allen had retired from the OPP in 2008 when he formed his corporation Behavioural Science Solutions Group Inc., and was retired when he was employed by Gerald Ranking in October of 2009.
  - e. Best and Sgt. Major Vibert discussed that it was possible that 'retired' Jim Van Allen might have known a Durham Regional Police officer and had that officer perform the CPIC checks upon Donald Best in December 2009.
  - f. Sgt. Major Vibert advised Donald Best to contact Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, whom Sgt. Major Vibert had already spoken with.
150. Sgt. Major Vibert falsely told Donald Best that Detective Sergeant Jim Van Allen had retired in 2008 when he founded his Ontario corporation, creates a reason to doubt the quality of the OPP internal investigation and the veracity of Sgt. Major Vibert's information, including that Vibert "found that there were no information checks made on Donald Best by Jim Van Allen or any other OPP officer."
151. On Monday February 4, 2013, as advised earlier by Sgt. Major Vibert, Donald Best called Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit and discussed the case. A February 6, 2013 email from Donald Best to Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, and to St. Major Jeff Vibert of the OPP Professional Standards Unit. The email described how "the defendants and their lawyers had in October 2009 hired a former OPP Detective Sergeant to track me down. This person, Jim Van Allen, improperly accessed confidential Toronto Police information and Ministry of Transport information about me." The email also confirms that Sgt. Major Vibert falsely informed Best that Jim Van Allen had retired prior to being hired by the lawyers in October 2009.

152. Further, the Appellant also wrote on February 6, 2013 that he suspected Van Allen might have caused the Durham Regional Police Special Constable to perform CPIC checks on Best. A February 7, 2013 email from Inspector Dmytruk acknowledging Best's email of the day before. A February 15, 2013 email from Donald Best to Inspector Dmytruk, informing that Best had not yet heard from the Durham Police investigator assigned to the case. A February 19, 2013 email from Sgt. Laurie Rushbrook to Donald Best and Best's reply.
153. On March 1, 2013, Donald Best spoke on the phone with Sgt. Rushbrook. An email dated March 13, 2013 from the appellant to Sgt. Rushbrook attaching three court transcripts for November 2, 2009, December 2, 2009 and January 15, 2010 was sent. On March 13, 2013, Donald Best spoke on the phone with Sgt. Rushbrook. A March 20, 2013 email exchange between Donald Best and Sgt. Rushbrook. A March 27, 2013 email from the Appellant to Sgt. Rushbrook and attachments. On March 27, 2013, Donald Best spoke on the phone with Sgt. Rushbrook.
154. On April 11, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, she had found no connection between the Durham Police court constable and 'retired' OPP officer Van Allen.
155. On April 24, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, her investigation did not examine if any Durham officers checked internal records for Donald Best.
156. On April 29, 2013, Donald Best swore an affidavit which was placed before the court on April 30, 2013, that described Sgt. Rushbrook's findings regarding the secret police investigation.

**D. EXAMINATIONS NEEDED**

157. The fact that Van Allen committed at least Provincial offences is clear.
158. The evidence that Mr. Ranking knew and participated in presenting an affidavit that was the product of such an offence and the degree to which he acted to cover up that offence requires further examination. While there is a strong circumstantial case to indicate his knowledge and criminal or quasi-criminal complicity, such an allegation requires further evidence or at least an opportunity for Mr. Ranking to deny or explain. While there is a circumstantial case against Mr. Silver, it is weaker. However, the reliance by Mr. Silver on the evidence of Van Allen, the joint nature of the efforts of Silver and Ranking and the comments on November 17, 2009 do create a circumstantial case of knowledge or wilful blindness. Further evidence is required, or at least an opportunity for Mr. Silver to deny or explain.
159. Van Allen knows who he told and what he told about his status as a serving police officer in or before October 2009. Documents, including unredacted invoices exist that will shed light on the issue of what activity was done by Van Allen and the use of police powers in the case.
160. Tamara Williamson is a director of Van Allen's corporation. She should have access to documentation regarding his retirement from the police force and whether and when he became a licensed private investigator, in addition to the unredacted invoices.
161. Other witnesses and documents from the OPP (Vibert); Durham Regional Police Force (Dmytruk; Rushbrook) and Toronto Police Association would also help determine the issues (When Van Allen retired; disclosure or non-disclosure of private investigations by Van Allen to OPP; involvement of Van Allen in 2007 criminal threat allegation in respect of McKenzie/NBGL;



access to MTO, Toronto Police Association information access; access to CPIC; DRPS investigation). However, the degree to which these witnesses and documents will be necessary will depend on whether Van Allen cooperates and the extent and honesty of that cooperation.

162. Finally, if a credible basis remains to believe that Messrs. Ranking and/or Silver knew and participated in the criminal or quasi-criminal acts of Van Allen, their examination would be also be sought make clear their wilful complicity in the offences of Van Allen and their obstruction of justice.

**E. TIME TO CONDUCT EXAMINATIONS**

163. The Appellant had great difficulty finding counsel able and willing to take on this case. The need to present evidence of misconduct of fellow counsel, let alone criminal or quasi-criminal misconduct is distasteful for most counsel.
164. Counsel for the Appellant, Paul Slansky, is in the middle of a terrorism trial in the Superior Court before the Honourable Madam Justice Baltman. The pre-trial motions will be continuing on February 10-24 (excepting Feb. 19 and 21) and possibly the afternoon of Feb. 25. The jury selection is scheduled for the week of March 3. The Trial before the jury is scheduled for 6-9 weeks starting March 17. Justice Baltman has asked that counsel be available except for Feb. 19 and 21 (because she is unavailable on those dates) until the end of May. Justice Blair scheduled the review/appeal notwithstanding the trial schedule. However, this fresh evidence and examination issue was not known to Justice Blair. Although the facts began to surface at the end of 2013, they only came together in late January and February, 2014. This motion is being made returnable on February 21, without consulting with the Respondents, because of the limited availability of Mr. Slansky.

ASS

165. Summonses have been issued for Van Allen and Williamson returnable on February 19. Efforts were made to serve them on February 6, 7 and 10, 2014. Further efforts will be made on February 11, 2014. Van Allen has located in B.C. and an email was sent to him. He has presently indicated a willingness to testify if video-link can be arranged. However, so far service through his Ontario corporate offices has not been achieved. So far, there is some indication that Williamson is on some kind of leave.
166. Such further grounds as counsel may advise and this Honourable Court permit.

**THE RELIEF REQUESTED IS:**

1. Adjourning the motion scheduled for February 27, 2014;
2. Re-scheduling of the motion to be heard:
  - a) with the main appeal on June 2, 2014; or
  - b) on June 2, 2014 with the adjournment the appeal hearing date to a date after June 2, 2014.
3. Adding a copy of the recording of a November 17, 2009 conversation to the record on the review/appeal and the main appeal.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Application:

1. The affidavit of Che Claire;
2. The Motion Record and Factum for the review/appeal motions to a panel scheduled for February 27, 2014;
3. The Appeal Book and Factum on the main appeal scheduled for June 2, 2014;


4. Such further material as counsel may advise and this Honourable Court may permit.

**THE MOVING PARTY (APPELLANT) MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS MOTION:**

By service through:

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9  
Tel: (416) 536-1220; Fax (416) 536-8842  
Counsel for the Moving Party (Appellant)

**DATED AT TORONTO**, this 11th day of February, 2014.

  
Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9  
Tel: (416) 536-1220; Fax (416) 536-8842  
LSUC # 25998I

Counsel for the Moving Party (Appellant)

TO: The Registrar  
Court of Appeal for Ontario  
Toronto, Ontario

AND TO: Lorne Silver  
Barrister and Solicitor  
Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King St. West  
Toronto, ON  
M5H 3C2

Tel: (416) 869-5490  
Fax: (416) 640-3018

Counsel for the Respondent (Kingsland Estates Limited)

AND TO:

Gerald L.R. Ranking  
Barrister and Solicitor  
Fasken Martineau DuMoulin LLP  
333 Bay St.  
Suite 2400  
Toronto, ON  
M5H 2T6

Tel: (416) 865-4419

Fax: (416) 364-7813

Counsel for the Respondent 'PricewaterhouseCoopers East  
Caribbean Firm'

A58 Donald Best (Appellant) v. Richard Ivan Cox, et al. (Kingsland  
Estates Ltd, PricewaterhuseCoopers East Caribbean Firm)  
(Respondents)

Court File No: C57123

---

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED IN BARRIE

---

**AMENDED NOTICE OF MOTION  
(ADJOURNMENT)**

---

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9

Tel: (416) 536-1220  
Fax: (416) 536-8842  
LSUC #25998I

Counsel for the Applicant/Appellant

BETWEEN: COURT OF APPEAL FOR ONTARIO

DONALD BEST

Moving Party  
(Appellant)

and

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES A.K.A. PHILIP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN AND ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED AND LIFE OF BARBADOS LIMITED C.O.B. AS LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICE WATERHOUSE COOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD., AND COMMONWEALTH CONSTRUCTION INC.

Respondents

---

---

**NOTICE OF MOTION**

---

**TAKE NOTICE THAT** the Moving Party (Appellant) will apply to a judge of this Honourable Court on Friday February 21, 2014, at 10 am, or as soon after that time as is possible in the Court of Appeal for Ontario, 130 Queen St. West, Toronto, for the adjournment of the review/appeal of motions to a panel scheduled for February 27, 2014 and other scheduling adjustments or adjournments that may flow from this adjournment and for the addition to the record on the review/appeal and appeal a copy of the recording of a November 17, 2009 conversation that was an Exhibit in proceedings under appeal.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE APPLICATION IS FOR AN ORDER:**

1. Adjourning the motion scheduled for February 27, 2014;
2. Re-scheduling of the motion to be heard:
  - a) with the main appeal on June 2, 2014; or
  - b) on June 2, 2014 with the adjournment the appeal hearing date to a date after June 2, 2014.
3. Adding a copy of the recording of a November 17, 2009 conversation to the record on the review/appeal and the main appeal.



**THE GROUNDS FOR THIS MOTION ARE:**

**(A) REASON FOR THE ADJOURNMENT REQUEST**

1. The Appellant has recently discovered evidence that one of the most important pieces of evidence relied upon below, an affidavit to obtain substituted service and ratification of service, sworn by a private investigator, Jim Van Allen in October 2009, was the product of criminal and/or quasi-criminal misconduct. It is alleged that Mr. Ranking, and likely Mr. Silver, Respondents' Counsel, were aware of this situation and were thereby parties to these offences. The Appellant has applied for summonses to two (2) witnesses returnable for examination on February 19, 2014 in relation to Mr. Van Allen and Tamara Williamson to obtain further evidence of this misconduct and evidence of Respondents' Counsel knowledge. Further summonses and examinations will be needed. There is insufficient time to conduct these examinations and obtain transcripts for use on a fresh evidence application on the review/appeal to remove counsel for misconduct, conflict of interest and as witnesses, presently scheduled for February 27, 2014.
2. In particular, it is an offence for a serving police officer to act as a private investigator. The affidavit disclosed Ministry of Transportation ("MTO") information and Toronto Police Association information and other personal information, including identity information, about the Appellant. The Appellant, being concerned that his life and the life of his family was being endangered by the public disclosure of this information, in light of his former duties as an undercover police officer and an investigator in the private sector, which endangerment became a reality, made enquiries about how this information came to be in the affidavit of a private investigator, who himself was a former police officer. The Appellant was told by the O.P.P. that Van Allen, was a former O.P.P. police officer who had retired in 2008. What has recently been discovered is that this was a lie. In fact, Van Allen was a

serving police officer, with likely official police involvement in this very case, until 2010.

3. It is alleged that Counsel, Gerald Ranking, who retained Van Allen and Counsel, Lorne Silver, who relied upon the affidavit, knew that Van Allen was a serving police officer at the time. Accordingly, they were parties to the criminal and/or quasi criminal offences.
4. This would be important fresh evidence supporting the motion to remove counsel that is the subject of the review/appeal scheduled for February 27, 2014.
5. A summons has been issued for Van Allen and Tamara Williamson, another corporate director, returnable in Barrie on February 19, 2014. An attempt to serve the summons at the Investigation Company corporate headquarters in Orillia was made on February 7 and 10, 2014.
6. Counsel for the Appellant with carriage of the case is in the middle of pre-trial motions on a Superior Court terrorism trial, *R. v. Hersi* and will be, except for February 19 and 21, until near the end of the month. Jury selection is set for the beginning of March and the trial is expected to go until the end of May, 2014.
7. The main appeal is set for June 2, 2014.

**(B) HISTORY/BACKGROUND:**

8. By way of summary, the Moving Party ("Appellant") was a director and shareholder of Nelson Barbados Group Limited ("NBGL") at the time of the action and contempt proceedings. NBGL was the plaintiff in an action brought in Ontario. The Honourable Mr. Justice Shaughnessy ("Justice

Shaughnessy" or the "Court") granted a motion of the Respondents brought to stay the action on the basis of an inadequate jurisdictional connection to Ontario. This motion was successful. On November 2, 2009, a proceeding was scheduled to determine costs against NBGL to the Respondents on the motion. The Appellant had indicated by letter to Justice Shaughnessy dated October 30, 2009 that he would not be attending on behalf of the plaintiff on the motion and that he was content to leave the matter of costs against NBGL in the hands of the Court.

9. Unbeknownst to the Appellant and without prior service or even attempted service on Best, the Respondents brought a motion returnable on November 2, 2009 to require that the Appellant provide documents allegedly relevant to the issue of costs on the action (week prior to examination on November 17, 2009 (November 10, 2009) and require that he attend to answer questions allegedly relevant to costs on November 17, 2009. Notwithstanding the fact that there had been no notice to the Appellant, based on the affidavit of Jim Van Allen, falsely alleging that the Appellant was trying to evade service, the Court indicated a willingness to make such an order on November 2, 2009 and signed such an order on November 12 or 13, 2009.
10. The Respondents asserted that they had served a draft order on the Appellant by mailing it on November 6 to a post office box.
11. Evidence later filed makes it clear that the Appellant left the country on November 11, 2009 out of concern for his safety and the safety of his family and that he did not receive the November 2 materials or the order. In a letter to the trial coordinator dated November 16, 2009, he explained that he called her, as he did from time to time, to see what had happened on the costs motion on November 2, 2009. He indicated in that letter that he discovered for the first time during that telephone conversation that he had been ordered to attend for examination the next day. Being out of the country, it was not

feasible to attend in Canada for examination the next day. Instead, he called the office of the special examiner (Victory Verbatim) on November 17, 2009 and advised Counsel for some of the Respondents that:

- he did not receive the November 2, 2009 order or the materials in support of the application;
- he did not know of examination until the day before;
- asked about who had retained a private investigator, who disclosed confidential information about the Appellant which was reported in a website which endangered himself and his family.

The Appellant offered to conduct the examination by telephone and indicated a willingness to answer questions addressed in the November 2, 2009 order. The Respondents refused to conduct the examination by telephone.

12. The Appellant recorded the conversation on November 17, 2009 which confirms the foregoing. This recording has been authenticated and the authenticity has been conceded. An electronic copy on CD was entered as an Exhibit in the proceedings below. However, when attempting to perfect the appeal, the Appellant's agents were told that the recording could not be filed without bringing a motion. This motion is, *inter alia*, for this purpose.
13. Respondents' Counsel made a "Statement for the Record" on November 17, 2009 at Victory Verbatim after the call, in which they purported to summarize aspects of the November 17 conversation. They said that the Appellant:
  - admitted that he had a copy of the order;
  - that he knew of the November order before the call to the trial coordinator on November 16 (this knowledge was the reason for the call); and
  - that he had refused to answer questions on November 17, 2009.

This Statement for the Record was sent to the Appellant along with a letter and a Notice of Examination for November 25, 2009 and was received on November 24, 2009. The Appellant sent two letters (one sent to Mr. Ranking, copied to all counsel and one to the Court) dated December 1, 2009. In the letters, the Appellant pointed out in detail that and how the November 17, 2009 Victory Verbatim "Statement for the Record" contained clear and deliberate falsehoods.

14. On that same day, Van Allen was scheduled to be examined by other parties, including counsel for NBGL's former counsel. Van Allen was not produced for examination. In the recorded call, in the presence of Mr. Ranking, Mr. Silver denied knowing who had retained the private investigator.
15. On December 2, 2009, on an *ex parte* basis, an application was brought by the Respondents to have the Appellant found in contempt of the November 2, 2009 order and the November 25 examination and sought an order for the same relief as the November 2, 2009 order (except that the examination was to be before Justice Shaughnessy). The Respondents, through counsel Ranking and Silver, filed the "Statement for the Record" from Victory Verbatim on November 17, 2009 and indicated that it was correct and the Appellant's version in the December 1 letters was false. They asserted that the Appellant knew about the examination because he was served by mailing it to the post office box and because of his November 16 letter and his call on November 17, 2009. Respondents' Counsel lied about the issue of whether and when the Appellant received a signed order, as opposed to a draft order. The issue was never about a signed order versus a draft order. In the November 17 discussion, that was recorded, the Appellant said that he did not receive the materials purportedly sent on November 6, 2009. The materials sent on November 6, 2009 could not have contained the signed order since it was not signed until later. The Appellant was clearly saying that he never received ANY order, draft or signed. The Court accepted the

Respondents' position and rejected the position of the Appellant that he had not received the November 2 order, communicated in the Dec. 1, 2009 letter, and proceeded on the basis that the Appellant knew of the orders to provide documents and to attend for examination. He did so in large measure based on the affidavit of Van Allen and the Statement for the Record, both of which were the product of criminal and/or quasi-criminal acts by Respondents' counsel. A contempt hearing was set for January 15, 2010.

16. On January 15, 2010, in the absence of the Appellant, the Court found the Appellant in contempt (civil) of court for not providing the documents or attending for examination. The Court failed in its duty to require that a trial of the issue regarding knowledge be held to determine issues of credibility on contested facts. This was done in relation to the November 2, 2009 order on the basis of knowledge inferred from the alleged mailing of the order on November 6, 2009 (based on the Van Allen affidavit), the November 17, 2009 Victory Verbatim Statement for the Record and the letter dated November 16 to the trial coordinator. This was done in relation to the November 25 Notice of Examination and the December 2, 2009 order based on purported compliance with substituted service orders. The former was an unreasonable finding not supported by the record and, in fact, was perverse and capricious. Both findings were invalid in light of the law as set out in by the SCC in *Bhatnager* which requires personal service or knowledge (or wilful blindness), not substituted service. Accordingly, separate and apart from new evidence, the contempt order should never have been made in 2010.
17. The Appellant did not learn of the contempt finding until a few months later, when he was outside of Canada. He retained counsel to apply to have the finding of contempt on January 15, 2010 set aside. There was delay by his counsel in bring the application, which was not filed until August 2012. Clear and uncontradicted evidence was presented which demonstrated that:



- he left the country out of concern for his safety and the safety of his family on November 11, 2009;
- he never received information regarding any order to produce documentation on November 10, 2009 until November 16, 2009;
- he first heard of an order requiring that he attend for examination on November 16, 2009 from the trial coordinator and he was unable to attend in person that day because he was out of the country;
- that he offered to be examined by telephone on November 17, 2009 but the Respondents refused to accept this procedure;
- he did not receive the November materials, any November 2, 2009 order (draft or signed) or the Notice of Examination for November 25, 2009 until November 24, 2009, when he was still outside of the country;
- the Victory Verbatim November 17, 2009 Statement for the Record was false in stating that he had admitted on November 17 that he had a copy of the November 2, 2009 order, knowledge of the November 2, 2009 order before the call to the trial coordinator on November 16, 2009 and that he had refused to answer questions;
- That he did not receive notice of the December 2, 2009 or January 15, 2010 proceedings or materials in support of such proceedings until June 2010.

Based on this evidence, the Court should have set aside the contempt order on April 30, 2013, when the application to set aside the order was heard. Instead, the Court unduly restricted the scope of its review and refused to consider whether Respondents counsel misled the Court, saying that this was a matter for the Court of Appeal. Notwithstanding the fresh evidence detailed above, the Court found there to be no new evidence and no basis to set aside the original order. This is the primary basis for the appeal.

18. The Court was never told that the Van Allen affidavit was the product of a criminal or quasi-criminal act. The Appellant did not know at the time. The



Respondents Counsel never advised the Court in the affidavit itself or otherwise.

19. The proceedings in respect of which the documents and examination of the Appellant were sought, and in relation to which he was found in civil contempt, were solely in respect to seeking costs from the Appellant personally on the main action. In April 2010, the costs of the action were settled and paid. Accordingly, in 2012 and 2013, when the Application to set aside the finding of contempt was brought, the issue of costs of the action was moot. The Respondents opposed the application for a reason that amounted to an abuse of process: to gather information in respect of other litigation or potential litigation abroad. This was admitted by Counsel for the Respondents below and on appeal. Justice Feldman found this to be a meritorious ground of appeal on a motion for security for costs heard together with the removal of counsel motion.
20. The Respondent, a former police officer, served 45 days in jail before being released on bail pending appeal.
21. The Respondents represented by Mr. Roman (Miller, Thompson LLP) and Ms. Lang (Stikeman, Elliot LLP) have indicated by email that their clients will not be participating in the appeal.
22. The Appeal was perfected on September 5, 2013.
23. In light of the history and ongoing misbehaviour of counsel for the Respondents, Messrs. Ranking and Silver, the Appellant did and does not trust them to fairly deal with him fairly as prosecutors of the civil contempt appeal. He asked them to remove themselves from the case. They refused. A motion was brought for this purpose and was heard by the Honourable

Madam Justice Feldman. This process and the review of her decisions is described in the factum of the Appellant filed on the review/appeal.

24. The application for removal was based on misconduct by Counsel for the Respondents, Messrs. Ranking and Silver below and on appeal. The bases were the misconduct itself and the consequent conflicts of interest that flowed from it. Justice Feldman dismissed the motion based on deference to the findings of Justice Shaughnessy below. This was so notwithstanding the clear statement by Justice Shaughnessy that he was not going to consider the allegations of misconduct made against counsel and notwithstanding the clear indication, albeit not recognized by Justice Shaughnessy, that he had in fact been misled by counsel. As set out in the factum on the review/appeal, this was an error. However, no issue was raised regarding the unlawfulness of the Van Allen affidavit, which was relied upon before Justice Feldman, because this was unknown at the time.

### **C. FRESH EVIDENCE**

#### **1. Overview**

25. The fresh evidence shows, *inter alia*, that the Respondents' primary witness below, Jim Van Allen, was in fact a serving Ontario Provincial Police officer, unlawfully hired by counsel and illegally working 'on the side' as an unlicensed private investigator. To date, Detective Sergeant Van Allen's true status and primary expertise have been concealed from the Applicant, from the court below, from the Court of Appeal and from the individual Justices who have heard various motions including Justices Goudge, Tulloch, MacFarland, Feldman, and Blair.
26. As a direct result of the past refusals of the respondents to present Detective Sergeant Van Allen for cross-examination, there has never been any cross-

examination of the affiant or testing of his evidence that was used to convict the Appellant, Donald Best.

27. The appellant discovered a 'secret police investigation', an undocumented and unofficial investigation by Durham Regional Police, in anticipation of a finding of contempt, during at least the last quarter of 2009, prior to the contempt hearing in January 2010. This was brought to the lower court's attention by Donald Best in his affidavit sworn April 29, 2013 when he was an unrepresented litigant. As related herein, there is also some evidence raising suspicion that the 'secret police investigation' may have been initiated as early as 2007 and likely involved Van Allen in his duties as a Police officer.
28. Generally, the newly discovered fresh evidence is centred around the purported 'private investigator', Mr. Jim Van Allen, an affiant below who was retained in the employ of Fasken Martineau DuMoulin LLP ("Faskens") and lawyers Gerald Ranking and Sebastien J. Kwidzinski. Mr. Van Allen's October 21, 2009 affidavit and invoices were integral and important evidence used to convict and sentence the Appellant, Donald Best, of contempt of court in 2010 and used to reaffirm that conviction in 2013.
29. Newly discovered evidence shows that, unbeknownst to the appellant, to the court below, and to date unbeknownst to the Appeal Court of Ontario: the private investigator/affiant James Arthur 'Jim' Van Allen was at the time of his October 21, 2009 Nelson Barbados affidavit, and for a year afterwards until October of 2010, a serving police officer, a Detective Sergeant in full time employment with the Ontario Provincial Police (OPP).

30. As described in further detail herein, by working as a private investigator for Faskens, Detective Sergeant Van Allen was in violation of various laws including, *inter alia*, the *Police Services Act* and the *Private Security and Investigative Services Act* and the *Criminal Code*.
31. Further, there is newly discovered evidence showing that Detective Sergeant Van Allen had serious direct and potential conflicts of interest that specifically precluded him from working on the Nelson Barbados case in any capacity outside of his official police duties.
32. Further, as detailed herein, there is newly discovered evidence showing that Detective Sergeant Van Allen was as early as 2008, and remains today, part of a business network of retired and still-serving police officers and other justice system personnel, where some persons are clearly, and others might be, in violation of various conflict of interest rules and other laws by virtue of their cooperative 'on the side' business activities. There is evidence that Detective Sergeant Van Allen illegally accessed and illegally presented as evidence in his October 21, 2009 affidavit, confidential personal and identity information sourced from police and/or other government agencies (MTO, CPIC and Toronto Police Services). It is not known whether he accessed this information himself or through this network.
33. Further, as detailed herein, these circumstances present a strong circumstantial basis to infer knowledge that Faskens counsel, in particular Mr. Ranking, knew that his affiant/private investigator was, at the time, a police officer. Messrs. Ranking and Silver closely cooperated in the motions for examination and the contempt motion. Mr. Silver was aware of and relied upon the affidavit of Van Allen as reflected in the record below. Yet, he lied about not knowing about the private investigator in the recorded November 17, 2009 conversation, on the very date that Van

Allen was scheduled to be examined. This a basis, albeit a weaker basis, to infer knowledge by Mr. Silver.

34. As presented in more detail later, all this newly discovered evidence was not available to the Appellant before now, as much of it is newly created by Van Allen himself, and is newly made available by Van Allen personally and on the internet. Further, some of the evidence was in the past deliberately concealed from the appellant and from the courts as detailed herein.
35. Further, the truth about Detective Sergeant Van Allen was also concealed from the appellant by senior officers of the Professional Standards Unit of the Ontario Provincial Police in March, 2013. It is now known that these Professional Standards Unit OPP officers knowingly communicated false information to the Appellant directly on February 4, 2013 and otherwise between January and April 2013: communicating that Detective Sergeant Van Allen retired from the OPP in 2008 instead of the truth that he retired in October 2010.

2. **Evidence of Jim Van Allen was placed before the Court**

36. Three exhibits were filed by Mr. Gerald Ranking in the Nelson Barbados Group Ltd. vs Cox et al ('Nelson Barbados case') civil case costs hearing. These three exhibits have to do with Mr. Jim Van Allen, the purported private investigator and affiant below employed by Faskens, Gerald Ranking and Sebastien Kwidzinski in 2009 to conduct investigations, to report to Mr. Ranking and Mr. Kwidzinski and to swear an affidavit in the Nelson Barbados case. One of these is the affidavit of Jim Van Allen, sworn October 21, 2009 and filed with the court below in support of applications for substituted service, ratification of service and contempt. The second and third are copies of redacted invoices dated October 24, 2009 and November

7, 2009 from 'Behavioural Science Solutions Group Inc.' to Faskens and Gerald Ranking and hand signed "With Thanks. J Van Allen".

**3. Detective Sergeant Jim Van Allen was employed as a private investigator and was directed by Faskens, Ranking and Kwidzinski**

37. Detective Sergeant Van Allen's invoices and affidavit indicate that he was hired to investigate as well as offer the 'expert' opinions contained in his affidavit.
38. Paragraph 6 of Jim Van Allen's October 21, 2009 affidavit is headed 'B. Investigation Regarding Donald Best' and indicates that Gerald Ranking of Fasken Martineau DuMoulin LLP personally contacted and hired Van Allen on October 7, 2009 to perform an investigation regarding Donald Best.
39. Van Allen's two known Behavioural Science Solutions Group Inc. invoices for investigation are directed to 'Fasken Martineau DuMoulin LLP, Mr. Gerald Ranking.' The invoices are apparently heavily redacted but still contain enough information to determine that Van Allen was invoicing for performed private investigations.
40. The October 24, 2009 invoice states in part: "Unsuccessful lead investigation..." and "(redacted) information checks, (redacted) checks, (redacted) record check, (redacted) checks, (redacted) telephone interviews of (redacted)". In light of the content of the affidavit, including information from MTO, CPIC and Toronto Police Services, these checks were likely done through the access given in the capacity as a police officer, and was used for private investigation purposes.

41. The November 7, 2009 invoice is also heavily redacted, but shows a trip of 834km to perform "(redacted) area check", make 'Inquiry' and perform other duties that are redacted from the invoice.
42. Mr. Van Allen's Ontario corporation, Behavioural Science Solutions Group Inc. (BSSG), was formed October 20, 2008. James Arthur Van Allen and Tamara Jean Williamson are the only Directors. (BSSG Ontario Corporation Profile Report).
43. Van Allen's affidavit and invoices together indicate that Detective Sergeant Van Allen received directions from both Gerald Ranking and another Fasken Martineau DuMoulin LLP lawyer, Sebastien Kwidzinski, and that both Ranking and Kwidzinski were involved in the preparation of Van Allen's affidavit.
44. In various oral and written submissions to the lower court, Mr. Ranking refers many times to Jim Van Allen as his "private investigator", as do Lorne Silver and Justice Shaughnessy. This is clear in the following portions of the record:
  - November 2, 2009 court transcript, page 36, line 12;
  - December 2, 2009 court transcript, page 18, line 28;
  - the January 15, 2010 court transcript (page 15, line 14; page 18, line 14; page 59, line 6;
  - the January 11, 2013 cross-exam of Best transcript page 164, line 23
  - the authenticated transcript of the recording of the November 17, 2009 phone call between the Appellant Donald Best, and lawyers including Gerald Ranking and Lorne Silver (pages 8, 15, 16)
  - On April 30, 2013, transcript page 17, line 3; page 43, line 18; page 70, lines 7, 14; page 73, line 27, 28; page 80, lines 6, 21; page 107, line 16; page 108, lines 9, 13; page 109, line 6;



- On May 3, 2013, transcript, page 26, line 31;
- In the current proceedings before the Court of Appeal for Ontario, Mr. Ranking, Mr. Silver and Mr. Pendrith refer to Jim Van Allen as a 'private investigator':
  - In their October 2, 2013 Joint Factum of the Moving Respondents, Mr. Ranking and Mr. Silver state 'Jim Van Allen, a private investigator retained by PwC' (Joint Factum, Oct 2/13, paragraphs 18, 45).
  - Colin Pendrith refers to 'Jim Van Allen, a private investigator retained by PWC' in his Sept 26, 2013 affidavit (page 20, para 53).

**4. Detective Sergeant Van Allen's affidavit and Invoices were important evidence in the costs and contempt proceedings**

45. The court transcripts of November 2, 2009, December 2, 2009 and January 15, 2010, shows that Justice Shaughnessy relied upon Van Allen's evidence, and the oral and written submissions by counsel relating to Van Allen's evidence, to convict Donald Best of Contempt of Court on January 15, 2010, and also in determining costs in the contempt motion brought by the defendants.
46. The Respondents continued to refer to the unfounded and false opinions of Van Allen that the Appellant was trying to hide to evade service. In fact, had it been revealed that Van Allen was in a fact a threat assessor for the OPP, it would have been clear that Van Allen knew that the reason for the efforts of the Appellant was not to evade service but to protect himself as a result of his police and private undercover duties.
47. Jim Van Allen's affidavit evidence as 'an experienced private investigator', including his observations and expert opinions about Donald Best, was an integral and important part of the evidence placed before Justice

Shaughnessy on November 2, 2009, December 2, 2009 and January 15, 2010 concerning:

(a): justifying validation of documents supposedly already served upon Donald Best and future substituted service of documents upon Mr. Best, and  
(b): Mr. Best's supposed motivations for using mail boxes and otherwise concealing his true whereabouts, and by implication, Mr. Best's supposed motivations in not attending court, and the resultant conviction for contempt of court.

48. Van Allen's redacted invoices were also used as evidence, placed before the court by Mr. Ranking on January 15, 2010, as noted in the court transcript, page 59, line 4.
49. Jim Van Allen's October 21, 2009 affidavit was part of a motion first placed before Justice Shaughnessy on Nov 2, 2009, Dec. 2, 2009 and in January 2010 and was used extensively in making submissions to the Court:
  - On Nov. 2, 2009, Mr. Ranking used Van Allen's evidence to justify asking the court for substituted service on Donald Best:
    - Ranking: "Well, the difficulty, Your Honour, is I have had my own firm try to find him, I've had private investigator try to find him." (Nov 2/09 transcript page 36 line 10);
    - Ranking also told Justice Shaughnessy: "...with respect to the whole issue of validating service with respect to serving Mr. Best, until we were here today I have no way of serving Mr. Best, that's why we're seeking an order for substituted service." (Nov 2/09 transcript page 29 line 7);
  - Van Allen's evidence was also relied upon by Mr. Sebastien Kwidzinski in his October 27, 2009 affidavit and was relied upon in the December 2 2009 proceedings:
    - "Mr. Van Allen, an experienced private investigator was also unable to locate Mr. Best, despite extensive efforts" (paragraph 39). This Kwidzinski affidavit was before Justice Shaughnessy on November 2, 2009 and was referred to by Mr. Ranking in his oral submissions on December 2, 2009:

- The December 2, 2009 transcript shows that Mr. Ranking spoke extensively about the Kwidzinski Affidavit and the investigation of Donald Best on pages 18, 21, 22, 24, 28, 32, 33, 34 and 35;
- Van Allen's evidence was extensively referred to by Gerald Ranking again on the Dec 2/2009 court date in justifying substituted service upon Donald Best. (December 2, 2009 court transcript, pages 18, 19, 20)
- The January 15, 2010 transcript shows that
  - Mr. Ranking and Mr. Silver made extensive submissions about the Kwidzinski Affidavit and the investigation of Donald Best by Van Allen on pages 18, 37, 38, 60 and 61;
  - Mr. Ranking again referred to Van Allen's investigations and evidence in his oral submissions. (January 15, 2010 court transcript, page 15 – line 14, page 18 – line 14, page 58 – line 22, page 59 – line 6);
  - Further, on January 15, 2010, Mr. Ranking spoke about the extensive costs that his client incurred, including the hiring of "the private investigator, Mr. Van Allen." In this context, I note that on page 58 of the January 15, 2010 transcript, Mr. Ranking indicates that the investigation also involved social insurance numbers:

"RANKING: I can tell Your Honour that, you know, with respect to trying to get into social insurance numbers and telephone numbers and driver's licences, and things of that nature, we did a lot of work and that is what is reflected through this material."

No information about investigations regarding social insurance numbers is revealed in Mr. Van Allen's affidavit, in his redacted invoices or in any of the materials filed before the court. This secret investigation of Social Insurance Numbers by a serving Ontario Provincial Police officer has never been explained.

50. Further, Justice Shaughnessy relied upon the affidavit of Van Allen in accepting substituted service, in validating service, in finding the Appellant in Contempt of Court and in dismissing the application to set it aside:

- In his December 2, 2009 endorsement, (AB Vol 1 pp 162) Justice Shaughnessy in paragraph 12 states in obvious reference to the Van Allen evidence:

“Extensive investigations have not resulted in a location where he resides. I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best. In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted.”

(Also referenced December 2, 2009 transcript, page 60, line 2);

- In the January 25, 2010 ‘Reasons on Motion for Contempt’ (AB Vol 1 pp 181-194), Justice Shaughnessy in paragraph 12 states in obvious reference to the Van Allen evidence:

“Extensive investigations have not resulted in locating where he (Best) resides. I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best. In these unusual and unique circumstances I find that an Order for substitutional service of the contempt application is appropriate and it is so granted.”

In paragraph 31 Justice Shaughnessy refers to Van Allen’s affidavit evidence of Best’s motor vehicle license and MTO address searches and information:

“The affidavit material filed on this motion indicates that a motor vehicle license search was conducted on "Donald Robert Best" and which disclosed an address of 122- 250 The East Mall, Apt. 1255 which is the address for the mailbox of the UPS store located in the Cloverdale Mall in Toronto.”

- In May 2013, Justice Shaughnessy extensively quotes from and reaffirms his January 25, 2010 reasons.

5. Fresh Evidence: The 'private investigator' and affiant Jim Van Allen, was working as a private investigator at the time his evidence was placed before the court when he was also a serving police officer with the Ontario Provincial Police, and remained so until October 2010

51. The evidence that Detective Sergeant Jim Van Allen was a sworn police officer actively serving with the Ontario Provincial Police ('OPP') at the time he was hired by Fasken Martineau DuMoulin LLP and Gerald Ranking, performed the private investigation into Donald Best, swore his October 21, 2009 affidavit and delivered his invoices is as follows:

- a) On December 30, 2013, during a pretext telephone conversation with a prospective client using the name 'Ray Metivier', Jim Van Allen stated that he retired from the OPP in October of 2010 after thirty-one and a half years service. This conversation was digitally recorded and the recording and a draft transcript of the conversation is attached to the affidavit in support of the motion;
- b) On December 31, 2013, Jim Van Allen sent an email to 'Ray Metivier' with a current CV. This C.V. states that he was appointed to the OPP in May of 1979 and retired in October 2010. This is a time period of 31 years and 6 months, which is the same as stated orally by Jim Van Allen during the 'Ray Metivier' recorded telephone conversation ("I was thirty one and a half years with the Ontario Provincial Police...").
- c) It is also noteworthy that Van Allen's current CV also indicates that he was appointed as the 'Manager, Criminal Profiling Unit' in June, 1995.
- d) In Jim Van Allen's current 'LinkedIn' CV is now available online. Mr. Van Allen again states that he was the 'Former Manager – Criminal

Profiling Unit, Ontario Provincial Police, June 1995-October 2010 (15 years 5 months)". This is consistent with Mr. Van Allen's October 2010 retirement date indicated in his current CV and December 30, 2013 recorded oral statements and other recently obtained materials.

- e) In a current flyer distributed by 'The Alpha Group', and available online, Jim Van Allen is advertised as giving an upcoming presentation on March 17-21, 2014 in Fort Myers, Florida on the subject 'Assessing Threats of Targeted Violence'. In the 'About Your Trainer' section, the flyer states that Jim Van Allen "served 31.5 years with The Ontario Provincial Police and for 15 years was the Manager of the Criminal Profiling Unit." (Exhibit 9) This is consistent with Mr. Van Allen's October 2010 retirement date and active service as Manager with OPP Criminal Profiling Unit indicated in his current CV and his December 30, 2013 recorded oral statements and other recently obtained materials.

**7. Detective Sergeant Van Allen violated various laws**

- 52. When Detective Sergeant Van Allen was employed as a private investigator by Faskens, Ranking and Kwidzinski in 2009, Van Allen was acting in violation of various laws, including the *Police Services Act*, the *Ontario Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34, and the *Criminal Code*, Section 120 (Bribery of Officers) and/or Section 122 (Breach of Trust).

**a) *Police Services Act*, RSO 1990**

- 53. The conduct of personnel of both municipal police services and the Ontario Provincial Police (OPP) is governed by, inter alia, the *Police Services Act*, RSO 1990, cP.15 ('PSA').

54. The PSA applies not only to sworn police officers, but also to civilian personnel of police services in Ontario (jointly referred to in the PSA as 'members').
55. Detective Sergeant Jim Van Allen was in violation of sections of the PSA having to do with prohibited secondary activities, non-disclosure of such prohibited secondary activities, conflict of interest and the unauthorized disclosure of personal information by police.
- (i) Secondary Activities of Members of Police Services
56. Under the Police Services Act of Ontario, 'secondary activities' of Members of Police Services (including secondary employment) are considered to be of sufficient importance that the Police Services Act requires members of police services (both sworn police officers like Van Allen, and civilian employees), chiefs of police and police boards to do certain things in respect of secondary activities of members of police services.
57. There are restrictions upon secondary activities set by the PSA, and also further restrictions set by the individual police services (OPP and municipal) under authority of the PSA.
58. Generally in relation to secondary activities, including secondary employment, the PSA places certain restrictions upon members' activities, and requires that members (like Detective Sergeant Jim Van Allen) disclose the full particulars of any secondary activity that may in the future, or may already have, contravene the restrictions.
59. The PSA restrictions upon secondary activities are described in Section 49:



#### Restrictions on secondary activities

49. (1) A member of a police force shall not engage in any activity,  
 (a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;  
 (b) that places him or her in a position of conflict of interest, or is likely to do so;  
 (c) that would otherwise constitute full-time employment for another person;  
 or  
 (d) in which he or she has an advantage derived from being a member of a police force. R.S.O. 1990, c. P.15, s. 49 (1); 2009, c. 30, s. 50 (1).

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

(1.1) Clause (1) (c) does not apply to a police officer appointed under the Interprovincial Policing Act, 2009. 2009, c. 30, s. 50 (2).

#### Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force. R.S.O. 1990, c. P.15, s. 49 (2).

#### Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board. R.S.O. 1990, c. P.15, s. 49 (3); 1997, c. 8, s. 30 (1).

#### Decision of chief of police or board

(4) The chief of police or the board, as the case may be, shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision. R.S.O. 1990, c. P.15, s. 49 (4); 1997, c. 8, s. 30 (2).

60. Although secondary employment as a private investigator is not specifically named as prohibited in the PSA, (no specific employment is named as prohibited in the PSA) there is a long-standing policy which characterizes police employment as private investigators or in other similar lines of work (process servers, skip tracers, credit collections), as

such secondary employment as violation of PSA, sections 49 (1) (a), (b) and (d).

61. Separate and apart from police policy and directives, secondary employment as a private investigator or in other similar investigative professions is prohibited because it creates potential and actual conflicts of interest between a police officer's duty to the public, the police service and the courts, and a private investigator's and business person's natural desire to obtain results for clients, to ensure the secondary employment is profitable, and to attract more clients and more investigations.
62. Secondary employment as a private investigator is also prohibited as it creates temptations and conflicts of interest in respect of improper access to, and misuse of, confidential police data, reports, sources, resources, specialized techniques and investigative tools. This appears to have happened in this case.
63. Victims, witnesses and other persons and entities, as well as the Crown and the Courts, rely upon the independence and discretion of the police. Any doubts about an individual police officer's divided loyalties, whether proven or not, undermines not only the public's trust of that police officer, but of the involved police service and even the entire policing profession in Ontario.
64. The public must trust and have confidence in the ability of the police to protect and restrict access to and the use of, confidential information that is provided to the police by the public, institutions or other government agencies. This trust and confidence is undermined when serving police officers act as private investigators.

65. For all of these above reasons, police services in Ontario and across Canada have had a long-standing prohibition against police officers acting as private investigators, and against licensed private investigators serving in any capacity (even as volunteers) with police services. In *Calgary Police Association v. Calgary Police Commission*, 1987 ABCA 239, the Calgary Police 'Rule 87' prohibition against police personnel engaging in various secondary employment including as a private investigator and process server was addressed and the Court of Appeal said: "Clearly Rule 87 is supportable to prevent possible conflicts with the recognized duties and responsibilities of police officers generally." In particular, the O.P.P. Standing Committee on Secondary Employment indicates that the OPP Commissioner has final approval on secondary activities.

(ii) Mandatory Disclosure of Secondary Activities

66. Under PSA 49(3), as an Ontario Provincial Police officer Detective Sergeant Jim Van Allen was required to disclose "full particulars" of secondary activity as a private investigator to the Commissioner of the Ontario Provincial Police.
67. PSA 49(3) states:
- (3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board. R.S.O. 1990, c. P.15, s. 49 (3); 1997, c. 8, s. 30 (1).
68. In light of the obvious conflict and the general policy that is improper to do so, it is a certainty that Detective Sergeant Jim Van Allen did not disclose to the OPP Commissioner in 2009 that he was acting as a private investigator in the employ of Faskens, Ranking and Kwidzinski.

69. It is a certainty that Detective Sergeant Van Allen did not disclose to the OPP Commissioner that he swore to an affidavit detailing his private investigations for use as evidence in an Ontario civil court case, and especially for the Nelson Barbados case, in light of the fact that the O.P.P., and perhaps his unit, had been dealing with a open criminal investigation in relation to the case since 2007.
70. While Van Allen may (or may not) have disclosed to the OPP that he had created an Ontario corporation in 2008 and was engaged in various non-prohibited secondary activities such as teaching, or authoring books, it is a certainty that Van Allen did not disclose "full particulars" of his activities as a private investigator since the full particulars would have disclosed that his activities were prohibited.
71. As an experienced and senior police officer with three decades of police experience, and as the manager of the OPP's elite Criminal Profiling Unit investigating serial murders, abductions and other serious crimes, Detective Sergeant Jim Van Allen knew or should have known that his secondary activities as a private investigator were prohibited by the PSA and the Ontario Provincial Police. He could not, and did not, disclose and obtain permission beforehand as required by PSA 49(3). He also knew or should have known that to report his private investigation activities afterwards would bring his professional reputation into disrepute in the OPP, and would almost certainly result in charges, convictions and even potential dismissal under the PSA.
72. It is also a certainty that Detective Sergeant Van Allen would not disclose the "full particulars" that he was working as a private investigator on one side of a civil case where the Ontario Provincial Police had on file an open criminal occurrence in an area of his expertise: threats. It is a certainty that Detective Sergeant Van Allen did not disclose that he was working for

defendants in a civil case where such defendants were reported to the OPP in 2007 as suspects in criminal activities against witnesses, lawyers and other persons associated with Nelson Barbados Group Ltd.

(iii) Detective Sergeant Van Allen's Actual Conflict of Interest

73. There were other reasons why Van Allen may have specifically concealed his 'on the side' activities in the Nelson Barbados case. Van Allen knew, or should have known, that his private investigation work on the Nelson Barbados case for Faskens and lawyers Ranking and Kwidzinski and purported defendant 'PricewaterhouseCoopers East Caribbean Firm' was a direct conflict of interest with an open Ontario Provincial Police criminal investigation, where his private clients had been reported as suspects in a crime.
74. Detective Sergeant Van Allen knew, or should have known, that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd. ("NBGL"), the plaintiff in the Nelson Barbados v. Cox civil case.
75. Barrister and Solicitor, and former counsel for NBGL, William McKenzie, and his family members, reported this criminal occurrence to the OPP in Orillia, Ontario in 2007. OPP investigators interviewed the McKenzies several times and received complete information, including the names of the suspects that generally included all defendants in the Nelson Barbados Group Ltd. v. Cox civil case.
76. Mr. McKenzie reported to the OPP that he, and others, including witnesses associated with Nelson Barbados Group Ltd., had been criminally threatened during third-party phone calls by a defendant from Barbados, Peter Simmons.

77. This specific threat from Peter Simmons is of note because Faskens and Mr. Ranking in 2007 hired Dr. Sharon Smith who testified as an expert witness before Justice Shaughnessy to rebut evidence regarding Peter Simmons' threats. Dr. Smith was then, and remains, one of Jim Van Allen's long-time business associates.
78. Further, McKenzie reported to the OPP the long history of threats, harassment, violence and other criminal acts against witnesses, lawyers and their family members in the Nelson Barbados Group Ltd. case. Mr. McKenzie also reported threatening and harassing actions against his family home in Orillia that were timed to coincide with litigation events in the Nelson Barbados case: including anonymous phone calls to his wife to let her know that the caller knew she was home alone and that Mr. McKenzie was traveling to do with the Nelson Barbados case.
79. As evident from Van Allen's CV, Detective Sergeant Jim Van Allen was in 2007, when the criminal complaint was made, and in 2009 when he worked for the Nelson Barbados defendants, the manager of the OPP's Criminal Profiling Unit. According to the OPP website, the Behavioural Sciences and Analysis Services unit where Van Allen worked is also responsible for Threat Assessments. It may even be that Detective Sergeant Jim Van Allen or members of his unit officially worked on the Nelson Barbados criminal threatening occurrence, or was in the chain of command and/or communications distribution network.
80. Whether Detective Sergeant Van Allen personally worked on the OPP criminal complaint by Mr. McKenzie or not, his working for the suspects and against the victims in an open OPP criminal occurrence is a direct conflict of interest.

81. Dr. Sharon Smith, a threats expert witness for the defendants in the Nelson Barbados case, presented by Faskens and Gerald Ranking, worked together with Jim Van Allen on a long term basis as policing professionals, and also as business associates. Their current websites indicate that they are still working together.
82. Given the apparent long standing professional and business relationship between former FBI Agent Dr. Sharon Smith and serving OPP Detective Sergeant Jim Van Allen, and the role of both as expert witnesses for the defence hired by Gerald Ranking in the Nelson Barbados case, there are serious unanswered questions concerning conflicts of interest, and how Mr. Ranking came to hire each. This is especially true considering that Detective Sergeant Jim Van Allen's true status as a serving police officer, threats expert and manager of the OPP criminal profiling unit was concealed from the Appellant and from the Court.
- (iv) Disclosure of personal information by police.
83. While the disclosure of personal information is not newly discovered, the fact that it was a police officer who accessed the information and disclosed it is newly discovered.
84. Under the Police Services Act of Ontario, the disclosure of personal information by police is considered to be of sufficient importance that the PSA regulates which members of police services are allowed to disclose personal information. Section 41 of the PSA also mandates that the disclosure 'shall' be done for one of eight purposes:

Power to disclose personal information



41 (1.1) Despite any other Act, a chief of police, or a person designated by him or her for the purpose of this subsection, may disclose personal information about an individual in accordance with the regulations.

Purpose of disclosure

(1.2) Any disclosure made under subsection (1.1) shall be for one or more of the following purposes:

1. Protection of the public.
2. Protection of victims of crime.
3. Keeping victims of crime informed of the law enforcement, judicial or correctional processes relevant to the crime that affected them.
4. Law enforcement.
5. Correctional purposes.
6. Administration of justice.
7. Enforcement of and compliance with any federal or provincial Act, regulation or government program.
8. Keeping the public informed of the law enforcement, judicial or correctional processes respecting any individual.

85. Detective Sergeant Jim Van Allen disclosed the Appellant's personal information to the public by placing Best's Ontario driver's license number, date of birth and Ontario Ministry of Transport address history into an affidavit that was filed in the Nelson Barbados case without redaction. Detective Sergeant Van Allen's 'private investigation' reports containing Donald Best's personal information were also distributed to the public. The information from Van Allen's reports and affidavit itself were published on the internet, starting on October 30, 2009, three days prior to the November 2, 2009 costs hearing. The actual affidavit was published on the internet in January 2010.
86. Copies of Detective Sergeant Van Allen's affidavit and Donald Best's personal information disclosed by Van Allen, remain posted on the internet in 2014.
87. Detective Sergeant Van Allen's disclosure of Best's personal information directly resulted in acts of violence, threats, harassment and other criminal

acts against Mr. Best and his family members. Mr. Best was ambushed and assaulted on the street. His family members were frightened and worried about violence and identity theft. One of his children was approached, shown a printout from the internet and threatened, and had to deny the Donald Best was their father. Anonymous persons on the internet called for criminals and gang members Mr. Best had prosecuted to hunt down Best and his family. Some persons called for the defendants to illegally hire an off-duty police officer to track down Mr. Best and his family. Unknown persons shot up a Best family vehicle parked near the family home. (Best Affidavit April 2012).

88. It is a certainty that Detective Sergeant Jim Van Allen was not authorized by the OPP Commissioner to release Donald Best's personal information, and therefore Detective Sergeant Van Allen was in violation of PSA 41(1.1).
89. Further, it seems apparent that Van Allen's release of Best's personal information was not in accordance with the authorized purposes under PSA 41 (1.2), and therefore Van Allen was again in violation of the PSA.

**(b) Private Security and Investigative Services Act**

90. The mandatory separation between the professions of police officer and private investigator is further illustrated by Sections 39 and 40 of the Ontario Private Security and Investigative Services Act, 2005, S.O. 2005, c. 34:

Holding out as police

39. No person who holds a licence under this Act shall hold himself, herself or itself out as providing services or performing duties connected with police. 2005, c. 34, s. 39.

Certain terms prohibited

40. No private investigator, security guard or person who engages in the business of selling the services of private investigators or security guards shall use the following terms or variations of them:

1. Detective or Private Detective.
2. Law enforcement.
3. Police.
4. Officer

91. Section 6 of the Act states:

**PART III PROHIBITIONS**  
Individual licence

6. No person shall act as a private investigator or a security guard or hold himself or herself out as one unless the person holds the appropriate licence under this Act and,

(a) is employed by a licensed business entity, a registered employer under section 5, or an employer that is not required to be registered; or

(b) is the sole proprietor of a licensed business entity or is a partner in a licensed business entity. 2005, c. 34, s. 6.

Licence to engage in the business

7. (1) No person shall sell the services of private investigators or security guards or hold themselves out as available to sell such services, unless,

(a) the person holds the appropriate licence under this Act; or

(b) the person is an employee of a licensee described in clause (a) and is acting on behalf of that licensee in the normal course of his or her duties.

92. Detective Sergeant Van Allen did not, and could not as a serving police officer, hold an appropriate license under the Ontario Private Security and Investigative Services Act when he acted as a private investigator, employed by Faskens/Ranking/Kwidzinski.

**(c) Bribery of Officers: Criminal Code Section 120**

93. The section of the Criminal Code of Canada dealing with Bribery of Officers states:

Bribery of officers

120. Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent

(i) to interfere with the administration of justice,

(ii) to procure or facilitate the commission of an offence, or

(iii) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).

94. In October 2009 Detective Sergeant Jim Van Allen was a 'Peace Officer', and that with Faskens/Ranking/Kwidzinski he agreed to, and obtained 'money' and 'employment', as evident in his affidavit and invoices filed with the court.
95. Detective Sergeant Jim Van Allen 'interfered' with the administration of justice when he offered evidence of an affidavit and two invoices in the Nelson Barbados civil case, when his participation in the case was prohibited by various laws. The 'interference' resulted from Detective Sergeant Van Allen's unauthorized and illegal participation in the Nelson Barbados civil case. Detective Sergeant Jim Van Allen's evidence contained significant omissions, deceptive and misleading statements and opinions and, regarding one issue, was arguably false.
96. Detective Sergeant Jim Van Allen, as a direct result of being employed by Faskens/Ranking/Kwidzinski and receiving or being promised money, committed offenses against the *Police Services Act*, and against the Ontario *Private Security and Investigative Services Act*.
97. In 2009, Detective Sergeant Jim Van Allen was employed by defendants in the Nelson Barbados case, who were reported to the OPP in 2007 as criminal

suspects in a criminal-threatening occurrence relating to the Nelson Barbados case. Detective Sergeant Van Allen was in 2007 and 2009 a manager in the OPP unit tasked with assessing criminal threatening occurrences.

98. There are serious concerns that Detective Sergeant Van Allen's employment and payment of money by Faskens/Ranking/Kwidzinski could be perceived as an attempt, or means to: "protect from detection or punishment a person who has committed or who intends to commit an offence". There is an obvious benefit to criminal suspects if they are able to secretly hire a police officer who has or could have knowledge of the police investigation into them.
99. Further, there are serious concerns that the persons and entities who offered or provided Detective Sergeant Van Allen employment and money to work for defendants in the Nelson Barbados civil case, could be perceived as "directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii)."
8. **Durham Regional Police Secret Investigation and cover-up of Van Allen's illegal activities**
100. In the April 29, 2013 affidavit of Donald Best detailing the Durham Regional Police Service's discovery of what Durham Police and Best called "an 'undocumented', secret, private or 'on the side' " investigation of Best by a Durham Regional Police court constable in December of 2009 in anticipation of a guilty verdict against Best to happen in a trial to take place over a month later on January 15, 2010.

101. As related in Mr. Best's affidavit, an investigation of this court constable by the Professional Standards Unit of the Durham Regional Police Service showed that the investigation of Best was "entirely undocumented and that no official or unofficial notes, emails, reports, files or records of this court police investigation exist with the Durham Regional Police or at the Court, including in the administrative records of the court in Barrie and Oshawa, or in the Nelson Barbados Group Ltd. court file and court transcripts."
102. Further, Sergeant Laurie Rushbrook of the Durham Regional Police, Professional Standards Unit advised Best that the investigation was "most likely in assistance to the court."
103. In the April 30, 2013 hearing in relation to the application to set aside the contempt order, the Appellant submitted the April 29, 2013 affidavit to the court and made oral submissions before Justice Shaughnessy. Mr. Best spoke of a cover-up and said (page 10, line 23):
- "The facts that were explained to me recently by Sergeant Rushbrook and my own experience as a police sergeant and veteran of internal investigations call for an immediate and thorough examination of this court process and court police investigation. The fact that no electronic or paper records, official or otherwise, of this investigation exist with the Durham Police, such as police notes, files, documents, occurrence numbers - nothing exists in the court file and Your Honour, that speaks further of a cover-up or a conspiracy in order to prevent a full hearing and it adds to already serious concern that this has been a miscarriage of justice and abuse from the beginning."
104. The Appellant also informed the court in the affidavit and orally that the Durham Regional Police Professional Standards Unit advised that they did not know how deep the undocumented or private police investigation went, what came of it, who requested it, who received the product of the investigation, or who provided Donald Best's name, date of birth and other information to the Court Constable. The Durham Police Court Constable retired a matter of a few days after first being spoken to by Sergeant Rushbrook and could no longer be compelled to talk.

105. On page 15 of the April 30, 2013 transcript, Mr. Ranking replied, stating:
- “I have no idea what my friend is talking about and I can tell you that neither Mr. Silver nor I, nor our respective clients, had anything to do with any of the allegations set out in Mr. Best's affidavit concerning Mr. Rushton, Sergeant Rushton, that he has handed across today, number one.”
106. In fact, Mr. Ranking knew, or should have known, that by employing Detective Sergeant Van Allen as a ‘private investigator’, or ‘private police officer’, Mr. Ranking had in effect commissioned a secret police investigation of Donald Best, and he had done so in the same general time frame as the secret police investigation that Mr. Best was informed about by Durham Regional Police.
107. Further, in answering Mr. Ranking’s oral submissions to the court, Donald Best mentioned Mr. Ranking’s private investigator, and how Van Allen had unlawful access to police records. On April 30, 2013, Mr. Best did not know that Jim Van Allen had been a serving police officer engaged in a secret police investigation of Mr. Best in 2009. Mr. Best stated (Page 16, starting line 32):

“MR. BEST: Well, I responded to his (Mr. Ranking’s) first point that he said and he's also assuring us that his clients don't know and I would remind you that Mr. Ranking's private investigator, by his own admission in his affidavit, accessed secret police records which he should not have, which the people who hold those records, the police association, say was a criminal offence that he did it. That was...”

THE COURT: That goes to the main argument that you are making in this case.

MR. BEST: So, Mr. Ranking saying that his client doesn't know is - you know, it carries very little weight.”

108. Mr. Ranking knew or should have known that his private police officer had improperly accessed confidential police files on Mr. Ranking’s behalf,



provided him with the information gleaned and placed at least some of that information into an affidavit. Further, Mr. Ranking knew or should have known that Detective Sergeant Jim Van Allen might have contacted the Durham Regional Court Constable and provided him with Donald Best's confidential and personal information as part of Detective Sergeant Van Allen's investigations and tasks for Mr. Ranking.

109. Mr. Best asked the court to perform a full investigation of the secret police investigation, which the court refused, saying that it was a matter for the Durham Regional Police to investigate.

9. **Ranking and Silver knew or should have known that Van Allen was a police officer working unlawfully and that he was unlawfully accessing police information**

(a) **Ranking**

110. Mr. Ranking retained a private investigator who was a 'former' police officer and relied upon his expertise. It is inconceivable that a competent senior counsel would not ask his affiant when he left the police, whether he was a licensed private investigator and how he got or was getting access to police data. In preparing the affidavit in this case, these questions would certainly have been asked. While it is possible that Detective Sergeant Van Allen lied to Mr. Ranking, it is extremely unlikely in light of the fact that information from police information checks were included in the affidavit and the editing of the invoices included edits regarding such checks. It is not possible that Mr. Ranking did not see the unedited versions of those invoices since, if Van Allen was hiding the information from Mr. Ranking, there would have been no need to include the information and then excise it. The details would merely have been omitted in the first place. Further, the drafting of the affidavit is carefully crafted to avoid revealing the fact that Van Allen was a

serving police officer. The fact that Mr. Ranking had earlier retained Dr. Smith, an associate of Van Allen, increases the likelihood that Mr. Ranking knew of Van Allen's status as a serving police officer. Mr. Ranking mentioning searches using to a Social Insurance Number also increases this likelihood. Finally, the fact that Van Allen was not produced by Mr. Ranking for cross-examination suggests that Mr. Ranking knew that there was a risk of exposure of this fact by cross-examination.

(i) Structure of Van Allen's evidence conceals his true status

111. The structure and content of private investigator/affiant Jim Van Allen's evidence (Van Allen's affidavit and invoices) had the effect of concealing from the Appellant and from the courts, the witnesses' true status as a serving OPP Detective Sergeant, and his primary expertise as a threats and risk assessment professional.
112. The October 24, 2009 invoice indicates that Mr. Ranking and Mr. Kwidzinski were involved in the preparation of the Van Allen affidavit.
113. The October 24, 2009 and November 7, 2009 invoices were placed before the court by Mr. Ranking on January 15, 2010. The invoices have extensive redactions, including redactions of what types of 'checks' and 'record checks' were performed by Mr. Van Allen. As Mr. Van Allen signed the invoices and probably prepared them, it is probable that Van Allen delivered them to Mr. Ranking in an unredacted form, and that Mr. Ranking or his staff upon Mr. Ranking's instructions would have redacted the invoices before filing them with the court. The converse is illogical. If Van Allen had wanted to hide his status as a police officer from Mr. Ranking, he would not have raised red flags by editing in respect of checks, the substance of which reveals that this was information accessible by the police. Rather, he would not have included the detail in the first

place and there would have been no need to edit (i.e., just "checks"; not X "checks, requiring an edit).

114. During his January 11, 2013 cross-examination by Mr. Silver and Mr. Ranking, Donald Best stated that Mr. Ranking redacted Mr. Van Allen's invoices, to which Mr. Silver replied "Maybe he redacted it because it was privileged." The entire exchange is in the record (January 11, 2013 transcript page 168, 169). This is an admission that he edited the invoices. There could not have been any privilege attaching to the edited parts of the invoices.
115. In Detective Sergeant Jim Van Allen's affidavit paragraph 1, Van Allen identifies himself as President of BSSGI, "an Ontario corporation that provides investigative analytical services..." Missing is the fact that neither BSSGI nor Van Allen himself were licensed to provide private investigation services as required under Sections 6 and 7 of the Ontario *Private Security and Investigative Services Act*, and that both Van Allen and his corporation were in violation of the Act.
116. In Jim Van Allen's affidavit paragraphs 2 through 5 under the heading "Background and Experience", Van Allen omits and conceals from the court the following facts that were true when he swore to his affidavit on October 21, 2009:
  - a. Jim Van Allen was (from May 1979 until October 2010) in full-time employment as a serving police officer, a Detective Sergeant with the Ontario Provincial Police.
  - b. Detective Sergeant Van Allen was (until October 2010) the manager of the OPP Criminal Profiling Unit where he had been assigned since 1995.
  - c. Detective Sergeant Van Allen selectively omitted any and all information about his professional expertise and training in threats, stalking, harassment and risk assessment. When compared with Van Allen's normal 2009 CV, normal 2013 CV and other materials

including his LinkedIn Profile and the current Alpha flyer a large amount of information was selectively omitted. The specific exclusion of this type of information is significant given the long history of threats, harassment, violence and other criminal acts against persons associated with the Nelson Barbados plaintiff.

- d. Detective Sergeant Van Allen did not reveal that his employment as a private investigator was illegal, a violation of the *Police Services Act*.
  - e. Detective Sergeant Van Allen did not reveal that his disclosure of Donald Best's personal information (date of birth, address history, drivers license number etc.) was illegal, a violation of the *Police Services Act*.
  - f. Detective Sergeant Van Allen did not reveal that his employment to perform an investigation for a defendant in the Nelson Barbados civil case was a direct conflict of interest for himself and for the Ontario Provincial Police. Van Allen did not reveal that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd., the plaintiff in the Nelson Barbados v. Cox civil case. Detective Sergeant Van Allen did not reveal that since 1995 he was assigned to the OPP unit in charge of threat assessments and threat occurrences for the entire province, nor did he reveal that some defendants in the Nelson Barbados case were listed as potential suspects in the OPP open crime occurrence.
  - g. Detective Sergeant Van Allen did not reveal his long-term professional police relationship and also his business relationship with another of Mr. Ranking's expert witnesses, Dr. Sharon Smith, who had provided evidence about threats in the Nelson Barbados case in January 2008.
  - h. Further, Detective Sergeant Jim Van Allen's affidavit is written in an unusual 'passive' voice, and are presented by Van Allen without a definitive commitment that the affiant performed the action himself. For instance in paragraph 12, Van Allen states "Inquiries of the Toronto Police Association, of which Mr. Best was a member, only reveal the former address in Hamilton, namely, 123 Mountain Park Road." and in paragraph 9 "Internet searches of various types were also unhelpful in locating any residential addresses for Mr. Best." Paragraph 10: "Other searches have also failed to disclose Donald Best's whereabouts."
117. Mr. Ranking, Mr. Kwidzinski, Mr. Silver and others knew prior to the creation of Detective Sergeant Van Allen's affidavit that the Nelson Barbados case had seen many allegations of threats, violence and other

criminal acts against the appellant's witnesses. The lawyers also knew that there was forensic evidence that some of the anonymous threats originated from defendants and also from the law firm of Miller Thomson. The omission of any mention of Van Allen's extensive background in threat assessment would be surprising in light of this situation, unless this was a conscious effort to conceal the fact that Van Allen was a serving police officer who was likely aware of the case as a result of his police duties.

118. Further, the incorrectness of Van Allen's conclusions regarding motivation to hide (to evade service per Van Allen; vs. safety as an former undercover police officer) are more clear when one considers the nature of Van Allen's expertise. For instance, throughout Section B 'Investigation Regarding Donald Best', Detective Sergeant Van Allen, one of the foremost threat and risk assessment police officers in Canada, is mystified and seemingly cannot imagine why Donald Best, whom he knew to be a former police officer and deep undercover investigator against organized crime, would use mailboxes to hide his home address, and have no listed telephone.
119. Further, in paragraph 15, Detective Sergeant Jim Van Allen states: "Very few people demonstrate the strenuous efforts (over a number of years) to create and convey a false address history, as reflected by the repeated use of false addresses and/or post office box numbers used by Donald Best. In my investigative experience, he is among very few individuals to go to this length to conceal his address." In light of his expertise and the fact that he was a police officer himself, Detective Sergeant Van Allen knew or should have known that Donald Best's hiding of his home address was normal and commonly practiced by police officers and other at risk persons.

120. Detective Sergeant Van Allen would have known that this concealment of residence is common and acceptable practice not only for police officers, but also for many Crown Prosecutors, judges, parole officers, health care workers, women's shelter workers, private investigators and a host of other at risk professions.
121. Detective Sergeant Van Allen would also have known that the names, addresses and phone numbers of undercover police officers are often concealed within policing organizations themselves as the policing community knows that Organized Crime and others are sometimes able to penetrate police and government databases. Van Allen would know that these breaches of data security happen when unethical police personnel illegally work for private interests: exactly as Detective Sergeant Van Allen was doing himself.
122. In paragraph 9, Detective Sergeant Van Allen notes that Donald Best used the word "suite" to describe a UPS United Parcel Service box address and that "I cannot explain the different terminology but it would certainly suggest an intention to portray a "mailbox" as an actual residential address."
123. Van Allen's purported bewildered state over why Donald Best would use the word 'suite' in this manner appears contrived to be sinister because Van Allen did not inform the court that he himself had a UPS United Parcel Service box in Orillia, to conceal his own home address. Van Allen did not inform the court that he also used the word "Suite" in relation to his own UPS box (per Van Allen's 2009 CV).
124. In paragraph 14 and 15, Detective Sergeant Van Allen uses the word 'false' to describe Donald Best's UPS mail box addresses. Van Allen states that Best exhibits "repeated use of false addresses and/or post office



box numbers". None of the addresses and UPS boxes are false. The appellant used each of them to receive mail. In the case of the East Mall address the appellant has rented the UPS box for almost 20 years. The use of the word 'false' by Detective Sergeant Jim Van Allen is in itself a demonstrably false statement. Van Allen knew that he supplied an affidavit that he must have known was deceitful, deceptive and outright false in paragraphs 14 and 15.

- (ii) Gerald Ranking indicated that Investigations into Donald Best included Social Insurance Numbers.

125. I note that on page 58 of the January 15, 2010 transcript, Mr. Ranking indicates to the court that the private investigation also involved Mr. Best's social insurance number, saying:

"RANKING: I can tell Your Honour that, you know, with respect to trying to get into social insurance numbers and telephone numbers and driver's licences, and things of that nature, we did a lot of work and that is what is reflected through this material."

126. There is no reference to the use of Social Insurance Numbers in any of the materials filed before the court. It is possible though, that the redacted October 24, 2009 and November 7, 2009 Van Allen invoices or a report or letter contained some information about the Social Insurance Number investigations, prior to redaction.

127. It therefore seems apparent that Mr. Ranking's oral submission to the court is further indication that there are facets of the private investigation that Mr. Ranking is aware of, but withheld from the appellant and from the court.

128. Certain types of investigations and searches involving Social Insurance Numbers (such as credit reports) are prohibited without the written permission of the subject of the search or unless they are done for a



'permissible purpose'. There could be no 'permissible purpose' during investigation by Detective Sergeant Van Allen.

- (iii) Lawyers actions had the effect of concealing truth about Van Allen from the Appellant and the Court.

129. At no time during the Nelson Barbados or Donald Best proceedings in lower court, or in the current proceedings in the Court of Appeal, did Mr. Ranking, Mr. Kwidzinski, Mr. Silver or anyone inform the court that the affiant Jim Van Allen was in fact an OPP Detective Sergeant, and one of the foremost threat and risk assessment professionals in Canada.
130. Mr. Ranking, Mr. Kwidzinski and Mr. Silver have always referred to Jim Van Allen as a 'private investigator' or similar term in written and oral submissions to the courts, in conversation with the Appellant during the recorded November 17, 2009 phone call, in inter-lawyer communications and during cross-examinations.
131. On November 17, 2009, both 'private investigator' Jim Van Allen and lawyer Sebastien Kwidzinski were to be cross-examined at Victory Verbatim in Toronto on their affidavits as presented to the court on November 2, 2009 (November 12, 2009 letter that is Exhibit V to Best's January 10, 2013 Affidavit).
132. Gerald Ranking refused to present Van Allen and Kwidzinski for cross-examination. This refusal was the subject of conversation between Mr. Ranking and the other lawyers, as shown in the digital voice recording made by Best at the time, and the associated certified transcript of the recording. All the lawyers in the room, including Ranking, Kwidzinski and Silver knew that Mr. Ranking had refused to present Van Allen and Kwidzinski for cross examination.

133. On November 17, 2009, Mr. Best called Victory Verbatim from overseas to be cross-examined, and spoke with Mr. Ranking and Mr. Silver on speaker phone while Mr. Kwidzinski and the other lawyers in the room listened. The voice recording and transcript show that when Mr. Best accused Mr. Silver of hiring the private investigator, Mr. Silver denied doing so. Mr. Best then asked of Mr. Silver ""Well well. Who was it then? Sir, who hired the private investigator?" Mr. Silver replied to Mr. Best, "I have no idea". Mr. Ranking, Mr. Kwidzinski and all the other lawyers in the room heard Mr. Silver say this to Mr. Best, yet remained silent about this issue as shown in the voice recording and the associated transcript.
134. As an experienced and senior lawyer, Mr. Ranking knew, or should have known, that had he presented Van Allen for cross-examination on Van Allen's affidavit, the first few basic questions would have forced Van Allen to admit that he was a serving OPP Detective Sergeant or to commit perjury or mislead.

(b) Silver

135. While Mr. Silver did not retain Van Allen, the positions advanced by Messrs. Ranking and Silver were done in cooperation. Mr. Silver repeatedly relied upon the Van Allen affidavit. It is highly unlikely that Mr. Silver was unaware of Van Allen's status as a police officer at the time. The fact that he denied knowledge of who hired the private investigator on the very day he was scheduled for cross-examination supports this position.

(c) **Criminal or Quasi Criminal Liability**

136. Under the *Criminal Code* and the *Provincial Offences Act* ("P.O.A.") a person may be a party to the criminal or quasi-criminal act of another if he aided and abetted that person. As stated above, the preparation and filing of an affidavit of a private investigator, who was a serving police officer, who accessed police data and who released that data to the public is violation of Provincial Statutes and an offence under the P.O.A. and the *Criminal Code*. The hiring of Van Allen by Mr. Ranking to do so was abetting. The drafting of the affidavit by Mr. Ranking was aiding. The knowing failure to divulge these circumstances and the reliance on the affidavit was also aiding and abetting by Messrs. Ranking and Silver and a criminal obstruction of justice by misleading the court.
137. In addition there are specific provisions for liability that flow from the legislation. In respect of the *Police Services Act*, section 81 of the *Police Services Act* states:
- Inducing misconduct and withholding services
- Inducing misconduct
81. (1) No person shall,
- (a) induce or attempt to induce a member of a police force to withhold his or her services; or
- (b) induce or attempt to induce a police officer to commit misconduct.
- Withholding services
- (2) No member of a police force shall withhold his or her services.
- Offence
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.
- Consent of Solicitor General
- (4) No prosecution shall be instituted under this section without the consent of the Solicitor General.
138. Detective Sergeant Van Allen's activities as a private investigator while under the employ of Faskens/Ranking/Kwidzinski, amounted to misconduct

under the Police Services Act. Detective Sergeant Van Allen's affidavit states that it was Gerald Ranking who contacted Van Allen with the offer of employment, and not the other way around. If Mr. Ranking was aware that Van Allen was a police officer, he was in violation of 81 (1) (b) 'induce or attempt to induce a police officer to commit misconduct'.

139. Section 120 of the Criminal Code also makes a person liable based on direct or indirect conduct.
140. The knowledge that Van Allen was a serving police officer when he purported to investigate as a private investigator may have been an obstruction of justice in respect of an investigation. However, clearly when the affidavit was filed with the court and relied upon in civil and contempt proceedings, as officers of the Court, both Messrs. Ranking and Silver were obliged to reveal that this purported private investigator was violating at the least the *Police Act* and the *Private Security and Investigative Services Act* and that he was not a licensed private investigator. The failure to do so misled the Court and therefore constituted criminal obstruction of justice under s.139(2) of the *Criminal Code*. The misleading of a Court by a lawyer is an obstruction of justice (*R. v. Doz*, (1984) 12 C.C.C.(3d) 200 (Ata. C.A.), at para 28; *R. v. Wijesinha*, [1995] 3 S.C.R. 422; *R. v. Murray*, [2000] O.J. No. 2182 (S.C.J.)). Any misleading of a Court the misleading of "judicial proceeding" as defined in section 118 and is an obstruction of the "course of justice" (*Wijesinha, supra*). This is so even in respect of a provincial offence (*R. v. Kalick v. The King* (1920), 61 S.C.R. 175, *R. v. Spezzano* (1977), 15 O.R.(2d) 489 (C.A.)) or civil proceedings (*Wijesinha, supra*). It would certainly include misleading the Court in respect of a civil contempt proceeding which is criminal or quasi criminal.

**10. Evidence was not discoverable through due diligence until recently**

141. The fresh evidence was obtained on December 30 and 31, 2013, that proves purported 'private investigator' Jim Van Allen was, at the time of his 2009 investigations and sworn affidavit for Ranking, Faskens and PWCECF in the Nelson Barbados civil case, a sworn police officer with the rank of Detective Sergeant, who was actively serving in full time employment with the Ontario Provincial Police.
142. Until recently, the Appellant had been effectively misled by the lies of the OPP who covered for their former colleague by saying that Van Allen had retired from the OPP in 2008.
143. The lie was uncovered as a result of suspicions that led to a person contacting Van Allen as a potential client on December 30, 2013 and a December 31, 2013 email. This information was not available earlier. The c.v. was created on December 30, 2013 and could not be found on the internet. The materials available online lack crucial details about Van Allen, such as his retirement date, or even the fact that he was a police officer at the time.
144. The Appellant exercised due diligence in seeking to determine how Van Allen got his personal information from November 2012 through April 2013. Senior police officers from the Professional Standards Units of the Ontario Provincial Police and the Durham Regional Police Service officially informed Donald Best that Detective Sergeant Van Allen had retired from the OPP in 2008. This information was false.
145. On November 9, 2012 Donald Best spoke with Inspector John MacDonald of the RCMP Professional Standards Unit.

146. On December 10, 2012 the Appellant sent a fax to RCMP Commissioner Bob Paulson, requesting an investigation into illegal /unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data. Mr. Best states that the (unnamed) suspects are a retired OPP Sergeant "and presumably still-serving OPP personnel who supplied him with the data."
147. On January 17, 2013, a fax was sent from the RCMP and P.M. Dionne of the Canadian Police Information Centre (CPIC), and also attaching 3 faxes from Donald Best to the RCMP Commissioner, including a January 16, 2013 fax informing Commissioner Paulson that Donald Best had received a voice mail from OPP Professional Standards Inspector Kearns.
148. On January 17, 2013, the Appellant called and spoke with OPP Professional Standards Officers Inspector Marty Kearns. A January 17, 2013 email from the Appellant to OPP Professional Standards Officers Inspector Marty Kearns and Sgt. Major Jeff Vibert, attaching the Van Allen October 21, 2009 affidavit, the two invoices from Behavioural Science Solutions Group Inc. to Faskens and Gerald Ranking, and the October 12, 2012 Order of Justice Shaughnessy staying the execution of the arrest warrant for Donald Best.
149. On Monday February 4, 2013, Donald Best spoke on the phone to Sgt. Major Vibert during several calls, wherein Vibert advised Best that:
- a. The OPP Professional Standards Unit had completed their investigation of Jim Van Allen and found that there were no information checks made on Donald Best by any OPP officer.
  - b. A Durham Regional Police officer had made two CPIC checks of Donald Best on December 17, 2009.
  - c. Peel Regional Police had performed a CPIC check on Donald Best on January 29, 2010.

- d. Detective Sergeant Jim Van Allen had retired from the OPP in 2008 when he formed his corporation Behavioural Science Solutions Group Inc., and was retired when he was employed by Gerald Ranking in October of 2009.
  - e. Best and Sgt. Major Vibert discussed that it was possible that 'retired' Jim Van Allen might have known a Durham Regional Police officer and had that officer perform the CPIC checks upon Donald Best in December 2009.
  - f. Sgt. Major Vibert advised Donald Best to contact Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, whom Sgt. Major Vibert had already spoken with.
150. Sgt. Major Vibert falsely told Donald Best that Detective Sergeant Jim Van Allen had retired in 2008 when he founded his Ontario corporation, creates a reason to doubt the quality of the OPP internal investigation and the veracity of Sgt. Major Vibert's information, including that Vibert "found that there were no information checks made on Donald Best by Jim Van Allen or any other OPP officer."
151. On Monday February 4, 2013, as advised earlier by Sgt. Major Vibert, Donald Best called Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit and discussed the case. A February 6, 2013 email from Donald Best to Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, and to St. Major Jeff Vibert of the OPP Professional Standards Unit. The email described how "the defendants and their lawyers had in October 2009 hired a former OPP Detective Sergeant to track me down. This person, Jim Van Allen, improperly accessed confidential Toronto Police information and Ministry of Transport information about me." The email also confirms that Sgt. Major Vibert falsely informed Best that Jim Van Allen had retired prior to being hired by the lawyers in October 2009.



152. Further, the Appellant also wrote on February 6, 2013 that he suspected Van Allen might have caused the Durham Regional Police Special Constable to perform CPIC checks on Best. A February 7, 2013 email from Inspector Dmytruk acknowledging Best's email of the day before. A February 15, 2013 email from Donald Best to Inspector Dmytruk, informing that Best had not yet heard from the Durham Police investigator assigned to the case. A February 19, 2013 email from Sgt. Laurie Rushbrook to Donald Best and Best's reply.
153. On March 1, 2013, Donald Best spoke on the phone with Sgt. Rushbrook. An email dated March 13, 2013 from the appellant to Sgt. Rushbrook attaching three court transcripts for November 2, 2009, December 2, 2009 and January 15, 2010 was sent. On March 13, 2013, Donald Best spoke on the phone with Sgt. Rushbrook. A March 20, 2013 email exchange between Donald Best and Sgt. Rushbrook. A March 27, 2013 email from the Appellant to Sgt. Rushbrook and attachments. On March 27, 2013, Donald Best spoke on the phone with Sgt. Rushbrook.
154. On April 11, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, she had found no connection between the Durham Police court constable and 'retired' OPP officer Van Allen.
155. On April 24, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, her investigation did not examine if any Durham officers checked internal records for Donald Best.
156. On April 29, 2013, Donald Best swore an affidavit which was placed before the court on April 30, 2013, that described Sgt. Rushbrook's findings regarding the secret police investigation.

**D. EXAMINATIONS NEEDED**

157. The fact that Van Allen committed at least Provincial offences is clear.
158. The evidence that Mr. Ranking knew and participated in presenting an affidavit that was the product of such an offence and the degree to which he acted to cover up that offence requires further examination. While there is a strong circumstantial case to indicate his knowledge and criminal or quasi-criminal complicity, such an allegation requires further evidence or at least an opportunity for Mr. Ranking to deny or explain. While there is a circumstantial case against Mr. Silver, it is weaker. However, the reliance by Mr. Silver on the evidence of Van Allen, the joint nature of the efforts of Silver and Ranking and the comments on November 17, 2009 do create a circumstantial case of knowledge or wilful blindness. Further evidence is required, or at least an opportunity for Mr. Silver to deny or explain.
159. Van Allen knows who he told and what he told about his status as a serving police officer in or before October 2009. Documents, including unredacted invoices exist that will shed light on the issue of what activity was done by Van Allen and the use of police powers in the case.
160. Tamara Williamson is a director of Van Allen's corporation. She should have access to documentation regarding his retirement from the police force and whether and when he became a licensed private investigator, in addition to the unredacted invoices.
161. Other witnesses and documents from the OPP (Vibert); Durham Regional Police Force (Dmytruk; Rushbrook) and Toronto Police Association would also help determine the issues (When Van Allen retired; disclosure or non-disclosure of private investigations by Van Allen to OPP; involvement of Van Allen in 2007 criminal threat allegation in respect of McKenzie/NBGL;

access to MTO, Toronto Police Association information access; access to CPIC; DRPS investigation). However, the degree to which these witnesses and documents will be necessary will depend on whether Van Allen cooperates and the extent and honesty of that cooperation.

162. Finally, if a credible basis remains to believe that Messrs. Ranking and/or Silver knew and participated in the criminal or quasi-criminal acts of Van Allen, their examination would be also be sought make clear their wilful complicity in the offences of Van Allen and their obstruction of justice.

**E. TIME TO CONDUCT EXAMINATIONS**

163. The Appellant had great difficulty finding counsel able and willing to take on this case. The need to present evidence of misconduct of fellow counsel, let alone criminal or quasi-criminal misconduct is distasteful for most counsel.
164. Counsel for the Appellant, Paul Slansky, is in the middle of a terrorism trial in the Superior Court before the Honourable Madam Justice Baltman. The pre-trial motions will be continuing on February 10-24 (excepting Feb. 19 and 21) and possibly the afternoon of Feb. 25. The jury selection is scheduled for the week of March 3. The Trial before the jury is scheduled for 6-9 weeks starting March 17. Justice Baltman has asked that counsel be available except for Feb. 19 and 21 (because she is unavailable on those dates) until the end of May. Justice Blair scheduled the review/appeal notwithstanding the trial schedule. However, this fresh evidence and examination issue was not known to Justice Blair. Although the facts began to surface at the end of 2013, they only came together in late January and February, 2014. This motion is being made returnable on February 21, without consulting with the Respondents, because of the limited availability of Mr. Slansky.

55

165. Summonses have been issued for Van Allen and Williamson returnable on February 19. Efforts were made to serve them on February 6, 7 and 10, 2014. Further efforts will be made on February 11, 2014. Van Allen has located in B.C. and an email was sent to him. He has presently indicated a willingness to testify if video-link can be arranged. However, so far service through his Ontario corporate offices has not been achieved. So far, there is some indication that Williamson is on some kind of leave.

166. Such further grounds as counsel may advise and this Honourable Court permit.

**THE RELIEF REQUESTED IS:**

1. Adjourning the motion scheduled for February 27, 2014;
2. Re-scheduling of the motion to be heard:
  - a) with the main appeal on June 2, 2014; or
  - b) on June 2, 2014 with the adjournment the appeal hearing date to a date after June 2, 2014.
3. Adding a copy of the recording of a November 17, 2009 conversation to the record on the review/appeal and the main appeal.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Application:

1. The affidavit of Che Claire;
2. The Motion Record and Factum for the review/appeal motions to a panel scheduled for February 27, 2014;
3. The Appeal Book and Factum on the main appeal scheduled for June 2, 2014;

4. Such further material as counsel may advise and this Honourable Court may permit.


**THE MOVING PARTY (APPELLANT) MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS MOTION:**

By service through:

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9  
Tel: (416) 536-1220; Fax (416) 536-8842

Counsel for the Moving Party (Appellant)

**DATED AT TORONTO**, this 11th day of February, 2014.

  
Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9  
Tel: (416) 536-1220; Fax (416) 536-8842  
LSUC # 259981

Counsel for the Moving Party (Appellant)

TO: The Registrar  
Court of Appeal for Ontario  
Toronto, Ontario

AND TO: Lorne Silver  
Barrister and Solicitor  
Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King St. West  
Toronto, ON  
M5H 3C2

Tel: (416) 869-5490  
Fax: (416) 640-3018

Counsel for the Respondent (Kingsland Estates Limited)

AND TO:

Gerald L.R. Ranking  
Barrister and Solicitor  
Fasken Martineau DuMoulin LLP  
333 Bay St.  
Suite 2400  
Toronto, ON  
M5H 2T6

Tel: (416) 865-4419  
Fax: (416) 364-7813

Counsel for the Respondent 'PricewaterhouseCoopers East  
Caribbean Firm'

85

Donald Best (Appellant) v. Richard Ivan Cox, et al. (Kingsland  
Estates Ltd, PricewaterhouseCoopers East Caribbean Firm  
(Respondents)

Court File No. C57123

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED IN BARRIE

**NOTICE OF MOTION  
(ADJOURNMENT)**

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9

Tel: (416) 536-1220  
Fax (416) 536-8842  
LSUC #259981

Counsel for the Applicant/Appellant



COURT OF APPEAL FOR ONTARIO

BETWEEN:

DONALD BEST

Moving Party(Appellant)

and

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES A.K.A. PHILIP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN AND ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED AND LIFE OF BARBADOS LIMITED C.O.B. AS LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICE WATERHOUSE COOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD., AND COMMONWEALTH CONSTRUCTION INC.

Respondents

---

AFFIDAVIT OF CHE CLAIRE

---

60

**I, Che Claire, Barrister and Solicitor, of the City of Toronto, MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Barrister and Solicitor, working as a sole practitioner based in Toronto. I have previously done a small amount of work on the Best file on a contract basis for Paul Slansky, Counsel for the Appellant. I have also attended at certain court and other proceedings.
2. This affidavit is primarily based on documents reviewed by me and attached to this affidavit and otherwise, where indicated, is based on information provided to me by others as named herein.
3. I swear this affidavit in support of:
  - a motion for an adjournment of the review/appeal to a panel of the motion to remove counsel/costs/stay (presently scheduled for February 27, 2014) (the "review") and, possibly, the hearing of the appeal (presently scheduled for June 2, 2014) (the "appeal") as a result of the need to examine witnesses and produce transcripts in relation to this fresh evidence sought to be introduced on the review and the appeal;
  - a motion to introduce fresh evidence regarding these issues on the review and the appeal;
  - a motion to allow the filing on the review and appeal of a recording of a conversation on November 17, 2009 that was filed as an Exhibit in proceedings now under appeal.and for no improper purpose.
4. At the request of Mr. Slansky, I reviewed various exhibits and evidence relating to the Appellant's case. Most recently, I personally reviewed fresh evidence relating to Van Allen or the 'secret police investigation' of the appellant, Donald Best, in the Nelson Barbados Group Ltd. vs Cox civil case (The 'Nelson Barbados case').

**Behavioural Sciences Solutions Group Inc. (BSSG)**

5. BSSG is a Canadian Corporation, and according to their corporate profile report was incorporated in October 2008, and list Jim Van Allen and Tamara Williamson as the Directors of the company. A copy of the BSSG Ontario Corporation Profile is attached hereto and is marked as **Exhibit 1**. As indicated in the redacted invoices (infra), this corporation was the entity retained to conduct private investigation work, done by Mr. Van Allen, for the alleged Respondent PricewaterhouseCoopers East Caribbean Firm ("PWCECF") by Fasken Martineau DuMoulin LLP ("Faskens") and Mr. Ranking.
6. According to their Mission Statement posted at the corporate website, BSSG provides "effective, professional and discreet solutions to manage potentially dangerous solutions to manage potentially dangerous situations for those concerned for their safety or those in their care, at home, at work, and at school." The bottom of the page shows that the page is Copyright 2013-2014. A copy of the BSSG mission statement is attached hereto and is marked as **Exhibit 2**.
7. At the Header of their "About Us" webpage, the objective of the company states: "The goal of Behavioural Science Solutions Group Inc is to offer high caliber protective solutions to client facing safety and security concern, or other challenges to their personal or corporate well being." A copy of the BSSG "About Us" webpage is attached hereto and is marked as **Exhibit 3**.
8. The company describes, under the "Services" tab on their website, a list of services that the organization offers to current and potential clients. These include threat assessment and investigative analysis. A copy of the BSSG "Services" webpage is attached hereto and is marked as **Exhibit 4**.

## BSSG Members, Employees and Affiliates

9. The BSSG "About Us" webpage lists Jim Van Allen as President and Tracey Marshall, Peter Collins and Reid J Meloy PH.D. as members of the company. The website "Reid J. Meloy profile page" states that he is a consultant to the counterintelligence division of the FBI and the United Kingdom's Home Office. A copy of the BSSG "Reid J. Meloy profile page" is attached hereto and is marked as **Exhibit 5**.
10. The BSSG "Tracey Marshall profile page" shows Tracey Marshall as a member of the company and notes that she has over 20 years of experience with the Toronto Police Service and Durham Regional Police Service (DRPS), serving most recently as a Durham Regional Police Detective in the Threat Assessment Unit. A copy of the BSSG "Tracey Marshall profile page" is attached hereto and is marked as **Exhibit 6**. Within her online resume Ms. Marshall states that she was a former member of DRPS as Detective in the Threat Assessment Unit, Crime Administration Branch 2003-present. Also, she states that she was involved in a one year duration Formal Mentorship Program with the Threat Assessment Unit, Behavioural Sciences Section at the OPP in 2004. A copy of the "Tracey Marshall Resume" is attached hereto and is marked as **Exhibit 7**.
11. The BSSG "Peter Collins profile page" lists Peter Collins as a member of the company and notes that he is also the Coordinator of the Forensic Psychiatry Unit, Behavioural Science and Analysis Services, Investigation and Support Bureau of the Ontario Provincial Police. (OPP) A copy of the BSSG "Peter Collins profile page" is attached hereto and is marked as **Exhibit 8**. Peter Collins online CV lists his present position as "Manager, Forensic Psychiatry Unit, Criminal Behaviour Analysis Service, Behavioural Sciences Section, Investigation Support Bureau, Ontario Provincial Police". A copy of relevant portions of "Peter Collins CV" is attached hereto and is marked as **Exhibit 9**. On a profile page located at the University of Toronto website, Peter Collins is similarly listed as employed by the OPP and additionally states that Mr. Collins is the Consultant Forensic Psychiatrist to RCMP. A copy of the University of

Toronto "Dr. Peter I Collins page" is attached hereto and is marked as **Exhibit 10**. Mr. Collins, according to Wikipedia became an in-house consultant to the OPP in 1995. A copy of the Wikipedia "Peter Collins page" is attached hereto and is marked as **Exhibit 11**.

12. Tamara Williamson is one of two Directors of BSSG. The LinkedIn profile of Tamara Williamson indicates that she is currently employed by the Ministry of Community and Social Services as a Probation and Parole Officer. A copy of the "Tamara Williamson LinkedIn profile" is attached hereto and is marked as **Exhibit 12**.
13. The BSSG website "contact us" page lists the types of typical clients served by BSSG. The page also provides links to affiliates, one being a Dr. Sharon Smith. A copy of the "BSSG contact us page" is attached hereto and is marked as **Exhibit 13**. Dr. Smith's CV includes court cases in which she has acted as an expert witness. Only one case is named in this category of her resume, 2008 PricewaterhouseCoopers (Barbados) v. Nelson Barbados Group Ltd., Mr. Best's case in the Court below. I note that Dr. Smith was an FBI agent from 1978 to 2003, and was assigned from April 1995 until December 2003 to the Behavioral Science Unit at the FBI Academy. A copy of the "Sharon Smith CV" is attached hereto and is marked as **Exhibit 14**. The companies that she represents are Forensic Psycholinguistics, LLC. and Threat Triage LLC. A copy of the "Sharon Smith LinkedIn profile" is attached hereto and is marked as **Exhibit 15**. A copy of the "Threat Triage LLC About Us" webpage is attached hereto and is marked as **Exhibit 16**.
14. On the Forensic Psycholinguistics website, "Products and Services", descriptions of her consulting capacities are listed on this page as well as typical types of clientele. In addition, there is a short list of names which are hyperlinked to their respective websites. Jim Van Allen is a member of this short list with a hyperlink to BSSG Inc. Dr. Reid Meloy is also hyperlinked. I note that Jim Van Allen's link states "Jim Van Allen (Ontario Provincial Police ret.)" A copy of the "Forensic Psycholinguistics Products and Services" webpage is attached hereto and is marked as **Exhibit 17**.

64

15. Jim Van Allen on his BSSG profile page indicates that he has provided expert testimony in the Ontario Court of Justice and Coroner's inquests regarding threat assessment. A copy of the "BSSG Van Allen profile" webpage is attached hereto and is marked as **Exhibit 18**. As a representative of BSSG, Jim Van Allen was a speaker at the Rotary Club of Toronto in March 2009. In the programme, Mr. Van Allen "Criminal Profiler, and Threat Assessment Analyst" profiles his experience with RCMP, FBI, Virginia State police and other law enforcement agencies: except the OPP, which is not mentioned at all. A copy of the "March 20, 2009 Rotary Voice" is attached hereto and is marked as **Exhibit 19**.
16. As referred to in **Exhibit 1**, Mr. Van Allen is one of two Directors and president of BSSG since its inception in October 2008 but in October 2010, according to his December 30, 2013 CV, Jim Van Allen ceased to be Detective Sergeant and Criminal Profiling Unit Manager with the Ontario Provincial Police. Jim Van Allen commenced employment with the OPP in 1979. A copy of the "December 30, 2013 Jim Van Allen CV" is attached hereto and is marked as **Exhibit 20**.
17. I have been advised by the Appellant Donald Best, and verily believe, that on December 30, 2013 at about 4:40pm someone using the name 'Raymond Metivier' called Jim Van Allen at phone number 604-626-9572, as found on the 'Contact Us' page of the website of BSSG as seen in **Exhibit 13**. The phone call was digitally recorded and I have listened to the recording. Attached hereto is a transcript of the call marked as **Exhibit 21**. Attached hereto as **Exhibit 22** is an MP3 digital recording of the phone call.
18. During the phone call, a man identifying himself as Jim Van Allen talked with the person purporting to be a prospective client, calling himself 'Raymond Metivier', about threats in a corporate environment. When asked about his police career, Jim Van Allen stated "I was thirty one and a half years with the Ontario Provincial Police and, ah, for



fifteen of those I was with the Behavioral Sciences Section doing criminal profiling and and threat assessment.”

19. When asked “Ah, what, when did you retire? Was it a long time ago?”, Jim Van Allen replied, “Nah, I retired in, um, ah, October, twenty ten, and I have been operating my own, ah, risk assessment consultancy since then and I do a lot of training, and I work for, um, I do work for lawyers and um private investigators, corporations.”
20. Attached hereto as **Exhibit 23** is a December 31, 2013 email from Jim Van Allen (behaviouralsolutions@gmail.com) to Raymond Metivier (ray.metivier@gmail.com). The email attached the CV of Jim Van Allen, already noted as **Exhibit 20**, showing Jim Van Allen retired from the OPP in October 2010 with the rank of Detective Sergeant.
21. I note that the email stated, inter alia: “All consultations are concluded with a written record of information received from a client, and my risk assessment of any potential of danger according to the situation.” and “I am supported by two widely renowned Forensic Psychiatric consultants who are available at an extra cost for incidents requiring highly specialized medical opinions or assistance.”

#### **Secondary and Off-Duty Activities of Police Officers:**

##### **Prohibition against police officers acting as private investigators or in similar secondary employment.**

22. I have been advised by the Appellant, Donald Best, and verily believe, that he was a police officer with the Toronto Police Service from 1975 until 1990 when he left the service honourably to manage the family business. At the time he left the police service, Mr. Best held the rank of Sergeant (Detective) and worked directly for one of the Deputy Chiefs. Mr. Best’s primary duties involved high-level internal investigations, research and disciplinary matters. He was also the sole staff investigator for the Ontario Association of Chiefs of Police. Mr. Best informs me, and I verily believe, that there is a long-standing prohibition by Ontario police services, including



the OPP, against police officers or civilian members taking secondary employment as private investigators or in other similar lines of work (skip tracers, process servers, credit collections etc.). Further, I am advised by the Appellant and believe that Ontario police organizations and police employees in general are aware that such secondary employment is in violation their organization's policies and rules, and is also in violation of the *Police Services Act* Sections 49. (1) (a), (b) and (d).

23. Further, I am advised by the Appellant and believe that the primary reason for the prohibition is that police secondary employment as a private investigator or other similar investigative professions creates potential and actual conflicts of interest between a police officer's duty to the public, the police service and the courts, and a private investigator's and business person's natural desire to obtain results for clients, to ensure the secondary employment is profitable, and to attract more clients and investigations. I am also advised that secondary employment as a private investigator is also prohibited as it creates temptations and conflicts of interest in respect of improper access to, and misuse of, confidential police data, reports, sources, resources, specialized techniques and investigative tools.

24. A copy of the "Toronto Police Service careers webpage" is attached hereto and is marked as **Exhibit 24**. This states, "In accordance with the Ministry of Community Safety and Correctional Services, Private investigators and Security Guards Act, Bill 159, (2004), a person holding a Private Investigators licence will not be an eligible candidate for the Toronto Police Service Auxiliary Program." Further, I am informed by the Appellant that prospective employees for police services undergo detailed background checks, and that police services are reluctant to hire as employees, even the spouses of licensed private investigators.

25. A copy of a Discussion Paper prepared for the Police Complaint Commissioner of British Columbia about off-duty police conduct, with analysis of secondary employment, is attached hereto and is marked as **Exhibit 25**. Commenting on the risks of secondary employment the author states: "Confidentiality presents a further concern

when police officers work in security or similar fields.” The author also cites several examples of Canadian provinces and police organizations where secondary employment as a private investigator or process server is specifically prohibited.

26. Attached hereto as **Exhibit 26** is The Royal Canadian Mounted Police External Review Committee discussion paper ‘Conflict of Interest’. Chapter VII of the document specifically discusses the restrictions relating to secondary activities by members of the police service, and the response by Ontario legislators in encapsulating and regulating these concerns through section 49 (1) of the Police Services Act. The same RCMP Committee also published a discussion paper ‘Off-Duty Conduct’, attached hereto as **Exhibit 27**. This report deals extensively with Outside Employment and Business Activities of police personnel and touches upon prohibitions of police taking secondary employment or investing in private investigation businesses.
27. The RCMP website, within the “Values and Ethics” subpage, attached hereto as **Exhibit 28**, submits that conflict of interest and secondary activities with the potential of conflict of interest go to its core values of integrity. Regarding secondary employment, the RCMP webpage states: “Employees must seek approval from a supervisor prior to engaging in any outside activity (including secondary employment) which is likely to give rise to a real, potential or apparent conflict of interest. It is an employee’s responsibility to report any outside activity that is directly or indirectly related to the employee’s duties.”

### **Reporting of Secondary Employment**

28. I am informed by the Appellant Donald Best, and believe, that the Ontario Provincial Police has established internal procedures for disclosures of secondary activities and that all OPP members (civilian and police officers) are formally instructed and given clear orders about the disclosure requirements flowing from the PSA and these internal procedures. I am informed by the Appellant Donald Best, and believe that OPP members are very aware of these procedures, especially in the supervisor ranks and

18

positions such as Detective Sergeant and Unit Manager, as was the rank and assignment of James Arthur (Jim) Van Allen. Further, I am informed by the Appellant Donald Best, and believe, that the OPP would retain records of any and all disclosures by Detective Sergeant James Arthur (Jim) Van Allen, and any refusals or permissions by the OPP Commissioner of Van Allen's disclosed secondary activities.

29. Attached hereto as **Exhibit 29** is a Sarnia Observer newspaper article titled 'Police work at second jobs', reporting on the disclosure requirement under PSA 49 (3). Chief Phil Nelson of the Sarnia Police Service is reported as saying that the secondary activities disclosure is to "provide transparency to the community" and that "It's important when you're a police officer that there is no conflict of interest," Further, the newspaper article describes the disclosure requirements for police service members under the PSA.
30. Attached hereto as **Exhibit 30** are relevant portions of a document titled "OPP 2013 Cost-Recovery Formula Update". The purpose of the report was to provide and aid Municipalities to "fully understand the cost-recovery process, ensure accountability and identify any potential that might exist for cost efficiencies." On Page 9 of the document there is a diagram regarding "Adequate and Effective" Police services under the Police Services Act (PSA) section 10. Within this diagram and pursuant to Section 49 of the PSA, as described in this document, is the role of the Police Services Boards to receive disclosure of secondary activities.
31. Attached hereto as **Exhibit 31** is a copy of The Municipality of Orillia Police Services Board Responsibilities webpage. The Orillia Police Services Board adopts the position that part of their responsibilities is to "receive regular reports from the Detachment Commander on disclosures and decisions made under section 49 (secondary activities)."

## Other BSSG Associated Businesses

### Investigative Solutions Network Inc. (ISN)

32. Attached hereto as **Exhibit 32** is the 'investigations' webpage of ISN. ISN describes the company as a 'full-service private investigations and training organization' and includes available services such as criminal and civil investigations, surveillance and threat/risk assessments.
33. ISN employs, contracts or has a similar relationship with Jim Van Allen and Peter Collins of BSSG Inc. Van Allen's and Collins' personal profiles are listed on the "About Us – Our Team" subpage of the ISN private investigation and training organization attached hereto as **Exhibit 33**. Also listed on this page is Kate Lines, who is according to the ISN website, a retired OPP Chief Superintendent and FBI trained criminal profiler.
34. Jim Van Allen's LinkedIn profile, attached hereto as **Exhibit 34**, states that from 2008-2012 for the private investigation firm ISN Inc., his duties were: "Provide Risk Assessment Evaluations, consultation, and comprehensive reports to guide decision making on client safety or criminal enforcement regarding stalking, workplace threats, or domestic violence incidents. Safety planning and victim consultation is available." This Van Allen LinkedIn profile was retrieved January 29, 2014 and also states that he is Former Manager of the Criminal Profiling Unit (OPP) since June 1995 until October 2010.

### Investigative Research Group (IRG)

35. A copy of BSSG Director Tamara Williamson's LinkedIn profile with an endorsement by R.W. (Rob) Goodfellow, CEO of the private investigation company Investigative Research Group (IRG) is attached hereto and is marked as **Exhibit 35**. A copy of the "IRG website Executive page" is attached hereto and is marked as **Exhibit 36**. I note

that R.W. (Rob) Goodfellow's profile indicates that he is a retired Superintendent of the OPP, and was at one time Director, Behavioural, Forensic and Electronic Services of the OPP; the same unit where Detective Sergeant Van Allen served from 1995 to October 2010.

36. A copy of the "IRG Directors webpage" is attached hereto and is marked as **Exhibit 37**. I note that Brian M. Sartorelli is a Director, and past CEO of IRG who founded IRG in 1992. A copy of two Toronto Star articles dated December 7 & 8, 1989 are attached hereto and is marked as **Exhibit 38**. I note that in the two Toronto Star articles Brian Malcolm Sartorelli, then owner of Simcoe Investigations, was criminally charged along with a serving OPP Constable and other persons, in multiple instances of fraud involving profiting from confidential OPP information, purchased through kickbacks to the OPP Constable.

#### **Threat Evaluation And Risk Management Strategies (T.E.R.M.S.)**

37. T.E.R.M.S is an organization that, according to its website, provides services such as threat assessment and threat or violence risk assessments. Listed as associates are Mr. Van Allen and Dr. Meloy of BSSG Inc. On the associate profile page attached hereto as **Exhibit 39**, there is no mention of OPP service by Mr. Van Allen. The website page states 'Copyright 2009' in the footer.
38. Van Allen's CV is downloadable from a link on the webpage and is attached hereto as **Exhibit 40**. I note that there is no cease date shown of his membership with the OPP. Further, attached hereto as **Exhibit 41** is a screen capture of metadata of **Exhibit 40**.

#### **The Alpha Group**

39. The Alpha Group Center for Crime & Intelligence Analysis Training lists Jim Van Allen as an Instructor in Criminal Investigative Analysis and Threat Analysis. Attached

71

hereto as **Exhibit 42** is a printout of the Jim Van Allen webpage of The Alpha Group Center for Crime & Intelligence Analysis Training.

40. Attached hereto as **Exhibit 43** is an online brochure showing that during March 17-21, 2014 Mr. Van Allen is instructing a course through the Alpha Group in Fort Myers, Florida, United States on the topic of Criminal Investigation Analysis: Assessing Threats of Targeted Violence. Mr. Van Allen's profile on this brochure states that he has served 31.5 years with the OPP and 15 years as the Manager of the Criminal Profiling Unit.

**OPP, RCMP, and DRPS interactions with Mr Best relevant to new evidence**

41. Based on what I have been told by Mr. Best and believe, and the portions of the record and new evidence that I have seen, from November 2012 through April 2013, Donald Best engaged in a series of communications with various police officers from the RCMP, OPP and Durham Regional Police Service (DRPS). I have been told by Mr. Best that these communications tell the history of his efforts to gather the highly relevant facts about Mr. Ranking's 'private investigator' Jim Van Allen and a suspected 'secret police investigation' operating for the purpose of assisting the defendants and their lawyers in the Nelson Barbados civil case and the case in relation to Mr. Best.
42. Based on what I have been told by Mr. Best and believe, during the period from November 2012 through April 2013, senior police officers from the Professional Standards Units of the Ontario Provincial Police and the Durham Regional Police Service in the course of their duties informed Donald Best that Detective Sergeant Van Allen had retired from the OPP in 2008.
43. Based on what I have been told by Mr. Best and believe, officers of the OPP and Durham Regional Police Service knew that the Appellant Donald Best was an unrepresented litigant, and that he was facing a three month sentence in jail after being convicted of civil contempt of court.



44. Based on what I have been told by Mr. Best and believe, I understand that on November 9, 2012 Donald Best spoke with Inspector John MacDonald of the RCMP Professional Standards Unit.
45. Attached hereto as **Exhibit 44** is a December 10, 2012 fax from Donald Best to RCMP Commissioner Bob Paulson, requesting an investigation into illegal / unauthorized access to CPIC (Canadian Police Information Centre – CPIC), Ontario Ministry of Transport and other internal police data. Mr. Best states that the (unnamed) suspects are a retired OPP Sergeant “and presumably still-serving OPP personnel who supplied him with the data.”
46. Attached hereto as **Exhibit 45** is a January 16, 2013 fax from Donald Best to RCMP Commissioner Bob Paulson, stating that Best has not yet been contacted by RCMP investigators. The fax also includes the original December 10, 2012 fax.
47. Attached hereto as **Exhibit 46** is a January 17, 2013, 5 page fax, from the RCMP and P.M. Dionne of the Canadian Police Information Centre (CPIC) to Donald Best, and also attaching 3 faxes from Donald Best to the RCMP Commissioner, including a January 16, 2013 fax informing Commissioner Paulson that Donald Best had received a voice mail from OPP Professional Standards Inspector Kearns.
48. Based on what I have been told by Mr. Best and believe, I understand that on January 17, 2013, Donald Best called and spoke with OPP Professional Standards Officers Inspector Marty Kearns.
49. Attached hereto as **Exhibit 47** is a January 17, 2013 email from Donald Best to OPP Professional Standards Officers Inspector Marty Kearns and Sgt. Major Jeff Vibert. The email states that Best attached the Van Allen October 21, 2009 affidavit, the two invoices from Behavioural Science Solutions Group Inc. to Faskens and Gerald Ranking, and the October 12, 2012 Order of Justice Shaughnessy staying the execution of the arrest warrant for Donald Best.



50. Based on what I have been told by Mr. Best and believe, I understand that on Monday February 4, 2013, Donald Best spoke on the phone to OPP Sgt. Major Vibert during several calls, wherein Vibert advised Best that:

- a. The OPP Professional Standards Unit had completed their investigation of Jim Van Allen and found that there were no information checks of any kind made on Donald Best by any OPP officer.
- b. A Durham Regional Police officer had made two CPIC checks of Donald Best on December 17, 2009.
- c. Peel Regional Police had performed a CPIC check on Donald Best on January 29, 2010.
- d. Detective Sergeant Jim Van Allen had retired from the OPP in "two thousand and eight" (2008) when he formed his corporation Behavioural Science Solutions Group Inc., and was retired when he was employed by Gerald Ranking in October of 2009.
- e. Best and Sgt. Major Vibert discussed that it was possible that 'retired' Jim Van Allen might have known a Durham Regional Police officer and had that officer perform the CPIC checks upon Donald Best in December 2009.
- f. Sgt. Major Vibert advised Donald Best to contact Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, whom Sgt. Major Vibert had already spoken with.

51. Based on what I have been told by Mr. Best and believe, I understand that on Monday February 4, 2013, as advised earlier by Sgt. Major Vibert, Donald Best called Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit and discussed the case.

52. Attached hereto as **Exhibit 48** is a February 6, 2013 email from Donald Best to Inspector George Dmytruk of the Durham Regional Police Service Professional Standards Unit, and to St. Major Jeff Vibert of the OPP Professional Standards Unit. The email states: "the defendants and their lawyers had in October 2009 hired a former OPP Detective Sergeant

to track me down. This person, Jim Van Allen, improperly accessed confidential Toronto Police information and Ministry of Transport information about me."

53. Further, Donald Best also wrote on February 6, 2013 that he suspected Van Allen might have caused the Durham Regional Police Special Constable to perform CPIC checks on Best (the 'secret police investigation')
54. Attached hereto as **Exhibit 49** is a February 7, 2013 email from Inspector Dmytruk acknowledging Best's email of the day before.
55. Attached hereto **Exhibit 50** is a February 15, 2013 email from Donald Best to Inspector Dmytruk, informing that Best had not yet heard from the Durham Police investigator assigned to the case.
56. Attached hereto **Exhibit 51** is a February 19, 2013 email from Sgt. Laurie Rushbrook to Donald Best and Best's reply.
57. Based on what I have been told by Mr. Best and believe, on March 1, 2013, Donald Best spoke on the phone with Sgt. Rushbrook.
58. Attached hereto as **Exhibit 52** are four March 13, 2013 emails from Best to Sgt. Rushbrook, that mention attaching three court transcripts for November 2, 2009, December 2, 2009 and January 15, 2010. Based on what I have been told by Mr. Best and believe, and the portions of the record and new evidence that I have seen, on March 13, 2013, Donald Best spoke on the phone with Sgt. Rushbrook,
59. Attached hereto as **Exhibit 53** is a March 20, 2013 email exchange between Donald Best and Sgt. Rushbrook.

60. Attached hereto as **Exhibit 54** is a March 27, 2013 email from Best to Sgt. Rushbrook and attachments. Based on what I have been told by Mr. Best and believe, on March 27, 2013 Donald Best spoke on the phone with Sgt. Rushbrook.
61. Based on what I have been told by Mr. Best and believe, on April 11, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, she had found no connection between the Durham Police court constable and 'retired' OPP officer Van Allen.
62. Based on what I have been told by Mr. Best and believe, on April 24, 2013, Donald Best spoke on the phone with Sgt. Rushbrook, who informed Best that, inter alia, that her investigation did not examine if any Durham officers checked internal police records for Donald Best.
63. Based on what I have been told by Mr. Best and believe, and the portions of the record and new evidence that I have seen, on April 29, 2013, Donald Best swore an affidavit which was placed before the court on April 30, 2013, that described Sgt. Rushbrook's findings regarding the secret police investigation.

**Threats, criminal acts and violence against persons associated with Nelson Barbados Group Ltd. reported to the OPP in 2007.**

64. I am informed by the Appellant and believe that since 2007 the OPP had an open crime occurrence into harassment, threats and violence against persons associated with Nelson Barbados Group Ltd. ("NBGL"), the plaintiff in the Nelson Barbados v. Cox civil case, including William McKenzie. William McKenzie, and his family members, reported this criminal occurrence to the OPP in Orillia, Ontario in 2007.

## Summonses to Witnesses

65. Based on what I have been told by Mr. Best, and believe, and the portions of the record that I have seen, the Honourable Court issued three summonses to witnesses in the Appellant's case on February 5, 2014. These were issued to BSSG Directors James Arthur (Jim) Van Allen and Tamara Jean Williamson, and also to James Arthur (Jim) Van Allen personally, to be examined in Barrie, Ontario on February 19, 2014.
66. Based on what I have been told by Mr. Best, and believe, and the portions of the record that I have seen, Mr. Slansky's process server attempted to serve Van Allen and Williamson on Friday, February 7, 2014 in Orillia, Ontario, by attending at the registered corporate headquarters of BSSG at [REDACTED], Orillia. This is a residence, and the process server met the occupant who identified himself verbally as Bill Van Allen, brother of the Director of BSSG. Bill Van Allen stated that his brother Jim had moved about two years ago to British Columbia. Further, Bill Van Allen provided the process server with Jim Van Allen's telephone number (the same as on the BSSG website).
67. Based on what I have been told by Mr. Best, and believe, and the portions of the record that I have seen, the process server also attended at 7 Garden Court, Orillia where he was told by the occupant that Jim Van Allen had sold the home to him about two years ago and moved to British Columbia. Further, the occupant also informed the process server that he believed that Tamara Jean Williamson may have at one time lived with Jim Van Allen at the home. The occupant based this speculation upon personal mail (as opposed to business mail) that still occasionally arrives at the home for both Jim Van Allen and Tamara Williamson.
68. Further, on Monday, February 10, 2014, the process server attended at the Probation Office in Orillia where it is believed that Tamara Williamson works as a Probation Officer. The process server was informed by an employee that Tamara Williamson had been absent from work for many months on leave, and was not expected to return to

77

work for some considerable and undefined time. The employee would not disclose the reason for the leave, nor Ms. Williamson's home address or other location. As Ms. Williamson is a Probation Officer who, according to her LinkedIn Profile, regularly deals with high-risk sex offenders, it is to be expected that her employer would not provide any personal information or her whereabouts.

69. Further, I am informed that the process server is very experienced with over 25 years of service, and that he used all his resources to try and locate Ms. Williamson, but was unable to do so. Further, despite diligent efforts, the process server was unable to find any records at all of Williamson's address or personal contact information. I am informed and believe that this lack of public information is normal for Probation Officers and other at risk professionals.
70. Attached hereto as **Exhibit 55** is an email sent on Saturday, February 8, 2014 at 10:53am (Toronto) to Jim Van Allen at the email address shown on the BSSG website: [behaviouralsolutions@gmail.com](mailto:behaviouralsolutions@gmail.com). The Van Allen Director summons to witness was attached. The exhibit also has the reply from Jim Van Allen showing that the message was read on February 8, 2014 at 9:35am (British Columbia).
71. I am informed by Paul Slansky and verily believe that on Saturday, February 8, 2014 before noon in Toronto, Mr. Slansky received a phone call from a man who identified himself as Jim Van Allen, saying that he had received the email with the Summons to Witness. Mr. Van Allen said that he would testify, but wished to do so from British Columbia via video conferencing. Mr. Slansky expressed appreciation that Mr. Van Allen had called, and advised him that he would attempt to make arrangements for video-conferencing and would contact Van Allen soon.
72. On Saturday, February 8, 2014, at about 2:39pm, Mr. Slansky received a fax from Van Allen indicating that he has relocated to Langley BC, providing his phone and email contact information and advising that he could not produce a minute book. A copy of this fax is attached as **Exhibit 56**.

73. On Sunday, February 9, 2014, at about 3:58pm, I sent an email to Jim Van Allen, confirming his receipt of the email and Summons to Witness, and informing him that we would be making arrangements for him to appear via video conference from British Columbia. I also asked Mr. Van Allen to provide an address where we could courier documents to him. On February 10, 2014 at about 10:09am, I received a reply from Mr. Van Allen directing that deliveries for him can be sent to the Magellan Law firm in Langley, British Columbia. Attached hereto as **Exhibit 57** is a copy of the email exchange with Jim Van Allen.

#### **Time to Conduct Examinations**

74. I am informed by Paul Slansky and verily believe that the Appellant had great difficulty finding counsel able and willing to take on this case.

75. I am informed by Paul Slansky and verily believe that counsel for the Appellant, Paul Slansky, is in the middle of a terrorism trial in the Superior Court before the Honourable Madam Justice Baltman. The pre-trial motions is scheduled to continue on February 10-24 (excepting Feb. 19 and 21) and possibly the afternoon of Feb. 25. On Wednesday, February 12 a ruling will be provided which may impact on scheduling. However, at least 3 more days of motions will be required in any case, likely on February 12, 13, 14 and/or 17. The jury selection is scheduled for the week of March 3. The Trial before the jury is scheduled for 6-9 weeks starting March 17. Justice Baltman has asked that counsel be available except for Feb. 19 and 21 (because she is unavailable on those dates) until the end of May. Justice Blair scheduled the review/appeal notwithstanding the trial schedule, this fresh evidence and examination issue was not known to Justice Blair. I have been informed that the facts began to surface at the end of 2013, and they only came together in late January and February, 2014. This motion is being made returnable on February 21, without consulting with the Respondents, because of the limited availability of Mr. Slansky.

**Voice Recording November 17, 2009**

76. I am informed by the Appellant, Donald Best, and verily believe that on November 17, 2009 he personally made two digital voice recordings (primary and backup) of his telephone conversation from overseas with Mr. Ranking, Mr. Silver and the other lawyers who were at Victory Verbatim in Toronto.
77. I am informed by Paul Slansky and believe that these recordings are central to several grounds of appeal and the removal motion. I am informed by Paul Slansky and believe that only by listening to qualities of the voices on the recording can the true fear and desperation of the Appellant and the abusive tones of the lawyers be realized in a manner that is impossible with only a transcript.
78. I am informed by the Appellant and believe that these voice recordings on a single CD and the associated certified transcript and forensic experts' reports on the authenticity of the voice recordings were entered as exhibits in the hearing below. I am informed by the Appellant and believe that the voice recordings on a single CD were attached to Donald Best's affidavit sworn December 10, 2012, as Exhibits K and L to the affidavit. The primary recording is Exhibit K (file name: 2009-11-17 at 09.48.mov) and the backup recording is Exhibit L (file name: 091117\_000.mp3). A copy of this recording is attached as **Exhibit 58**
79. I am informed by the Appellant and believe that Donald Best's December 10, 2012 affidavit forms part of the Appeal Book in the current Appeal, and appears in Appeal Book, Volume 5, pages 2699 to 2922.
80. I am informed by the Appellant and Paul Slansky and believe that the CD containing the two recordings was placed in the Table of Contents Appeal Book at page 2799, however when Mr. Slansky's agent, Steve Lewis attempted to get pre-approval for filing of the Appeal Book at the Court of Appeal, the Court Registry staff informed Mr. Lewis that they would not accept the CD or any other electronic evidence without a



without the CD containing the recordings. I was present during the argument of the removal motion before Justice Feldman. Mr. Slansky offered to play the recording for Justice Feldman, but she declined to hear it. The Appellant now asks the Honourable Court for an order enabling the filing of the recordings for the main appeal and on the motion for removal.

**SWORN** before me on this 11<sup>th</sup>  
day of February, 2014, at Toronto

)  
)  
)  
)  
)

[REDACTED]

Che Claire

[REDACTED]

A Commissioner of Oaths etc.

This is Exhibit "1" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A black rectangular redaction box covering the signature of the Commissioner.

A Commissioner, etc.

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 1

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
1781398	BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.	2008/10/20
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
[REDACTED]		NOT APPLICABLE
		Amalgamation Ind.
		NOT APPLICABLE
		New Amal. Number
		NOT APPLICABLE
		Notice Date
		NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address		Revival Date
[REDACTED]		NOT APPLICABLE
		Continuation Date
		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum Maximum	in Ontario
	00001 00010	NOT APPLICABLE
Activity Classification		Date Ceased
NOT AVAILABLE		in Ontario
		NOT APPLICABLE

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

83  
Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 2

## CORPORATION PROFILE REPORT

Ontario Corp Number

1781398

Corporation Name

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Corporate Name History

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Effective Date

2008/10/20

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

Suite # 15

BRITISH COLUMBIA  
CANADA

Date Began

2008/10/20

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

84

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 3

## CORPORATION PROFILE REPORT

Ontario Corp Number

1781398

Corporation Name

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

Suite # 15

BRITISH COLUMBIA  
CANADA

Date Began

2008/10/20

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

BRITISH COLUMBIA  
CANADA

Date Began

2008/10/20

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

85

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

1781398

Corporation Name

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

[REDACTED]  
[REDACTED]  
BRITISH COLUMBIA  
CANADA [REDACTED]

Date Began

2008/10/20

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

[REDACTED]  
ORILLIA  
ONTARIO  
CANADA [REDACTED]

Date Began

2008/10/31

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

1781398

Corporation Name

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

ONTARIO  
CANADA

Date Began

2008/10/31

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

ORILLIA  
ONTARIO  
CANADA

Date Began

2008/10/31

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y



87

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 6

## CORPORATION PROFILE REPORT

Ontario Corp Number

1781398

Corporation Name

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

[REDACTED]

ORILLIA  
ONTARIO  
CANADA [REDACTED] [REDACTED]

Date Began

2008/10/31

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

JAMES  
ARTHUR  
VAN ALLEN

Address

[REDACTED]

ORILLIA  
ONTARIO  
CANADA [REDACTED] [REDACTED]

Date Began

2008/10/31

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

GENERAL MANAGER

Resident Canadian

Y

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

88  
Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 7

## CORPORATION PROFILE REPORT

Ontario Corp Number

1781398

Corporation Name

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Administrator:  
Name (Individual / Corporation)

TAMARA  
JEAN  
WILLIAMSON

Address

██████████  
  
ORILLIA  
ONTARIO  
CANADA ██████████

Date Began

2008/10/31

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 016120352  
Transaction ID: 53261396  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

89  
Date Report Produced: 2014/01/30  
Time Report Produced: 17:48:24  
Page: 8

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1781398

BEHAVIOURAL SCIENCE SOLUTIONS GROUP INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA CHANGE NOTICE

1

2012/11/29

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

This is Exhibit "2" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.



A Commissioner, etc.



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)

Telephone (604) 626.9572



## Welcome to Behavioural Science Solutions Group Inc.

### Mission

Through our expertise in behavioural analysis, Behavioural Science Solutions Group Inc. is dedicated to providing effective, professional and discreet solutions to manage potentially dangerous situations for those concerned for their safety or those in their care, at home, at work, and at school.

### Values

We believe that a client's trust and confidence is founded in the quality of service and our commitment to providing pro-active and effective investigative support and behavioural management strategies.

Our dedication to the safety and security of others motivates us to stay current in the field of behavioural sciences. In order to provide advanced solutions, we can access a network of international experts. Our expertise and group approach ensures high quality and individualized solutions for your personal, agency or corporate needs.

### Vision

Our effectiveness is measured by our contribution to client successes. Our goal is to achieve total client satisfaction with our investigative support and threat assessment assistance.

Through our focus on communication and implementation, honesty, earned trust and respect, associates of Behavioural Science Solutions Group Inc. will continually strive to maintain these objectives above all else. Our vision is that your trust in our exceptional level of service will establish us as leaders in our field.

Homepage | About Us | Services | FAQs | Training | Contact Us  
 Behavioural Science Solutions Group Inc. © 2013-2014 | P.O. Box 3101 | Stn LCD | Langley, BC | V3A 4R3 | T: 604-626-9572 | F: 604-371-1649

This is Exhibit "3" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

93



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)
[Telephone \(804\) 626.9572](#)


# KNOWLEDGE EXPERIENCE INTEGRITY

## About Behavioural Science Solutions Group Inc.



### JIM VAN ALLEN, PRESIDENT

Jim has over seventeen years specialized experience as a Certified Profiler, and experienced Threat Assessment Analyst. Jim responds to a broad range of incidents with a potential for violence including threatening, stalking, domestic violence, and school and workplace violence.

[READ MORE >>](#)



### TRACEY MARSHALL

Tracey Marshall is the president of Threat Management Matters Inc. She has over 20 years of law enforcement experience both with the Toronto Police Service and the Durham Regional Police Service, serving most recently as a Detective in the Threat Assessment Unit. She has specialized training in the field of Threat Assessment and Workplace Violence and Intervention.

[READ MORE >>](#)



### PETER COLLINS, M.D., F.R.C.P(C)

Peter Collins is the Coordinator of the Forensic Psychiatry Unit, Behavioural Science and Analysis Services, Investigation and Support Bureau of the Ontario Provincial Police, and is also the Consultant Forensic Psychiatrist to the Profiling Unit of the Florida Department of Law Enforcement.

[READ MORE >>](#)



### REID J. MELOY PH.D.

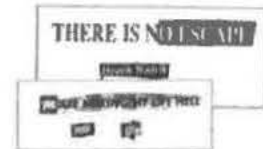
Reid Meloy, Ph.D., is clinical professor of psychiatry at the University of California, San Diego, School of Medicine; adjunct professor at the University of San Diego School of Law; and faculty member at the San Diego Psychoanalytic Institute.

[READ MORE >>](#)

## FOLLOW US



## ANONYMOUS DOCUMENTS?



[Get help today >>](#)

## OUR SERVICES

- Workplace Violence
- Threat & Risk Assessments
- Threat Management Strategies
- Analysis of Threatening or Anonymous Documents
- Investigative Consulting
- Personality Profiling
- Indirect Personality Assessments
- Interviewing Suggestions and Support
- Truth Verification (Statement Analysis)
- Training

[Read More >>](#)





94

Homepage | About Us | Services | FAQs | Training | Contact Us  
Behavioural Science Solutions Group Inc. © 2013-2014 | P.O. Box 3101 | Stn LCD | Langley, BC | V3A 4R3 | T: 604-626-9572 | F: 604-371-1649

This is Exhibit "4" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A black rectangular redaction box covering the signature of the Commissioner.

A Commissioner, etc.

96



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

Home page	About us	Services	Training	FAQs	Contact	Telephone (804) 626,9572
-----------	----------	----------	----------	------	---------	--------------------------



## Our Services

Behavioural Science Solutions Group Inc. provides specialized Behavioural Analysis, and Threat Management Strategies. These include:

### Indirect Personality Assessments

Indirect Personality Assessments discreetly evaluate information about a person's lifestyle, relationships, occupation, values or emotions. These assessments determine a basic personality type and key motivational factors. They provide valuable insight to help select and plan best investigative and interview techniques and intervention strategies.

### Interviewing Strategies

Interviewing strategies are selected for a person's unique personality traits and their involvement in a case. Appropriate techniques or approaches are selected to maximize the success of an interview and the overall investigation. We have developed successful interview strategies for reluctant witnesses, problematic victims, persons of interest, suspects and offenders in some of Canada's most serious investigations. We've successfully developed strategies for people with a variety of mental disorders. Interview support in monitoring important interviews and critical advice about deception, and personality based interview techniques is available.

### Statement Analysis

Statement Analysis detects deception or hidden information by examining a person's word use, sentence content and structure, or changes in speech patterns in written or recorded interviews. Our staff have analyzed countless witness, victim, and suspect and offender statements; and identified people responsible for a variety of crimes. This aids investigators to quickly focus and allocate resources efficiently and effectively. View Questionnaires can be distributed and analyzed in an effort to prioritize the most likely suspect among a group of people.

### Analysis of Anonymous or Threatening Documents

Analysis of anonymous or threatening documents provides insight into bizarre, threatening, unusual or inappropriate anonymous communications. Recognizing core personality traits can assist in identifying the author of a document. This provides an understanding of the author's reason for sending the message and their intentions. We have considerable experience in anonymous threats regarding extortion, stalking, and harassment. We have also successfully identified falsely alleged crimes and complaints.

### Determining Falsely Alleged Incidents

Determining falsely alleged incidents avoids wasting valuable investigative resources. Hoax complaints can be the basis of false accusations in a variety of settings, such as stalking, sexual assault, workplace problems, or can underlay fraudulent insurance or benefit claims.

### Investigative Consulting

Investigative Consulting incorporates behavioural analysis, investigative experience, and consideration of physical and forensic evidence. It assists to develop investigative approaches to efficiently conclude investigations. Crime Scene Analysis, and Crime Scene Reconstruction, determines the sequence of events that occurred and their true significance. Analysis of staged crimes, manner of death determinations, psychological profiles, undercover strategies and evaluation of motive are also available. Our goal is to

## FOLLOW US



## ANONYMOUS DOCUMENTS?



Get help today >>

## OUR SERVICES

- Workplace Violence
- Threat & Risk Assessments
- Threat Management Strategies
- Analysis of Threatening or Anonymous Documents
- Investigative Consulting
- Personality Profiling
- Indirect Personality Assessments
- Interviewing Suggestions and Support
- Truth Verification (Statement Analysis)
- Training

97

provide a more organized and comprehensive understanding of the behavioural, personality and motivational characteristics of the people involved in cases under investigation.

### Psychological Profiles

Psychological Profiles offer a description of a person's traits in an unsolved case. They assist to generate suspects, and identify and investigate people responsible for a variety of incidents. Our staff has experience in developing profiles that have aided investigations of homicide, sexual assault, arson, extortion, product tampering, criminal harassment, and threatening. In some instances, our profiles have assisted victims to name their aggressors. In another case, using one of our profiles, a homicide victim's sister successfully identified the killer. Profiles are possible in evaluating crime scene behaviour, or anonymous documents.

### Threat Assessment


Threat Assessment is the evaluation of risk factors, inappropriate behaviour, communications or verbal or electronic threats; to determine the level of risk posed by an individual or group. Specially designed case management strategies promote personal and organizational safety. Victim safety plans and contact strategies for threateners reduce the risk of a violent outcome. Examples of situations where threat assessments are regularly used include: stalking, relationship conflicts, workplace conflicts harassment and threats, school threats, threats to medical professionals, politicians celebrities or other public figures and investigators. Threat assessments offer a prediction of what an offender might do, and assists clients to regain control of potentially dangerous situations. In over two thousand incidents where our threat analysts were actively involved, only one person was injured. Ignoring a threat is not an effective strategy.

### Training

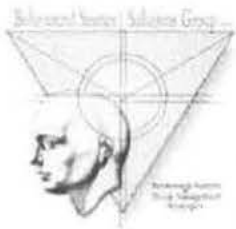
Training is available on a variety of topics including: detecting deception, personality based interviewing, crime analysis, offender categories, arson, stalking, false allegations, and threat assessment. All training can be customized to your specific needs.

For additional information on how these services might benefit your specific activities, or those of your clients, please feel free to **contact us**.

This is Exhibit "**5**" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

99



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)
[Téléphone \(604\) 626.9572](#)


## About Behavioural Science Solutions Group Inc.

### REID J. MELOY PH.D.

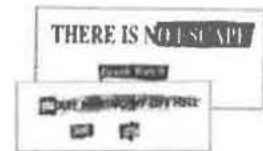


Reid Meloy, Ph.D., is clinical professor of psychiatry at the University of California, San Diego, School of Medicine; adjunct professor at the University of San Diego School of Law; and faculty member at the San Diego Psychoanalytic Institute. A past president of the American Academy of Forensic Psychology, he is the author of numerous books and articles on psychopathy, violence risk and threat assessment, stalking, and the nexus of psychiatric disorders and criminality. Dr. Meloy is a world renowned expert in the dynamics of violent crimes. He currently works as a consultant on various criminal cases, especially complex homicides, and also maintains an active research, writing, and teaching agenda. He is also a consultant to the counterintelligence division of the FBI and the United Kingdom's Home Office.

### FOLLOW US



### ANONYMOUS DOCUMENTS?



[Get help today >>](#)

### OUR SERVICES


- Workplace Violence
- Threat & Risk Assessments
- Threat Management Strategies
- Analysis of Threatening or Anonymous Documents
- Investigative Consulting
- Personality Profiling
- Indirect Personality Assessments
- Interviewing Suggestions and Support
- Truth Verification (Statement Analysis)
- Training

[Read More >>](#)

[Homepage](#) | [About Us](#) | [Services](#) | [FAQs](#) | [Training](#) | [Contact Us](#)

Behavioural Science Solutions Group Inc. © 2013-2014 | P.O. Box 3101 | Stn LCD | Langley, BC | V3A 4R3 | T: 604-626-9572 | F: 604-371-1649

This is Exhibit "6" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.





*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)

Telephone: (604) 626-9572



KNOWLEDGE EXPERIENCE INTEGRITY

## About Behavioural Science Solutions Group Inc.

### TRACEY MARSHALL



Tracey Marshall is the president of Threat Management Matters Inc. She has over 20 years of law enforcement experience both with the Toronto Police Service and the Durham Regional Police Service, serving most recently as a Detective in the Threat Assessment Unit. She has specialized training in the field of Threat Assessment and Workplace Violence and Intervention.

Tracey is experienced with the analysis of investigative files including Sexual Violence, Domestic Violence, Criminal Harassment, Threatening Correspondence, Threats to Judiciary and Public Officials, School Violence and Workplace Violence.

She is currently a member of the Board of Directors for the Canadian Association of Threat Assessment Professionals.

Tracey provides training on Domestic Violence, Criminal Harassment/Stalking, Threat Assessment and Case Management to audiences including Law Enforcement, Social Services, Victim Advocacy Groups and Corporate Personnel.

### FOLLOW US



### ANONYMOUS DOCUMENTS?



[Get help today >>](#)

### OUR SERVICES

- Workplace Violence
- Threat & Risk Assessments
- Threat Management Strategies
- Analysis of Threatening or Anonymous Documents
- Investigative Consulting
- Personality Profiling
- Indirect Personality Assessments
- Interviewing Suggestions and Support
- Truth Verification (Statement Analysis)
- Training

[Read More >>](#)

This is Exhibit "7" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

103

Search this site

# Tracey's Teaching Portfolio

Teaching Philosophy   Resume   Assessment and Evaluation   Collaborative Learning   Curriculum Design  
Diverse Needs   Educational Technology   Reflective Practice

Teaching Philosophy  
Resume  
Assessment and Evaluation  
Collaborative Learning  
Curriculum Design  
Diverse Needs  
Educational Technology  
Reflective Practice  
Contact

## Site owners

Tracey Marshall

Tracey Marshall



## Resume

Tracey Marshall

██████████ ██████████ ██████████ Whitby, Ontario ██████████  
██████████

## HIGHLIGHTS

- Team Building and Leadership
- Community Partnership Development
- Community Event Coordination
- Expert Testimony
- Teaching Experience
- Supervisory Experience

## EDUCATION

Master of Arts – Central Michigan University –  
Completed 2013

Bachelor of Arts Degree - University of Toronto

104

(1983-1986)

Major in Criminology / Minor in Psychology and  
Sociology

Formal Mentorship Program (1 Year-2004)

Threat Assessment Unit, Behavioural Sciences Section,  
Ontario Provincial Police

## AWARDS

2006 Region of Durham YWCA - Woman of Distinction

2004 Toronto Police Service - Chief of Police

Excellence Award

## CURRENT APPOINTMENT

Durham College – Professor  
School of Justice and Emergency Services (2011 to  
Present)

Program Coordinator for the Youth Corrections and  
Interventions graduate certificate program.  
Requisite technical knowledge and skills include completion  
of the College Teaching Certificate program (April 2013)

Durham College - Part-Time Faculty  
School of Justice and Emergency Services (2009 to  
2011)

Experience teaching Youth Counselling (Graduate  
Certificate Level), Psychology and Criminology. Requisite  
technical knowledge and skills include course content  
design, the integration of technology in the classroom and  
the use of WebCT.

Currently a member of the Program Advisory Committee  
for the Victimology program and developed course  
curriculum for "Woman Abuse: Assessment and

105

Intervention" course.

### Manager of Student Rights and Responsibilities

#### Durham College and UOIT

Responsibilities include the investigation, assessment and resolution of all non-academic behavioural issues, which arise at Durham College and the University of Ontario Institute of Technology.

Conduct threat assessments and provide a measured response to incidents in which the risk of future violence is identified.

Responsible for the implementation of Multi-Disciplinary Incident Management Teams to assess "at risk" situations (students/faculty/staff).

Responsible for working in concert with other members of the Office of Campus Safety, service providers on campus and community partners as necessary to address the needs of the identified student as well as the greater community.

Recent initiatives include the development and delivery of Workplace Harassment and Violence Training for all staff and faculty at Durham College and the University of Ontario Institute of Technology.

### Detective – Threat Analyst / Threat Assessment Unit

Provide investigative assistance, support and training within the region of Durham to criminal justice agencies in relation to the categorization of threats, evaluation of potential violence or risk and suggested methods of intervention. Assist agencies with the preparation of operational plans and facilitate access to correctional, legal and medical/psychiatric expertise. Examination and analysis of investigative files including Sexual Violence, Domestic Violence, Criminal Harassment, Threatening Correspondence, Threats to Judiciary and Public Officials, School Violence and Workplace Violence.

106

**Distinctions:**

**Member - Executive Steering Committee for Durham Region's Intimate-relationship Violence Empowerment Network (DRIVEN).** This is community collaborative that assists victims of intimate partner violence by providing a one-stop location to access services and reduce the risk of future harm.

**Expert Testimony -** Qualified at the Ontario Court of Justice in the field of Threat Assessment.

**Expert Panel Member -** Advisory Panel for 'Neighbours, Friends and Family'; Government of Ontario Initiative. This initiative is aimed at all Ontarians in an effort to raise awareness and change attitudes around relationship violence.

**Instructor/Guest Speaker -** Domestic Violence Investigation, Criminal Harassment/Stalking, Workplace Violence, Threat Assessment and Management to audiences including College/University staff, students and faculty, Police Officers, Social Services and Victim Advocacy Groups.

**Memberships:**

**Executive Board Secretary -** Canadian Association of Threat Assessment Professionals (CATAP)

**Certified Training Relevant to Appointment:**

- Level II Violence Threat/Risk Assessment Training / Peterborough, ON (2011)
- CATAP Annual Threat Assessment Conference / Banff, AB (2010)
- WAWR-21 Training, Dr. Reid Mejer / Orillia, ON (2009)
- Threat Management Symposium / Orillia, ON (2009)
- Mental Health and Disorders Training / Orillia, ON (2008)
- Workplace Violence Think Tank / London, ON (2006)
- Advanced Threat Assessment Course / Vancouver, BC (2006)
- Family Justice Centre Model "One-Stop Shopping" / Waterloo, ON (2006)

107

- Domestic Violence Investigation Train-the-Trainer Course / OPC (2005)
- Finding Common Ground / Toronto, ON (2005)
- Sex Crimes Conference / Toronto, ON (2005)
- Threat Management Conference / Orillia, ON (2005)
- Advances in Theory, Assessment & Treatment in Domestic Violence (2005)
- Managing the Risk - Human and Environmental Factors / Stratford, ON (2005)
- Ontario Domestic Assault Risk Assessment (ODARA) Training / Whistler (2005)
- Assistant Crown Attorney Conference / Toronto, ON (2005)
- Threat Assessment Conference / Vancouver, BC (2005)
- Intimate Partner Violence Risk Assessment / Orillia, ON (2005)
- Youth Violence Risk Assessment Course / Toronto, ON (2004)
- Domestic Violence Seminar / London, ON (2004)
- Antisocial Behaviour & Substance Abuse Across the Lifespan / Toronto, ON (2004)
- Threat Assessment and Management / USA (2004)
- Domestic Violence Risk Assessment / Orillia, ON (2004)
- Violence Risk, Sexual Violence Risk, Psychopathy / Orillia, ON (2003)
- International Conference on Violent Crime / Kempenfelt Bay, ON (2003)
- Threat Management Conference / Orillia, ON (2003)
- Domestic Violence Investigators Course / Orillia, ON (2002)
- Threat Assessment Seminar / Toronto, ON (2002)
- Actuarial Tools for Determining Risk in Sex Offenders / Orillia, ON (2001)
- Violence Risk and Threat Assessment / Troy,



108

- NY (2000)
- \* Stalking and Criminal Harassment Conference (2000)
- \* International Conference on Violent Crime / Toronto, ON (1999)
- \* Pedophilia Workshop / Oakville, ON (1998)
- \* Threat Assessment Conference / Washington, D.C. (1998)

## PROFESSIONAL EXPERIENCE

Durham  
College  
2011 to Present

Professor - Full-time Faculty, School of Justice and Emergency Services

Program coordinator for the Youth Corrections and Interventions graduate certificate program

Durham  
College  
2009 to 2011

Professor - Part-Time Faculty, School of Justice and Emergency Services

Experience teaching Youth Counselling, Psychology and Criminology

Requisite technical knowledge and skills for the integration of technology in the classroom

Durham College-  
UOIT  
2008 to 2011

Manager - Student Rights, Responsibilities and Threat Assessment

Durham Regional Police Service

2000 to 2008

109

Detective – Threat Assessment Unit, Crime Administration  
Branch / 2003 to Present

Detective Constable – Criminal Investigation Bureau,  
Whitby Community Office / 2003

Constable – Uniform Patrol, Clarington Community Office  
/ 2002 to 2003

Permanent Acting Sergeant

<b>Toronto</b>	<b>Police</b>	<b>Service</b>
		<b>1987 to</b>
<b>2000</b>		

Detective – Professional Standards, Special Task Force  
/ 2001 to 2002

Sergeant – 42 Division / 2001

Detective Constable – Threat Assessment Section, / 1999  
to 2001

Detective Constable – Sexual Assault Squad / 1997 to 1999

Constable – 41 Division / 1989 to 1997

Fingerprint Technician – Forensic Identification Unit  
/ 1988 to 1989

Communications Operator – Communications Branch /  
1987 to 1988

## PROFESSIONAL DEVELOPMENT

- Direction Leadership Program – RCMP / 2006-2008
- Police Supervision and Leadership Course / PLC / 2003
- General Investigative Techniques Course / PLC / 2003
- Internal Affairs Seminar / TPS / 2002
- Police Supervision and Leadership Course / TPS / 2001
- Statement Admissibility Seminar / OPP / 2000
- Advanced Homicide Investigators Seminar / TPS / 2000
- Interview and Interrogation Techniques Seminar / TPS / 2000
- Sexual Assault Investigators Seminar / TPS / 2000
- Collateral Material Workshop / TPS / 2000
- Major Case Management Course / TPS / 1998

- Crimes Against Children – Sex Crimes on the Internet / FBI / 1998
- Crimes Against Children / FBI / 1998
- Fraud Investigators Seminar / TPS / 1997
- Sexual Assault Investigators Seminar / TPS / 1997
- Advanced L.S.I. – Scientific Content Analysis / TPS / 1994
- Basic L.S.I. – Scientific Content Analysis / TPS / 1993
- Sexual Assault/Child Abuse Investigation Course / TPS / 1993
- Sexual Assault Investigators Seminar / TPS / 1992
- Sexual Assault Investigators Seminar / TPS / 1991

## COMMUNITY

Board Member – Westminster United Church – Ministry and Personnel / 2007-present

Board Member - Nigerian Order of Nurses (NON) / 2004 to 2005

## Comments

tracey.marshall@durhamcollege.ca, Professor, School of Justice & Emergency Services, Durham College

[Sign in](#) | [Recent Site Activity](#) | [Report Abuse](#) | [Print Page](#) | [Remove Access](#) | Powered By [Google Sites](#)

111

This is Exhibit "8" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

---

A Commissioner, etc.

112



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)
[Telephone \(604\) 626-9572](#)


## About Behavioural Science Solutions Group Inc.

### PETER COLLINS, M.D., F.R.C.P(C)



Peter Collins is the Coordinator of the Forensic Psychiatry Unit, Behavioural Science and Analysis Services, Investigation and Support Bureau of the Ontario Provincial Police, and is also the Consultant Forensic Psychiatrist to the Profiling Unit of the Florida Department of Law Enforcement.

Peter is an affiliate member of the International Criminal Investigative Analysis Fellowship and was appointed a member of the INTERPOL Specialist Group on Crimes Against Children.

Peter has lectured internationally and is an expert on Suicide, Stalking, Sexual Deviance, Workplace Violence, Threat Assessment, and Mental Disorders.

### FOLLOW US



### ANONYMOUS DOCUMENTS?



[Get help today >>](#)

### OUR SERVICES

- Workplace Violence
- Threat & Risk Assessments
- Threat Management Strategies
- Analysis of Threatening or Anonymous Documents
- Investigative Consulting
- Personality Profiling
- Indirect Personality Assessments
- Interviewing Suggestions and Support
- Truth Verification (Statement Analysis)
- Training

[Read More >>](#)

This is Exhibit "9" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A solid black rectangular box used to redact the signature of the Commissioner.

A Commissioner, etc.

**CURRICULUM VITAE**  
**PETER IAN COLLINS**

Date of Birth: [REDACTED]

Place of Birth: Toronto, Ontario

**Present Position**

Staff Forensic Psychiatrist, Law and Mental Health Program, Centre for Addiction and Mental Health, University of Toronto

Manager, Forensic Psychiatry Unit, Criminal Behaviour Analysis Service, Behavioural Sciences Section, Investigation Support Bureau, Ontario Provincial Police

Associate Professor, Department of Psychiatry, Faculty of Medicine, University of Toronto

**Other Appointments**

Affiliate Professor, Forensic Science Program, Nebraska Wesleyan University

Member, Specialist Group on Crimes Against Children, Trafficking in Human Beings Sub-Directorate, INTERPOL

Consultant Forensic Psychiatrist, Behavioural Sciences Branch, Royal Canadian Mounted Police.

Consultant Forensic Psychiatrist, Integrated National Security Enforcement Team (INSET), "O" Division, Royal Canadian Mounted Police

Consultant Forensic Psychiatrist, International Criminal Investigative Analysis Fellowship

Forensic Psychiatrist, Crisis Negotiation Team, Emergency Task Force, Toronto Police Service

Consultant Forensic Psychiatrist, Profiling Unit, Florida Department of Law Enforcement

**Revised: 21 December 2007**



### **Past Appointments**

Consultant Psychiatrist, Canadian Security Intelligence Service (CSIS) – 1990-1999.

Member, Ontario Review Board (formerly The Lieutenant Governor's Review Board) - 1990-1998.

Criminal Harassment Working Group, Policing Standards, Policing Services Division, Ministry of the Solicitor General (Ontario) – 1995.

### **Education**

F.R.C.P(C) - Fellow of the Royal College of Physicians (Canada)- Psychiatry - University of Toronto, May 1989.

M.D. - McMaster University, Hamilton, Ontario, May 1983.

M.C.A. - Master of Criminology (Applied), University of Ottawa, October 1978.

Honours Status in Psychology, University of Western Ontario, London, Ontario, April 1976.

B.A. - Psychology - University of Western Ontario, London, Ontario, October 1975.

### **Postgraduate Education**

Chief Resident, Queen Street Mental Health Centre, Toronto, Ontario. January 1, 1989 - June 30, 1989. (Chronic Care Psychiatry)

Senior Resident, Clinical Research Division, Clarke Institute of Psychiatry, Toronto, Ontario. July 1, 1988 - December 31, 1988. (Resident on Clinical Psychopharmacology Unit)

Senior Resident, Forensic Psychiatry Division, Clarke Institute of Psychiatry, Toronto, Ontario. July 1, 1987 - June 30, 1988.

Resident in Psychiatry, Clarke Institute of Psychiatry, Toronto, Ontario. July 1, 1986 - June 30, 1987. (6 months Crisis Unit / Emergency Room, 6 months Family Court Clinic).

Resident in Psychiatry, The Wellesley Hospital, Toronto, Ontario. July 1, 1985 - June 30, 1986.

Resident in Anatomical Pathology, Mount Sinai Hospital, Toronto, Ontario. July 1, 1984 - June 30, 1985.

General Internship (Mixed), Mount Sinai Hospital, Toronto, Ontario. June 13, 1983 - June 11, 1984.

### **Previous Employment**

March 1986 - December 1988 - Queen Street Mental Health Centre, Toronto, Ontario.  
Duty Physician. 2 to 3 shifts per month.

July 1984 - July 1987 - Hassle Free Clinic, 556 Church Street, Toronto, Ontario. Sexually Transmitted Disease Clinic. 3 to 5 hours per week.

April 1978 - August 1980 - Probation Officer, Yukon Territorial Government, Whitehorse, YT. Co-ordinated Juvenile Probation for the Department of Health and Human Resources & Consultant Criminologist to "M" Division, Royal Canadian Mounted Police.

April 1977 - August 1977 - Community Release Officer. Solicitor General's Department, Government of Alberta. Edmonton, Alberta (summer employment).

May 1975 - August 1975 - Assistant Probation Officer. Juvenile Branch, Ministry of Correctional Services, Toronto, Ontario (summer employment).

May 1974 - August 1974 - as above.

May 1973 - August 1973 - Identification Photographer, Systems and Procedures Branch, Ministry of Correctional Services, Government of Ontario, Toronto (summer employment)

### **Medical School Electives**

February 1981 - Forensic Pathology, Hamilton General Hospital. Supervised by Dr. J.A.J. Ferris.

November - December 1981 - Infectious Disease, Coppetts Wood Hospital of the Royal Free Hospital, London, England. Supervised by Dr. H. Smith and Dr. R.T.E. Emond.

April 1982 - Cardiology, St. Joseph's Hospital, Hamilton, Ontario. Supervised by Dr. Tihal.

May 1982 - Emergency Medicine - Henderson General Hospital, Hamilton, Ontario.

March 1983 - Intensive Care Unit, St. Joseph's Hospital, Hamilton, Ontario.

April 1983 - Neurology, Hamilton General Hospital. Supervised by Dr. R. Duke.

**Academic Field Work – Department of Criminology, University of Ottawa**

August 1977 - April 1978 - Ottawa Police Force.

September 1976 - April 1977 - Quinte Regional Detention Centre, Napanee, Ontario.

**Teaching Experience**

Associate Professor - Department of Psychiatry, Faculty of Medicine, University of Toronto.

Affiliate Professor, Forensic Science Program, Nebraska Wesleyan University.

Assistant Professor – Forensic Sciences Program, University of Toronto at Mississauga – 2000 to 2006.

Instructor - Forensic Psychology, (PSY 344H) University of Toronto at Mississauga - 2000 to 2006

Trainer – Interpol Specialist Group on Crime Against Children & International Centre for Missing and Exploited Children International Training Initiative – 2004 to 2006.

Department of Psychiatry Representative - Brain & Behaviour Section (Neuroscience), Medical School Year I - University of Toronto - 1994-1996.

Tutorial Leader - Brain & Behaviour Section (Neuroscience) Medical School Year I - University of Toronto - 1993-1994.

Co-ordinator - The Criminal Investigative Analysis Understudy Symposium - Ontario Provincial Police Academy - May 28 - June 2 1995.

Trial Advocacy Course, Faculty of Law, University of Toronto, "Expert Witness" class 1987 - 1998.

Practicum Supervisor - Department of Applied Psychology - The Ontario Institute for Studies in Education. (1991)

Co-ordinator of Psychiatric Education - Rehabilitation Medicine - University of Toronto.  
(1989-1991)

Guest Lecturer - Department of Criminology - University of Toronto.

Guest Lecturer - Department of Forensic Sciences - University of Toronto at Mississauga.

Guest Lecturer - Forensic Sciences Program - Trent University

Guest Lecturer - Justice Studies Department - Ryerson Polytechnic University, Toronto.

Guest Lecturer - Law Enforcement Program - Humber College, Toronto.

Guest Lecturer - Austin Community College - Austin, Texas.

Guest Lecturer - Computer Forensics Program, Champlain College - Burlington, Vermont.

Instructor - Mount Royal College (Calgary), Centre of Criminal Justice Extension  
Programme - Yukon Department of Corrections -1978-1980.

**Training has been provided to numerous Criminal Justice Agencies including:**

Canadian Police College

Ontario Police College

Ontario Provincial Police Academy

C.O. Bick College of the Toronto Police Service

Northern Ontario Police Academy for Advanced Training

Saskatchewan Police Academy

Canadian Forces Military Police Academy

Polygraph School, Canadian Police College

Iowa Law Enforcement Academy

New York State Police Academy

Georgia Police Academy  
F.B.I. Academy, Quantico  
Nordrhein-Westfalen Police Academy (Germany)  
Peel Regional Police Service  
Halton Regional Police Service  
Durham Regional Police Service  
York Regional Police  
London Police Force  
Belleville Police Service  
Sarnia Police Service  
Windsor Police Service  
Guelph Police Service  
Niagara Regional Police Service  
Sault Ste. Marie Police Service  
Ottawa Police Service  
Toronto Police Service  
Miramichi Police Force  
Royal Newfoundland Constabulary  
Vancouver Police Department  
Toronto Transit Commission Transit Patrol  
New York State Police

Massachusetts State Police

Florida Department of Law Enforcement

Iowa Division of Criminal Investigation

Iowa State Patrol

Nebraska State Patrol

Michigan State Police

Georgia Bureau of Investigation

Las Vegas Metropolitan Police Department

Florida Sex Crimes Investigators Association

Iowa Sex Crimes Investigators Association

Minnesota Sex Crimes Investigators Association

Colorado Association of Sex Crime Investigators

Washington Violent Crimes Investigators Association

Michigan Chapter of the FBI Academy

Alaska Peace Officers Association

Utah Attorney General's Office

Washington State Attorney General's Office

State of New Hampshire Attorney General's Task Force on Child Abuse and Neglect

Massachusetts Internet Crimes Against Children Task Force

American Prosecutors Research Institute

National Association of Attorneys General

National Center for Justice and the Rule of Law at the University of Mississippi School of Law

United States Department of Justice - Internet Crimes Against Children Task Force

United States Department of Justice – Office for the Victims of Crime

United States Postal Inspection Service

Japanese National Police

Organismo de Investigacion Judicial Costa Rica

Federal Police Argentina

Federal District Military Police, Brazil

South African Police Service

Criminal Police Directorate, Croatia

Dutch National Police

Belgian National Police

General Inspectorate of the Romanian Police

Her Majesty's Customs and Excise National Intelligence Division

Serious Crimes Group, New Scotland Yard, Metropolitan Police Service

Greater Manchester Police

National Crime Squad of England and Wales

Homicide Working Group – Senior Investigating Officers – Association of Chief Police Officers of England, Wales & Northern Ireland.

Australian Federal Police

Queensland Police Service



Department of National Defence – Canada

Canadian Forces Military Police

Canadian Forces National Counter Intelligence Service

Communications Security Establishment

Criminal Intelligence Service Canada

Criminal Intelligence Service Ontario

Criminal Intelligence Service Nova Scotia

Ontario Provincial Police

Royal Canadian Mounted Police

Federal Bureau of Investigation

International Criminal Investigative Analysis Fellowship

European Union Law Enforcement Organisation (EUROPOL)


Organisation Internationale de Police Criminelle (INTERPOL)

**Workshops/Seminars/Meetings Attended**

1. 5<sup>th</sup> Annual Senior Investigating Officers Conference – Homicide Working Group of the Association of Chief Police Officers of England, Wales & Northern Ireland – Wyboston, Bedfordshire, England – November 5 – November 7, 2007.
2. 6<sup>th</sup> Annual Internet Crimes Against Children National Conference – San Jose, California – October 14 – October 18, 2007.
3. Violent Words to Violent Deeds – Risk Assessment Using Psycholinguistic Analysis – Sharon S. Smith, PhD (FBI retired) – Orillia, Ontario – September 12, 2007.
4. Canadian Forces Military Psychiatry in Afghanistan – Dr. Randy Boddam – Ontario District Branch, American Psychiatric Association – September 11, 2007.

5. 25th Meeting of the INTERPOL Specialist Group on Crimes Against Children – Lyon, France – June 5th – June 7th, 2007.
6. 6<sup>th</sup> Victim Identification Workshop, INTERPOL Specialist Group on Crimes Against Children - Lyon, France – June 4, 2007.
7. The Bullet Proof Mind – Lt. Col. Dave Grossman – 20<sup>th</sup> Annual Law Enforcement Coordinating Committee & County Attorneys Association Criminal Justice Conference – Kearney, Nebraska – 19 May 2007.
8. Internet Child Pornography and the On-Line Offender: Mental Health & Legal Perspectives – Southern Alberta Forensic Psychiatry Services – Calgary, Alberta – 18 April 2007.
9. 59<sup>th</sup> Meeting of The American Academy of Forensic Sciences – San Antonio, TX, - February 19 – February 24, 2007.
10. Deep Brain Stimulation for Treatment Resistant Depression – Dr. Sidney Kennedy - Ontario District Branch – American Psychiatric Association – Toronto, Ontario – February 6, 2007.
11. Planning & Executing a Continuing Medical Education Course – Continuing Mental Health Education Committee – Department of Psychiatry, University of Toronto – Toronto, Ontario – January 18, 2007.
12. 56<sup>th</sup> Annual Conference of the Canadian Psychiatric Association – Toronto, Ontario – November 9 – November 12, 2006.
13. Children as Victims and Witnesses of Domestic Homicide – Lessons Learned from the Ontario Domestic Violence Death Review Committee – London, Ontario – November 2, 2006.
14. International Homicide Investigators Association 13<sup>th</sup> Annual Symposium – New Orleans, Louisiana – August 28 – September 1, 2006.
15. International Association of Chiefs of Police South American Executive Public Safety Seminar – Fortaleza, Ceará, Brazil - June 18 – June 20, 2006.
16. 24<sup>th</sup> Meeting of the INTERPOL Specialist Group on Crimes Against Children – Nicolet, Quebec - May 30 – June 2, 2006.

This is Exhibit "10" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

125

[POWER \(https://power.utoronto.ca/power/index.cfm\)](https://power.utoronto.ca/power/index.cfm)

[Portal \(https://portal.utoronto.ca/webapps/portal/frameset.jsp\)](https://portal.utoronto.ca/webapps/portal/frameset.jsp)

[MEDSiS \(http://medsis.utoronto.ca/\)](http://medsis.utoronto.ca/)

[On-Call Resources \(http://www.psychiatry.utoronto.ca/on-call-resource/\)](http://www.psychiatry.utoronto.ca/on-call-resource/)

[Faculty & Staff Directory \(http://www.psychiatry.utoronto.ca/faculty-staff/\)](http://www.psychiatry.utoronto.ca/faculty-staff/)

search ...

[About Us \(http://www.psychiatry.utoronto.ca/about/\)](http://www.psychiatry.utoronto.ca/about/)

[Organization & Governance \(http://www.psychiatry.utoronto.ca/about/organization-chart/\)](http://www.psychiatry.utoronto.ca/about/organization-chart/)

[Education \(http://www.psychiatry.utoronto.ca/education/\)](http://www.psychiatry.utoronto.ca/education/)

[Research \(http://www.psychiatry.utoronto.ca/research/\)](http://www.psychiatry.utoronto.ca/research/)

[Events \(http://www.psychiatry.utoronto.ca/events/\)](http://www.psychiatry.utoronto.ca/events/)

[Support Us \(http://www.psychiatry.utoronto.ca/why-support-the-department/\)](http://www.psychiatry.utoronto.ca/why-support-the-department/)

## Dr. Peter I. Collins

### Associate Professor

Division One: Forensic Psychiatry

Division One (Joint): Forensic Psychiatry

### Contact Information

#### Address:

CAMH

250 College Street

Toronto, ON M5T 1R8

#### Telephone:

416-979-6847

#### E-Mail:

[peter.collins@camh.ca](mailto:peter.collins@camh.ca) (<mailto:peter.collins@camh.ca>)

### Profile

#### Faculty & Staff

[Faculty & Staff \(http://www.psychiatry.utoronto.ca/faculty-staff/\)](http://www.psychiatry.utoronto.ca/faculty-staff/)

[HR Finance & Research Forms \(http://www.psychiatry.utoronto.ca/hr-finance-research-forms/\)](http://www.psychiatry.utoronto.ca/hr-finance-research-forms/)

[Faculty Promotions \(http://www.psychiatry.utoronto.ca/faculty-staff/faculty-promotions/\)](http://www.psychiatry.utoronto.ca/faculty-staff/faculty-promotions/)

[Senior Promotions \(http://www.psychiatry.utoronto.ca/faculty-staff/faculty-promotions/senior-promotions/\)](http://www.psychiatry.utoronto.ca/faculty-staff/faculty-promotions/senior-promotions/)

[Junior Promotions \(http://www.psychiatry.utoronto.ca/faculty-staff/faculty-promotions/junior-promotions/\)](http://www.psychiatry.utoronto.ca/faculty-staff/faculty-promotions/junior-promotions/)

[Faculty Development \(http://www.psychiatry.utoronto.ca/education/faculty-development/\)](http://www.psychiatry.utoronto.ca/education/faculty-development/)

[Academic Appointments \(http://www.psychiatry.utoronto.ca/faculty-staff/academic-appointments/\)](http://www.psychiatry.utoronto.ca/faculty-staff/academic-appointments/)

[Status-Only Academic Appointment \(Non MD\) \(http://www.psychiatry.utoronto.ca/faculty-staff/academic-appointments/status-only-academic-appointment-non-md/\)](http://www.psychiatry.utoronto.ca/faculty-staff/academic-appointments/status-only-academic-appointment-non-md/)

126

Peter Collins is the Forensic Psychiatrist for the Criminal Behaviour Analysis Unit of the Behavioural Sciences and Analysis Section – Ontario Provincial Police. Peter is also the Consultant Forensic Psychiatrist to RCMP \_

[appointments/sc-acad-appoint-non-md/](#)

[Clinical Academic Appointments \(MD\) \(http://www.psychiatry.utoronto.ca/facu-staff/academic-appointments/clinical-acad-appoint-md/\)](#)

## Research Interests

Violent Crime, Crimes Against Children, Child Pornography, Crisis/Hostage Negotiation, Suicide by Cop.

## Affiliations

Canadian Psychiatric Association

Canadian Medical Association

Canadian Academy of Psychiatry and the Law

Canadian Association of Threat Assessment Professionals (Board of Directors)

Canadian Critical Incident Association

Ontario Psychiatric Association

Ontario Medical Association

Medico-Legal Society of Toronto (Member of Council)

American Psychiatric Association

American Academy of Forensic Sciences

American Academy of Psychiatry and the Law

Homicide Research Working Group

International Homicide Investigators Association

International Criminal Investigative Analysis Fellowship

127

## Other Links

<http://www.opp.ca> (<http://www.opp.ca>)


© 2014, UNIVERSITY OF TORONTO

[U OF T HOME \(HTTP://WWW.UTORONTO.CA\)](http://www.utoronto.ca)

[FACULTY OF MEDICINE HOME \(HTTP://MEDICINE.UTORONTO.CA/\)](http://medicine.utoronto.ca/)

[U OF T LIBRARIES \(HTTP://ONESEARCH.LIBRARY.UTORONTO.CA/\)](http://onsearch.library.utoronto.ca/)

This is Exhibit "11" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
\_\_\_\_\_  
A Commissioner, etc.



129

# Peter Collins (psychiatrist)

From Wikipedia, the free encyclopedia

**Peter Ian Collins** (born [REDACTED]) is a Canadian forensic psychiatrist. He is an expert on violent crime and has worked with criminal justice agencies in Canada and throughout the world, including INTERPOL, the FBI and U.S. Department of Homeland Security, the Australian Federal Police and Europol. He has testified as an expert witness on sexual homicide, pedophilia, child pornography, stalking, sexual assault, paraphilias, the insanity defense, suicide by cop, police crisis negotiations, operational stress injury and post-traumatic stress disorder.<sup>[1]</sup>

## Contents

- 1 Life and career
- 2 Selected publications
- 3 References
- 4 External links

## Life and career

Collins obtained his Bachelor's degree in psychology from The University of Western Ontario in 1975 and his Masters degree in applied criminology from the University of Ottawa in 1978. He earned his Medical degree from McMaster University in 1983. Collins completed his postgraduate medical training in Psychiatry at the University of Toronto in 1989. He is a Fellow of the Royal College of Physicians (Canada) in both Psychiatry and Forensic Psychiatry.

Collins took a position at the Clarke Institute of Psychiatry, now part of the Centre for Addiction and Mental Health (CAMH) in 1989. His clinical appointment is with CAMH's Complex Mental Illness Program. In 2004 he was promoted to Associate Professor at University of Toronto in the Division of Forensic Psychiatry - Faculty of Medicine. Collins is also a co-investigator with the Health Adaptation Research on Trauma (HART) Lab at the University of Toronto Mississauga.

When the Royal Canadian Mounted Police established their Violent Crimes Analysis Section (later named the Behavioural Analysis Branch), in June 1990, Collins became a consultant, in December 1990, and continued with this position until 2008. As a member of the Behavioural Analysis Branch he was involved in the project that developed the Violent Crime Linkage Analysis System (ViCLAS) with Inspectors Ron MacKay (retired), Keith Davidson (retired) and Greg Johnson.

Collins became an in-house consultant to the Ontario Provincial Police (OPP), in 1995, and is currently the Forensic Psychiatrist with the Criminal Behaviour Analysis Unit of the OPP's Behavioural Sciences and Analysis Section. He is also serves as the consultant psychiatrist to "O" Division Integrated National Security Enforcement Team (INSET) of the Royal Canadian Mounted Police, the Behavioral Analysis Unit of the U.S.

Marshall's Service, the Investigative Psychology Unit of the South African Police and the Profiling Unit of the Florida Department of Law Enforcement. Collins has been a member of the Toronto Police Service Emergency Task Force (ETF) Crisis Negotiation Team since 1992.

In 1997, Collins was elected a member of the International Criminal Investigative Analysis Fellowship. In 2000, Collins was appointed a member of the INTERPOL Specialist Group on Crimes against Children. Collins retired, at the rank of Lieutenant-Commander, from the Royal Canadian Navy (Reserves). He is a veteran of two deployments to Southern Afghanistan.<sup>[2]</sup> In October 2012 Collins was awarded the Queen's Diamond Jubilee Medal for his contribution to the Canadian Forces and has the Canadian Forces Decoration (C.D.).

In his capacity as a forensic psychiatrist with the OPP Collins has been consulted, internationally, on numerous homicide investigations, including serial murder cases, sexual homicides and child abductions.<sup>[3][4][5]</sup> He has also written on suicide by cop.<sup>[6]</sup> At the request of the Department of Justice, Collins testified before the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness – Bill C-2: An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act - Ottawa, Ontario, 2 May 2005. He has also been involved in two joint presentations, on the topic of Child Pornography, to Members of Parliament - House of Commons, Ottawa, in June 1999 and April 2002. In April 2006 he presented to the Counter Terrorism Training Working Group – Institute of Intergovernmental Research & U.S. Department of Justice, Washington, D.C. on the topic of Source Development and Recruitment.

In the private sector Collins is a consultant to Hennes Paynter Communications, in Cleveland, Ohio; Martin & Associates Investigations, in Halifax, Nova Scotia; Investigation Solutions Network, in Pickering, Ontario and Behavioural Sciences Solutions in Langley, British Columbia.

## Selected publications

### Books

- St-Yves, M. & Collins, P. (2012) *The psychology of crisis intervention for law enforcement officers*. Carswell: Toronto, Ontario. ISBN 978-07798-4955-0
- St-Yves, M. & Collins, P. (2011) *Psychologie de l'intervention policière en situation de crise*. Editions Yvon Blais: Cowansville, Quebec. ISBN 978-2-89635-464-1
- Cornish J.L., Murray K.A., Collins P.I. (1999) *The criminal lawyers' guide to the law of criminal harassment and stalking*. Canada Law Book: Aurora, Ontario. ISBN 978-0-88804-320-7

### Book Chapters

- Collins, P & St-Yves, M. (2012) Negotiating with suicidal individuals. In *The psychology of crisis intervention for law enforcement officers*. Eds. Michel St-Yves & Peter Collins. Carswell: Toronto, Ontario.
- Collins, P & St-Yves, M. (2012) Negotiating with emotionally disturbed individuals. In *The psychology of crisis intervention for law enforcement officers*. Eds. Michel St-Yves & Peter Collins. Carswell: Toronto, Ontario.
- Collins, P. (2012) Dealing with extremist and politically motivated incidents. In *The psychology of crisis*

- intervention for law enforcement officers. Eds. Michel St-Yves & Peter Collins. Carswell: Toronto, Ontario.
- Pierson, F., Crocq, L. & Collins, P. (2012) Psychological assistance for first responders and victims. The psychology of crisis intervention for law enforcement officers. Eds. Michel St-Yves & Peter Collins. Carswell: Toronto, Ontario.
  - Collins, P. (2011) Psychologie de l'extrémisme – Prises d'otages et situations de barricade à motivation idéologique ou politique. In Psychologie de l'intervention policière en situation de crise. Eds. Michel St-Yves et Peter Collins. Les éditions Yvon Blais: Cowansville, Quebec.
  - Collins, P. & St-Yves, M. (2011) L'intervention policière auprès des personnes suicidaires. In Psychologie de l'intervention policière en situation de crise. Eds. Michel St-Yves et Peter Collins. Les éditions Yvon Blais: Cowansville, Quebec.
  - Collins, P. & St-Yves, M. (2011) L'intervention policière auprès des personnes mentalement perturbées. In Psychologie de l'intervention policière en situation de crise. Eds. Michel St-Yves et Peter Collins. Les éditions Yvon Blais: Cowansville, Quebec.
  - Collins, P., Smerick, P. & St-Yves, M. (2009) The Psychology of Criminal Harassment. In The Psychology of Criminal Investigations: the search for the truth. Eds. Michel St-Yves & Michel Tanguay. Carswell: Toronto, Ontario.
  - Collins, P., Smerick, P. & St-Yves, M. (2007) Psychologie du harcèlement criminel. In Psychologie de l'enquête criminelle: la recherche de la vérité. Eds. Michel St-Yves & Michel Tanguay. Les éditions Yvon Blais: Cowansville, Quebec.
  - Collins, Peter I. (2005) Child Sexual Abuse and the Paraphilias. In Medical & Legal Aspects of Child Sexual Exploitation: A Comprehensive Review of Child Pornography, Child Prostitution and Internet Crimes. Eds. - Sharon W. Cooper, Richard Angelo P. Giardino, Victor V. Veith and Nancy D. Kellogg. GW Medical Publishing: St. Louis, MO.
  - Kuch, K. and Collins, P. (2000). Psychological Injury After Motor Vehicle Accidents. In Personal Injury Litigation: Guidance From Health Care Professionals edited by The Honourable Mr. Justice Ted Matlow, Canada Law Book: Aurora, Ontario.
  - Collins, Peter I. (1998) Preface. Workplace Violence in Healthcare Toolkit: A Guide to Establishing a Prevention and Training Program by Judy L. Jacobs & Wayne D. Porter, McGraw-Hill: Burr Ridge, Illinois.

## Articles

- Leenaars, A.A., Park, B.C.B., Collins, P.I., Wenckstern, S. & Leenaars, L. (2010) Martyrs' Last Letters: Are They the Same as Suicide Notes? – Journal of Forensic Sciences, Vol. 55, No.3, pp 660–668.
- Mohandie, K., Meloy, J.R. & Collins, P.I. (2009) Suicide by Cop Among Officer-Involved Shooting Cases – Journal of Forensic Sciences, Vol. 54, No. 2, pp 456–462.
- Collins, Peter, Drug Facilitated Sexual Assault – The Challenge of "Date Rape Drugs" Part III. (2003). The Ontario Provincial Police Review, Vol. 38, No.3, pp 13.
- Collins, Peter, Drug Facilitated Sexual Assault – The Challenge of "Date Rape Drugs" Part II. (2003) The Ontario Provincial Police Review, Vol. 38, No.2, pp 21.
- Collins, Peter, Drug Facilitated Sexual Assault – The Challenge of "Date Rape Drugs" Part I. (2003) The Ontario Provincial Police Review, Vol. 38, No.1, pp 13.
- Collins, Peter I., Johnson, Gregory F., Choy, Alberto, Davidson, Keith T., MacKay, Ronald E. (1998). Advances in Violent Crime Analysis and Law Enforcement: The Canadian Violent Crime Linkage Analysis System - ViCLAS - Journal of Government Information - Vol.25, No.3. pp. 277–284.
- Collins, Peter (1998). Legal Application of Collateral Material, Canadian Association of Violent Crime



Analysts Newsletter - Vol. 2, No. 1, pp. 16–19.

- Van Allen, James & Collins, Peter. (1998) Stalking, The Ontario Provincial Police Review, Vol. 32, No.2, pp. 16–17
- Kuch, Klaus & Collins, Peter. (1997). Psychological Injury after Motor Vehicle Accidents, Advocates Quarterly - A Canadian Journal for Practitioners of Civil Litigation, Vol. 19, No. 2, pp. 176–187.
- Blanchard, Ray & Collins, Peter I. (1993). Men with Sexual Interest in Transvestites, Transsexual and She-Males. The Journal of Nervous and Mental Disease, Vol. 181, No. 9, pp. 570–575.
- Collins, P.I., Scharf, N., Persad, E. (1989) "What's New in Psychopharmacology" Modern Medicine of Canada Vol. 44, No. 11, pp. 1066–1074.

## Manuals

- Contributor to A Handbook for Police and Crown Prosecutors on Criminal Harassment - Department of Justice Canada, 2nd Edition, March 2004.
- Contributor to Manual for Investigators of Child Sexual Abuse – The Interpol Specialist Group on Crimes Against Children, 2nd Edition, 2003.
- Contributor to A Handbook for Police and Crown Prosecutors on Criminal Harassment -Department of Justice Canada, September 1999.
- Contributor to Sexual Exploitation of Children – Guidelines for Law Enforcement - Criminal Intelligence Service Canada / Royal Canadian Mounted Police, 1999.
- Contributor to The Investigators Guide to Child Pornography Crime - Procedure and Investigative Techniques - Ontario Provincial Police, 1999.

## Reports

- Collins, Peter, Threat Assessment in Sexual Victimization of Children – Final Report of the National Working Group in Pursuit of Child-Centred Intervention Strategies, Royal Canadian Mounted Police / Solicitor General Canada / Canadian Association of Chiefs of Police, 1999.

## References

1. ^ Campion-Smith, Bruce (December 3, 1989) Many judges unaware of devastation sex attacks cause women, forum told. *Toronto Star*
2. ^ Fisher, Matthew (April 3, 2009). Canadian psychiatrist minding hearts and souls - of soldiers. (<http://www.nationalpost.com/m/story.html?id=1461861>) *National Post*
3. ^ Michaud, S. G., & Hazelwood, R. (2001). *The evil that men do: FBI profiler Roy Hazelwood's journey into the minds of sexual predators*. Macmillan, ISBN 978-0-312-97060-4
4. ^ Clark, D. (2002). *Dark paths, cold trails: How a Mountie led the quest to link serial killers to their victims*. HarperCollins Publishers Ltd, ISBN 978-0-00-200078-9
5. ^ McCrary, G. O., & Ramsland, K. (2003). *The unknown darkness: Profiling the predators among us*. HarperCollins Publishers Ltd, ISBN 978-0-06-050957-6
6. ^ Mohandie K, Meloy JR, Collins PI (2009). Suicide by cop among officer-involved shooting cases. *Journal of Forensic Sciences*. 2009 Mar;54(2):456-62. Epub 2008 Feb 6.

## External links

- Peter Collins profile (<http://www.crisiscommunications.com/team.html>) via Hennes Paynter

133


## Communications

Retrieved from "http://en.wikipedia.org/w/index.php?title=Peter\_Collins\_(psychiatrist)&oldid=588696574"

Categories: Living people | [REDACTED] births | University of Western Ontario alumni | University of Ottawa alumni | McMaster University alumni | University of Toronto alumni

- This page was last modified on 1 January 2014 at 19:08.
  - Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy.
- Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.

This is Exhibit "12" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

135

Search for people, jobs, companies, and more...



Advanced

Home Profile Network Jobs Interests

Business Services

Upgrade

Surveillance Computers - Featuring PoE Ports to Power IP Cameras in Wide Temperature Ranges. | [Read More »](#)

## Tamara Williamson

Probation and Parole Officer at Ministry of Community and Social Services  
Ontario, Canada Government Administration

Education Simon Fraser University



15  
connections

ca.linkedin.com/pub/tamara-williamson/33/460/770

### Background

### Experience

#### Probation and Parole Officer

Ministry of Community and Social Services  
2000 – Present (14 years)

- Manage a caseload predominantly of sexual offenders
- Communicate effectively with clients regarding immediate concerns and provide additional assistance with referrals to community resources
- Liaise with and maintain relationships with stakeholders within limits of confidentiality
- Use various techniques to conduct interviews of clients and collateral contacts in order to complete comprehensive assessments and reports in an accurate and concise manner
- Assess risk to re-offend using empirical risk assessment tools
- Write court ordered reports professionally and efficiently
- Prepare clients to move from one stage of change to the next using appropriate motivational strategies
- Facilitate weekly relapse prevention program to adult male, intellectually disabled, sex offenders
- Monitor compliance and enforcement of Probation Orders, Conditional Sentences and Youth Probation Orders by relying on professional discretion and applying Ministry standards and relevant legislation
- Select, supervise and schedule volunteer officers, summer and placement students
- Facilitate Volunteer Probation and Parole officer training, acting as a mentor and resource for volunteers
- Health and Safety Liaison - Ensure adherence to the office safety plan and provincial protocols; conduct monthly inspection and compose monthly and annual reports

### Skills & Expertise

Most endorsed for...

- 1 Government
- 1 Policy
- 1 Enforcement
- 1 Investigation
- 1 Courts



### People Similar to Tamara



Jackie Mack

Regional Program Manager at Ministry of Co...  
[Connect](#)

### Ads You May Be Interested In



#### IDP Card Printers

Great printers, warranty and prices, local inventory... dealers wanted!



#### Access Control Systems

Small, Energy Efficient Computers for Access Control.



#### Proximity Cards Sale

Tired of Paying too much for Proximity cards? Get a Free Test Sample.

### People Also Viewed



Heather Boyd

Finance/Admin at Dairy Farmers of Nova Scotia



Sarah Kirkpatrick

Copywriter at SMAK media



Jamie A. Kingsbury

Founder | President | Owner of Movingboxes.ca Ottawa Toronto Montreal Kingston



Jillianne Roach

Customer service and Culinary enthusiast



Sally Heath



Timothy Cowles

Owner



Susan Blackburn

Post-Display Supervisor at Broadcast Captioning and Consulting Services



Bill Hyndman

Owner, Hyndman Ltd Contractors.



136

- Case Management
- Report Writing
- Community Outreach
- Public Safety
- Social Services



Brenda Mercer



Diana Seminara  
Event Coordinator

Tamara also knows about...

- Corrections
- Risk Assessment
- Policy Analysis
- Criminal Justice
- Public Policy
- Criminal Investigations
- Evidence
- Police
- Emergency Management
- Mediation
- Legal Research
- Crime Prevention

Education

**Simon Fraser University**  
Post-Bachelor's, Criminology



**Trent University**  
HBA, English Language and Literature, General

People Similar to Tamara



**Jackie Mack**  
Regional Program Manager at Ministry of Co...  
Connect

Ads You May Be Interested In



**Surveillance Computers**  
Featuring PoE Ports to Power IP Cameras in Wide Temperature Ranges



**IDP Card Printers**  
Great printers, warranty and prices... local inventory... dealers wanted!



**UOIT Online Degree**  
Convert your diploma into an Adult Education and Digital Technology degree.

Partnerships



**Ministry of Communi...**  
Government Administration  
Follow



**Giffin Koerth Forensi...**  
Security and Investigations  
Follow

Schools



**Simon Fraser Univer...**  
Vancouver, Canada Area  
Follow



**Trent University**  
Ontario, Canada  
Follow



This is Exhibit "13" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A solid black rectangular box used to redact the signature of the Commissioner.

A Commissioner, etc.

138



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)

Telephone (604) 626-9572

## DON'T MISS AN OPPORTUNITY TO INTERVENE

### Contact Us

We respond to requests for assistance for a variety of investigations, and also from people, businesses and institutions who fear harm from stalking, threatening, harassing or other menacing situations, including inappropriate or unwanted contact, or anonymous communications.

We do not offer recommendations on non-specific inquiries from non-clients.

If you contact Behavioural Science Solutions Group Inc. a member of our team will discuss your circumstances to determine if or how we can assist you. There is no charge for this initial consultation.

Our services are billed according to the time required to evaluate and respond to your case. We will provide a written estimate and proceed once we receive a client's signed authorization and signed agreement.

If you are facing immediate danger we urge you to contact your local police agency.

If you require the services of BSSG Inc. or would like to speak with Jim Van Allen, President, please email: [behaviouralsolutions@gmail.com](mailto:behaviouralsolutions@gmail.com) or call: 1-604-626-9572.

You may also contact us by fax: 604-371-1649

#### Who Requests our Services:

- Private citizens
- Private Investigators and Private Security
- Lawyers
- Municipal governments
- All sizes of businesses
- Corporations
- Chartered Banks
- Human Resource Specialists
- Loss prevention and internal loss departments
- Colleges and universities
- Management companies for performing artists

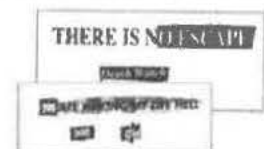
#### Links:

- Investigative Solutions Network, Pickering ON [View Website >>](#)
- Dr. Reid Meloy [View Website >>](#)
- Threat Evaluation and Risk Management Strategies [View Website >>](#)
- Dr. Sharon Smith [View Website >>](#)

### FOLLOW US



### ANONYMOUS DOCUMENTS?




[Get help today >>](#)

### OUR SERVICES

- Workplace Violence
  - Threat & Risk Assessments
  - Threat Management Strategies
  - Analysis of Threatening or Anonymous Documents
  - Investigative Consulting
  - Personality Profiling
  - Indirect Personality Assessments
  - Interviewing Suggestions and Support
  - Truth Verification (Statement Analysis)
  - Training
- [Read More >>](#)

This is Exhibit "14" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

**Sharon S. Smith, Ph.D.***Threat Assessment / Behavioral and Deception Assessment***Forensic Psycholinguistics, LLC and Threat Triage, LLC****dr.sharonsmith@gmail.com****540-226-2131****EDUCATION**

Ph.D. in Psychology, Georgetown University, Washington, DC, with specialized training in Psycholinguistics.

Master's Degree in Education, University of Virginia, Charlottesville, Virginia.

Bachelor's Degree in Education, University of Maryland, College Park, Maryland.

**PRESENT POSITION 2007 - Present**

Consultant to intelligence and security related governmental agencies; law enforcement agencies; security directors for high profile/high net-worth individuals, corporations and physical structures; and attorneys. Provides criminal behavior analysis, including language used, in conducting threat assessment—analysis of risk for potential for harm. Also provides behavioral assessment of deception in business and criminal matters, criminal and corporate psychopathy, school and workplace violence, and interviewing techniques for criminal and violent offenders.

**CORPORATE PROFESSIONAL EXPERIENCE**

1/04-12/04 Senior Expert and Instructor, Business Intelligence Advisors,  
Boston, Massachusetts

- Worked closely with many of BIA's largest investment and most prestigious law enforcement clients in the instruction and application of detection of deception.
- Worked closely with security directors of high profile/high net-worth individuals, corporations, and physical structures to assess threats and the potential risk of violence.

**FBI PROFESSIONAL EXPERIENCE 1978 - 2003**

4/95 - 12/03 Behavioral Science Unit, FBI Academy

- Analyzed cases involving threats, deception, rapes, child molestations, homicides, and psychopathic behavior.
- Instructor for Managing Investigations of Death and Sexual Offenses Using Investigative Psychology
- Instructor for Investigative Psychology Course
- Instructor for Interpersonal Violence Course
- BSU Coordinator for National Center for the Analysis of Violent Crime
- Gave presentations across the country to federal, state and local law enforcement groups.

Dr. Sharon S. Smith

141

1/95 - 4/95 FBIHQ Congressional Affairs Office

- Worked with the Intelligence Division on briefing U.S. Congressional Representatives, Senators, and their staffs on intelligence and counterterrorism matters
- Coordinated testimony of the FBI Director and high-level FBI officials before U.S. Congress on counterterrorism legislation needed by law enforcement.

4/94 - 1/95 Washington, DC FBI Field Office, International Drug Trafficking Squad

- Worked with multiple local and federal agencies in planning and implementing investigative and prosecutive strategies against heroin dealers.
- Participated in numerous arrests, multiple searches, and wiretaps.
- Part of the prosecutive team for a four-year international and multi-divisional undercover investigation of drug traffickers who imported and distributed significant quantities of pure Southeast Asian heroin into the Washington, DC area. Investigated and participated in the arrest of one of the defendants, who conspired with a correctional officer to escape from the custody of the DC Jail. Received an award from the Washington, DC U.S. Attorney's Office for my work on this case.

1/91 - 4/94 FBI Headquarters National Press Office

- Received a letter of commendation and a cash incentive award from the FBI Director for my efforts while in this assignment.
- Spokesperson for the FBI during several major events including the Gulf War, the Randy Weaver siege in Idaho, and the Branch Davidian standoff in Waco, Texas.
- Was interviewed by and provided information for television and print reporters on a daily basis.
- Arranged interviews of and wrote news releases for the Director and FBI executives on a weekly basis.
- Wrote position papers for the Director.
- Coached FBI executives for TV interviews.
- Organized major news conferences.
- In 1993 planned and implemented a major media in-service for FBI executives, which featured media personalities Mike Wallace of "60 minutes" and Ted Koppel of "Nightline."
- In 1993 personally contacted and persuaded Connie Chung of "Eye to Eye" to do a show on the UNABOM case.
- In 1991 coordinated all press coverage of President Bush's Crime Bill speech at the FBI Academy. This involved approximately a month of daily negotiation with the White House, major television and print media, FBIHQ and the FBI Academy.
- As the senior supervisor agent in the unit, exercised organizational and administrative responsibilities by supervising and disciplining personnel, writing performance appraisals, and assisting in making policy decisions.

2/83 - 12/90 Education and Communication Arts Unit, FBI Academy

- Taught FBI agent trainees interviewing and interrogation skills.
- Taught instructional techniques, speech, and media relations to National Academy, DEA, Executive Development Institute (EDI), and Law Enforcement Executive Development Seminar (mid-level police executives).
- Gave presentations across the country to federal, state, and local law enforcement groups.
- As program manager for FBI Field Police Instructors, designed curriculum for, authorized certification of, and supervised instruction by police coordinators in all FBI field offices.

7/82 - 2/83 Newark Field Office

- Planned, and, with squad members, executed the only arrests made by my squad during my tenure in Newark.
- Represented FBI with Special Agent in Charge on radio talk show.

12/78 - 7/82 Charlotte Field Office

- Investigated copyright violations resulting in arrest and convictions of six subjects. Charlotte subjects were involved in investigations connected with New York and Jacksonville, Florida undercover operations.
- Worked undercover for 1 1/2 years part-time investigating vote buying, interstate transportation of stolen cars and other property, and political corruption. Case resulted in indictments and arrests of over 40 subjects, including state representative, state judge, lieutenant governor, and major narcotics dealers. Additionally, initiated and worked a stolen automobile case (based on informant information) that became an integral part of this operation and resulted in recovery of 3/4 million dollars in cars.

## SPECIALIZED TRAINING

Received the following training during career with FBI:

Forensic Linguistic Analysis, 2003  
 Statement Analysis and Detection of Deception, 2002  
 Homicide Investigation, 2002  
 Risk Assessment for Violence, 2001  
 American Psychology Association Annual Conference, 2002  
 Statement Analysis, 2000  
 Risk Assessment for Violence, 2000  
 Extremist Groups/Cults, 1999  
 Characteristics of Psychopathy, 1999  
 Authorship Identification, 1999  
 Neuro-linguistic Programming and its Application to Interview and Interrogation, 1999  
 School Violence Symposium, 1999  
 School Shootings: A Threat Assessment Perspective, 1999  
 Hare Psychopathy Checklist Administration, 1999  
 Investigative Psychology Conference, Liverpool, England, 1998  
 International Society of Political Psychologists Conference, 1998



FBI Profiling Coordinators In-service, 1998  
 Behavior Assessment and Elicitation Interviewing School, 1998  
 Internet Safety Forum: Cyber Crimes Seminar, 1998  
 Sexual Offenders, 1997  
 Violence and Criminality, 1996  
 Twelfth National Symposium on Child Sexual Abuse, sponsored by the  
     National Children's Advocacy Center, 1996  
 Association of Threat Assessment Professionals Conference, 1995  
 Advanced Death Investigation, 1995  
 Scientific Content Analysis of Statements, 1995  
 Street Survival, 1994  
 Polygraph In-Service, 1993  
 Media Representatives In-service, 1993  
 Death Investigation, 1990  
 Executive Leadership, 1989  
 Advanced Police Instructors, 1988  
 Advanced Interrogation In-Service, 1987  
 Profile Coordinator In-Service, 1985  
 Mentally Disordered Offenders, 1985  
 Rape Intervention/Rape Research Symposium, 1985  
 World Conference on Police Psychology, 1985  
 Interpersonal Violence, 1983  
 Investigative Techniques for Financial Crimes for Non-Accountants, 1981  
 General Police Instructor, 1979

#### **FBI SPECIALTIES**

Police instructor for the following courses:

Managing Investigations of Death and Sexual Offenses Using Investigative  
     Psychology  
 Investigative Psychology  
 Interpersonal Violence related to Sex Crimes  
 Advanced General Police Instruction  
 Field Office Administration and Communication  
 General Police Instruction  
 Instructor Development  
 Interviewing and Interrogation  
 Management of the Training Process  
 Media Relations  
 Speech

#### **PRE-FBI EXPERIENCE**

1976 - 1978      Graduate Assistant, University of Virginia, Charlottesville, Virginia. Taught courses in  
                          education/communication.  
 1974 - 1976      College Instructor, Education Department, Austin College, Sherman, Texas.  
                          Supervised student teachers. Designed and taught seven courses.

146

1969 - 1974     Instructor, public school systems in Maine and Texas. As a team leader and instructor in Texas public schools, initiated and developed educational program that became model for state of Texas.

#### **PUBLICATION/EDITORIAL WORK**

Smith, S. S., Woyach, R. B., & O'Toole, M. E. (in press). Threat Triage: How to Recognize the Needle in the Stack of Disturbing and Threatening Communications. *International Handbook for Threat Assessment*. New York: Oxford University Press.

O'Toole, M. E. & Smith, S. S. (in press). Fundamentals of Threat Assessment for Beginners. *International Handbook for Threat Assessment*. New York: Oxford University Press.

Smith, S.S., O'Toole, M.E., & Hare, R.D. (2012). The Predator: When the Stalker is a Psychopath. *FBI Law Enforcement Bulletin*, 81 (7), 9-13.

O'Toole, M.E., Logan, M., & Smith, S. (2012). Looking behind the mask: Implications for interviewing psychopaths. *FBI Law Enforcement Bulletin*, 81 (7), 14-19.

Woodworth, M., Hancock, J., Porter, S., Hare, R., Logan, M., O'Toole, M. E., & Smith, S. (2012). The language of psychopaths: New findings and implications for law enforcement. *FBI Law Enforcement Bulletin*, 81 (7), 28-32.

Babiak, P., Folino, J., Hancock, J., Hare, R. D., Logan, M., Mayer, E.L., Meloy, J. R., Hakkanen-Nyholm, H., O'Toole, M. E., Pinizzotto, A., Porter, S., Smith, S., & Woodworth, M. (2012). Psychopathy: An important forensic concept for the 21<sup>st</sup> century. *FBI Law Enforcement Bulletin*, 81 (7), 3-7.

Smith, S. S. (2008). Risk assessment of threatening communications from FBI case files using Gottschalk-Gleser content analysis scales. In L. Gottschalk & R. Bechtel (Eds.), *Computerized content analysis of speech and verbal texts and its many applications* (pp. 111-121). New York: Nova Science Publishers, Inc.

O'Toole, M.E., Smith, S.S., & Hare, R.D. (2008). Psychopathy and Predatory Stalking of Public Figures. In J.R. Meloy, L. Sheridan, & J. Hoffmann (Eds.), *Stalking, threatening, and attacking public figures* (pp. 215-243). New York: Oxford University Press.

Smith, S.S. (2008). From Violent Words to Violent Deeds: Assessing Risk From FBI Threatening Communication Cases. In J.R. Meloy, L. Sheridan, & J. Hoffmann (Eds.), *Stalking, threatening, and attacking public figures* (pp. 435-455). New York: Oxford University Press.

Smith, S.S. (2007). From violent words to violent deeds? Assessing risk from threatening communications. *Dissertation Abstracts International*, 68 (03), 1945B. (UMI No. 3256532).

Smith, S. S. & Shuy, R.W. (2002). Forensic psycholinguistics: Using language analysis for identifying and assessing offenders. *FBI Law Enforcement Bulletin*, 4, 16-21.

Farwell, L.A. & Smith, S.S. (2001). Using brain MERMER testing to detect knowledge despite efforts to conceal. *Journal for Forensic Sciences*, 46 (1), 135-143.



## PROFESSIONAL PRESENTATIONS/CONSULTATIONS

[Examples of types of audiences and topics, not intended to be comprehensive.]

"Detection of Deception and Strategic Interviewing Techniques," Auditing firm, Chicago, IL, June 24, 2013.

"Detection of Deception and Strategic Interviewing Techniques," Auditing firm, Chicago, IL, June 10, 2013.

"Early Warning System: Assessing Disturbing and Threatening Communications for Violence Risk," Alaska Peace Officers Association Annual Conference, Soldotna, Alaska, May 23, 2013.

"Sexual Sadists and Their Victims," Alaska Peace Officers Association Annual Conference, Soldotna, Alaska, May 23, 2013.

"The Psychopathic Offender" Alaska Peace Officers Association Annual Conference, Soldotna, Alaska, May 22, 2013.

"Criminal Investigative Analysis-How to Analyze a Homicide Crime Scene," Alaska Peace Officers Association Annual Conference, Soldotna, Alaska, May 22, 2013.

"Threat Triage: Assessing Threatening and Disturbing Communications," Retail Industry Leaders Association Annual Conference, Orlando, Florida, May 1, 2013.

"Threat Triage: Assessing Threatening and Disturbing Communications," Texas A & N University Threat Assessment Team, College Station, TX, February 12, 2013.

"Detection of Deception and Strategic Interviewing Techniques," Auditing firm, Edison, New Jersey, December 5, 2012.

"Threat Triage: Assessing Threatening and Disturbing Communications," Florida Department of Law Enforcement, Miami, Florida, November 14, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Orlando, Florida, October 21, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Orlando, Florida, August 17, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Orlando, Florida, August 13, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Chicago, Illinois, June 29, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Chicago, Illinois, June 22, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Chandler, Arizona, June 8, 2012.

"Threat Triage: Assessing Threatening and Disturbing Communications," Infraguard, Columbus, Ohio, May 23, 2012.

"Threat Triage: Assessing Threatening and Disturbing Communications," ASIS Ohio Regional Conference, Columbus, Ohio, May 17, 2012.

"Threat Triage: Assessing Threatening and Disturbing Communications," Central Ohio Trauma System, Columbus, Ohio, May 2, 2012.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Dallas, Texas, October 24, 2011.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Atlanta, Georgia, September 19, 2011.

"Analyzing Threats in a Violent World: What Do Words Really Reveal?" Association of Threat Assessment Professionals, May 3, 2010, Chicago, Illinois

"Behavioral Analysis of Violent Offenders, Bolivia, South America Police, La Paz, Bolivia, December 7-16, 2009 (training for and consultation with homicide investigators on violent crimes against adults and children).

"Analyzing Threats: Moving from Violent Words to Violent Deeds," National Research Council as part of commission by the United States Secret Service, Washington, DC, September 22-23, 2009.

"Analyzing Threats in a Violent World: What Do Words Really Reveal?" Federal Bureau of Investigation, Washington, DC, January 8, 2009.

"Analyzing Threats in a Violent World," Office of Personnel Management, Shepherdstown, West Virginia, March 27, 2008.

"From Violent Words to Violent Deeds? Assessing Risk from Threatening Communications," Los Angeles Chapter, Association of Threat Assessment Professionals, Los Angeles, California, March 20, 2008.

"From Violent Words to Violent Deeds? Assessing Risk from Threatening Communications," Defense Intelligence Agency, Fairfax, Virginia, December 10, 2007.

"From Violent Words to Violent Deeds? Assessing Risk from Threatening Communications," Virginia Police and Private Security Association, Fairfax, Virginia, October 14, 2007.

"From Violent Words to Violent Deeds? Assessing Risk from Threatening Communications," Seminar hosted by Ontario Provincial Police, September 12, 2007.

"From Violent Words to Violent Deeds? Assessing Risk from Threatening Communications," Association of Threat Assessment Professionals, Anaheim, California, August 17, 2007.

"From Violent Words to Violent Deeds? Assessing Risk from Threatening Communications," International Association of Forensic Linguists, Seattle, Washington, July 14, 2007.

"Detection of Deception and Strategic Interviewing Techniques," Major auditing firm, Boca Raton, Florida, December 13-14, 2006.

"From Violent Words to Violent Deeds," Behavioral Analysis Units and Behavioral Science Unit, Federal Bureau of Investigation, Quantico, Virginia, July 2006.

"Strategic Information Collection," Federal Bureau of Investigation, Washington, DC, August 18, 2004.

"Verbal and Nonverbal Detection of Deception," Los Angeles Police Department, June 21-22, 2004.

"Forensic Psycholinguistic Analysis of Threatening Communications," Smithsonian Institute, Washington DC, November 17, 2003.

"Behavior Analysis of the Deviant Sexual Offender," Regional Law Enforcement Training hosted by New Orleans, Louisiana FBI, October 15-16, 2002.

"Homicide Investigations and Detecting Deception," Regional Law Enforcement Training hosted by New Orleans, Louisiana FBI, August 15-16, 2001.

"Forensic Psycholinguistics," Regional Law Enforcement Training hosted by Lee County Sheriff's Office, Ft. Myers, Florida, February 23-24, 2000.

"Compliant Victims of Sexual Sadists," National Center for the Analysis of Violent Crime, Aquia, Virginia, October 27, 1999.

"Rape Typologies and Profiling Serial Rapists and Child Molesters," Regional Law Enforcement Training hosted by Lee County Sheriff's Office, Ft. Myers, Florida, February 24-25, 1999.

"Child Molester Typologies," Pennsylvania Juvenile Officers Association and Philadelphia Division of FBI, Montgomery, Pennsylvania, February 3-4, 1999.

"Inside the FBI: Criminal Investigative Analysis," Smithsonian Institute, Washington, DC, January 28, 1999.

"Child Molester Typologies," Maglocen Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network, Mays Landing, New Jersey, October 28, 1998.

"Criminal Investigative Analysis," Minister of Justice, Zurich, Switzerland, September 10, 1998.

"Instructor Development," Federal Bureau of Investigation, New York, New York, August 14-18, 1989.

"Advanced Instructor Development," Federal Bureau of Investigation, Quantico, Virginia, November 9-13, 1987.

#### **MOVIE/TELEVISION CONSULTATIONS**

Consultant to Director Brett Rattner and actors Edward Norton and Harvey Keitel for the movie "Red Dragon."

Consultant to Joe Pantoloni for the television series "The Handler."

Consultant to screenwriter for the television series "The Mentalist."

## **PROFESSIONAL MEMBERSHIPS**

American Psychological Association  
 ASIS International  
 Association of Threat Assessment Professionals  
 International Association of Forensic Linguistics  
 International Criminal Investigative Analysis Fellowship  
 International Society of Political Psychologists  
 PADI Diving Society  
 Society for Former Special Agents of the FBI  
 Society for the Scientific Study of Psychopathy

## **COURT CASES**

2008 PricewaterhouseCoopers (Barbados) vs. Nelson Barbados Group Ltd.

- Allegation that one of the defendants threatened prosecuting attorney
- Consulted by defense
- Linguistic issue: whether statements made in two tape recorded conversations constituted a threat to harm
- Judge accepted the findings in my report and rejected reports of two prosecution experts, resulting in a judgment in favor of the defendant.

## **COMMUNITY ACTIVITIES**


Church group leader for justice missions class

Past President of Property Owners Association

Volunteer to justice oriented organizations

- Provided assistance to a local refugee family from Tanzania
- In July 2009 traveled on mission trip sponsored by the International Justice Mission to Philippines and Cambodia to assess sexual trafficking of underaged children.
- In December 2009 spend two weeks in Bolivia teaching National Police investigative, interview and behavioral analysis techniques for offenders responsible for sexual assault and homicide.

This is Exhibit "15" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.



150

Search for people, jobs, companies, and more...



Reconnect

Home

Profile

Network

Jobs

Interests

Discover/Settings

Help

Mesh CCTV: free webinar - Join Fluidmesh for a free online introduction to mesh wireless CCTV. | [Read More](#)

## Sharon Smith

Threat, Deception, and Behavioral Assessments

Washington D.C. Metro Area Security and Investigations

Current Forensic Psycholinguistics and Threat Triage

Previous Business Intelligence Advisors, Federal Bureau of Investigation

Education Georgetown University



291

connections

[www.linkedin.com/pub/sharon-smith/27/6b3/177](http://www.linkedin.com/pub/sharon-smith/27/6b3/177)

Contact Info

Background

### Experience

#### President

Forensic Psycholinguistics and Threat Triage

July 2007 – Present (6 years 7 months)

Dr. Sharon Smith is a consultant to intelligence and security-related governmental agencies; law enforcement agencies; security directors for high profile/high net-worth individuals, corporations and physical structures; and attorneys. She provides consultations and assessments in the following areas:

- threat assessment,
- criminal and corporate psychopathy,
- offender behavior,
- crime scene assessment,
- detection of deception,
- interviewing techniques for criminal and violent offenders, and
- school and workplace violence.

#### Senior Expert & Instructor

Business Intelligence Advisors

January 2004 – January 2005 (1 year 1 month) | Greater Boston Area

After retiring from the FBI, Sharon was a Senior Expert and Instructor for Behavioral Intelligence and Risk Management, with Behavioral Intelligence Advisors (BIA), a Boston-based company. Sharon worked closely with many of BIA's largest investment clients and most prestigious law enforcement clients in the instruction and application of detection of deception, threat assessment, and psychopathy.

#### FBI agent

Federal Bureau of Investigation

1978 – 2003 (25 years) | Charlotte, NC; Newark, NJ; Washington, DC; FBI headquarters; FBI Academy

Sharon is a retired FBI Special Agent with a 25-year career including: a nearly nine year assignment at the FBI's elite Behavioral Science Unit (BSU); field work as a part-time undercover agent on multiple cases resulting in the arrest and prosecution of over 40 individuals; field agent member of the U.S. Attorney's team during a four-year international undercover investigation of drug traffickers, for which she received an award from the U.S. Attorney's Office for her work on this case; and assignments at the FBI Academy, the FBI National Academy, and at FBI Headquarters, in both its Congressional Affairs Office and its National Press Office.

### People Similar to Sharon



Craig Ackley

President at Behavioral Science Education a...

Connect

### Ads You May Be Interested In



#### Surveillance Computers

Featuring PoE Ports to Power IP Cameras in Wide Temperature Ranges.



#### IDP Card Printers

Great printers, warranty and prices... local inventory... dealers wanted!



#### Control Your Drones!

UglCS is a software for management of all types of unmanned vehicles.

### People Also Viewed



Frank Sauer

CEO | Executive Management | Visionary Entrepreneur



Betsy Ross

Profiler, Criminal Behavioral Analyst, Private Investigator



Sean Gallagher

VP of Corporate Security at Time Inc.



Stephen Porter

Professor of Psychology



Mark Brenzinger Psy.D.

Clinical and Forensic Psychologist at Midwest Behavioral Risk Management, P.C.



Danielle Williams

Experienced Analytical Writer



Eric W. Hickey

Dean, California School of Forensic Studies, Alliant International University



Gillian Harden

Knowledgeable Engineer with experienced hands on work and dedicated theoretical design.

At the FBI's Behavioral Science Unit (BSU), Sharon consulted on high profile cases and taught at the FBI National Academy. The FBI National Academy is the world's most prestigious training course designed for state and local law enforcement executives. Sharon taught complex courses there, while in the BSU assisting law enforcement agencies throughout the world in sexual homicides, serial rapes, threats, workplace violence, arsons, detection of deception, and psychopathy, by applying criminal investigative analysis to offender behavior. Also while at BSU, Sharon consulted on the Hollywood movie Red Dragon and the television series The Handler.

At the FBI Academy, which trains all new FBI Special Agents, Sharon was the first female Special Agent in the FBI to teach academic subjects. During her tenure, she designed and taught interviewing courses to nearly a thousand FBI special agent trainees, as well as instructional and presentation skills to hundreds of FBI agents and law enforcement officers.

## Skills & Expertise

### Most endorsed for...

28 Workplace Violence

22 Risk Assessment

25 Investigation

27 Enforcement

20 Criminal Law

17 Intelligence

18 Criminal Investigations

13 Security

10 Interrogation

6 Private Investigations



### Sharon also knows about...

Executive Protection Counterintelligence Law Enforcement...  
 Counterterrorism Internal Investigations Interviews  
 Homeland Security Surveillance Public Speaking Physical Security  
 Criminal Justice Firearms Police

## Education

### Georgetown University

PhD, Psychology  
2006

Sharon has a PhD in Psychology with specialized training in psycholinguistics.



### University of Virginia

Masters of Science, Education



**Richard Leggett**  
CEO at Frontier Strategy Group



**Kenneth Morris**  
Criminal Profiler at Virginia State Police

### People Similar to Sharon



**Craig Ackley**  
President at Behavioral Science Education a...  
**Connect**

### Ads You May Be Interested In



**Access Control Systems**  
Small, Energy Efficient Computers for Access Control



**IDP 30S ID Card Printer**  
New Plastic Card Printer! 2-year warranty, best cost per print, only \$1370



**UOIT Online Degree**  
Convert your diploma into an Adult Education and Digital Technology degree.



152



**University of Maryland**  
Bachelor's degree, Education



**ASIS International**  
Join



**Association of Threa...**  
Join



**Criminal Profiling**  
Join



**Deception Detection**  
Join



**FBI National Academ...**  
Join



**Former FBI Agent Ne...**  
Join



**Friends of the FBI**  
Join

[See 5 more](#)

## Schools



**University of Virginia**  
Charlottesville, Virginia Area  
Follow



**Georgetown University**  
Washington D.C. Metro Area  
Follow




**University of Marylan...**  
Washington D.C. Metro Area  
Follow

[Help Center](#) | [About](#) | [Press](#) | [Blog](#) | [Careers](#) | [Advertising](#) | [Talent Solutions](#) | [Tools](#) | [Mobile](#) | [Developers](#) | [Publishers](#) | [Language](#) |

[Upgrade Your Account](#)

LinkedIn Corporation © 2014 | [User Agreement](#) | [Privacy Policy](#) | [Community Guidelines](#) | [Cookie Policy](#) | [Copyright Policy](#) | [Send Feedback](#)

This is Exhibit "16" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

Threat Triage is a joint collaboration between Social Science Automation, Inc and Forensic Psycholinguistics, LLC.

## Social Science Automation

Since 1997, Social Science Automation, Inc. has provided state-of-the-art automated text analysis products and services to business, government, and academic clients. Founded by Dr. Michael Young and Dr. Margaret Hermann, the company identified a need within government organizations for automated text analysis services and expert consultation. Since then, Social Science Automation, Inc. has diversified its offerings to include solutions for media analysis, campaign and election media evaluation, athlete achievement, and forensic psycholinguistics. Our breadth of offerings in various vertical markets offers a wide range of expertise, all rooted in our core competency of automated text analysis.

You can visit us at

<http://www.socialscience.net/default.aspx>

## Forensic Psycholinguistics

Forensic Psycholinguistics was founded by Dr. Sharon Smith, a consultant to intelligence and security-related governmental agencies; law enforcement agencies; security directors for high profile/high net-worth individuals, corporations and physical structures; and attorneys. She provides consultations and assessments in the following areas:

- threat assessment,
- criminal and corporate psychopathy,
- offender behavior,
- crime scene assessment,
- detection of deception,
- interviewing techniques for criminal and violent offenders, and
- school and workplace violence.

Sharon is a retired FBI Special Agent with a 25-year career including: a nearly nine year assignment at the FBI's elite Behavioral Science Unit (BSU).

You can visit us at

<http://www.forensicpsycholinguistics.com>

This is Exhibit "17" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A black rectangular redaction box covering the signature of the Commissioner.

A Commissioner, etc.



[Home](#) [Products and Services](#) [Publications](#) [Contact](#)

## Consulting

Dr. Smith provides consultations and assessments in the following areas:

- threat assessment,
- detection of deception,
- criminal and corporate psychopathy,
- criminal behavior,
- abnormal psychology,
- crime scene assessment,
- interviewing techniques for criminal and violent offenders, and
- school and workplace violence.

Her clients include: intelligence and security-related governmental agencies; law enforcement agencies; security directors for high profile/high net-worth individuals, corporations and physical structures; and attorneys. Over the course of her 25-year FBI career, Dr. Smith has developed ongoing professional relationships with some of the world's leading experts in abnormal psychology, criminal behavior, forensics, psychopathy, threat assessment, linguistics, text analytics, trauma treatment, and violence. She draws on this network in order to address her clients' issues and concerns.

[Dr. Robert Hare](#)

[Dr. Roger Shuy](#)

[Dr. Mary Ellen O'Toole \(FBI ret.\)](#)

[Dr. J. Reid Meloy](#)

[Dr. Michael Young](#)

[Mark Safarik \(FBI ret.\)](#)

[Dr. Paul Babiak](#)

[Jim Van Allen \(Ontario Provincial Police ret.\)](#)

[Dr. Stephen White](#)

[Dr. Nancy Davis](#)

## ThreatTriage.com

Forensic Psycholinguistics has partnered with [Social Science Automation](#) to create ThreatTriage.com, a web-based tool designed for security professionals to assess threatening communications regarding

the likelihood of targeted violence. To learn more about the tool, visit [ThreatTriage.com](http://ThreatTriage.com).


---

157

[Home](#) [Contact Us](#)

Copyright © 2013 ForensicPsycholinguistics LLC

This is Exhibit "18" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.



159



*The goal of Behavioural Science Solutions Group Inc. is to offer high calibre protective solutions to clients facing safety and security concerns, or other challenges to their personal or corporate well being.*

[Home page](#)
[About us](#)
[Services](#)
[Training](#)
[FAQs](#)
[Contact](#)
[Telephone: \(504\) 626-9572](#)


# KNOWLEDGE EXPERIENCE INTEGRITY

## About Behavioural Science Solutions Group Inc.

### JIM VAN ALLEN - President



#### Threat Management Involvement:

Jim has over seventeen years specialized experience as a Certified Profiler, and experienced Threat Assessment Analyst. Jim responds to a broad range of incidents with a potential for violence including threatening, stalking, domestic violence, and school and workplace violence.

#### Associations:

Jim has professional associations with the Canadian Association of Threat Assessment Professionals, and the International Criminal Investigative Analysis Fellowship. He is also a risk assessment consultant to Investigative Solutions Network, and an instructor for the Alpha Group Center for Crime and Intelligence Analysis.

#### Teaching:

Jim has lectured at numerous conferences and symposiums and to Colleges and Universities on the assessment and intervention of workplace violence, and dangerous individuals and their pathways to violence. He has lectured internationally in the United States, The Netherlands, Belgium, and South Africa. He has lectured throughout Canada to Judges and Justices of the Peace, Crown Attorneys, Probation officers, and to Psychologists and Psychiatrists, law enforcement, and corporate professionals. He has provided expert testimony to the Ontario Court of Justice, and Coroner's inquests regarding threat assessment, personality disorders, Psychopathy, sexual misconduct and workplace violence.

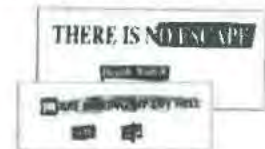
#### Experience:

Jim has assisted numerous organizations and agencies deal with cases that pose risk of violence. He is recognized for his expertise in accurately evaluating risk and managing dangerous people and situations. He is experienced in analyzing anonymous threatening documents and cyber communications.

### FOLLOW US



### ANONYMOUS DOCUMENTS?



Get help today >>

### OUR SERVICES

- Workplace Violence
- Threat & Risk Assessments
- Threat Management Strategies
- Analysis of Threatening or Anonymous Documents
- Investigative Consulting
- Personality Profiling
- Indirect Personality Assessments
- Interviewing Suggestions and Support
- Truth Verification (Statement Analysis)
- Training

**Read More >>**

This is Exhibit "19" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

# ROTARY VOICE

Rotary Voice is published by The Rotary Club of Toronto

## The 4-way test

of the things we think, say or do.

Is it the truth?

Is it fair to all concerned?

Will it build goodwill  
and better friendships?

Will it be beneficial  
to all concerned?

March 20, 2009

Vol. 84 No 138

Let us keep our hearts strong, enthusiasm fresh,  
hope high. As long as we keep imbued with this  
spirit, Rotary can never die.

THE ROTARIAN, August 1926

## TODAY'S PROGRAMME

**SPEAKER: JIM VAN ALLEN**  
**CSI EXPERT,**  
**BEHAVIOURAL SCIENCE**



**TOPIC: "CRIME SCENE ANALYSIS"**

**LOCATION: THE IMPERIAL ROOM**

Jim Van Allen is President of *Behavioural Science Solutions Group Inc.* He has fourteen years public sector experience as a Criminal Profiler, and Threat Assessment Analyst.

Jim successfully completed several senior and advanced specialist courses in Canada and the United States related to major and serial investigations, behavioural analysis and threat assessment. He graduated from the FBI National Academy Program in Quantico, Virginia. He has had professional associations with the RCMP, FBI, Virginia State Police, Texas Rangers, L.A. County Sheriff's Office, Florida Department of Law Enforcement, South Carolina Law Enforcement Division, Georgia Bureau of Investigation and other federal, state and municipal police agencies in North America, The Netherlands and Australia.

Jim has lectured at many police training facilities, colleges and universities on criminal behaviour analysis. He has presented internationally in, The Netherlands, and Belgium. He has lectured at conferences in Ontario, Manitoba, and Alberta to Judges and Justices of the Peace, Crown Attorneys and Defence Counsel, Police investigators, Probation officers, and Psychologists and Psychiatrists.

Jim has assisted several high profile cases in Canada and the United States, including: Paul Bernardo, the Abortion Doctor Shootings, the Holly Jones homicide, the Cecelia Zhang abduction and homicide, the Lisa Posluns' homicide, and the Ianiero family homicides in Mexico. He assisted in the analysis of numerous serial rape and arson investigations, the murders of three Ontario police officers, and numerous other homicides, sexual assaults, stalking, extortion and threatening cases. Jim has recognized expertise in identifying deception in written, audio or video recorded statements; profiling authors of anonymous threatening letters and cyber-communications, and in developing personality based forensic interview strategies.

Jim has been interviewed for numerous local, national and international media projects. He has testified as an expert witness in various levels of the Ontario Court of Justice, and Coroners' Inquests on Threat Assessment, Stalking, Psychopathy, and Criminal Sexual Conduct.

*Behavioural Science Solutions Group Inc.* is an association of professionals that provide confidential behavioural analysis and threat assessment services to private sector clients including businesses, professional associations, legal counsel, public figures and private citizens. These services include: threat assessments, workplace violence management strategies, and detection of deception, analysis of threatening or anonymous documents, interviewing support, psychological profiling, investigative reviews, and training.





*The Rotary Club of Toronto ~ Making the world a better place.*

162

## **DGN MARKETING SERVICES LTD.**

### **BRANDED MERCHANDISE**

Your single source for corporate branded products, clothing, give-always and more. Vast selection from over 10,000 Canadian and US firms.

In-house custom garment designs & manufacture.

Corporate premium programs, from initial catalogue development through to procurement, web commerce (budget or credit card) and overall program management.

NEIL PHILLIPS

T: 905.670.6778

E: NPHILLIPS@DGN-MARKETING.COM

W: WWW.DGN-MARKETING.COM

### **ROTARY INTERNATIONAL THEME 2008/2009**

#### **THE ROTARY CLUB OF TORONTO**

**The Fairmont Royal York**

(Health Club Level)

100 Front St. West

Toronto, Ontario M5J 1E3

Tel: (416) 363-0604

Fax: (416) 363-0686

Email: office@rotarytoronto.on.ca

Web site: www.rotarytoronto.com

Meets Fridays - 12:15 p.m.

#### **Officers:**

President: Bill Morari

President-Elect: Bert Steenburgh

Vice President: Peter Love

Treasurer: Harold Fisher

#### **Directors**

Will Andras

Maureen Bird

Susan Hunter

James Fletcher

Michael Edmonds

Chris Snyder

Nancy Schafer

Kim Curry

Pat Neuman

Jeff Dobson

Sylvia Geist

Demetra Layzell

#### **Immediate Past President:**

Susan Howson

**Executive Director:** Valerie Clarke

**Office Administrator:** Vivian Wang

Club #55, Organized 1912

**District 7070 Governor:**

Mike Phelan



## **UPCOMING FELLOWSHIP & ENTERTAINMENT EVENTS:**

### **Spa Weekend—Mar 21st, 2009**

Are you ready for our first Spa weekend? Or a family weekend of fun.

What a great way to begin the new year, with fellow Rotarians at Hockley Valley and resort..

Our leisure package includes: your overnight accommodation, 3 course a la carte dinner, hot and cold buffet breakfast, complimentary evening bonfire with s'mores made with lindt chocolate, and a cocktail gathering reception service hors d'oeuvres prior to dinner for only **\$135.00 per person per night stay plus taxes & service fee (based on double occupancy).**

Whether it is skiing or spa treatments you desire.

You will be in your wife's good books for the rest of the year.

March 21st is the time for you. Call the office to sign up.

**Location: Hockley Valley Resort** (45 minutes north of Pearson International Airport)

## **IN MEMORIAM FOR ALAN MARTIN**



It is regret that I announce the death of our great Past President, Alan Martin.

Al died on Sunday March 8 very peacefully at home and a memorial service was held for him on Tuesday March 10.

Alan Martin was born and educated in England. He spent 6 ½ years in the Royal Army Service Corp of the British Navy and after being stationed in Washington, New York and Norfolk working with the U.S. Navy on lend-lease supplies he met his wife Dorothy whom he married in 1943 and they migrated to Canada in 1946.

Al spent 23 years in the coffee, tea and restaurant supply business with J. Lyons & Co in various capacities. It was while he held the title of Executive Vice-President with that company that he became a member of The Rotary Club of Toronto in 1966 holding the classification of "Tea and Coffee Distributing."

He subsequently became the National Executive Director of the Canadian Cancer Society from which he retired in 1986 by which time his classification in Rotary changed to "Associations - Cancer Society".

In his 43 years as a member of our Club, Alan served on a number of committees including Attendance, Youth & Children's services, Classification and Membership, New Members, Senior Citizens, Special Events, Voice Newsletter, and had been chairman of quite a few. He served on the Board of Directors from 1973-1976 He became President of our Club in 1988. He was a Paul Harris Fellow and a Wm. Peace Award recipient.

Al served on a number of voluntary organizations besides Rotary including: The Coalition of National Voluntary Organizations, the Committee of National Voluntary Health Organizations and the Second Mile Club where became President in 1987.

Some of his accomplishments during his term as President included: the Club's *Futures Task Force* which drafted a directional plan for the Club for the future; *The Peace Forum*; and *Decade in the Dome*, the very successful fundraiser which netted \$164,000 for our philanthropic causes.

Al was married to Dorothy a long-standing member of the Inner Wheel and they have two daughters, a son and many grand-and-great grand children. It was delightful to hear these young people at Tuesday's service, speak so highly and lovingly of their Grandfather.

Our sympathy is extended to the family.

—By Valerie Clarke

163

## UPCOMING SPEAKERS & EVENTS

2009

- Mar 20 Jim Van Allen, CSI Expert—  
Behavioural Science  
"Crime Scene Analysis"
- 21 Spa Weekend—Hockley Valley  
Resort
- 27 John Campbell, President & CEO—  
Water Front Toronto
- Apr 3 Youth Day
- 10 No Meeting (Good Friday)
- 17 Dr. James Busuttill, Associate Professor  
Institute of Social Studies
- 24 Gary McNeil, Managing Director &  
CEO, GO Transit
- 21 Bridge Wind-up Lunch
- 25 "Dancing with Rotary STaRS @  
MaRS!"
- May 1 Alanna Mitchell, Author—Sea Sick  
"Environment"
- 8 Neil Aitchinson, Drayton  
Entertainment  
"Light & Humorous"
- 15 Ambassador of Czechoslovakia
- 22 Roy Cullen, MP & Author  
"The Poverty of Corrupt Nations"

### PROPOSE A SPEAKER

CONTACT - Marg Stanowski, Chair  
PROGRAMME COMMITTEE

mstanowski@operationspringboard.on.ca

### BRIDGE WIND-UP LUNCH

Bridge Wind-up Lunch at the Rosedale Golf  
Club on Thursday April 21, 2009. Dress code  
in effect.

Cash Bar 11:00AM

Lunch 12:00 Noon

Bridge 1PM—3PM

Prizes 3PM—4PM

Register with the Office or contact Peter Naylor  
by April 14, 2009.

Value \$50.00

### Inner Wheel News

**Important Dates:** Mark your Calendars for these  
events:

**Friday, May 8**—We will be making our annual  
donation(s). An interesting and amusing speaker  
is scheduled. (at our own expense).

**Tuesday, May 12**—Annual Bridge Luncheon at  
Rosedale Golf Club. Bridge at 10 a.m., Cocktails  
at noon, Luncheon at 1 p.m. All welcome. Send  
your cheque made out to Marjorye Austin in the  
amount of \$35.—10 Stratheden Road, M4N 1E3

Maryan Tisdale, Recorder

## Dancing.....Dancing.....

### HAVE YOU GOT YOUR TICKET YET?

**Date:** Saturday, April 25, 2009 at 6:30pm

**Cost:** \$275.00/person

\$500.00 /pair

Corporate Sponsorship is available for \$5,000. Corporate  
tables include four tickets to the event, sponsorship re-  
ception, limousine service to and from the event, corpo-  
rate acknowledgement in the program, and on the Club's  
website and signage.

**Place:** MaRS Centre

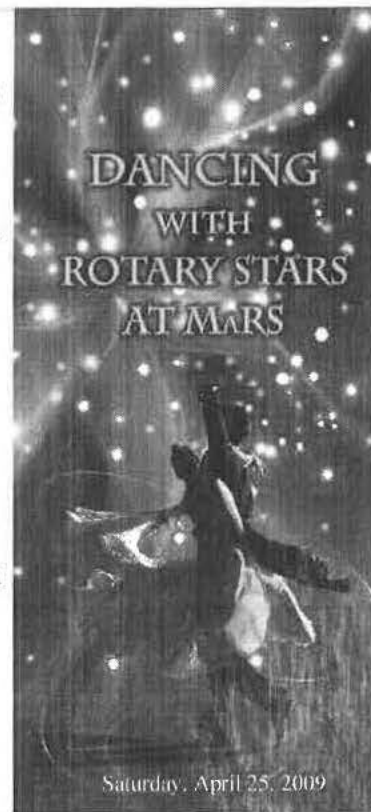
101 College Street (College & University)  
Toronto, Ontario

**Attire:** Black Tie or dance Attire optional  
Valet parking available

For your reservation to **Dancing With Rotary Stars @  
MaRS**, contact the Rotary office by phone 416-363-0604  
or email office@rotarytoronto.on.ca

Purchase your tickets by March 20th to be entered in a  
draw for:

- \* Free Ticket to The Event
- \* Gift certificate for pair of costumes from Chifforobe.
- \* Trio of dance films



### "DANCING WITH THE ROTARY STARS AT MARS" COSTUME INFORMATION

Rotarians:

So you've bought your ticket to our 2009 annual fundraiser gala, and to fully complete the experience,  
you want to come in snazzy dance attire befitting the best of world-class competition. Or perhaps you  
fancy yourself in a sultry tango bar of Buenos Aires, a jazz cellar of Paris, rock 'n roll club of the US  
South – or any of a myriad cast of characters?

**Well this year's event is Black Tie or Dance Attire, so anything goes!**

For those wishing to have some fun and make a splash, we've again teamed up with a local theatrical  
costume house. **Chifforobe** is offering a special rental price of **only \$75.00** for any costumes for our  
event. They have an incredibly varied selection, covering most any era...so feel free to be creative.

Contact Information:

Carmen Amini – 416-454-4443 (Mention Icebreaker 09)

Chifforobe - Call to set up an appointment.

9 Davies Ave (just before Broadview north of Queen) Suite 407

Note...voice-mail refers to "The Tantalizing Tart" – this is Carmen!

You have called the correct place...leave a message. (Baked goods busi-  
ness as well.)

Payment is by cash or cheque only.

You can also try other retail rental houses, however we have no special  
Rotary arrangement with

them. (Malabar's is popular - 14 McCaul Street, 416-598-2581, cos-  
tumes mostly \$100 - \$175.)

Have fun choosing...and we'll see you there!





We had two visiting Rotarians and 17 guests, which for the start of March break made for quite a nice turn out. Michael Wolkenberg reminded us about R2R (which stands for Rotarian to Rotarian). This event is usually held at The National Club on the second Thursday of the month, Michael reported that they had 24 people; it's a great networking opportunity and a wonderful way to find out what other Rotarians do for a day job, keep it in mind! There was an announcement about our upcoming fund raising event, "Dancing with the Rotary Stars @ MaRS", (the only fund raiser our Club holds) being held at the MaRS Building on Saturday, April 25<sup>th</sup>. There is an early bird draw, so get your tickets right away there is an opportunity to win a free ticket to the event among other things. The Don Valley Rotary Club is holding a fund raising event, "Passion for Fashion" on Thursday March 26<sup>th</sup> if you need any information, call our Rotary office. Brian Westlake came up to the podium to tell us about an interesting Rotary fellowship idea. It is called ITH Fellowship which stands for International Travel and Hosting. You can get the details from the office but the main idea is that if you sign-up (there is a slight cost) you would host a Rotarian who is visiting from another country. They would stay with you and you would be expected to possibly take them to dinner, or take them on a sightseeing tour, and then when you travel abroad you would be hosted by a Rotarian in another country. Brian said that he and his wife have joined the group and have really enjoyed it.

Our guest speaker, Rev. Harry Robinson, was very nicely introduced by Walter Thompson. Reverend Robinson retired in 1992, when he was the Rector of St. John's Shaughnessy Anglican church and currently lives in Vancouver, but he was a member of this Club from 1970 to 1978. Rev. Robinson's speech was entitled, "A Tribute to Atheism" and it was very interesting. The reverend started his talk by telling us about advertisements on commuter buses in The U.K. that say "God Does Not Exist So Enjoy Yourself" and ended with thanking the atheists for helping to define a theist's ideology. Rev. Robinson said that atheism is a world view built on the idea that every individual is reasonable and it assumes that individuals will act in moral ways at all times. He pointed out that this is not necessarily the case as history and current events often show us. He said that one cannot create an ideal community without honouring the individual, the idea that Karl Marx had of creating an ideal community only with ideal people breeds the excesses that come of "correct thought", gulags in Siberia and ultimately of the evil corruptions of Nazism in the 1930's. This truth lives on today where we see the results of blinkered reactionary policy on both ends of a political circle that joins leftist and rightist ideology in exclusion of any idea or person that is different. Rev. Robinson also spoke of self knowledge. He talked about human complexity and the mystery of our own being; he said that we hide ourselves from others and that the tension between "self" and "neighbour" can be removed by honouring and loving others on equal terms. He said that we live in a space of time that "we are locked in a generation" and it is very difficult to see with any objectivity outside of those parameters. So humans live with the constant tension between truth and lie, hope and despair, love and profanity, faith and fear, eternity and time and he feels that he has found refuge in a theist's world view that sees eternal meaning set against a transient existence which in turn helps us to explore the meaning of our own individual lives.

**Reminder....Celebrate World Water Day—March 22, 2009***By screening award winning film***Blue Gold****World Water Wars**

A film by Sam Bozzo based on the groundbreaking book *Blue Gold* by Maude Barlow and Tony Clark

Please contact Kim Curry by email [kcurry@sayidentity.com](mailto:kcurry@sayidentity.com) or call The Rotary Office for more information.

**LOOKING AHEAD: FRIDAY, MARCH 27, 2009**

**SPEAKER: JOHN CAMPBELL, PRESIDENT & CEO  
WATER FRONT TORONTO**

**LOCATION: THE UPPER CANADA ROOM**



Before joining Waterfront Toronto in April 2003, John was a senior executive at Brookfield Properties. He headed up the Canadian property management services subsidiary and also played a leadership role in the development of the company's most prestigious property – BCE Place; directing construction, marketing and leasing of the \$1.2 billion award winning project. Prior to joining Brookfield in 1989, John held senior positions in the real estate divisions of Bimcor Inc. and Bell Canada. He has an MBA from the University of Toronto and a Bachelor of Engineering degree from Carleton University.



*The Rotary Club of Toronto ~ Making the world a better place.*

**The Rotary Club of Toronto**

Fairmont Royal York

100 Front Street West, H Level, Toronto, ON M5J 1E4

Phone: 416-363-0604 – Fax: 416-363-0686 – Email: [office@rotarytoronto.on.ca](mailto:office@rotarytoronto.on.ca) – Web: [www.rotarytoronto.com](http://www.rotarytoronto.com)

This is Exhibit "20" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.



\_\_\_\_\_  
A Commissioner, etc.



## Jim Van Allen – Curriculum Vitae

### Personal Profile

- President – Behavioural Science Solutions Group Inc., Langley, British Columbia, Canada
- Risk Assessment Consultant  
Member of Canadian Association of Threat Assessment Professionals
- Certified Profiler – International Criminal Investigative Analysis Fellowship Inc.
- Behavioural investigative advisor to private investigators, legal counsel, corporate security and human resource personnel, and justice agencies
- Instructs workshops on risk assessment and risk management across North America

### Experience

- Has prepared risk assessments and response strategies for incidents with a potential for violence from the private and public sectors
- Experienced in a broad range of cases involving: threats, workplace violence, stalking, intimate partner violence, school violence, mental illness, arson, sexual misconduct, abduction, product tampering and extortion
- Has prepared threat and risk assessments for corporate directors, justice officials, public figures, celebrities, politicians, and developed personalized safety plans
- Developed discreet personality assessments of individuals with questioned mental instability
- Developed forensic interview strategies that assisted to conclude high profile and serious investigations
- Experienced in the analysis of anonymous written and electronic communications (letters, emails, blog posts, etc.)
- Has lectured extensively within the Ontario Police Training System and at venues including: Toronto Police C.O. Bick College, Canadian Police College, York Regional Police Academy, Ottawa Police Academy, FBI Academy, The Justice Institute of British Columbia, Georgia Public Safety Training Center, and numerous conferences and symposiums in Canada and the United States to justice officials, corporate personnel, educators, and medical professionals
- Has lectured to Federal Police Agencies in The Netherlands, and Belgium, and South Africa on behavioural analysis, Threat Assessment, evaluation and dangerous individuals and their pathways to violence
- Guest lecturer at the University of Toronto, Laurentian University, Trent University, and various community colleges
- Has provided expert testimony at all levels of the Ontario Court of Justice on risk assessment, investigative procedures, stalking, workplace violence, Psychopathy, crime reconstruction and sexual misconduct. Has also testified at the Court of Queen's Bench, Manitoba

## Jim Van Allen – Curriculum Vitae

### Achievements

- Invested as a Member of The Order of Merit of the Police Forces by Her Excellency, The Right Honourable Michaëlle Jean, Governor General of Canada – May 2010
- Graduate – FBI National Academy, Quantico, Virginia (Applied criminal psychology)
- Certification - International Criminal Investigative Analysis Fellowship
- Completed numerous senior and advanced courses in threat assessment, dynamics of crime, applied criminal psychology, crimes of interpersonal violence, and behavioral analysis at venues across North America
- Has trained and mentored twenty-four criminal profilers from Ontario, RCMP, Surete de Quebec, Georgia, Virginia, Texas, Florida, California, and Australia
- Contributor to The Psychology of Criminal Investigations – The Search for the Truth
- Contributor to The Canadian Lawyer's Guide to The Law of Criminal Harassment and Stalking

### Related Career History

May	1979 - Appointed – Ontario Provincial Police
May	1986 - Promoted – Shift Supervisor - Corporal
	1987 – Re-designated Sergeant
January	1992 - Criminal Investigative Supervisor
June	1995 - Manager, Criminal Profiling Unit
October	2008 - Founded – Behavioral Science Solutions Group Inc. - President
October	2010 – Retired - Ontario Provincial Police – Detective Sergeant

### Languages:

English

### Contact Information

Jim Van Allen  
President,

Behavioural Science Solutions Group Inc.  
PO Box 3101  
Stn LCD  
Langley, BC  
V3A 4R3  
Canada

Telephone 604-626-9572  
Fax 604-371-1649

Email: [Behaviouralsolutions@gmail.com](mailto:Behaviouralsolutions@gmail.com)

This is Exhibit "21" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

Transcript of Recorded telephone conversation with Jim Van Allen

Date of call: December 30, 2013, 4:40pm EST

Caller: 'Raymond Metivier'

Subject: Jim Van Allen

Telephone number called: 604-626-9572

V = 'Jim Van Allen'

M = 'Raymond Metivier'

V Good afternoon. Jim Van Allen.

M Ah, good afternoon Mister Van Allen. My name is Ray Metivier. I'm a Montreal-based consultant. How are you today?

V Very good Sir, yourself?

M Good, thank you. I represent a major Canadian corporation, ah, that had a strange situation just recently. It involved the CEO, and threats that were made to

V Oh yeah

M the CEO. It shook them up. We, we managed, or they managed to get out of it quite well, but it left them shaken up and I've been tasked with trying to locate an expert on the subject, and we'd like to establish some in-house seminars for the top management.

V Okay

M I thought that would be perhaps, perhaps up your alley. I've been, ah, looking at information on the Internet here about you that I've located...

V Yes, Sir.

M You were...

V Yes, I, I go around and I do, ah, a lot of presenting to, um, well, law enforcement, corporate people, HR, um, personnel and anybody who, who is being threatened and I talk about risk and how to evaluate it and give them some suggested recommendations...

- M Ummm hmmm, so...
- V But how...
- M This sounds, this sounds like it's your expertise, really.
- V Yes. I was doing this in the, ah, police career. I was thirty one and a half years with the Ontario Provincial Police and, ah, for fifteen of those I was with the Behavioral Sciences Section doing criminal profiling and and threat assessment.
- M ummmm
- V And ah
- M That must have been very challenging.
- V It was very fascinating, one of the most interesting things you could do in a police career, in my, ah, mind. And we've worked hand in hand with the RCMP, the SQ, the FBI and a lot of other, ah, large state agencies in the United States and, ah, I've I've worked all over Canada doing cases similar to what you're talking about, and we've been very experienced in the areas of...
- M uh, you were thirty one and a half years in the police force?
- V Yes Sir.
- M Ah, what, when did you retire? Was it a long time ago?
- V Nah, I retired in, um, ah, October, twenty ten, and I have been operating my own, ah, risk assessment consultancy since then...
- M mmmmm
- V and I do a lot of training, and I work for, um, I do work for lawyers and um private...
- M Uh huh
- V ... investigators, corporations
- M Mister Van Allen, would it be possible for you to send me a confidential copy of your C.V.? I will give you an email address and you sound exactly like the type of person this corporation is looking for...

V OK then

M If you could give me an idea of your fees also

V Well...

M ... in the email and then then we could negotiate and discuss and this will have to go through our legal department then.

V Sure. Absolutely. So, you're ah...

M I'll be glad to give you my email address.

V Okay

M It's my name, okay? And my name is Raymond Metivier. So it's Ray: R A Y

V Uh hmm

M dot Metivier. M as in Michael. E, T as in Tom, I, V as in Victor, I E R ...

V Yes

M At gee mail dot com.

V Okay.

M I prefer to to remain anonymous. Once I receive your CV and I contact you the next time I, ah, will let you know the name of my company and I will brief you as to the Canadian corporation involved, but they are a major corporation.

V Okay, well I'll get that out to you, um, likely tomorrow if that's okay, right?

M That's fine with me.

V Okay, thanks very much for

M It's been a pleasure speaking with you. Thanks very much Sir.

V Thank you.

This is Exhibit "22" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A solid black rectangular box used to redact the signature of the Commissioner.

\_\_\_\_\_  
A Commissioner, etc.



# EXHIBIT 22

SEE ATTACHED CD

This is Exhibit "23" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

From: Jim Van Allen <behaviouralsolutions@gmail.com>  
Date: Tue, Dec 31, 2013 at 10:20 AM  
Subject: Jim Van Allen CV  
To: Ray.metivier@gmail.com

Good Morning Mr. Metivier;

Thank you for your inquiry about risk assessment services I provide. An abbreviated CV is attached as you requested.

My goal is to provide effective, reliable and confidential risk assessment counselling to clients who face challenges to their personal or organizational well-being. I have provided risk assessments to corporations involved in natural resources and financial sectors, municipal, provincial and federal governments, and educational organizations. I have also provided these services to a range of clients of private investigators, legal counsel, and security firms.

Based in Langley, BC, much of my work is done via telephone and electronic messaging. I am available to respond to provide emergent ongoing onsite assistance if required. All consultations are concluded with a written record of information received from a client, and my risk assessment of any potential of danger according to the situation. I also provide "red flag" behaviours to be vigilant for, and safety recommendations.

I am supported by two widely renowned Forensic Psychiatric consultants who are available at an extra cost for incidents requiring highly specialized medical opinions or assistance.

#### FEE:

My basic hourly fee is \$ 150.00. If travel is required, actual expenses are charged in a fair and equitable manner, and detailed billings and receipts are supplied.

#### TRAINING:

Training is designed for the specific needs and time requirements of a client, following a discussion of their concerns.

An estimate for a one day workshop in Montreal, requiring air travel and accommodations would be approximately:

Speaker Fee (one day)	\$ 1500.00
Economy round trip airfare	\$ 865.44
One night Accommodation	\$ 160.00
Mileage	\$ 51.00
Taxi	\$ 120.00
Parking (Vancouver Airport)	\$ 32.00
Meal Per Diem 2 days	\$ 90.00
Total	\$ 3018.44
Plus GST	\$ 75.00

The client would be responsible for providing a training venue, audio visual equipment, attendee costs, coffee / nutrition break costs.

Any written materials or student handouts requested by the client would be extra.

I appreciate the opportunity to submit this proposal for your consideration. Please contact me if any further information or discussion is required.

I look forward to any future discussion about providing risk assessment consultation or training to your client.

Sincerely;

Jim Van Allen

Jim Van Allen  
604 626 9572

Behavioural Science Solutions Group Inc.

A behavioural analysis and threat management company

This is Exhibit "24" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.



# Toronto Police Service

## To Serve and Protect

### Frequently Asked Questions

- What is an Auxiliary officer?
- Is the Toronto Police Service currently hiring Auxiliary officers?
- What are the basic requirements for becoming an Auxiliary Officer with the Toronto Police Service?
- What are the duties of an Auxiliary Officer?
- What are some of the benefits in becoming an Auxiliary member of the Toronto Police Service?
- Do I need to obtain an OACP Certificate of Results in order to become an Auxiliary officer?
- Do I need a Police Foundations diploma or a Law and Security diploma to be hired?
- Can I apply to become an Auxiliary Officer if I have a Private Investigators licence?
- Can I apply to become an Auxiliary Officer if I have a security guard licence?
- If I have a criminal record, can I still apply to become an Auxiliary Officer?
- How long is my application on file for?
- After I submit my application, how long will it take to get an Interview?
- How long does the hiring process take?
- As an Auxiliary Officer, will I receive any kind of formal Training?
- What is the Auxiliary schedule like?

**Q:** What is an Auxiliary officer?

**A:** Auxiliary Officers promote community based policing are part of a very dedicated and committed team of volunteers who are trained both in the theoretical and practical applications of policing. They work alongside uniformed officers and assist the community and service with community mobilization initiatives, crime prevention programs, special events, parades, searches for missing persons and emergency call-outs.

[back ↑](#)

**Q:** Is the Toronto Police Service currently hiring Auxiliary officers?

**A:** For the latest information regarding our hiring status, please log onto [www.torontopolice.on.ca/careers](http://www.torontopolice.on.ca/careers) for more information.

[back ↑](#)

**Q:** What are the basic requirements for becoming an Auxiliary Officer with the Toronto Police Service?

**A:** The BASIC REQUIREMENTS for the position are as follows:

- be a Canadian citizen or permanent resident of Canada,
- be a minimum of 18 years of age,
- Ontario Secondary School Diploma (Grade 12) or official transcript of High School marks OR IF SCHOOLED OUTSIDE THE PROVINCE OF ONTARIO, an educational equivalency which has been completed by the Ministry of Education. *IF YOU DID NOT RECEIVE YOUR POST SECONDARY EDUCATION IN THE PROVINCE OF ONTARIO, YOU WILL BE REQUIRED TO PRODUCE AN EQUIVALENCY ASSESSMENT.* Please refer to the applicant resource listing,
- possess Standard First Aid and Level 'C' CPR certificates,
- not have been convicted of a criminal offence for which a pardon has not been granted,
- be a fully licensed driver and meet all the requirements of the Graduated Licensing System in the province of Ontario, having accumulated no more than 6 demerit points,
- meet the vision standards which include, colour, peripheral and depth perception requirements, have uncorrected visual acuity of 20/40 and best corrected acuity of 20/30 with both eyes open (binocularly),
- be physically able to perform the duties of the position, with regard to personal safety and the safety of the public,
- be of good moral character and habits,
- due to the amount of time required in the selection and training process we ask all members to stay for a minimum of one year.

Candidates are also expected to:

- volunteer a minimum of 150 hours per year,
- reside in the Greater Toronto Area (Durham, Peel, York, Toronto),
- complete all ongoing training as required.

NOTE: applicants who do not meet **all** of the above requirements will not be considered for this **VOLUNTEER** position.

back ↑

**Q:** What are the duties of an Auxiliary Officer?

**A:** On a daily basis, Auxiliary member may be asked to assist the regular Police members with any of the following duties:

- community response initiatives,
- canvassing and searching with respect to evidence or missing persons,
- maintenance of police perimeters,
- registration and or identification of community property, i.e. bicycles,
- community functions and events such as Police Week, parades, fairs, etc.,
- community safety audits and other crime prevention programs (i.e. Child Find),
- renewal of community Night Listing data,
- serving on Community Police Committees,
- assistance with the operation of the Toronto Police Information booths, Community Police Offices and Collision Reporting Centres.

back ↑

**Q:** What are some of the benefits in becoming an Auxiliary member of the Toronto Police Service?

**A:** Some of the benefit of becoming an Auxiliary Officer are:

- the Toronto Police Service provides each Auxiliary member with a uniform, equipment and training,
- the Auxiliary member is afforded an opportunity to develop an understanding of the Police function within the community,



- experience gained as an Auxiliary volunteer will allow a prospective candidate for the regular service to determine his/her suitability for the position of Police Constable,
- an Auxiliary member, while on duty, is covered by the Workplace Safety and Insurance Board,
- satisfaction in knowing that a member has made a personal contribution to the well being of his/her community.

back ↑

**Q:** Do I need to obtain an OACP Certificate of Results in order to become an Auxiliary officer?

**A:** No. There is no requirement to have an OACP certificate in order to apply to the Auxiliary program.

back ↑

**Q:** Do I need a Police Foundations diploma or a Law and Security diploma to be hired?

**A:** There is **no** requirement by the Toronto Police Service for a candidate to attend any Police Foundations or Law and Security program. The only requirement in regards to education is that a candidate possess a minimum grade 12 diploma or equivalent certificate.

back ↑

**Q:** Can I apply to become an Auxiliary Officer if I have a Private Investigators licence?

**A:** In accordance with the Ministry of Community Safety and Correctional Services, Private investigators and Security Guards Act, Bill 159, (2004), a person holding a Private Investigators licence will not be an eligible candidate for the Toronto Police Service Auxiliary Program.

back ↑

**Q:** Can I apply to become an Auxiliary Officer if I have a security guard licence?

**A:** A person currently licensed as a security guard may make application to the Auxiliary Program if it is determined that they do not directly or indirectly participate in any investigative capacity. Notwithstanding, a complete background investigation will be conducted to determine if a conflict of interest may exist.

back ↑

**Q:** If I have a criminal record, can I still apply to become an Auxiliary Officer?

**A:** As per the minimum requirement, if an individual has been convicted of a criminal offence (in any country), they must first obtain a pardon prior to applying. Furthermore, if the individual has had a 'Findings of Guilt' which has resulted in absolute or conditional discharge, their records must be 'sealed' by the RCMP, prior to applying.

back ↑

**Q:** How long is my application on file for?

**A:** Applications will be valid for a period of one year from the date they are submitted to the Employment Unit. If you have not been contacted within one year from the date you submitted your application, a new application, with current certifications is required.

back ↑

**Q:** After I submit my application, how long will it take to get an Interview?

**A:** Only those applicants assessed best able to meet the organizational needs of the service will be selected for an interview.

back ↑

**Q:** How long does the hiring process take?

**A:** There is no specific time period. All applicants are reminded that when applying, it is for the position of Auxiliary Officer and not a particular recruiting class.

back ↑

**Q:** As an Auxiliary Officer, will I receive any kind of formal Training?


**A:** Yes. Once hired, all Auxiliary officers will undergo a six week training program which will include theoretical, procedural and self defence training.

back ↑

**Q:** What is the Auxiliary schedule like?

**A:** Community/special events are generally held on weekends and evenings. As a result, Auxiliary Officers will also typically work on evenings and weekends. Your hours will also vary depending on the event.

This is Exhibit "25" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
\_\_\_\_\_  
A Commissioner, etc.

## **Off-Duty Police Conduct:**

### **A Discussion Paper**

Prepared for the Office of the Police Complaint Commissioner

by Paul Ceyssens, Barrister and Solicitor

June, 2000

#### **1. Introduction**

I have been asked by Mr. Don Morrison, Police Complaint Commissioner, to draft a discussion paper concerning off-duty conduct by police officers. The discussion paper is intended to serve as the starting point in consultations with interested parties, perhaps leading to a guideline, policy or other appropriate response to the various issues related to police off-duty conduct.

The regulation of police officers' "off-duty" conduct has become quite prominent and controversial of recent years. This is so for several reasons. First, off-duty conduct and worker privacy has become an important issue in employment law generally. Second, off-duty conduct of police officers has become more prominent because of the general increase in public concern and debate in the last twenty years over how society should regulate its police.

The purposes of this discussion paper are, first, to examine the threshold issue of the distinction between "on-duty" and "off-duty" in police employment, and then to examine general principles governing the application of the complaint process to off-duty police conduct. The remainder of the analysis will focus on specific issues related to off-duty police activity: secondary employment and political activity. Finally, the discussion paper will then pose several issues for response by interested parties.

In the course of researching and drafting the discussion paper, I contacted a variety of organizations in British Columbia to invite participation. I also discussed the issue with representatives from police management, associations and the legal profession outside of the province.

## **2. The Distinction Between "On-duty" and "Off-duty" in the Constabulary**

### **(a) Introduction**

Any analysis of the issue of off-duty conduct necessarily involves an examination of the distinction between "on-duty" and "off-duty", particularly as it pertains to police employment.

Despite the importance of this distinction, considerable confusion surrounds it. Much of the confusion originates from the fact that the two general approaches to the issue have not been reconciled.

The first approach favours the view that no distinction exists between on-duty and off-duty as it pertains to policing: owing to the nature of the office of constable, a police officer is never "off duty."

The second approach holds that a valid distinction does indeed exist, as it does for other workers, and the important issue is the extent to which police officers are subject to greater regulation than other workers with respect to off-duty conduct, by virtue of the duties and powers of the office of constable.

### **(b) "There is No Distinction Between On-duty and Off-duty"**

Although the view that there is no distinction between on-duty and off-duty is archaic in a number of regards, there is an established body of judicial decisions which supports it. The most frequently cited authority in support of this position is the judgment of the Ontario Court of Appeal in *R. v. Johnston*, in which the court allowed an appeal from a ruling that a police officer was not in the execution of his duty because he was privately employed by a business to direct traffic outside of its premises. The court's conclusion that "a police officer is on duty at all times" is still cited with approval.

This view has been endorsed in other forums. In Nova Scotia, for example, Chief Judge Green in the *Report of the Commission to Review the Police Act and Regulations* preferred this approach.

A variation on this theme is the view that police officers are "in effect" always on duty. The Alberta Court of Queen's Bench, for example, expressed the view that police officers, because of their office and position, are "in effect 'on duty' 24 hours a day, 7 days a week" and therefore subject to discipline for acts committed beyond regular working hours. The Nova Scotia Supreme Court used similar language: "[i]t goes without saying that a police officer can be called out at any time and essentially is never off duty".

The most obvious problem is that, although some courts of law have resisted the conclusion that police officers can be off-duty, legislation and regulations have

contained specific provisions that clearly recognize the distinction between on-duty and off-duty conduct. For example, the Ontario Code of Conduct enacted in 1969 created specific disciplinary offences for particular "on duty" conduct, suggesting that the statement in the *R. v. Johnston* case that "a police officer is on duty at all times", decided only four years earlier, was no longer good law. In more modern times, the regulation of police involvement in political activity explicitly recognizes the fact that a police officer can be off-duty.

### (c) "There is a Distinction Between On-duty and Off-duty"

As discussed, the second approach – that police officers *are* off duty outside of "prescribed hours of duty" – also finds support in case law, as well as Canadian statutes and regulations and other sources.

Police officers who are off-duty may "put themselves on duty" at any time by exercising the powers of the office of constable. In British Columbia, at least, it would appear to be settled law that a police officer may be "on duty" beyond the conclusion of prescribed working hours. In the words of the British Columbia Supreme Court, a police officer is not restricted to "acting within the confines of a working day".

To be "on duty" while outside of formal working hours, a police officer must take some action *qua* police officer, or "rel[y] on his position of authority." In *R. v. Crimeni*, an off-duty New Westminster constable approached a suspected impaired driver, presented his police identification, asked the driver to produce his licence and registration, confiscated the driver's keys and sought assistance from a private citizen to find the nearest police detachment. The court ruled that the constable was acting as a police officer. In *Love v. Saanich (District)*, a police officer investigated a noise outside his home late in the evening, and discovered that someone was attempting to remove a stereo from an automobile parked in his driveway. He was casually dressed and was armed only with a bamboo tomato stake. The police officer was injured in the course of apprehending the suspect, who was convicted of attempted theft and assault. The Workers' Compensation Review Board concluded that the injury arose "out of and in the course of" his employment within the meaning of the term in the *Workers' Compensation Act*. The Board reasoned that the police officer objectively had embarked on a criminal investigation at the point at which he saw the open car door, despite the fact that he was on his own property: "[o]nce he saw objective evidence of a crime in progress, his police officer role was engaged." A similar decision resulted in a West Vancouver case in which an off-duty police officer attempted to apprehend a person unlawfully entering his residence.

The English common law was set out in the case of *Davis v. Minister of Pensions*, a war reserve constable was injured on the way to work, and claimed compensation for a "war service injury." Eligibility for compensation depended on whether the injury arose in the course of the performance of duty, and the

claimant argued that because a constable is on duty "at any time" although outside regular hours of duty, any accident must therefore have arisen in the performance of his duties. The Court rejected this position:

When the prescribed hours of duty of a constable have come to an end and an emergency arises it is his duty to attend to that emergency, and at that moment he is on duty in the strict and narrow sense [...] but until such an emergency arises he is in the position of any other civilian.

### 3. The Application of the Complaint Process to Off-Duty Conduct

#### (a) General Principles

Assuming that a valid distinction exists between on-duty and off-duty activity, and both logic and the weight of legal authority suggest it does, then the question to be answered is the extent to which the complaint process captures police officers' behaviour while off duty.

The starting point in responding to this question involves an examination of the general principles of employment law. Ball distills the law in this regard:

An employer cannot determine in a paternalistic fashion how employees shall conduct their lives when off the job in matters which do not affect work performance or the employer.

Both courts of law in common law wrongful dismissal cases and arbitrators in grievance decisions have adopted a similar approach on this issue. In one Newfoundland dismissal decision, in fact, the court cited with approval the following statement of the law from Kashinsky and Sack, *Discharge and Discipline*:

While arbitrators are generally of the view that employers are not custodians of their employees' character, whether an employee may be disciplined for off-duty conduct will depend upon whether the conduct is work-related. This will involve a consideration of the nature of the offence, the employment duties and the nature of the employer's business. In particular, it will depend upon whether the employee's conduct

(1) detrimentally affects the employer's reputation;

(2) renders the employee unable properly to discharge his or her employment obligations;



(3) causes other employees to refuse to work with him or her; or

(4) inhibits the employer's ability to efficiently manage and direct the production process.

In short, a connection or nexus must be established between the employee's actions and the employment relationship.

The test in policing is not dissimilar. Courts of law and tribunals have consistently ruled that the police complaint process captures off duty conduct, so long as a nexus exists between the impugned off duty conduct and either public respect for the constabulary or the fitness of the police officer to hold the office of constable.

As the Ontario Court of Appeal observed in *Trumbley v. Metropolitan Toronto Police*, however, the relation of police officers to the police force is not akin to that of an ordinary citizen to government: "[t]he police officer has voluntarily accepted a vocation entailing duties which are peculiar to it and essential to its proper performance, duties to which ordinary citizens are not subject." Thus, the more important question is how these general principles governing off-duty conduct are applied, given the nature of the duties and powers of the office of constable. The point was expressed as follows by the R.C.M.P. External Review Committee:

The debate now, as always, is over how much higher those standards may legitimately be, and in what respects (and with respect to what conduct) they may legitimately differ from standards demanded of ordinary citizens and other employees.

The law will be examined through a review of case law originating in various forums: courts of law and tribunals, inquiries and grievance arbitration. Relevant legislation will also be discussed.

#### **(b) Court and Tribunal Decisions in Misconduct Cases**

A reasonably large body of court decisions has developed dealing with the application of the complaint process to off-duty conduct. The bulk of these court judgments originate from appeals of disciplinary tribunal decisions or applications for judicial review.

The first modern Commonwealth court judgment offering guidance on the extent to which the police complaint process captures off-duty conduct appeared in the Australian case of *Henry v. Ryan*, involving the offence of "misconduct against the discipline of the police force". Here, the Court ruled that off duty behaviour was subject to internal discipline in certain circumstances:

"Discipline" in this sense involves more than mere obedience to lawful orders. It is a wide concept and I have no doubt extends to conduct of a police officer when off duty so far as that conduct may affect his fitness to discharge his duties as a police officer.

The leading Canadian judgment is the decision of the Nova Scotia Court of Appeal in *Blakeney v. Police Review Board*, in which a police officer called a neighbour a "senile old bastard" during an argument over the telephone that occurred off duty. The police officer was convicted of the discipline offence of abuse of authority under s. 5(1)(g) of the Nova Scotia Police Act Regulations, which read as follows:

5. (1) A member of a police force commits a disciplinary default where the member

...

(g) abuses authority by

...

(iii) being discourteous or uncivil to any member of the public having regard to all the circumstances

The Police Review dismissed the police officer's appeal against the conviction, and made the following observation in its decision:

Cst. Blakeney was in a position of authority. The public expects that a police officer should always conduct himself with respect and courtesy towards members of the public. The public expects this when the police officer is on or off duty.

The Nova Scotia Supreme Court dismissed the police officer's application for an order to quash the decision, and his further appeal to the Nova Scotia Court of Appeal was also unsuccessful.

While *Blakeney* and many other "off duty" cases have involved incidents occurring within the geographical boundaries of the police force, courts of law have applied the same principles to cases in which the conduct in question occurred outside of the geographic jurisdiction of the police force. The issue of the applicability of "public complaint" legislation to off-duty conduct was the subject of an application for judicial review under one of the first legislative public complaint schemes in Canada, the *Metropolitan Toronto Police Force Complaints Act, 1984*. In *Marks v. Lewis*, the chief of police challenged the authority of the Police Complaints Commissioner to review a decision made by the chief of police not to deal with a complaint alleging improper behaviour on the part of two police

officers while off duty at a cottage 130 miles outside the city limits. In dismissing the application, the Court provided only brief reasons, but did conclude that the conduct alleged (an assault) "may well fall within the definition of 'discreditable conduct'". In a British Columbia case, *Bowles v. Post*, the court ruled that a chief constable acted within his powers in commencing discipline proceedings against several members who were off duty and outside the department's geographical jurisdiction at the time. The court concluded that neither the statute nor the regulations contained geographical restrictions, and concluded as follows:

Common sense dictates that if a police officer acts in a disorderly or embarrassing manner that may not be criminal but which brings discredit upon the reputation of the police force, whether it happens at Shawnigan Lake, Vancouver or New York City, the chief constable must have the power to correct and discipline such conduct. If he could not discipline such conduct the public's respect for the force as a whole would be diminished. Such a result could render the force ineffective.

The reference in *Bowles* to the authority of the chief constable over matters occurring outside of the country is thought to be the first explicit statement that the complaint process reaches this far. Although the misconduct alleged in that case did not occur outside the country, the Alberta Court of Queen's Bench did consider allegations against an Edmonton police officer respecting an incident alleged to have occurred in Indiana. The court in *Vanovermeire v. Edmonton Police Commission* confirmed that the complaint process captured conduct alleged to have occurred in another country:

I would also reject the [police officer's] contention that, because an incident took place involving a police officer of the E.P.S. outside of the city limits the E.P.S. should be uninterested and have no jurisdiction or duty to investigate the same. Whether we like it or not, many public servants and officials, because of their offices and positions are, in effect, "on duty" 24 hours a day, 7 days a week. I believe police officers are in this category. So are judges. It would be inconceivable to me that the Canadian Judicial Council, which has a statutory duty to review complaints made against Federal Judges, would not have the jurisdiction to investigate a complaint that a judge was behaving in an unacceptable fashion just because the incident happened after court sitting hours and in another province than that in which the judge normally sits. Surely the question of whether that judge's conduct has brought disrepute to the justice system has nothing to do with where it took place and whether it was within normal working hours.

The law governing whether particular misconduct would likely damage the reputation of the police force is not free from doubt. One view is stated by the

R.C.M.P. External Review Committee, in its report *Sanctioning Police Misconduct - General Principles*, as follows: "[i]n determining whether certain misconduct would likely damage the reputation of the police force, the proper test is whether a reasonable person who was fully informed of all the relevant facts would be of the opinion that the misconduct in question brings discredit on the police force." However, the report goes on to state that:

The issue of "harm to the reputation of the police force" needs to be carefully examined in the context of each case. Police discipliners should not automatically report to this criteria as a justification for a severe sanction without some evidence that damage to the reputation of the force has occurred and is so great that a severe sanction is warranted. The assumption that the reputation of the police force is damaged by the misconduct of an individual police officer can easily be overstated. Seldom will the isolated misconduct of one police officer result in the loss or substantial lowering of a good police force's overall reputation. The public and others are normally intelligent enough to appreciate that the individual misconduct of one police officer ought not to be visited upon the reputation of the entire police department.

As well, the locality in which a police officer is stationed can affect the severity of discreditable conduct. The R.C.M.P. External Review Committee, in its Report entitled *Off-Duty Conduct*, made the following observation:

[T]he conduct of an officer who lives in a large, relatively anonymous, urban area is inherently less likely to be "discreditable" than the same conduct of an officer working in a small rural community where everybody knows everyone else. The necessary implication is that officers working in small communities are held to higher standards of private conduct than officers working in large urban areas.

Tribunal decisions have generally followed the court decisions. The Alberta Law Enforcement Review Board, for example, set out its view of the law as follows:

In our free and democratic society it has long been recognized that employees (in public or private occupations) are entitled to a private life while off duty. During that time period people are at liberty to choose their activities and regulate their lawful conduct as they see fit so long as their employer is not damaged or harmed in some fashion. A prima facie presumption exists in favour of the off duty right to privacy, non-interference, and the absence of surveillance.

...

Disciplinary proceedings against an employee for off duty conduct absent a sufficient nexus are unlawful and will not be sustained ...

...

[T]he Board is persuaded that some guidelines should be provided concerning where a nexus or rational connection is likely to occur in the context of off duty conduct. The following list, though not exhaustive, is intended to identify key areas of connection and concern:

- (1) Where the conduct of the officer harms the reputation or credibility of the Police Service.
- (2) Where the officer's behaviour renders him or her unable to perform his or her duties in a satisfactory manner.
- (3) Where the officer's behaviour leads to refusal, reluctance, or inability of other officers or employees to work with the officer.
- (4) Where the officer has contravened the law in a manner that renders his or her conduct injurious to the reputation of the service and its members.
- (5) Where the officer's conduct places difficulty in the way of the service to properly carry out its functions and effectively manage its work or effectively direct its work force.

Tribunals rarely conclude that off-duty misconduct is unlikely to damage the reputation of the police force, however. While time has not permitted an exhaustive examination of tribunal decisions across Canada, a quick review of recent cases from Alberta and Ontario (as examples) reveals findings of misconduct for a wide range of off-duty behaviour. In Alberta, the Law Enforcement Review Board has found misconduct in off-duty cases involving involvement in prostitution-related activity, damage to a vehicle during a personal dispute, use of police identification to obtain favourable treatment and using a false name. In Ontario, the Commission has found misconduct in off-duty cases involving involvement in prostitution-related activity, child abuse, shoplifting and other theft, assault, insurance fraud, playing Russian roulette, improper use of police identification, improper personal relationships and sexual harassment.

A small number of tribunal decisions, however, have concluded that misconduct could not be established because there was no nexus between the impugned off duty conduct and either public respect for the constabulary or the fitness of the police officer to hold the office of constable.



One case containing some useful discussion in this regard is *Leone v. Catalano*, a decision of the board of inquiry under the public complaint provisions found in the former Part VI of the Ontario *Police Services Act*. This case involved an extraordinary series of events beginning with an off-duty police officer observing a car full of people stop in front of his house. One of the occupants, a realtor, removed his company's "for sale" sign, which the police officer was using for his own purposes (to advertise fill). The police officer thought he had the right to use the sign and, while still in barefeet, commenced a vehicle pursuit in a highly dangerous manner. The incident ended at an O.P.P. detachment, where the police officer offered his assessment of the realtors in blunt fashion. The police complaints commissioner constituted a board of inquiry to hear the allegations of misconduct arising from the realtors' complaints, and the board offered the following analysis on the issue of off-duty conduct:

Having found, on clear and convincing evidence that allegations 1 and 2 of the Statement of Alleged Misconduct [relating to the pursuit and forcing the car off the road] are proven, the Board must ask itself if such actions are "likely to bring discredit upon the reputation of the police force" contrary to s. 1(a)(i) of the Code of Offences set out in the Regulations made pursuant to the *Police Services Act*, R.S.O. 1990, c. P.15.

Counsel for the Police Complaints Commissioner referred the Board to two decisions by the former Police Complaints Board, namely *Re Footman* [*Footman v. Davies*, Police Complaints Board, 14 December 1984, aff'd, Ont. Div. Ct., 14 October 1986], and *Re Khoury* [*Khoury v. Pike*, Police Complaints Board, 31 October 1985, aff'd, Ont. Div. Ct., 23 November 1988]. In *Re Footman*, [the Police Complaints Board] states at pp. 3-4:

... Moreover, the Code of Offences set out under Regulation 791 (R.R. O. 1980) the *Police Act* (R.S.O. 1980, c. 371) includes offences which do not require a wrongful intent. For example, under s. 1(i) of the Schedule of Offences, acts which are "likely to bring discredit upon the reputation of the police force" are discreditable conduct. Such an offence clearly does not contain a requirement of wrongful intent. This offence is based on the concept that if an action has the appearance of wrongful conduct, such as the appearance of suppressing evidence or inappropriately failing to act, then it may be held to be misconduct, regardless of intent, because it may bring discredit on the force by virtue of its appearance.

and at p. 5:

... It is the Board's view that the conduct of the officers should be judged against the standard of reasonableness ... This is not the highest possible standard ... Nor is it to impose the standard referred to earlier, that a wrongful intent must be found. Rather, it is to impose a standard which requires the officers to act in accordance with the reasonable expectations of society and to judge their conduct against that standard.

In *Re Khoury*, Mr. Makuch, the Chair, states at p. 6:

... the Board should apply the test of whether the community or a reasonable person, would see the conduct as uncivil or likely to discredit the force.

The Board adopts and accepts the reasoning in these decisions and has assessed Officer Catalano's conduct against what we believe are reasonable community standards. On that basis, both allegations 1 and 2 of the Statement of Alleged Misconduct, proven on clear and convincing evidence, do offend reasonable community standards, and misconduct is established on both these allegations.

... Counsel argued that discreditable conduct is not an offence applicable to an officer off-duty. ... The Board is clearly of the opinion that an off-duty police officer can commit the offence of discreditable conduct. Police officers are respected by the public because of who they are. That respect is afforded to police officers off duty as well as on duty, and the public is entitled to expect a certain standard of behaviour from police officers, whether off duty or on duty. This is not to say that the matter is not a factor however. It comes in to play in assessing whether the police officer's conduct falls below the reasonable community standards referred to previously. Certain actions which might be considered to offend reasonable community standards when taken by an officer on duty, might not offend reasonable community standards when taken by an officer off duty. In this case, the Board has found that Officer Catalano insulted Mr. Leone prior to the pursuit by calling him a "son of a bitch". Allegation # 3 in the Statement of Alleged Misconduct is not established in that other essential elements of the allegation were not proven. However, if this were the only element of the allegation, the Board would not consider this likely to bring discredit upon the reputation of the police force. These words would almost certainly bring discredit if used by an officer on duty dealing with the public. However, in this case, unknown persons to Officer Catalano upset his wife and invaded the sanctity of his home while he was at home on vacation (whether the sign was within the legal limits of Officer Catalano's lot or not, this was as a person would



normally view it, his home), by taking property that he legitimately believed he had a right to have. Police officers have the same right to be angry and upset about an intrusion of this nature, as anyone else, and in our opinion this insult would not offend reasonable community standards.

The Ontario Civilian Commission on Police Services has also concluded in a number of cases that the employer did not establish the required nexus. In its decision in *Morin and Ontario Provincial Police*, for example, the Commission dealt with a long-standing dispute between a police officer and the municipality concerning a property boundary. The municipality sent its workers to perform ditching operations, and the police officer took the position that the workers could not proceed because the location fell within his property boundary. The police officer succeeded in his appeal from a conviction for discreditable conduct for obstructing the workers and throwing a worker's helmet in a ditch. The Commission concluded that the police officer honestly believed that the municipality had encroached on his property, had relied on survey evidence and had engaged in *bona fide* discussions with municipal staff. In particular, the Commission concluded that his actions did not bring, or were not likely to bring, discredit to the employer. In its more recent case of *Burdett and Guelph Police*, the Commission considered an appeal by a police officer who had been convicted of two counts of discreditable conduct for off-duty behaviour. The first involved sending an offensive and threatening Christmas card to a person he suspected of breaking into his home. The suspect did not know the sender was a police officer. The second arose when investigating police officers attending his residence looked through his front door and saw a hand-painted message on an unfinished wall: "When I catch you I'm going to kill you. And believe me ... you're as good as caught ... Eric!". The Commission ruled that sending the threatening card did constitute misconduct, but the writing on the wall was "essentially a private act" and therefore not discreditable conduct:

Like every other citizen, a police officer is entitled to enjoy the privacy afforded by his or her own home and to express himself or herself as he or she wished to the extent that is lawful. Angry thoughts scribbled in a personal diary or scratched on an internal wall in a private home under renovation is not conduct subject to discipline. We consider that Constable Burdett's action had no practical connection with any member of the public, his employment or the reputation of the police service.

The final remark to offer regarding tribunals cases dealing with off-duty conduct concerns the recent proceedings involving the former chief of the Edmonton Police. In *Re Lindsay*, the Alberta Law Enforcement Review Board made a recommendation that policy governing off-duty conduct be reviewed:

It is recommended that the Edmonton Police Service undertake a review of its current policy concerning the off-duty conduct of [its] members. Existing policy may require further detail and strengthening in regard to off-duty member contact or association with career criminals, their close associates, or those involved in criminal organizations (O.M.G.s). Some emphasis may be required concerning the negative aspects of such associations (or perceived associations) and the inherent dangers that arise from such contact. It is further recommended that the Edmonton Police Commission review the existing Police Service policy in relation to off-duty conduct.

### (c) Inquiries

The standard of conduct expected of police officers while off duty has also been examined in various inquiries. Several inquiries in Great Britain have offered guidance in this regard. The following comment appears in the *Report of the Committee on the Police Service of England, Wales and Scotland, 1919* (the "Desborough Report"):

[A constable] must at all times, both on and off duty, maintain a standard of personal conduct befitting to his position, and this does impose upon him certain restrictions which do not exist in ordinary employments and hardly apply in the same degree even in the case of other public servants.

The *Report of the Committee on Police Conditions of Service, 1949* (the "Oaksey Report") made similar remarks:

Without a high standard of conduct, both on and off duty, [the police] would lose the confidence of the community and without that confidence the police service could never be fully effective.

In Canada, Mr. Justice Campbell Grant, writing as a Commissioner under public inquiry legislation, offered the following analysis:

This inquiry is based on the premise that there is a minimum standard of conduct which police officers must observe in their private lives. This standard is quite obviously much higher than the standard required of an ordinary citizen. The most basic reason for requiring this high standard of care in a policeman's private as well as his public life stems from the realization that the efficient operation of a police force depends upon the existence of mutual respect and trust between the public and the police and also among the members of the police force itself. This mutual respect and trust will deteriorate when the conduct in a policeman's private or public life is less than blameless. The reasons being:

(1) The equal administration of law depends upon the principle that justice must not only be done but seen to be done. Thus a police officer must do nothing in his private life that would influence or appear to influence the performance of his public duty as an officer of the Crown.

(2) The police officer is the person most responsible for initially setting the wheels of the administration of justice in motion and therefore the public cannot be expected to respect the law if it does not respect and believe in the dedication and integrity of the police force.

(3) A police officer's conduct ought to set an example for the community to follow and thus any shortcomings in his conduct will colour the image of the police force in the eyes of the public.

(4) There are few professions, if any, where a person is put in a position of such temptation to use his professional authority for personal gain and thus any irregularity in a police officer's conduct becomes the subject of speculation, thereby jeopardizing the respect and trust of the public.

(5) As in any other military or quasi-military organization it is essential that morale among members be kept as high as possible and this requires that the members believe in the honesty and integrity of one another. Without this respect the force will not function as it ought to. This is particularly important if the members of the more junior ranks of the force do not respect the members in the more senior ranks. Thus all members must ensure that by their conduct they do not place themselves or the morale of the force in jeopardy.

The *Policing in British Columbia Commission of Inquiry Final Report* summarized the law as follows:

Because police officers hold a special public office, courts have allowed police agencies to hold their members to a higher standard of off-duty conduct than expected of other groups in society. However, courts require this standard to be related to the legitimate interests and requirements of the police agency. To intervene in the private lives of its members, a police agency must show a rational relationship between the intervention and the legitimate occupational requirements and reputation of the force.

**(d) Arbitral Jurisprudence**

Arbitral jurisprudence has also been consistent in this regard. In *Granby (Ville) and Fraternite Des Policiers De Granby, Inc.*, the arbitrator made the following statement:

The position of a law enforcement officer differs from other employment as regards the standard of conduct that will be required of an incumbent in such a position. The conduct of such a person, whether on or off duty, may be the subject of scrutiny. Such conduct, where it places in doubt the integrity, honesty or moral character of the police officer, may weaken his effectiveness, cause embarrassment to the police force of which he is a member, and may as such be quite incompatible with his position.

In *Metropolitan Board of Commissioners of Police and Metropolitan Toronto Police Association*, the higher standard was applied to a civilian member of the police department: "Although the grievor was not a uniformed member of the police force but was only a civilian member, his employee-employer relationship was significantly different than the usual relationship in an industrial enterprise. The board's function is to uphold and enforce the law."

#### **(e) Legislation and Regulations**

British Columbia has now specifically addressed off duty conduct in its Code of Professional Conduct Regulation, and created a separate disciplinary default of improper off duty conduct: "a police officer commits the disciplinary default of improper off-duty conduct if (a) the police officer, while off duty, asserts or purports to assert authority as a police officer and does an act that would constitute a disciplinary default if done while the police officer is on duty, or (b) the police officer, while off duty, acts in a manner that is likely to discredit the reputation of the municipal police department with which the police officer is employed." In Ontario, s. 74(2) of the *Police Services Act* now specifically provides that "[a] police officer shall not be found guilty of misconduct if there is no connection between the conduct and either the occupational requirements for a police officer or the reputation of the police force."

#### **4. Secondary Activity**

Historically, secondary activity on the part of police officers, especially secondary employment, was looked upon with some disfavour. In Ontario, for example, the law until 1990 provided that a police officer could not, without consent of the chief of police, "engage directly or indirectly in any other occupation or calling, and he shall devote his whole time and attention to the service of the police force".



The traditional caution towards secondary activity, and secondary employment in particular, derived in large part from the nature of a police officer's authority. The R.C.M.P. External Review Committee addressed this concern in its discussion paper *Off-Duty Conduct*:

A major concern with some kinds of employment is that a police officer may exercise the office of constable and the functions of a peace officer whether on or off duty. Secondary employment which can blur the officer's status and source of authority is thus suspect. For this reason, employment requiring firearms, or which might involve arresting someone, is often prohibited. Similarly, members who engage in any business or employment for which they could also be required to perform any inspections or regulatory functions as part of their police duties run a serious risk of conflict.

Confidentiality presents a further concern when police officers work in security or similar fields.

In the last decade, both Ontario and Newfoundland have addressed secondary activity using similar language. The *Royal Newfoundland Constabulary Act, 1992*, addresses secondary activity in ss. 15(2) - (4):

- (2) A police officer shall not engage in any activity,
  - (a) that interferes with or adversely influences the performance of his or her duties, or is likely to do so;
  - (b) that places him or her in a position of conflict of interest, or is likely to do so;
  - (c) that would prevent or impair his or her ability to be recalled to duty by the chief or his or her superior officer; and
  - (d) in which he or she may acquire an advantage derived from employment as a police officer.
- (3) A police officer who proposes to undertake an activity that may contravene subsection (2), or who becomes aware that an activity that he or she has already undertaken may contravene subsection (2) shall disclose full particulars of the activity to the chief.
- (4) The chief shall decide whether or not an activity proposed to be engaged in or engaged in by a police officer is prohibited under this section and that police officer shall comply with the decision of the chief.

In Ontario, s. 49 of the *Police Services Act* governs secondary employment:

- (1) A member of a police force shall not engage in any activity,
  - (a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;
  - (b) that places him or her in a position of conflict of interest, or is likely to do so;
  - (c) that would otherwise constitute full-time employment for another person; or
  - (d) in which he or she has an advantage derived from employment as a member of a police force.
- (2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force.
- (3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police or, in the case of a chief of police, to the board.
- (4) The chief of police or the board, as the case may be, shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision.

Some jurisdictions have chosen to control outside employment activity by way of policy and rules, rather than by statute or regulation. The Alberta Court of Appeal ruled that implementation of such rules is a valid exercise of the statutory authority to make rules governing the operation of a police force. At the time, s. 26 of the Alberta *Police Act* provided as follows:

- (2) The commission may make rules not inconsistent with this Act governing the operation of a police force of an urban municipality including
  - (a) the conduct, dress, deportment and duties of members of the police force,
  - (b) the prevention of neglect or abuse in the discharge of duties,
  - (c) the efficient discharge of duties by the members of the police force, and

(d) punishment for contraventions of the rules.

In this case, the rule read as follows:

87.1 A member will not invest in any of the following businesses or ventures or accept part-time employment in any of the following occupations:

- (i) bill collector;
- (ii) skip tracer;
- (iii) watchman, security guard, or other security work;
- (iv) taxi or limousine driver, or the owner or operator of a taxi service or limousine service;
- (v) owner, operator, or employee in an establishment in which alcohol is consumed
- (vi) owner, operator, or employee in an establishment in which gambling occurs;
- (vii) insurance adjuster or investigator;
- (viii) private investigator;
- (ix) escort, or an employee of an escort agency;
- (x) process server;
- (xi) armoured car driver or guard;
- (xii) body guard; or
- (xiii) any occupation which requires a member to be armed.

87.2 A member may invest in a business or venture not listed in Section 87.1 and may accept part-time employment in an occupation not listed in section 87.1 providing the following conditions are met:

- (i) the member's effectiveness as a peace officer will not be adversely affected;



(ii) participation in the business or other venture, or part-time employment, will not create a conflict of interest with the member's duties as a peace officer; and

(iii) the business venture, or part-time employment, will not be demeaning to the member's position as a peace officer, or to the service.

87.3 Prior to investing in a business venture or accepting part-time employment to which section 87.2 applies, a member must apply for and receive permission to do so from the Chief of Police. Applications must be in writing and include the name and address of the employer, or owner of the business, and the duties and responsibilities the member will be expected to fulfill.

87.4 A member who is notified by the Chief of Police that his application to invest in a business or venture, or accept part-time employment, does not meet the conditions specified in section 87.2, may, within 30 days, appeal to the Commission.

Such restriction of secondary employment would not likely contravene s. 7 of the *Charter of Rights*. In the *Calgary Police Association* case, the Court of Appeal found no *Charter* violation where the chief of police and the police commission added a provision to the police administration manual prohibiting certain outside employment activities and regulating others. The *Nova Scotia Police Act* now requires municipal boards of police commissioners to establish written policies respecting off duty employment. The policy must prohibit police officers from engaging in the business of serving civil process documents, private investigation and private guard.

Some jurisdictions have extended their regulation in this area to the extent of including outside business interests of family members of police officers.

## **5. Political Activity**

Participation in political activity has historically been considered incompatible with the impartiality necessary to the fulfilment by police of their duties, and many jurisdictions have formulated some type of restrictions on the right of police officers to engage in political activity. These restrictions fall within a broad spectrum ranging from a complete ban on police officers' involvement in political activity to permissive schemes in which police officers have substantive political activity rights.

While the purpose of this discussion paper does not include a detailed survey of political activity provisions across Canada, an example of the extremes is useful. The *Royal Newfoundland Constabulary Act, 1992* is an example of the restrictive approach: a police officer shall not engage in political activity, except in accordance with the regulations, and the Royal Newfoundland Constabulary Regulations provide that a police officer shall not "wear the emblem, mark or insignia of a political party or in another way manifest political partisanship". Recent years, however, have seen a trend in favour of greater political activity rights for police officers. Professor Stenning argues that community-based policing, with its expectation that police be both more proactive and more alive to addressing "underlying causes" of crime, require greater police involvement in the community, which in turn may increase politicization of both police officers and police forces.

Recent trends are evident in both the jurisprudence and legislative amendment. In England, the House of Lords decision in *Champion v. Chief Constable of the Gwent Constabulary* is the leading case, and contains an instructive examination of the scope of permissible political activity by police officers. In *Champion*, a constable was elected to serve as a parent governor of a local comprehensive school, and served on the appointments sub-committee, which interviewed applicants for teaching positions and made recommendations for appointments. The chief constable refused to allow the member to sit on the sub-committee. At issue was the interpretation of regulations which required a police officer to abstain from "any activity which is likely to interfere with the impartial discharge of his duties or which is likely to give rise to the impression amongst members of the public that it may so interfere; and in particular a member ... shall not take any active part in politics". The House of Lords approached the issue by addressing the two principal objections raised by the chief constable. The first was that the constable might have information about an applicant which he had gained only by virtue of his employment. Lord Griffiths, stressing that the regulation prohibited activities *likely* to lead to an impression of unfairness in the public mind, discounted the possibility that a disappointed candidate might think that the constable had improperly used confidential information to prevent the appointment, thereby giving rise to a public perception that the constable's activities as a member of the sub-committee would interfere with the impartial discharge of his police duties. In particular circumstances, Lord Griffiths noted, a constable possessing confidential information may wish to excuse himself from attending a meeting. Second, the chief constable did not want the police involved in controversial decisions which could affect the reputation of the force for impartiality, but Lord Griffiths found no evidence supporting the position that the appointment of teachers would likely lead to public controversy. While Lord Griffith's speech addressed an activity which is less partisan than most political activity, his Lordship avoided interpreting the regulation in a narrow fashion:

Its object is to prevent a police officer doing anything which affects his impartiality or his appearance of impartiality. Impartiality means

favouring neither one side nor the other but dealing with people fairly and even-handedly. The paragraph takes its colour from the particular prohibition on taking part in politics which is an overly partisan activity in which one favours one side to the exclusion of the other. It is activities that are likely to be seen in a similar light that are aimed at, activities that identify those taking part with a particular interest or point of view in a way which will, or may be thought to, make it difficult for them to deal fairly with those with whom they disagree. Exceptionally, it may include activities involving controversial decisions but I would have thought that such occasions would be rare, for surely most of us are, from time to time, involved in controversial decisions without it being thought that we cannot deal fairly in other matters. [...] This restriction is not intended to protect police officers from the occasional embarrassing decision with which they may be faced during off-duty activities; it is there to ensure both impartiality and the appearance of impartiality. There are in my view great dangers in isolating the police from the community and every encouragement should be given to police officers to play a full part in the life of the community in which they live.

The scheme governing permissible political activity for members of the R.C.M.P. was also recently modified after the Québec Superior Court ruled that the existing provisions contravened s. 2 of the *Charter of Rights and Freedoms*.

A number of jurisdictions have now modified their regulations. Ontario recently made O. Reg. 554/91, in which it reformulated its approach to permissible political activity by municipal police officers, and adopted a very permissive approach. A municipal police officer may vote in an election, hold membership or office in an organization engaged in political activity and contribute money or goods to an organization engaged in political activity, and to a candidate. A municipal police officer may engage in a further set of political activities when not on duty or in uniform, as authorized by s. 2:

1. Expressing views on any issue not directly related to the police officer's responsibilities as a police officer, as long as the police officer does not,
  - i. associate his or her position as a police officer with the issue, or
  - ii. represent the views as those of a police force.
2. Attending and participating in a public meeting, including,
  - i. a meeting with elected representatives or government officials, or



- ii. a meeting with candidates in an election.
- 3. Attending and participating in a meeting or convention of a political party or other organization engaged in political activity.
- 4. Canvassing on behalf of a political party or other organization engaged in political activity, or on behalf of a candidate in an election, as long as the police officer does not solicit or receive funds on behalf of the party, organization or candidate.
- 5. Acting as a scrutineer for a candidate in an election.
- 6. On the polling day of an election, transporting electors to a polling place on behalf of a candidate.
- 7. Engaging in any other political activity, other than,
  - i. soliciting or receiving funds, or
  - ii. political activity that places or is likely to place the police officer in a position of conflict of interest.

The police services board or a chief of police may authorize a municipal police officer to engage in certain political activities on behalf of the police force. The regulation also permits the appointment or election of a municipal police officer to a local board other than a police services board, unless such activity interferes with the police officer's duties as a police officer, or places or is likely to place the police officer in a position of conflict of interest. Finally, a municipal police officer other than a chief of police or a deputy chief may be a candidate in a federal, provincial, or municipal election:

- 6. (1) A municipal police officer may be a candidate, or may seek to become a candidate, in a federal or provincial election or in an election for municipal council only while on a leave of absence granted under subsection (2).
- (2) A municipal police officer who seeks to become a candidate in a federal or provincial election or in an election for municipal council shall apply to the board of the municipality in which he or she is employed for a leave of absence without pay and the board shall grant the leave of absence.
- (3) Despite subsections (1) and (2), a municipal police officer may seek to become a candidate or may be a candidate in an election for municipal council without taking a leave of absence if,

(a) the election is in a municipality that does not receive police services from the municipality in which the police officer is employed; and

(b) seeking to become or being a candidate does not interfere with the police officer's duties as a police officer and does not place, or is not likely to place, the police officer in a position of conflict of interest.

(4) Regardless of whether a leave of absence is required under this section, a board shall grant any leave of absence that is requested by a municipal police officer to enable the police officer to seek to become a candidate or to be a candidate in an election for municipal council.

(5) The following rules apply to a leave of absence granted to a municipal police officer under subsection (2) or (4):

1. A leave of absence shall begin and end on the dates specified in the police officer's application, subject to paragraphs 2, 3, and 4.

2. A leave of absence granted to enable a police officer to be a candidate in an election for municipal council shall not begin earlier than sixty days before polling day or continue after polling day.

3. A leave of absence granted to enable a police officer to be a candidate in a federal or provincial election shall not begin earlier than the day on which the writ for the election is issued or later than the last day for nominating candidates under the applicable provincial or federal statute and shall not continue after polling day.

7. (1) A municipal police officer who is elected in a federal or provincial election or in an election for municipal council shall immediately resign as a police officer.

(2) Despite subsection (1), a municipal police officer need not resign as a municipal police officer upon being elected in an election for municipal council if,

(a) the police officer is elected a member of the municipal council of a municipality that does not receive police services from the municipality in which the police officer is employed; and

(b) being a member of the municipal council does not interfere with the police officer's duties as a police officer or does not place, or is

not likely to place, the police officer in a position of conflict of interest.

(3) A municipal police officer who is elected in an election for municipal council and who, as permitted by subsection (2), does not resign as a police officer,

(a) shall not take part at any meeting of the municipal council in the discussion of, or vote on, any question relating to the budget for a police services board under section 39 of the Act; and

(b) shall not attempt in any way, whether before, during or after a meeting of the municipal council, to influence the voting on any such question.

(4) A former municipal police officer who resigns in accordance with subsection (1) and later ceases to be an elected political representative is entitled, on application, to be appointed to any vacant position on the police force for which he or she is qualified under section 43 of the Act.

(5) Subsection (4) applies only if the former police officer,

(a) ceases to be an elected political representative within,

(i) in the case of a former police officer who was elected in a federal or provincial election, five years after resigning as a police officer,

(ii) in the case of a former police officer who was elected in an election for municipal council, three years after resigning as a police officer; and

(b) makes an application to be reappointed to the police force within 12 months after ceasing to be an elected political representative.

(6) Another person's right to be appointed or assigned to a position on the police force by virtue of a collective agreement prevails over the right conferred by subsection (4).

**8. (1)** The period of a leave of absence granted under subsection 6 (2) or (4) shall not be counted in determining the length of the police officer's service, but the service before and after the period of leave shall be deemed to be continuous for all purposes.



(2) Subsection (1) applies, with necessary modifications, to a police officer who has resigned and subsequently been reappointed to the police force in accordance with subsection 7 (3).

In Ontario, police involvement in political activity has become prominent in the past year. The Toronto Police Association's "True Blue" campaign generated various legal proceedings, all of which have apparently now settled. More recently, the O.P.P. Association has involved itself in the Canadian Alliance leadership race, as the following newspaper report indicates:

The union representing 7,000 Ontario Provincial Police officers has sent its members a letter saying Tom Long "has adopted our issues as his justice platform" in his bid to become leader of the Canadian Alliance.

Brian Adkin, president of the OPP Association, sent the letter to his members June 1. Although he says the association is not endorsing any political party - and mailing costs "are paid by Tom Long" - the union president reminds members that it's good political strategy to advance "our justice and law and order goals."

Attached to Adkin's short covering letter, which he said is confidential, is a three-page letter from Long. The Alliance candidate outlines a tough justice platform that could see youth offenders as young as 10 tried in adult court and facing mandatory adult sentences.

Long urges the police to support his candidacy, and encloses Canadian Alliance membership forms.

Adkin spent yesterday at the funeral of OPP Sergeant Marg Eve, 38, who died of head injuries following a pileup involving her cruiser on Highway 401. Reached by The Star on his cell phone, he declined to discuss the appropriateness of his letter "on the day of the funeral of one of our members."

Dave Levac, the Liberal MPP who is his party's critic for police matters, said Ontario police have had the legal right to engage in political activities since Mike Harris' government changed the Police Act in 1998. However, Levac accused Long of exploiting "hot button issues" in his letter.

The letters of both Adkin and Long use the death of OPP Constable Thomas Coffin, shot in the back of the head in an unprovoked attack three years ago, to attack federal Liberal justice policy.



"Will Tom Coffin's killer serve his 25-year sentence?" Adkin asks. Long adds that Coffin's killer "needs to serve his life sentence."

Allen MacDonald was sentenced last month to life imprisonment, without eligibility for parole for 25 years, for shooting Coffin. Under present law, MacDonald could apply at 15 years to have his mandatory 25 years reduced. But an early release is unlikely since MacDonald faces concurrent sentences on other charges, and still must go to trial for threatening to kill Toronto's fire chief.

Paul Rhodes, spokesperson for the Long campaign, said the police association is doing what several other organizations, including the Ontario Medical Association, have agreed to do by sending out Long's campaign literature. It is part of a high-spending, professionally-organized effort to sign up enough Ontario supporters for Long to beat his front-running rivals Preston Manning and Stockwell Day.

Rhodes said the tough law-and-order content of Long's letter is consistent with Long's campaign statements on crime. In the letter, Long says that because the federal Liberals pretend crime is not a problem "our communities are less safe than they were 20 or 30 years ago."

Long advocates reducing the minimum age for trying young offenders to 10 from 12 years, and says that at any age, prosecutors should have the discretion to try youth in adult court, with mandatory adult penalties for serious offences. (Present law provides for such discretion at 14, with a presumption that adult sentences may apply.)

Long calls the OPP "a great source of strength to the Mike Harris government in Ontario" and asks OPP members to support his candidacy "to have a similar impact in Ottawa."

Long was a key Harris adviser and is considered an architect of the Common Sense Revolution. Rhodes said Long has friends in the police association who offered to help his campaign, but Adkin's letter says Long approached him asking about justice issues important to OPP members.

## 6. Options for Consideration

This discussion paper has considered three issues that invite input from interested parties: the application of the complaint process to off-duty conduct; secondary activity; and political activity. Interested parties considering these issues may decide that one or more require attention at present, and various possibilities exist in this regard.

One vehicle to address these issues is a guideline. The police complaint commissioner has authority under s. 50(2)(j) to establish guidelines involving informal resolution of public trust complaints under s. 54.1, and under s. 50(3)(d) to "prepare guidelines respecting the procedures to be followed by a person receiving a complaint". There is some doubt, however, whether the *Police Act* provides authority for a guideline on the issue of off-duty conduct. Moreover, there is uncertainty surrounding the legal status of a guideline. For these reasons, a guideline may well not be the preferred response.

A second vehicle would see the police complaint commissioner formulate a policy or informational report, or similar instrument. There would seem to be no bar to the police complaint commissioner's authority to do so. Once again, however, there is a question regarding the effectiveness of such measures. A policy document, for example, has limited status in law.

Interested parties may see some advantage to a regulatory response. The advantage of a regulation is that regulations have the force of law. Section 74 of the *Act* contains a wide grant of regulation making power.

On the issue of the application of the complaint process to off-duty conduct, there is some advantage to a response which would clarify the distinction between on-duty and off-duty conduct. Despite the fact that much of the case law dealing with this distinction originates from British Columbia – the *Crimeni*, *Love* and *Burnett* cases discussed above – there remains considerable uncertainty among police officers regarding the relevant concepts. There remains some uncertainty regarding the *standard* applicable to off-duty conduct, as well. Thus, some statement that would guide police conduct in this regard would be of use. Interested parties may also wish to address the wisdom of educating police officers concerning the standard of off-duty behaviour.

On the issue of secondary activity, most police departments have put into place some form of policy, and any response would need to consider whether this issue is more properly handled by police departments and police boards on an individual basis, or whether a province-wide standard for secondary activity is more appropriate.


On the last issue – permissible political activity on the part of police officers – the question again arises as to whether this issue is more properly handled on a local or province-wide basis. Political activity rights for police officers is quite a

prominent issue at present, however, and interested parties may wish to give it preventive consideration.

All of which is respectfully submitted.

"Paul Ceyssens"  
Return to Archived Reports

This is Exhibit "26" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.



# **Royal Canadian Mounted Police External Review Committee**

## **Conflict of Interest**



## **Conflict of Interest**

**Royal Canadian Mounted Police  
External Review Committee**

Chairman

Honourable René J. Marin, OMM, QC, LL.D.

Vice-Chairman

F. Jennifer Lynch, QC

Members

Joanne McLeod, CM, QC

William Millar

Executive Director

Simon Coakeley

The Committee publishes a series of discussion papers to elicit public comment to assist the Committee in the formulation of recommendations pursuant to the Royal Canadian Mounted Police Act (1986). The views expressed in this paper are not necessarily the views of the Committee.

Comments are invited; they should be addressed to:

Simon Coakeley  
Executive Director  
RCMP External Review Committee  
Postal Box 1159, Station "B"  
Ottawa, Ontario  
K1P 5R2  
Fax: (613) 990-8969



**Royal Canadian Mounted Police  
External Review Committee**

Discussion Paper Series

Number 10: Conflict of Interest

Director of Research  
Lynne Bennett

with the assistance of:  
Simon Coakeley  
Yvonne Martin  
Suzanne Gervais

Consultant:  
Kenneth P. Swan with the assistance of:  
Ronald G. Pearson

Also published:

Discussion paper 1  
Suspensions - A Balanced View  
Suspensions - Consultation Report

Discussion paper 2  
Relocation - A Painless Process?  
Relocation - Consultation Report

Discussion paper 3  
Medical Discharge - A Police Perspective  
Medical Discharge - Consultation Report

Discussion paper 4  
Post-Complaint Management -  
The Impact of Complaint Procedures on  
Police Discipline  
Post-Complaint Management -  
Consultation Report

Discussion paper 5  
Employee Assistance Programs -  
Philosophy, theory and practice  
Employee Assistance Programs -  
Consultation Report

Discussion paper 6  
Disciplinary Dismissal - A Police Perspective  
Disciplinary Dismissal - Consultation Report

Discussion paper 7  
Off-Duty Conduct  
Off-Duty Conduct - Consultation Report

Discussion paper 8  
Sanctioning Police Misconduct - General  
Principles

Discussion paper 9  
Occupational Health and Safety -  
An Employer Perspective

**FOREWORD**

This discussion Paper is the tenth in a series produced by the Research Directorate of the RCMP External Review Committee.

It could not have been written without the cooperation and assistance of many people in the police community across the country. The Committee would like to extend its sincere appreciation to all those who have helped, particularly those who made time and resources available to search files, compile summaries and share views with the consultant. He asked that special thanks be expressed to Assistant Commissioner G.G. Leahy, Director of Personnel for the RCMP, and Sergeant A.W. Mercer, NCO in charge of the Conflict of Interest Section at RCMP Headquarters, for the assistance rendered in preparing this study.

A few words about the methodology of this study are in order. A companion study on secondary employment, being published as Discussion Paper 11, took place at the same time as this study and involved more extensive survey techniques. This consultant used interviews, mostly conducted by telephone or in writing, to get access to materials which are not on the public record, particularly in relation to actual practices of police forces in real conflict of interest situations.

As a consequence, some of the material provided to the consultant was confidential, mostly because it involved personal information not a part of the public record. Where references to the public record are possible, they are included in the endnotes. Where no reference is given to support anecdotal evidence, the material comes from a summary, either oral or written, given to the consultant by a police force. Where appropriate the force from which the information came is identified; in some cases even this was thought not to be appropriate.

This study builds on earlier discussion papers published by the Committee, and in particular on Disciplinary Dismissal - A Police Perspective, Discussion Paper 6, and Off-Duty Conduct, Discussion Paper 7. To ensure that the present study is free-standing and internally coherent, it has been necessary to go over some of the same ground as is covered in those studies. To the extent possible, however, an attempt has been made to select different examples and illustrations to make the same points, so as to increase the total amount of information available to readers.

Finally, the new RCMP code on Conflict of Interest was not available to the consultant when the study was written and all references are as of September 30, 1991. The Ontario government has since published additional policies relating to conflict of interest and the Assistant Deputy Registrar of Canada has published a document entitled Conflict of Interest - Compliance Measures and Caveats which discusses thirteen different conflict of interest situations which arise under federal guidelines.

Simon Coakeley  
Executive Director  
RCMP External Review Committee

## TABLE OF CONTENTS

### INTRODUCTION

### AN ANATOMY OF CONFLICT OF INTEREST

- 2.1 Types of Conflict
- 2.2 Types of Interests

### WHY IS CONFLICT OF INTEREST REGULATED?

### THE STANDARD OF ETHICAL CONDUCT

- 4.1 In Private Employment
- 4.2 In the Public Sector
- 4.3 In the Police Sector

### DESIGNING CODES TO REGULATE CONFLICTS OF INTEREST

- 5.1 In Private Employment
- 5.2 In the Public Sector
- 5.3 In the Police Sector

### ACHIEVING COMPLIANCE

- 6.1 Disciplinary Responses
- 6.2 Non-disciplinary Responses

### SPECIFIC EXAMPLES OF POLICE CONFLICT OF INTEREST

- 7.1 Secondary Employment
- 7.2 Political Activity
- 7.3 Economic Transfers and Gratuities
- 7.4 Confidential Information
- 7.5 Preferential Treatment
- 7.6 Associations
- 7.7 Public Criticism

### POST-EMPLOYMENT CONSIDERATIONS

### CONCLUSION

### ENDNOTES

### BIBLIOGRAPHY

## Chapter I

### INTRODUCTION

As this discussion paper goes to press, the Royal Canadian Mounted Police is developing new conflict of interest compliance measures for members. These compliance measures will be published as Commissioner's Standing Orders, pursuant to section 69 of the Federal Government's Conflict of Interest and Post-Employment Code for Public Office Holders.<sup>1</sup> This is but the latest example of the "chain reaction"<sup>2</sup> that has been taking place over the last two decades - in government, industry and police forces - in the development of formal policy statements regarding ethical conduct. But the phenomenon is not merely historical. Promoting ethical conduct has been labelled the challenge of the 1990s,<sup>3</sup> and employers are constantly seeking new solutions to ensure that, as one corporate code of ethics provides:<sup>4</sup>

Employees must do more than merely act within the law. They must act in such a manner that their conduct will bear the closest scrutiny should circumstances demand that it be examined.

This challenge is especially important for police forces. In light of the discretionary power exercised by police officers, in circumstances often permitting little direct supervision, there can be "daily opportunity for integrity breakdown".<sup>5</sup> The avoidance of conflict of interest is one of the most important areas of concern under the umbrella of ethical conduct, and most formal codes of ethics have that goal. In the words of a report prepared for the BC Police Commission in response to a particular allegation of conflict of interest:<sup>6</sup>

Conflicts of interest can arise in almost any situation in which a police officer becomes involved. Situations must be clearly defined where a police officer's personal assets, affairs or interests place him in a real, apparent or potential conflict of interest with the duties and responsibilities of the department or situations which could affect his judgement. It is paramount, therefore, that a clear, succinct definition be enunciated to ensure that the outer bounds of permitted activities and conduct be identified.

But individuals have numerous interests, many of which may give rise to conflicts in different situations. The manner in which individuals deal with these situations will depend on the strength of the obligations they recognize - to their employer, to their profession, and to society in general.<sup>7</sup> It is because of this fluidity of the interface between personal interests and public duty that conflict of interest is difficult to define with precision.

Many different definitions have been offered for conflict of interest. Whatever the precise expression, the general intent is usually very similar. Consider some definitions:

... any situation in which they might seem to be deriving inappropriate personal advantage from their position with the Corporation, or in which their individual interests may be in conflict with those of the Corporation.<sup>8</sup>

... when the member, the member's spouse or a dependent in relation to the member has significant private interests, other than permitted private interests, that afford the opportunity for the member to benefit, whether directly or indirectly, as a result of the execution of, or the failure to execute, any office of the member.<sup>9</sup>

... any situation ... of a nature to compromise his impartiality in the performance of his duties or of a nature to influence adversely his judgment and his sense of fairness.<sup>10</sup>

... a situation in which an official has a private financial interest sufficient to influence, or appear to influence, the exercise of his public duties and responsibilities.<sup>11</sup>

It will readily be seen that such definitions lack the detail and specificity necessary for their application to individual circumstances.



## Chapter II

### AN ANATOMY OF CONFLICT OF INTEREST

#### 2.1 Types of Conflict

There have been many attempts to classify conflict of interest, in order to analyze which conflicts are avoidable, and which are permissible. A three-part dissection of conflict of interest achieved a degree of acceptance after the Parker Commission of Inquiry.<sup>12</sup> A "real" conflict of interest denotes "a situation in which a [person] has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities."<sup>13</sup> A "potential" conflict of interest incorporates a concept of foreseeability: when individuals can foresee that a private interest may someday be sufficient to influence the exercise of their duty, but has not yet, they are in a potential conflict of interest. An "apparent" conflict of interest exists "when there is a reasonable apprehension, which a reasonably well-informed person could properly have, that a conflict of interest exists."<sup>14</sup>

Whether a conflict of interest situation involves an actual, potential or apparent conflict, it may result in unacceptable conflict.<sup>15</sup> What constitutes an unacceptable conflict is discussed in Conflict of Interest Rules for Federal Legislators,<sup>16</sup> which identifies four types of conflict. The first, an "inherent conflict", which is therefore unavoidable, is with an interest held in common with other individuals as members of society, i.e. as a parent or home owner. The representative function of legislators on behalf of the electorate in their constituency is a second, specialized form of unavoidable conflict. A third type of conflict is called personally necessary conflicts. These conflicts arise from a legislator's need to live an adequate and satisfying life. The report includes within this category such matters as personal investments, family businesses and professional interests, which lead to conflicts also classified as unavoidable. Finally, there is a category of avoidable conflicts which serves as the basis for regulations. These conflicts are "personal economic interests not fitting into the above categories and which substantially affect the independence of the legislator."<sup>17</sup>

Neither these, nor any of the other classifications or definitions found in formal conflict of interest codes, are entirely satisfactory. The problem is that conflicts of interest occur in an infinite variety of forms.<sup>18</sup> It has been suggested that the field of conflict of interest "may well prove to be incapable of regulation."<sup>19</sup> As one arbitrator stated:<sup>20</sup>

It is by no means easy to set out a code of circumstances which constitute a conflict of interest, for the existence thereof may turn on questions of fact such as the job of a particular public servant and the extent of the interaction with a party outside the Government.

Nevertheless, while it is difficult to define conflict of interest, an attempt at definition is central to most codes of conduct. The more difficult problem is applying that definition to individual situations. This requires a far more detailed analysis of the competing interests.

## 2.2 Types of Interests

The interests in question are the personal interests of the employee, versus the proper and impartial execution of the employee's duties and responsibilities. An employee's personal interest could be considered to be in conflict where the interest:<sup>21</sup>

... would be likely to affect adversely the judgment of an employee and his loyalty to his employer or which the employee might be tempted to prefer to the interests of the employer.

The first matter of concern, in defining the scope of a personal interest, is whether it is truly personal or private in nature - an interest which exists separate from the interests of the general public.<sup>22</sup> If an individual has an interest as a ratepayer in common with other ratepayers, then that interest is no different than that of the community in general<sup>23</sup>. The 1986 Aird Report recommended the inclusion of a "community of interest" exception to formal conflict of interest rules.<sup>24</sup>

The next issue is whether the scope of regulated interests should extend beyond a pecuniary interest. For example, the Green Paper on Conflict of Interest<sup>25</sup> defined conflict of interests as a:<sup>26</sup>

... situation in which a Member of Parliament has a personal or a private pecuniary interest sufficient to influence, or appear to influence, the exercise of his public duties and responsibilities.

The usual justification offered for restricting the definition to that which is pecuniary is the difficulty that would be incurred in attempting to identify or regulate other motivations,<sup>27</sup> such as family, religious, political, institutional, ethnic, and sexual. Yet any of these other motivations could also put an individual in a position incompatible with his or her duties and responsibilities. It has been argued, consequently, that the focus of the definition should be on situations where public interests and private interests (of whatever nature they may be) intersect.<sup>28</sup>

Must a conflicting interest be a direct interest or is an indirect interest sufficient to require scrutiny? A direct interest would provide a possible benefit (whether pecuniary or other) directly to the individual in conflict. An indirect interest would provide a possible benefit directly to some other beneficiary with whom the individual has a relationship. For example, the Ontario *Municipal Conflict of Interest Act, 1983*<sup>29</sup> provides that a member of a municipal council or board would have an indirect pecuniary interest in any matter where the member or the member's nominee, parent, spouse or child:

- is a shareholder in a private corporation,
- has a controlling interest in a public corporation,
- is a director or senior officer in either a private or public corporation,
- is a member of a body,
- is a partner of a person,
- is in the employment of a person or body,



that has a pecuniary interest in the matter.

In the absence of so specific a definition, an indirect interest may be inferred, but it will depend upon a test of remoteness. As an example of how difficult such a test may be to apply, however, the Alberta Court of Appeal held that an extension of the town water line, to the land of the father of a council member who voted on the extension, would not improperly benefit the council member.<sup>30</sup>

... it is unreasonable to infer from a mere expectation that the appellant might benefit from an increase in the value of his father's estate, that he had "a direct or indirect pecuniary interest" in the extension of the water line thereto. To hold otherwise would mean that in no case could a councillor's son vote upon a matter relating to his father's land.

In later Alberta Court of Appeal cases, however, apparently opposite conclusions were drawn<sup>31</sup>. Where a council member had done some work for an applicant before council (for which bills were still outstanding), the court found that the "relationship with the applicant was so fresh and so close that there is a reasonable apprehension of bias to a pecuniary incentive to vote as he did."<sup>32</sup>

If a personal interest is so remote that it cannot reasonably influence an individual, then it should not be considered a conflicting interest. There have been complaints that some conflict of interest regulations have no provision to excuse insignificant interests.<sup>33</sup> A de minimis rule would allow just such a separation of inconsequential interests from conflicting interests. An example that has been offered is the interest of the holder of Bell Canada shares. With hundreds of millions of shares issued, it seems unlikely that holding ten shares would either influence or appear to influence the performance of an individual's duties in relation to Bell Canada.<sup>34</sup>

On the other hand, interests in privately held corporations raise different considerations, even where the interest is held by a family member. The report on allegations of conflict of interest against an Ontario cabinet minister in 1986 reviewed various definitions of 'interest' in such circumstances, and proposed that an unacceptable conflict would require:<sup>35</sup>

- a) some involvement between the Minister or the Minister's family member, as the case may be, and the private Ontario company in question;
- b) the involvement should be more than a mere passive association, such as an endorser or promoter of the company or its product, and one which involves some active conduct, pursuant to some legal or similar duty;
- c) the nature and extent of the Minister's involvement with the private company should contribute measurably to the company's business operations and prospects; and

- d) any contractual involvement between the private company and the Government of Ontario should improve or would likely improve, directly or indirectly, the status or lot of the Minister.

In summary, it is easy to find a broad consensus on the general principle that a person required to serve the public interest:

... should serve only one master and should never place himself in a position where he could be even tempted to prefer his own interests or the interests of another over the interests of the public he is employed to serve. Those requirements constitute the rationale of the doctrine that he should avoid a position of apparent bias as well as actual bias...<sup>36</sup>

Other formulations of the principle establish that one should: act only on matters in which he or she does not have a personal economic interest;<sup>37</sup> avoid activities that might give the appearance of using a public position for personal gain;<sup>38</sup> separate private interests from public interests;<sup>39</sup> resolve conflict always in favour of the public interest.<sup>40</sup> The difficulty arises in attempting to apply these broad principles to specific fact situations. As one corporate code states:

it is unlikely you will find definitive answers to many of your questions in published guidelines.<sup>41</sup>

### Chapter III

#### WHY IS CONFLICT OF INTEREST REGULATED?

The main objective of regulating conflict of interest is to maintain the actuality and appearance of a higher standard of ethical conduct.<sup>42</sup> A significant secondary goal, however, is rooted in efficiency concerns. Like private employers and public service organizations, police forces have an interest in being efficient and responsive to the needs of the public. Their legitimacy depends on the "public's perception of the autonomy of policing from partisan and selfish forces."<sup>43</sup>

Any departure from the principle of impartiality, either actual or apparent, adversely affects levels of public confidence and trust. If private interests are seen to replace the public interest, then uncertainty and resentment mount and cooperation and respect fade, and an appearance of conflict of interest can be every bit as damaging as an actual conflict. A high standard of ethical conduct is thus central both to the reputation for integrity of a police force, and to the effectiveness that reputation enhances.

Not only is public confidence undermined by a conflict of interest, but so is employer confidence in the employee to act impartially. Moreover, morale requires that employees believe in the honesty and integrity of one another.<sup>44</sup> Therefore, situations that give rise to a conflict of interest can adversely impact on departmental efficiency because they:

1. Undermine public confidence and trust in the Force.
2. Adversely affect the employee's own performance.
3. Interfere with the regular operation of the Force.
4. Disturb harmony and discipline in the workplace.<sup>45</sup>

Thus, the regulation of conflict of interest situations can be grounded both on ethical principles and on the need for optimum efficiency.



## Chapter IV

### THE STANDARD OF ETHICAL CONDUCT

There has been a shift, in recent decades, from emphasis on such issues as bribery and fraud (criminal conflict of interest) to more subtle and complex problems of the separation of public and private interests (non-criminal conflict of interest).<sup>46</sup> The conflict of interest provisions within the *Criminal Code* are found under the general provisions on corruption, including bribery, fraud, breach of trust, and selling, purchasing or influencing appointments and offices.<sup>47</sup> In these situations, favouring the private interest involves a criminal intent, and will invariably have direct and catastrophic effects on the employment relationship, especially for members of a police force. The focus of this paper is on non-criminal forms of conflict of interest which, being grounded in ethical and efficiency concerns, give rise to employment related sanctions.

#### 4.1 In Private Employment

##### Non-Unionized Environment

In the private sector, non-unionized employees are governed by the principles of the common law of master and servant. The standard of conduct expected of employees is expressed in *Pearce*:<sup>48</sup>

... where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the master has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him ...

A fundamental term of the master-servant employment relationship is thus that the employee undertakes to act in the interest only of the employer.

The standard of conduct expected of employees is such that they cannot undermine the employer's confidence in their ability to effectively perform their duties. At common law there is a duty of fidelity implied in each contract of employment,<sup>49</sup> pursuant to which a servant undertakes to serve his master with good faith and loyalty.<sup>50</sup> While little is said about the origins of this obligation of loyalty, there is a consensus that it does exist.<sup>51</sup>

An even higher standard of conduct is expected of employees considered to have fiduciary obligations.<sup>52</sup> The concept of fiduciary relationships, is "to impose standards of acceptable conduct on one party to a relationship for the benefit of the other where the one has a responsibility for the preservation of the other's interests."<sup>53</sup> The fiduciary obligation requires that the employee always prefer the interest of the employer to his or her own. At common law, the employment relationship is "a trusting and fiduciary relationship which betokens loyalty, good faith and an avoidance of a conflict of duty and self-interest."<sup>54</sup> While all employees can be considered fiduciaries,<sup>55</sup> the obligations are much more clearly defined for officers, directors, and senior managers, and may even survive the termination of the employment relationship for persons of such rank.<sup>56</sup> How far down the hierarchy such obligations are enforced often depends on the degree of independent authority

exercised.<sup>57</sup>

### Unionized Environment

Employer regulation of unionized employee conduct must be managed within the context of the collective agreement. The terms of a collective agreement are agreed upon by both the employer and the employees and therefore will normally prevail over the principles of the common law. While scope exists for unilateral employer regulation, either pursuant to an express management rights provision or as an exercise of inherent management authority, such unilateral action must conform to the collective agreement, and is subject to arbitral review against well-established principles.<sup>58</sup> Arbitrators have determined, however, that it is not necessary to set out the basic duty of fidelity in writing to be able to enforce it against employees.<sup>59</sup> Consequently, a rule against conflict of interest is assumed to be part of the foundations of the employer-employee relationship and the employer need not have a written policy.<sup>60</sup>

Nevertheless, the use of a written code of ethical conduct is finding increased usage in the private sector for both unionized and non-unionized employees. A recent Conference Board Report indicated that the number of American companies with a code of ethics (or similar policy statement) had jumped from 40% in 1964 to 85% in 1987.<sup>61</sup>

## **4.2 In the Public Sector**

The regulation of public sector employee conduct can result in higher standards than seen in the private sector. Public servants also owe a duty of loyalty to their employer, the government,<sup>62</sup> but government is responsible to the public at large. Consequently, not only must the employer have confidence in the ability of the public servant to effectively fulfil public duties, the public must also have confidence in the actual or apparent impartiality of public servants.<sup>63</sup>

The basis for this requirement is obvious: people want to be treated equally and fairly. The principle of impartiality can be derived either from the rule of law or from social equality.<sup>64</sup> The rule of law, in essence, is that "public officials may exercise only the authority which is authorized by laws which are approved by representative legislatures and applied evenhandedly to everyone."<sup>65</sup> This principle is buttressed by the greater interest in and demand for social equality exhibited in recent decades by citizens who demand more than mere adherence to the letter of the law.

Public officials are trustees, standing in a fiduciary relationship to the public they serve. As a result, their conduct is more restricted than that of a private citizen. For example, public servants are often restricted in their political activities.<sup>66</sup> Political neutrality:



... is a constitutional convention which provides that public servants should avoid activities likely to impair, or to seem to impair, their political impartiality or the political impartiality of the public service.<sup>67</sup>

Successive federal governments have recognized the importance of preserving public trust in the government:

... the precept of fulfilling one's official responsibilities in an objective and disinterested manner lies at the very heart of our system of government.<sup>68</sup>

... to function effectively, the government and public service of a democracy must have the trust and confidence of the public they serve.<sup>69</sup>

However, guidelines which do not have the force of law, the traditional vehicle for conveying such sentiments, have not been perceived as effective instruments to regulate conflict of interest, and there has been increasing demand for legislation.<sup>70</sup> Legislated standards for the conduct of public office holders have consequently become more common.<sup>71</sup> Public servant conduct, on the other hand, is still more often regulated by guidelines, directives or supplementary compliance measures.<sup>72</sup>

Written instruments to regulate conflicts of interest in the public sector include federal, provincial and municipal legislation, guidelines, and supplementary and administrative directives. Early efforts were found in legislation aimed at protecting the independence of legislators.<sup>73</sup> The *Parliament of Canada Act*<sup>74</sup> and various legislative assembly acts continue to contain conflict of interest prohibitions. More recently, however, attention has turned to specific statutes devoted to the regulation of conflict of interest itself.

The federal government does not yet have conflict of interest legislation. Proposed legislation, Bill C-46, *Members of the Senate and House of Commons Conflict of Interest Act*,<sup>75</sup> received first reading in the House of Commons, but now appears destined to collect dust. In 1985, rejecting persistent recommendations favouring a statutory conflict of interest document, the government introduced a non-legislated code, the Conflict of Interest and Post-Employment Code for Public Office Holders.<sup>76</sup> A companion document for public servants was also created.<sup>77</sup>

Most provinces have conflict of interest legislation of some standing.<sup>78</sup> These acts all regulate the conduct of the "political masters". Public servants are dealt with in public service acts, or in guidelines such as the 1987 Standards of Conduct Guidelines for Public Servants<sup>79</sup> in British Columbia, or the 1983 Code of Conduct and Ethics for the Public Service of Alberta.<sup>80</sup>

Supplementary compliance measures are often utilized by government departments to meet specific circumstances. For example, the federal Code prohibits outside activities where they give rise to a conflict of interest, with no real elaboration. In the supplementary compliance measure issued by Revenue Canada<sup>81</sup> several activities are discussed to provide illustrations of situations where conflict is most likely to occur.



Municipal conflict of interest legislation like that in Nova Scotia,<sup>82</sup> Ontario<sup>83</sup> and Manitoba<sup>84</sup> also regulates the conduct of the "political masters" rather than the municipal staff. Municipalities are slowly developing codes of conduct to regulate conflict of interest for their staff.<sup>85</sup> Municipalities, like government departments, also make use of administration policy directives to regulate conflict of interest.<sup>86</sup>

#### 4.3 In the Police Sector

Police forces can legitimately demand the highest standard of ethical conduct from their members because of the exigencies of law enforcement. The socially and politically sensitive nature of public law enforcement requires officers to be impartial, honest and trustworthy.<sup>87</sup> This obligation of impartiality stems from a number of sources. While police officers have a duty of loyalty and fidelity to their nominal employer,<sup>88</sup> the board, municipality, or government that pays them, the duties of police officers are specified by legislation rather than by the respective board.<sup>89</sup>

Police employment is not an ordinary master-servant relationship; instead, a police constable is regarded as a holder of an office.<sup>90</sup> The paradigm formulation of the principle states:

... there is a fundamental difference between the domestic relation of servant and master and that of the holder of a public officer and the State which he is said to serve. The constable falls within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office; he is a ministerial officer exercising statutory rights independently of contract. The essential difference is recognized in the fact that his relationship to the Government is not in ordinary parlance described as that of servant and master.<sup>91</sup>

Therefore, the obligation of impartiality inherent in the office of constable derives from the law itself. The doctrine of police independence involves the idea that police officers are servants only of the law.<sup>92</sup> Police must not show favour in exercising their duties and upholding the law. Their presence is a social resource and should be allocated on the basis of need rather than personal interest.<sup>93</sup>

Moreover, police officers have long considered their work to be a profession.<sup>94</sup> Professionals are traditionally described "as performing a service to the public, as being competent and having integrity in their work."<sup>95</sup> There is thus scope for an element of self-enforcement of ethical behaviour, either through individual standards or peer expectations.

While the obligation of impartiality in law enforcement is clear, it nevertheless has been called an "impossible mandate."<sup>96</sup> Lack of information, time and resources renders total impartiality a difficult if not impossible task. The need for the exercise of police discretion arises from the acknowledgement of the gap between the "ideal (impartial) obligations imposed by the office of constable, and the actual (partial) decisions made every day by existing police officers..."<sup>97</sup> Control of police discretion has two aspects. The larger issue relates to the distributive implications for society as a whole; that is a social question involving the allocation of resources. Conflict of interest

regulations are directed towards the exercise of individual discretion, to ensure that police officers are individually impartial in the manner in which they enforce the law.

The regulation of police conduct is typically accomplished through legislation such as a provincial police act.<sup>98</sup> Codes of conduct are commonly part of the general regulations enacted pursuant to such legislation,<sup>99</sup> which may also authorize the promulgation of force-specific regulations,<sup>100</sup> in the form of standing orders or policy and procedure manuals to regulate conflict of interest. Disciplinary codes may make it an offence to contravene any such policy or procedure. Finally, there may also be secondary legislation, such as a public service or municipal statute, which regulates the conduct of police officers in certain ways.<sup>101</sup>

## Chapter V

**DESIGNING CODES TO REGULATE CONFLICTS OF INTEREST<sup>102</sup>**

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.<sup>103</sup>

A high standard of ethical conduct may be defined through various approaches, including unwritten rules, oaths of office, guidelines, codes of conduct, statutory regimes or ethics commissions. While the use of express rules enforced by discipline is the most obvious mechanism to control and direct behaviour, it is not the only means. Supervision, socialization, training, education, rewards, and inspections are only some of the other mechanisms available.<sup>104</sup>

The importance of culture and values for guiding employee behaviour is becoming more apparent.<sup>105</sup> Rule structures, such as codes of ethics, are traditionally collections of prohibitions. Such rule structures do not motivate people to behave ethically, and a common criticism is that they encourage people to try to find loopholes or to make an end run around the system.<sup>106</sup> Even when hortatory in nature, however, rules cannot eliminate self-interest; they merely assist those individuals who want to act ethically.<sup>107</sup> Thus, while the focus must remain on individual conduct, more emphasis needs to be placed on the collective framework of ideals that influence individual behaviour and characterize an organization. An ethics awareness training program, the commitment of supervisors at every level, and a positive tone in the rule structure are important ingredients in establishing an environment that promotes the highest standards of integrity.

Nevertheless, written rules provide an objective standard for employees and a management tool for measuring performance. A successful ethics program should thus include both a "concerted effort at articulating organizational values and a well-written ethics code."<sup>108</sup> Of the two, a written code of ethical conduct is currently the central instrument for the regulation of conflict of interest.

The problems of definition reviewed above, however, hamper efforts to develop such a code.<sup>109</sup> Codes should be as specific as possible so that employees can govern themselves accordingly, but it is difficult to "envisage in advance and provide for every particular type of improper conduct that the human mind is capable of devising."<sup>110</sup> What constitutes a conflict of interest depends on the facts and circumstances of each specific situation, and codes regulating conflict of interest must "provide flexibility in administration, and be applied on a functional basis. By 'functional' we mean that the scope and content of the procedures would be related to the category and rank of the public office holder..."<sup>111</sup> Functionality may be further enhanced by a more discursive approach, for example by the use of a multi-level code where a general statement is supplemented by illustrative examples of problem areas.<sup>112</sup>

A further caution about the design of codes to regulate conflict of interest. It is vital to avoid the suggestion that employees are somehow inherently untrustworthy. Some will feel that a written code is unnecessary because they are fully aware of the standard of conduct that is expected of

them.<sup>113</sup> As one anonymous observer remarked:

... ethics in any group arises out of a sense of tradition and pride in his particular calling. Humiliate that group. Subject them to constant restriction and supervision. Refuse to trust them in any of their activities... and you destroy any possibility of an effective ethical code.<sup>114</sup>

Therefore, to maximize its effective operation, employers must take care to design a code which is an aid to voluntary compliance with ethical principles and avoids accusatory implications.

Codes generally include some or all of the following elements: credo; definitions; rationale; rules; guidelines; and illustrative examples.<sup>115</sup> A credo should set forth the basic philosophy and guiding principles for the organization; its function is "aspirational and admonitory".<sup>116</sup> Definitions provide a common understanding of the important terms, while the rationale provides the objective to be achieved by the regulation of conflict of interest. In the context of such prefatory material, a rule structure will be easier to understand, and informed compliance easier to secure.<sup>117</sup>

This result may be further aided by expansion of the concepts set out in the rules. Guidelines assist employees in making decisions in situations where it is not possible to set out a global rule, and illustrative examples can demonstrate the rules in action.

### 5.1 In Private Employment

The code of conduct developed by the Royal Bank of Canada provides a good example of a code that opens with a presentation of the corporate objectives, and the basic principles that underly the Bank's approach to doing business.<sup>118</sup>

- To give good value -- contributing rather than exploring;
- To deal with people and institutions fairly and honestly;
- To recognize and respect each person's rights, individuality and human dignity;
- To be a responsible citizen;
- To be a leader, unceasingly striving for excellence in everything we do.

A 1987 survey of 2,000 United States companies found that 64% of the respondents have a corporate credo in which the company philosophy is expressed. It has been suggested that this may be the oldest form of a code of ethics.<sup>119</sup>

Most corporate codes of conduct provide a definition of conflict of interest. Algoma's definition is a situation which can arise:

... when an employee has a personal interest, direct or indirect, in a supplier, customer or competitor of the Corporation; or when an employee is engaged in outside employment or participates in an outside organization which may interfere with the employee's regular duties or affect the employee's working effectiveness.<sup>120</sup>



Definitions in corporate codes tend toward a broad interpretation of conflict of interest that encompasses conflicts of commitment, the impact of outside activities on an employee's energy and time, and the rationale for the code is often combined with the definition. For example, Algoma requires employees to avoid any interest or activity that, "would deprive the Corporation of the time or attention required to perform their duties properly".<sup>121</sup> In contrast, Bell Canada's definition centres on the need for impartiality in fulfilling one's duties; a conflict of interest exists when:

... an employee: has a direct or indirect interest in or relationship with, an outsider, or with a person in a position to influence the actions of such outsiders, which might be implied or construed to: render the employee partial toward the outsider for personal reasons, or otherwise inhibit the impartiality of the employee's business judgement or desire to serve only the company's best interests.<sup>122</sup>

Many corporate codes attach a broader scope to "interest" than most public codes, defining it as, for example, "business, financial or other direct or indirect interests or relationships".<sup>123</sup> Some codes address any interest which affects the impartiality of an employee, without further definition. For some employers, interests include family interests. While one company:

... recognizes that each individual family member may have his or her own interests which are beyond the control of the individual employee, we do expect these principles to apply to the immediate family in a reasonable manner.<sup>124</sup>

Bell Canada recognizes that its employees all have many different interests and relationships and that it is not difficult for situations to arise in which "some of these interests get in each other's way."<sup>125</sup>

Various techniques are used to assist employees to understand when interests conflict. Loblaw's uses a rule of thumb based on the degree of embarrassment to the employee, to another individual or to the company, should the situation in question become public knowledge.<sup>126</sup> Pepsico sets out a number of questions for employees to ask themselves.<sup>127</sup> If they are unable to answer "no" to all of the questions then they are referred to their supervisor to discuss the matter. Codes usually make liberal use of illustrative examples of conflict of interests situations, as actual scenarios tend to assist in the interpretation of extensive rules and guidelines.

Categories of private sector conflict of interest situations are reflected by the typology devised by the Center for Corporate Social Performance and Ethics.<sup>128</sup> Conflicts are arrayed under the employer interest likely to be harmed:

1. The Company: working a second job may impinge on company time or on performance of work.
2. External Relations: the use of corporate funds/facilities for the support of political parties or candidates may create a potential or actual conflict of interest.
3. Employee Relations: accepting an inappropriate gift for personal use from a supplier, customer or competitor, the hiring of relatives and self-dealing may adversely affect morale and personal relationships.
4. Customer Relations: the potential for customers to influence one's judgement in fulfilling one's duties and responsibilities may create conflict.
5. Supplier Relations: having a personal relationship with a supplier may create conflict.
6. Competitor Relations: the potential for one's judgement to be influenced by personal or financial relationships with a competitor may create conflict.

## 5.2 In the Public Sector

Similarly, public sector instruments often begin with a policy rationale or objective, which generally centres on preventing conflicts from arising, and resolving them in favour of the public interest when they do arise. The Quebec *Public Service Act*<sup>129</sup> has a separate chapter for standards of ethics and discipline. The Act points to the importance of loyalty and impartiality:

5. Every public servant is bound ex officio to be loyal and to bear allegiance to constituted authority.

A public servant shall perform his duties in the public interest, to the best of his ability, with honesty and impartiality, and shall treat the public with consideration and diligence.

A common shortcoming of public sector instruments is the lack of a specific definition for conflict of interest. Where one is provided, it is often tautological. For example, the Ontario Public Service Manual of Administration, defines a conflict of interest as, "a conflict between a public servant's personal interest and his/her responsibility as a public servant."<sup>130</sup>

On the other hand, public sector instruments often define the bounds of unacceptable conflicting private interests by specifying exemptions. For example, the Nova Scotia *Conflict of Interest Act* exempts any benefit that:

- i) is of general public application
- ii) affects a member as one of a broad class of persons,
- iii) concerns the remuneration, allowances and benefits of a member as a member



- iv) is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.<sup>131</sup>

Included here are three kinds of community interest and an interest that is too remote. Bill C-46 similarly proposed a community of interest exemption.<sup>132</sup> The Ontario *Conflict of Interest Act* allows for a representative interest exemption.<sup>133</sup>

Remoteness of significance is often defined by a minimum value above which the interest would be considered significant. For example, in the Manitoba *Legislative Assembly and Executive Council Conflict of Interest Act*, the value of the private interest or liability must be \$500 or more to be significant.<sup>134</sup> This legislation specifically identifies a liability as a distinct form of interest.<sup>135</sup>

Most of the instruments focus on pecuniary interests, direct or indirect, of the member, the member's spouse or dependent children.<sup>136</sup> Ontario's *Conflict of Interest Guidelines*<sup>137</sup> for cabinet ministers, however, is more encompassing than most other public codes. It includes any private interests - financial, nonfinancial, direct, indirect, personal or pertaining to another.

### 5.3 In the Police Sector

The conduct of police officers in Canada is heavily regulated, and conflict of interest situations are generally caught up in this regulation. However, police rules seldom provide assistance in deciding what is a conflict of interest, or on such technical issues as whether private interests to be disclosed include nonpecuniary interests, or interests held by a family member. The focus in the police sector has generally been on specific prohibitions of situations that are of particular importance to the forces (such as secondary employment, political activities, or breach of confidence), without actually labelling them conflicts of interest. In addition, the high standard of conduct expected of police officers ensures that certain forms of misconduct are regarded so seriously as to require specific prohibition, rather than leaving them to the generally of conflict of interest.

The new Ontario *Police Services Act, 1990*<sup>138</sup> is atypical among provincial police legislation in explicitly proscribing conflict of interest situations. Paragraph 49(1)(b) of the Act prohibits officers from engaging in any activity "that places him or her in a conflict of interest." No further definition is provided for conflict of interest.

The *Royal Canadian Mounted Police Act* is also explicit in its treatment of conflict of interest. The standard expected of every member requires that they, "avoid any actual, apparent or potential conflict of interests."<sup>139</sup>

Many police statutes or regulations require an oath of allegiance or oath of office. In British Columbia, for example, all constables must solemnly swear that:

... I will well and truly serve our Sovereign Lady the Queen, her heirs and successors

according to law ... without favour, affection, malice or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved...<sup>140</sup>

More specific is the oath of office of the RCMP which states:

I... solemnly swear that I will faithfully, diligently and impartially execute and perform the duties required of me as a member of the Royal Canadian Mounted Police, and will well and truly obey and perform all lawful orders and instructions that I receive as such, without fear, favour or affection of or toward any person.<sup>141</sup>

It is this requirement of impartiality that makes the oath a general tool for regulating conflict of interest, as breaches of these oaths can give rise to disciplinary consequences.<sup>142</sup>

Most police legislation deals with police misconduct through the use of a code of discipline, generally found in the regulations enacted pursuant to a police act.<sup>143</sup> The various codes of discipline are all similar in that they make it a disciplinary default to engage in any action that constitutes:

- a) discreditable conduct;
- b) insubordination;
- c) neglect of duty;
- d) deceit;
- e) improper disclosure of information;
- f) corrupt practice;
- g) abuse of authority

Conflict of interest is not generally itself a defined form of misconduct in such regulations. Consequently, it is often found in the guise of discreditable conduct. A police officer engages in discreditable conduct by, "acting in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit upon the reputation of the police force"<sup>144</sup> Conflict of interest situations fall within this heading because, as discussed earlier, they can affect the morale of a police force and/or the level of public trust in the police force. This is made express in the *RCMP Regulations*. An act or conduct of a member that, "is prejudicial to the impartial performance of the member's duties", is a disgraceful act that brings discredit on the Force.<sup>145</sup>

However, many of the other disciplinary headings can also be invoked by a conflict of interest. In order to avoid a conflict of interest, officers must perform their duties in a disinterested and impartial manner. If an officer fails to properly investigate an offence, R is neglect of duty. If the officer fails to investigate because the person involved is the same person to whom the officer wishes to sell a car, then it would also be a conflict of interest. An officer who uses confidential information gained as a result of being a police officer could be charged for improperly disclosing information. If the officer used this information for private gain or to assist a relative, then it would also be a conflict of interest.<sup>146</sup> Similarly, conflict of interest could result in an abuse of authority, deceit or insubordination, or might constitute misconduct under two or more heads at the same time.

The use of such amorphous concepts in codes of discipline has been replaced as the primary mechanism to control conflict of interest in some forces. Quebec now has a *Code of ethics of Quebec police officers*<sup>147</sup> that applies to relations of the public with members of the Sûreté du Québec and municipal forces. It begins with a general section setting out its objective and rationale. The Code is intended:

... to ensure better protection of the public by developing high standards of public service and professional conscience within police departments...<sup>148</sup>

The second section deals with the duties and standards of conduct of a police officer. Each provision within this section begins with a positive pronouncement, such as, "A police officer must perform his duties with integrity",<sup>149</sup> followed by a list of prohibited activities. Article 9 deals with conflict of interest. It reads:

A police officer must perform his duties disinterestedly and impartially and must avoid putting himself in a conflict-of-interest situation liable to compromise his impartiality or to adversely affect his judgment or fairness.

The express prohibitions under this heading deal with: 1) the acceptance of a gift, favour or advantage liable to compromise the impartiality of the person receiving the gift; 2) the offer of a gift, favour or advantage liable to compromise the impartiality of the person receiving the gift; 3) recommending the services of a particular attorney to someone with whom the officer has been involved in the performance of duties; and 4) soliciting money from the public through the advertising or sale of tickets.

The contents of this code are expanded in the *Regulation Regarding the Internal Discipline of the Police of the Communauté Urbaine de Montreal*.<sup>150</sup> The first part of the regulation reproduces the *Code of ethics of Quebec police officers*. The second part establishes the office of an ethics commissioner and the procedures to follow in light of any complaints regarding the Code.

The third part sets out the duties of officers and therefore the expected standard of conduct. The oath of allegiance and oath of discretion are used as the basis for a prohibition against the use of confidential information for personal gain.<sup>151</sup>

Police officers also have an obligation to perform their duties with integrity. This expands into a prohibition against the personal use of employer property,<sup>152</sup> and failing to inform the director of situations which place the officer or appear to place the officer in a conflict of interest, compromise the officer's impartiality, or affect unfavourably the officer's judgment or loyalty.<sup>153</sup>

The officer also has a duty, "to conduct himself with dignity and avoid any behaviour likely to make him lose the confidence and the consideration that his duties require or to compromise the prestige or the effectiveness of the service".<sup>154</sup> The categories of activities prohibited under this wide duty include associating with criminals, recommending a particular lawyer, secondary employment, selling or advertising tickets, and political activities.

These duties to act impartially, loyally, with integrity, and so as to retain the public trust, are all obviously intertwined in the duty to avoid a conflict of interest. A breach of duty under any of the above categories could just as easily be an example of a conflict of interest as of the listed prohibition.

Section 6 requires officers promptly to obey the orders and directives of superiors. It makes it a disciplinary default to refuse to disclose private interests when requested by the director.<sup>155</sup> The Code thus contemplates some form of disclosure, but the compliance procedure is not dealt with in detail.

The *Regulation respecting the code of conduct and discipline of members of the Sûreté du Québec*,<sup>156</sup> dealing with the internal discipline of the force, required members to perform their duties "in a disinterested and impartial manner."<sup>157</sup> A member was required to avoid:

... any situation where he would be in a conflict of interest of a nature to compromise his impartiality in the performance of his duties or of a nature to influence adversely his judgment and his sense of fairness.<sup>158</sup>

Disclosure to a supervisor was only required when members believed themselves to be in, or likely to be in, a conflict of interest situation.<sup>159</sup> The Code provided no assistance to the supervisor in deciding how to resolve the situation.

The regulation of conflict of interest in the Winnipeg Police Department is subject to municipal legislation. The *Winnipeg Police Department Regulations*<sup>160</sup> were established by by-law as authorized by the *City of Winnipeg Act*.<sup>161</sup> These differ little from other regulations. The City of Winnipeg also has a *Code of Ethics for Employees*,<sup>162</sup> adopted in 1982, which applies to police officers. Provisions cover preferential treatment, secondary employment, disclosing confidential information, accepting gifts, and personal use of City-owned property.

Generally, the various police statutes also authorize or direct provincial police commissions and municipal police boards to make force-specific rules. For example, s. 28 of the *British Columbia Police Act*<sup>163</sup> states:

- (1) Every board shall make rules not inconsistent with this Act and the regulations respecting the



- (a) standards, guidelines and policies for the administration of the municipal police force,
- (b) prevention of neglect and abuse by its municipal constables, and
- (c) efficient discharge of duties and functions by the municipal force and municipal constables.

Such regulations may take the form of standing orders, policy manuals, or administration manuals. For example, the code of conduct in the Calgary Police Administration Manual requires police officers to:

avoid situations which could present a conflict of interest, or the appearance of a conflict of interest, and situations which could affect one's ability to act objectively.<sup>164</sup>

Part 1.4 of the RCMP Administration Manual, provides an opportunity for a more complete analysis of conflict of interest situations and the means to resolve them. At a general level, members must:

Act at all times with integrity and prudence in order to promote the best interests of the public and the Force.<sup>165</sup>

More specifically, the following Conflict of Interest Guidelines apply to all members of the Force:<sup>166</sup>

2. It is by no means sufficient for a person in a position of responsibility in the public service to act within the law. There is an obligation not simply to obey the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. In order that honesty and impartiality may be beyond doubt, public servants should not place themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, a public servant should not have a pecuniary interest that could conflict in any manner with the discharge of his official duties.

3. No conflict should exist or appear to exist between the private interest of public servants and their official duties. Upon appointment to office, public servants are expected to arrange their private affairs in a manner that will prevent conflicts of interest from arising.

4. Public servants should exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired during the course of their official duties, which information is not generally available to the public.

5. Public servants should not place themselves in a position where they could derive any direct or indirect benefit or interest from any government contracts over which they can influence decisions.
6. All public servants are expected to disclose to their superiors, in a manner to be notified, all business, commercial or financial interests where such interest might conceivably be construed as being in actual or potential conflict with their official duties.
7. Public servants should hold no outside office or employment that could place on them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner.
8. Public servants should not accord, in the performance of their official duties, preferential treatment to relatives or friends or organizations in which they or their relatives or friends have an interest.

In order to comply with the disclosure requirements of guideline 6, members must report to their commanding officer the details of any privately held pecuniary interests which "conceivably could give rise to an actual, or potential" conflict of interest. The supervisor will inform them of the steps required to comply with the provision.<sup>167</sup>

The onus is on the individual member to decide when to disclose. However, interests are not adequately defined for members to make an informed decision in relation to guideline 6, nor are the compliance measures which would comport with the requirements of guideline 3. Compliance measures for specific situations that may give rise to a conflict of interest, such as secondary employment, the acceptance of gifts, or purchasing surplus assets, are not found in a compliance section of the conflict of interest section of the Manual, thereby depriving members of easy access to such information.

This is typical of the manner in which the police sector now addresses conflict of interest. There are less likely to be discursive policy instruments which set out, in an orderly progression, the philosophy and objectives of an ethical code with expansive definitions and clear-cut compliance measures. The emphasis instead is on prohibiting or regulating activities specifically addressed, rather than on expounding a doctrine of conflict of interest. Similarly, there are less likely to be sophisticated mechanisms for achieving compliance. The usual tool for enforcement is discipline.



## Chapter VI

### ACHIEVING COMPLIANCE

#### 6.1 Disciplinary Responses

Conflict of interest lies within the generality of the duty of loyalty. At common law, any conduct that causes an employer to lose trust in an employee is misconduct that constitutes just cause for immediate dismissal.<sup>168</sup> The right to dismiss is absolute. It is not necessary to prove any actual harm or prejudice to the employer as a result of the conflict of interest,<sup>169</sup> nor does it matter that the conflicting interest would benefit both the employer and the employee.<sup>170</sup> The rule is that "where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him".<sup>171</sup>

However, disciplinary responses are usually considered appropriate only where employees are aware of the conduct that is expected of them and fail to meet that standard. It is widely accepted that the objective of discipline is to provide employees with an opportunity to correct job-related shortcomings. Discipline is the process by which employers attempt to foster employee compliance with a set of standards - usually written. An earlier ERC study, Disciplinary Dismissal - A police perspective, suggests that the role of discipline is to "establish work and behaviour rules and to enforce these rules by imposing sanctions on those who break them."<sup>172</sup> Disciplinary rules are thought to be necessary to ensure that employees are treated consistently and fairly and to allow the organization to operate effectively.

For this reason, many corporate and government ethical codes require that employees sign to certify that they have read and understand the rules. In addition, training is often provided to promote compliance with the code, and to ensure that employees are also aware of the consequences of breaching rules, especially what conduct would warrant dismissal. Most codes simply provide that failure to comply with the provisions could result in discipline, up to and including discharge.<sup>173</sup>

While such warnings are valuable, they may not be strictly necessary in order to justify discipline. The master and servant relationship, discussed above, does not apply to police officers. Consequently, in one case, there was held to be no obligation on the part of the chief to inform a constable as to the consequences of the latter's act in order to render the act disciplinable.<sup>174</sup> Such a view of discipline is of little assistance in enforcing ethical behaviour; it is only operable in the context of clear rules and an emphasis on punitive discipline.

Approaches to enforcement of conflict of interest codes can be either negative or positive. Negative enforcement focuses on punishment and deterrence, while positive enforcement focuses on educating the employee so as to encourage responsible employee conduct. Positive enforcement techniques are an important ingredient in the development of an environment that values a high standard of ethical behaviour. It is important to emphasize that, while disciplinary rules and procedures are an important element in securing compliance, they should operate only when other, more subtle, methods have failed.

Traditional organizational responses to misconduct typically progress from counselling, to

warnings in the form of oral or written reprimands, to suspensions with or without pay, and finally to dismissal. The rate of progression relates to the severity of the misconduct. The focus of organizational responses to conflict of interest, however, should generally be on eliminating the conflict. For example, the Royal Bank's objective is to:

... implement a disciplinary system which **keys in on** and corrects the **cause** of unsatisfactory employee behaviour in a positive manner, encouraging improvement in the employee's conduct by ensuring the employee clearly understands his/her responsibilities.<sup>175</sup>

This is also the philosophy of Pepsico where, if a conflict exists:

... and there is no failure of good faith on the part of the employee, it will be Pepsico's policy to allow a reasonable amount of time for the employee to correct the situation...<sup>176</sup>

The approach is to encourage awareness of employer concerns regarding conflict of interest situations and provide measures to assist employees to avoid or rectify problems. Non-punitive management responses can vary from returning a gift, terminating an activity, or interest, disposing of an interest, or realigning job functions on a temporary or permanent basis, and are discussed in greater detail below.

Police force responses may depend on whether or not the alleged misconduct is thought to be of a serious nature. For example, the Alberta Police Regulations offer a supervisor an opportunity to counsel the officer.<sup>177</sup> The *RCMP Act*<sup>178</sup> also allows for informal disciplinary actions such as counselling, recommendation for training or transfer. For misconduct of a more serious nature, and depending on the applicable legislative provisions, police officers could be dismissed, ordered to resign, demoted, suspended, reprimanded, or fined.<sup>179</sup>

Where discipline is necessary, the jurisprudence stresses that each particular case must be decided on its own peculiar facts.<sup>180</sup> In deciding a disciplinary response, consideration has been given to the following factors:

1. whether or not the employee in question is responsible for a part of a process whereby members of the public are granted or denied licenses, benefits, etc.,
2. the extent to which the employee exercises discretion in any part of such a process,
3. the extent to which he deals with the public, and is seen by them to be instrumental in the process, and
4. the extent to which clear guidelines on the nature of conflict of interest have been promulgated, and, if they have not, whether the nature of the employee's



positions is such that he can be expected to reach his own reasonable conclusions or seek advice on the issue of conflict of interest.<sup>181</sup>

These factors are appropriate considerations in response to conflict of interest in the police sector.

Dismissal may not be the appropriate response where the employee can be rehabilitated.<sup>182</sup> The appropriate question is whether the conduct reasonably causes irreparable harm to the employment relationship.<sup>183</sup> A breach of conflict of interest rules may, in an extreme case, however, constitute a repudiation of the employment contract.<sup>184</sup>

In most employment situations, discipline arises only where intentional misconduct is involved, but conflict of interest cases may present different considerations. Even though legal consequences normally only flow from reality, a finding of conflict of interest does not depend on wilful wrongdoing.<sup>185</sup> Thus, in a conflict of interest situation, a real conflict could require a disciplinary response, while a potential or apparent conflict of interest, on the other hand, could benefit from a non-disciplinary response. Many definitions of conflict of interest take this into account, making it a breach only if the individual knows that official conduct might further a private interest.<sup>186</sup> The *Manitoba Legislative Assembly and Executive Council Conflict of Interest Act* forgives an inadvertent breach:

Notwithstanding anything in this Act, where a judge finds that a member violated a provision of this Act unknowingly or through inadvertence, the member is not disqualified from office, and the judge shall not declare the seat of the member vacant, in consequence of the violation.<sup>187</sup>

Responses to conflict of interest situations which do not justify discipline could include non-disciplinary measures such as transfer, leave, or administrative termination should the conflict not be possible to eliminate.

## 6.2 Non-disciplinary Responses

As a general proposition, the discipline structure is a very poor tool for securing compliance with conflict of interest codes. The problem is that having a conflict of interest is not really morally culpable in itself; it is only when the conflict is resolved unethically that culpability arises.

At the same time, however, the importance of appearances is such that the mere existence of a conflict may have to be resolved without waiting to see whether it will produce culpable conduct. For this reason, more sophisticated codes include obligations and restrictions, but may also include techniques to minimize conflicts of interest. The most common of these techniques are avoidance and disclosure.<sup>188</sup>

Avoidance encompasses not only the circumvention of new involvements that may lead to a conflict, but also the shedding of old ones:

... rather than an individual continually worrying about whether a particular decision will affect one of his or her specific vested interests, and rather than having the public perceive that a public office holder could be ensconced in a position to confer benefits upon himself or herself, ... the problem should be removed in advance by requiring divestment of certain types of assets and relinquishing of certain types of interest by those in authority.<sup>189</sup>

Obviously, overbroad avoidance rules may result in significant financial loss or hardship. Conflict of interest regulations must balance the need for high standards of ethical conduct against the need for competent personnel.<sup>190</sup> The person sought after for public service will often have significant outside interests.<sup>191</sup>

By requiring excessive divestment of assets, some individuals may be dissuaded from accepting public office.

A less intrusive form of avoidance involves the use of trusts. For these purposes frozen trusts and blind trusts are the most commonly used. A frozen trust is one in which the trustee maintains the holdings in the same condition as when placed in the trust. Thus, while the beneficiary always knows the precise contents of the trust, any conflict which could arise from the temptations of dealing with those assets is avoided. Conflicts involving the enhancement of the assets, of course, are not prevented.

A blind trust, on the other hand, allows the trustee to deal with the assets, making all the investment decisions on behalf of the beneficiary. The beneficiary has no control over the assets while in trust, and no knowledge of the current asset mix. There are limits to the uses of a blind trust, as the Parker Commission made clear:

... the only assets that should be placed into a blind trust are those that can truly and easily be sold by an arm's length trustee, such as publicly traded securities. The blind trust should never be used for any other kind of holding, and certainly not for anything like a family business or family firm.<sup>192</sup>

The Commission recommended that the use of blind trusts should be abolished.

There are, of course, costs associated with trusts. In addition to opportunity costs where assets are locked in a frozen trust, or losses due to faulty administration of a blind trust, there are the actual trust fees to be considered. Some codes make provision for reimbursement for the latter;<sup>193</sup> none apparently contemplates compensation for the former.



The enforcement technique found in many recent codes of ethics is a requirement of disclosure.<sup>194</sup> Disclosure of all interests lets the employer participate in the decision as to which interests may lead to conflicts, and can thus provide the employee who has made full disclosure with a certain degree of protection from the consequences of honest errors in judgment.

Disclosure may be made to a designated official and kept confidential, or the report may be available for public inspection.<sup>195</sup> Each mechanism has obvious advantages and disadvantages, and will have differing applicability to specific circumstances.

A requirement for disclosure in this way raises important issues regarding the right to privacy.<sup>196</sup> While this is especially the case for public disclosure, it also holds true for confidential disclosure. The degree of infringement will also depend on the breadth of the requirement. For example, in *Canadian Fram*, the employees objected to disclosing the business interests of members of their families, arguing that:

... the right to disclose a person's financial and business interests to some third party is not inherent in a familial relationship and that an employee, purporting to do so, without the express consent of the family member involved, would be acting without any colour of right, authority, or justification whatsoever.<sup>197</sup>

A third form of compliance measure, which may be used either as an alternative or as an adjunct to disclosure, is refusal - the specific disclosure of a personal interest at the time when the interest comes or appears to come into conflict with public duties and responsibilities.<sup>198</sup> Refusal may be confidential or public, narrow or broad, much the same as disclosure. While it is less intrusive, it also places more of the responsibility on the employee to identify and report possible conflicts.

Disclosure, discussion and consultation are the primary processes of compliance in private sector codes. The onus is on the individual to disclose, often in writing to a designated official, any interests or activities which might reasonably be perceived to be in conflict with public duties or responsibilities. Each individual's situation is considered to be different, and is differently assessed.

Compliance measures for the public sector include avoidance, confidential disclosure, public declaration, disqualification by refusal, or divestment. Disclosure is the primary method to deal with conflicts of interest. Disclosure can be required upon initiation into the position, on a periodic basis, or whenever interests or duties of office change. Specific disclosure, or refusal, may also be required when the private interest conflicts, has the potential to conflict, or appears to conflict with public duties. The *Alberta Conflict of Interest Act*<sup>199</sup> reflects a belief that refusal is the best method for dealing with conflicts of interest. Disclosure of an interest that could reasonably impact on a decision, at the time of the decision, is required.<sup>200</sup> Because it is not possible to tell, in advance, the impact of all a member's various interests, refusal permits timely notice of a possible conflict.

Public sector codes often list extensive exemptions from the interests required to be disclosed. Disclosure of non-exempted interests is required, insofar as they are known to the holder. Should any material change in holdings occur, it is imperative that the new information is promptly provided to the proper official.<sup>201</sup>

In the public sector, disclosure requirements are often hedged around by freedom of information and/or privacy legislation, which can provide public access to information provided on a confidential basis, or deny access to interests which ought properly to be public. Where privacy laws have paramountcy, special handling of disclosure data may be necessary to Comply.<sup>202</sup>

The final compliance measure of any effective code is some system of review through an ethics office or commission. Some control authority to assist employees in meeting the requirements of the code is essential to provide guidance and to ensure consistent application of the rules. Because employees and the ethics authority may not always agree as to the existence of a conflict or as to the proper measures to deal with it, a dispute resolution mechanism will also be necessary. Such a mechanism can range from a system where the ethics authority always prevails to a structure of independent binding adjudication.

The role of such an authority in ensuring compliance varies widely. IBM directs employees to consider the many factors that only they can know, in deciding whether to seek advice from the in-house legal counsel, supervisor or designated official. That official considers the circumstances and the requirements of the code to determine whether the employee is in compliance with the code or should divest an interest or realign job duties.<sup>203</sup> Other companies use an ethics committee to advise employees on how to comply with the code, and to enforce its provisions.<sup>204</sup>

While the ultimate responsibility lies on the individual to identify a real or potential conflict in the public sector as well, assistance is often provided either to discuss possible lines of action, or to act to divest or to disclose the interest. Designated officials may review disclosure forms to determine if there is a conflict of interest and advise employees of appropriate actions.<sup>205</sup>

Designated officials may be supervisors, judges or ethics commissioners. The New Brunswick *Conflict of Interest Act*<sup>206</sup> requires disclosure to be made to a designated judge. Many codes authorize the establishment of an ethics commissioner or committee, and this is a recurring feature of new codes.<sup>207</sup>

The use of a compliance agency may provide a mechanism for *ad hoc* exemptions. Bill C-46 would establish a three member commission to aid in the interpretation and enforcement of the Act, and to designate "any asset, liability, financial interest or source of income"<sup>208</sup> as a permitted private interest. In addition the commission could decide what form of compliance would meet the needs of the statute for each particular member's situation. While such a broad mandate provides flexibility, there has been doubt expressed whether enough guidance is provided to the commissioners in executing their discretion.<sup>209</sup>

Similarly, the Alberta legislation empowers the ethics commissioner to exempt otherwise



prohibited activity if it is disclosed and approved.<sup>210</sup> Under the Ontario guidelines, the Premier can make exceptions, to divestment where there is "undue hardship".<sup>211</sup> The Edmonton city policy allows the City Manager to waive or alter the provisions of the Code for any situation in which it is deemed to be in the public interest to do so.<sup>212</sup> These provisions similarly promote flexibility, possibly at the expense of certainty.

A designated official can assist in determining the appropriate method of compliance, by taking into account:

- a) the specific responsibilities of the public office holder;
- b) the value and type of the assets and interests involved; and
- c) the actual costs to be incurred by divesting the assets and interests as opposed to the potential that the assets and interests represent for a conflict of interest.<sup>213</sup>

Monitoring of employee compliance with the conflict of interest regulations may also engage line management, in addition to or instead of ethics advisors. Supervisors can monitor the situation by having annual reviews, reminding employees of their obligations in light of any possible changes in their personal circumstances and ensuring that annual declaration forms are filled out for all employees. Employees may be required to certify that they have read and understood the conflict of interest regulations as a condition of employment. The City of Burlington Code of Conduct imposes a duty on the supervisor to ensure that employees in their section are aware of and complying with the code.<sup>214</sup> Some companies, like Cominco, go further and require managers to ensure that all decisions taken within their department conform to the requirements of the Code.<sup>215</sup> Johnson & Johnson's code is more stringent, requiring supervisors periodically to certify that employees in their sector are in compliance.<sup>216</sup>

While the designated official can monitor the employee disclosure forms and the supervisor can monitor the activities of the employee, other interested parties may have a role to play. Any affected individual may be able to ask for an advisory opinion on his or her own situation. Under some codes, so may a member who has reasonable and probable grounds to believe that another member is in a conflict of interest.<sup>217</sup> The Alberta legislation goes further than this and allows any person to request that the Ethics Commissioner investigate an alleged breach.<sup>218</sup> In other jurisdictions, members of the public who wish to launch an investigation are probably directed to their elected representatives. In the police sector, public complaints mechanisms are often a source of allegations of conflict of interest.

## Chapter VII

### SPECIFIC EXAMPLES OF POLICE CONFLICT OF INTEREST

#### 7.1 Secondary Employment

For many police managers, secondary employment constitutes the paradigm of conflict of interest. Indeed, many of those managers who were contacted for this study treated secondary employment as virtually the only source of conflict of interest, and had to be pressed to consider other aspects of the problem.

As has been observed elsewhere as well, secondary employment by police officers is widely regulated and often prohibited in theory, but in practice occurs virtually everywhere and appears to be often tolerated or ignored.<sup>219</sup> Even where police management is diligent in enforcement of restrictions on secondary employment, however, particular instances rarely lead to formal discipline, and thus seldom yield formal case reports. Most respondents to this study indicated that their forces dealt with secondary employment issues, when they became sufficiently serious to require management intervention, through counselling and discussion, with a view to managing the problem before it reached the status of a disciplinary interview. Only high profile or persistent cases seem to lead to formal discipline.

One police force has developed a procedure to identify and monitor (if necessary) any secondary employment of officers. On a weekly basis, members of the internal investigation unit research publications listing new businesses, statements of claim, judgments, and bankruptcies. If the name of a police officer (or spouse) appears in these sections, an investigation may be carried out to ensure that no real or perceived conflict of interest is associated with the business activity. We heard of no other enforcement program of any similar rigour.

As a result, the following section must be seen as an understatement of the degree of involvement by individual police officers in secondary employment. At the same time, the rigid formalism of most police regulations on the subject of secondary employment must be viewed in the light of the anecdotal evidence of enforcement practices which are far more interactive and mediative than would appear from the regulations themselves.

Allowing police officers to engage in second jobs can be helpful in developing new and useful skills, building community relations, and providing supplementary income. Traditionally, however, there have been concerns about the effect of outside interests on an officer's public duty to impartially enforce the law (conflict of interest), as well as concerns regarding the extent to which outside interests interfere with his or her ability effectively to carry out police duties and responsibilities (conflict of commitment).<sup>220</sup>

A conflict of commitment can occur when an employee, as the result of holding a second job, is less attentive, careful, devoted, or efficient in relation to the primary occupation. For example, Loblaw's prohibits employees from accepting outside employment which:

... deprives the Corporation of the time and attention required to perform their duties,

without the approval of the Local Business Conduct Committee.<sup>221</sup>

The Halifax Police Department prohibits secondary employment which "could diminish the member's physical and or mental ability to discharge his duty responsibly, safely and efficiently in keeping with officer safety and professional requirements."<sup>222</sup> Opponents of secondary employment argue that:

... such things as the compressed work week, secondary employment, and paid overtime are seriously damaging to the professionalism and dedication of police officers. They argue that these policies encourage police officers to treat their policing duties as some form of part-time activity which is secondary in importance to some other vocation.<sup>223</sup>

On the other hand, the arbitral jurisprudence on secondary employment and outside activity suggests that:

... unless a substantial and legitimate business reason exists, the employer has no authority, control, interest or jurisdiction over an employee's behaviour outside the hours of his employment.<sup>224</sup>

Most arbitrators recognize the general principle that governing one's own life is a right of employees unless the disputed activity directly affects the business of the employer. For example, in *Henderson Machinery*<sup>225</sup> an employee pulled double shifts by working a full shift at a second job after his first shift was over. The ramifications in terms of safety seem obvious, but the arbitrator found no evidence of deterioration in the employee's performance in this case, and therefore no reason to prohibit the second job.

In the police sector, however, another primary concern is with the high potential for conflict of interest in situations of secondary employment of police officers.<sup>226</sup> It is possible, of course, to conceive of a conflict of interest in every secondary employment situation involving police officers.<sup>227</sup> Questions will always arise about the likelihood of a police officer enforcing the law evenhandedly against an outside employer. This raises a threshold problem which has led some forces to prohibit secondary employment. More recently, however, the trend in police forces has been away from absolute prohibitions.

The Sûreté du Québec stand at one end of the continuum, with an absolute prohibition on secondary employment:

A member of the Police shall occupy himself solely with the work of the Police Force and the duties of his position. He may not assume any other employment nor engage in any business, directly or indirectly.<sup>228</sup>

RCMP officers are also very restricted in the outside employment that they may accept. In requiring an officer to behave in a manner that is in the best interest of the RCMP, a member is prohibited

from engaging in "any employment outside the RCMP on an employer/employee basis or on a personal service contract basis."<sup>229</sup> There are only a few exceptions to this general prohibition such as community and public-spirited activities, or assisting friends. Members are also prohibited from engaging in any trade or business activity,<sup>230</sup> subject to exceptions such as remunerative hobbies, mere investment without active participation in management, operating a hobby-farm, or some other specifically authorized exception.<sup>231</sup>

Most jurisdictions, however, like the Halifax Police Department, allow secondary employment if it is consented to by the Chief of Police:

No member, except with the written consent of the Chief of Police, shall engage directly or indirectly in any other occupation or calling and shall devote his time and attention to his chosen profession and to the service of the Department.<sup>232</sup>

The Edmonton Police Service stresses that an officer's primary occupational responsibility is to the Police Service. The following procedure is required in order to receive permission to engage in extra employment:<sup>233</sup>

Applications must be in writing and include the name and address of the employer or owner of the business, and the duties and responsibilities the Member will be expected to fulfill.

Individual permission, subject to annual renewal each January, will be granted on written application provided there is no conflict of interest, as interpreted by the Chief. Members will be deemed in conflict of interest if their private/extra employment and/or related external interests impair their judgment, independence or unbiased performance of Police duty, or might reasonably be expected to do so. The onus for ensuring that a conflict of interest does not exist during the entire period for which permission has been granted rests with the Member(s) involved and, for cause, the Chief may at any time rescind previously granted permission.

The Winnipeg Police Force also requires prior approval by the Chief of Police before an officer can engage in extra employment<sup>234</sup> but these regulations are currently under review. It is anticipated that the current secondary employment provision will be revised by including a section outlining types of employment that would be considered in conflict with the position of Police Officer. These activities would be prohibited.

The Edmonton Police Service currently prohibits two specific occupations - private security work and driving taxis.<sup>235</sup> The Calgary Police Force, on the other hand, prohibits a number of outside interests including:<sup>236</sup>

- a. Bill collector;
- b. Skip tracer;
- c. Watchman, security guard, or other security work;



- d. Taxi or limousine driver, or the owner or operator of a taxi service or limousine service;
- e. Owner, operator, or employee of an establishment in which alcohol is consumed;
- f. Owner, operator, or employee in an establishment in which gambling occurs;
- g. Insurance adjuster or investigator;
- h. Private investigator;
- i. Escort, or an employee of an escort agency;
- j. Process server;
- k. Armored car driver or guard;
- l. Body guard; or
- m. Any occupation which requires a member to be armed.

These comprehensive regulations were unsuccessfully challenged in the *Calgary Police Association* case.<sup>237</sup> The Alberta Court of Appeal upheld a lower court ruling to the effect that the regulation was *intra vires*, not unreasonable, and did not deprive the applicants of their "liberty" as guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms*. The court concluded that a police officer does not have an unrestricted right to engage in part time employment, without considering the particular justifications for the rules prohibiting certain forms of secondary employment.

The Ontario Provincial Police had a policy similar to that of Calgary, in limiting certain types of activities, until the Ontario Police Services Act 1990,<sup>238</sup> was passed. Under the previous regulations, officers were required to apply for permission to engage in secondary employment.<sup>239</sup> There was an:

... unwritten presumption that consent would not be granted unless the officer could establish some need or justification for the employment.<sup>240</sup>

This presumption has now been replaced in the new Act Section 49(1) states that an officer shall not engage in any activity:

- a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;
- b) that places him or her in a position of conflict of interest, or is likely to do so;
- c) that would otherwise constitute full-time employment for another person; or
- d) in which he or she has an advantage derived from employment as a member of a police force.

To invoke discipline under this section, management would be required to prove, on the facts of each case, that the member is in breach of these restrictions. In other words, officers will be able to work unless management can prove that, in these circumstances, a conflict of interest arises from the employment.

While most restrictions are silent on the rationale for restricting secondary employment, some analysis is possible of the reasons for many of the common prohibitions of certain types of employment. The trend towards more relaxed secondary employment provisions reflects an attempt to balance the rights of individuals against the need for impartial law enforcement. Nevertheless, there is still a desire to restrict activities that:

1. suggest that the officer's authority may improperly serve private rather than collective interests, ie. process server or bill collector;
2. involve working for establishments that profit from activities prohibited by statute, or licenced for closely regulated goods by statute, ie. working in a bar;
3. involve ownership or managerial responsibilities in businesses where a conflict of interest is presumed, ie. security or investigative businesses in competition with the Force.<sup>241</sup>

A major concern with some kinds of employment is that a police officer may exercise the office of constable and the functions of a peace officer whether on or off duty. Secondary employment which can blur the officer's status and source of authority is thus suspect. For this reason, employment requiring firearms, or which might involve arresting someone, is often prohibited. Similarly, members who engage in any business or employment for which they could also be required to perform any inspections or regulatory functions as part of their police duties run a serious risk of conflict.<sup>242</sup>

In addition to these concerns relating to authority, illegality and "competition", real concerns arise because of privileged sources of information. Police officers have ready access to information that is not generally available to private employers, but would be of enormous value. Access to criminal records, motor vehicle records, police intelligence, crime statistics and investigative reports could simplify the work of many civilian occupations. Process servers, private investigators, bailiffs, lawyers, paralegals, security firms, bonding agencies, and many similar occupations on the periphery of law enforcement could benefit greatly from police information not legally available to them. For this reason, such secondary employment is almost invariably prohibited for police officers, since even if the temptation to use police information for private ends were resisted, the appearance of conflict is almost irresistible.

But even other businesses can benefit from improper use of such information. For example, a Metro Toronto officer was charged with corrupt practice for using CPIC information for personal purposes. He had caused person checks to be made on individuals he was planning to hire as employees of a domestic cleaning business which he owned.<sup>243</sup>

Another concern which has been expressed, but which does not appear to be directly addressed in any of the existing codes, amounts to the concept of a conflict of commitment taken to an extreme. Police officers, along with members of several other occupations, may be subject to compulsory service in emergency or disaster situations. For this reason, secondary employment as an ambulance driver or other emergency response personnel, or service in the reserve Armed Forces,



might render a police officer subject to conflicting mandatory service obligations in respect of the same emergency. This possibility may argue against permitting such secondary employment for police officers.

To the extent that police codes identify secondary employment as a kind of conflict of interest issue, questions of the nature and extent of the private interests which raise concerns arise here as in public and private sector codes. The *O.P.P. Police Orders* define conflict of interest as any "business, undertaking or calling that involves financial gain in which a member participates while not on duty."<sup>244</sup> Members of the Sûreté du Québec may not assume, "any other employment nor engage in any business, directly or indirectly."<sup>245</sup> Also, in the case of the Halifax Police Department, members may not without permission "engage directly or indirectly in any other occupation or calling."<sup>246</sup> It is unclear what impact the qualifying word "indirectly" has on the scope of the prohibition, or the extent to which it might catch family interests.

Closely related is the issue of remoteness. The *O.P.P. Police Orders* state:<sup>247</sup>

These guidelines are not intended to apply to investments in business or other undertakings where the member's participation does not result in any form of control or influence on the business or undertaking. In these latter cases, it is assumed that each member will exercise good judgment and bear in mind their position as a police officer.

In a case involving an officer convicted of discreditable conduct for engaging in the second occupation of selling novelties and gifts, this provision was invoked on appeal by the Ontario Police Commission to determine whether or not the appellant retained a prohibited interest in the sideline business, in light of the officer's claim that he did not have a substantial interest. Such questions concerning the parameters of private interests are not adequately dealt with in police statutes, regulations or policies.

The RCMP Standing Orders, Part 1.4 does touch on the issue of remoteness as it relates to the prohibition on business activity. It states:

Close identification with the business of a relative (e.g. one's spouse) to the point where it appears that a member is employed in, or by that business or is a part of it, ... is considered to be engaging in a business activity.<sup>248</sup>

Along with the provincial forces, and possibly some regional forces, the RCMP shares a problem of geographical differences in the impact of secondary employment. Occupations which may be relatively innocuous in some postings may cause considerable difficulty in others. For example, an RCMP officer operating a tow truck business would present his superiors with very different considerations if assigned to security duties in Ottawa than if assigned to highway patrol duties in rural Saskatchewan. While this is a somewhat extravagant example, similar differences could arise with any number of secondary occupations from one posting to the next. Such considerations do not usually arise in municipal police forces.

The opposite aspect of this geographical differentiation is that the larger forces have increased opportunities for managing certain types of conflict through transfers. Indeed, a reassignment to different duties, even without any geographical movement, is more possible in larger police forces than in smaller municipal forces. This added dimension is an important factor to be considered in assessing any code of conduct which broadens rights to secondary employment.

## 7.2 Political Activity

In the private sphere, employees are generally encouraged to participate in political activities, so long as it is clear that they are not acting as representatives of the corporation.<sup>249</sup> However, both the public and police sectors have a tradition of political neutrality that requires that employees:

1. do not engage in partisan political activities
2. do not express publicly their personal views on the policies, programs or personalities of the government or its opponents.<sup>250</sup>

The rationale for regulating political activities<sup>251</sup> in both the public and police sectors can be derived from the need for impartiality, or more importantly, the appearance of impartiality.

While the provinces differ in how they deal with various political activities, most now grant a leave of absence to permit a civil servant to run for public office, but otherwise significantly restrict political activity. That the provinces have the power constitutionally to require public servants to take a leave of absence to run for public office, and to restrict other activity, even in the federal sphere, was established in *O.P.S.E.U. v. A.G. of Ontario*.<sup>252</sup>

Since the *Charter of Rights* was added to the constitution, however, there have been significant challenges to such restrictions. In 1986 the Nova Scotia Supreme Court struck down the *Civil Service Act* provisions which required civil servants to resign in order to stand for election,<sup>253</sup> thus motivating legislation change in that province. A civil servant is now entitled to a leave of absence, and is entitled to return to work if unsuccessful.<sup>254</sup> If elected, a civil servant is entitled to a leave of absence up to the point of a second successful term of office, at which time employment is deemed to have been terminated.<sup>255</sup> Not all of the provinces allow the leave of absence to continue should the member be elected, instead deeming the candidate to have resigned.

Like the Nova Scotia *Civil Service Act*, the Ontario *Public Service Act*<sup>256</sup> is a two-tier system, in which some employees are more restricted in their activities. Included in the approximately 6,000 public servants in the "restricted category", are 4,000 members of the Ontario Provincial Police.<sup>257</sup> An OPP officer, as a Crown employee, may therefore only:

- 1) vote;
- 2) be a member of a political party;
- 3) make a financial contribution to a political party;
- 4) engage in non-partisan political activity



254

- 5) attend meetings of "all candidates"; and
- 6) comment publicly on matters not directly related to party platforms or to their particular area of responsibility as an employee.<sup>258</sup>

These regulatory restrictions are now under review, chiefly as a result of a recent change in the political climate. Both public servants and police officers have been the subjects of discussion papers on political activities, as will appear below, and change is anticipated in the near future. Some sense of what may happen is provided by the case of Ontario municipal police officers who are prohibited from engaging in any political activity, according to section 46 of the *Police Services Act, 1990*,<sup>259</sup> unless permitted by regulation. The regulations, which were promulgated on October 3, 1991, are discussed in detail below.

Other jurisdictions utilize a single general provision directed at maintaining a member's impartiality. The *Code of Ethics and Discipline of Members of the Sûreté du Québec*,<sup>260</sup> s. 21 directs members to be politically neutral in the performance of their duties. There is no other provision governing the political activities of members. The regulations for the Vancouver Police Force are similar in that the sole provision governing political activities reads:

I will abstain from any public expression of political opinion which might give offence to any person or which might influence any election.<sup>261</sup>

Some forces require permission in order for members to engage in some political activity. The Calgary Police Services Administration Manual<sup>262</sup> directs members to apply for a leave of absence to run for provincial or federal office. A member who is elected must resign. One member who ran for mayor of a satellite community without complying with the rule subsequently resigned his mayoralty.

In other forces, the regulations allow a leave of absence in such situations. The *Winnipeg Police Department Regulations*, established in 1974, required severance if the member was elected.<sup>263</sup> This regulation was recently superseded by the *City of Winnipeg Act*<sup>264</sup> which allows police officers, as municipal employees, to take a leave of absence if elected to political office.

The *RCMP Regulations* preserve some scope for low-profile political activity:

... nothing herein shall be construed to affect the right of a member to privately support any political party, to privately express an opinion on any political subject or candidate, to attend political meetings while off duty and not in uniform or to vote as the member chooses.<sup>265</sup>

However, the rights of RCMP officers to engage in political activities are otherwise severely restricted.

Section 57(1) states:

A member shall not

- a) engage in any work for, on behalf of or against any person seeking election or re-election...
- b) engage in any work for, on behalf of or against any political party; or
- c) be a candidate for election ...

The phrase "engage in work for" is also used in s.33 of the *Public Service Employment Act*.<sup>266</sup> The Federal Court of Appeal in *Osborne v. The Queen*<sup>267</sup> struck down the provision as being too vague. However, on appeal, Sopinka J. for the Supreme Court of Canada stated that "difficulty of interpretation cannot be equated with the absence of any intelligible standard," while striking down the restrictions on other grounds.<sup>268</sup>

The key issue in addressing political activities of police officers is to strike a balance between permitting members "to exercise their individual, democratic rights to engage in political activity,"<sup>269</sup> and protecting the public's right to an impartial police service.<sup>270</sup> Similarly, restrictions on the political rights of public servants are said to serve three basic objectives:

- 1. To protect the right of all Canadians to fair and equitable treatment in their dealings with the public service
- 2. to protect the right of the government to receive impartial advice
- 3. to protect public servants against punitive measures based on partisan political considerations.<sup>271</sup>

These arguments are also applicable in support of police neutrality in politics.<sup>272</sup>

Much concern has been expressed about the overbreadth of regulations which restrict political activity. The D'Avignon Committee report<sup>273</sup> in 1979 encouraged full political participation as a right of citizens, limited only in those exceptional cases where:

... any indication of partisan political interests would compromise the reputation of the public service for impartiality or would damage the individual's effectiveness as a public servant.<sup>274</sup>

The Report went on to recommend a three-tier regulatory system fashioned on the British model. This system, involving a restricted category, an intermediate category and an unrestricted category has also been promoted in the 1991 discussion paper on The Extension of Political Activity Rights for Ontario Crown Employees.<sup>275</sup> Included within each category would be:

Restricted Category	-	Deputy Ministers and Senior Management
Intermediate Category	-	Management personnel, excluded personnel, AEA's (bargaining unit employees performing allocative, evaluative and adjudicative functions)
Unrestricted Category	-	The vast majority

The discussion paper adopts the focus of the 1986 Ontario Law Reform Commission Report on Political Activity, Public Comment and Disclosure by Crown Employees<sup>276</sup> on AEAs - those employees involved in adjudicative, evaluative or allocative decision-making, in their day-to-day dealings with members of the public.

An AEA is defined as:

a crown employee whose actions may give rise to a "reasonable apprehension of bias" by the public, because:

- their duties involve a **significant amount of contact** with individual members of the public (or with organizations);
- they make, or may seem to the public to **make, adjudicative, evaluative or allocative decisions** affecting them; and
- their **political activities are likely to be known to the public** that they serve.<sup>277</sup>

A police officer could easily fall into the intermediate category, given the nature of police discretion and the higher standard of conduct expected of police officers. It is of interest, however, that the Ontario Law Reform Commission declined to deal with the question of police political activity, despite the status of O.P.P. officers as public servants under the Ontario legislation. The Commission concluded:

In our view, however, political activity by police officers raises very different issues than political activity by Crown employees, issues that are beyond the scope of our present study.<sup>278</sup>

The question of police political activity was, however, recently addressed in the Ontario Solicitor General's discussion paper on Political Activity Rights for Police Officers in Ontario.<sup>279</sup> The possible suggested approaches were again, very restricted political rights, broad, but not unrestricted political rights, and no restrictions. It is clear that, in balancing these rights, under the



Charter of Rights and Freedoms, only reasonable limits will be permitted.<sup>280</sup>

In fact, at least in the case of municipal police officers, the balance has been struck firmly on the side of individual liberty. A regulation made under the *Police Services Act*, 1990, section 46 on October 3, 1991 allows broad, although not completely unrestricted, rights for municipal police officers to participate in political activity at the federal, provincial and municipal level.<sup>281</sup> A broad range of specific political activities are listed as permissible, in some cases subject to particular restrictions, with the net effect that there appears to be very little political involvement denied to a municipal police officer.

Participation of a public nature is allowed only when the officer is not on duty and not in uniform, and participation in an election as a candidate in a federal or provincial election, or for office as head or member of a municipal council, requires a leave of absence without pay during the campaign, and resignation from the force if elected. Reinstatement in employment within a period of six years is, subject to certain restrictions, available as of right upon ceasing to hold office. Police chiefs and deputy chiefs are not permitted to be candidates under this provision.

Police officers are also allowed, without resigning or taking a leave, to be appointed to or run for election to a local board, such as a school board, public library board, local board of health or planning board. For obvious reasons, service on or participation in political activities in relation to a police services board is excluded. This right is also subject to the conditions that it not interfere with the performance of the officer's duties as a police officer, or place or be likely to place the officer in a position of conflict of interest.

The regulation permits a police officer while not on duty and not in uniform to express views on any issue not directly related to his or her responsibilities as a police officer. The officer must not, however, associate his or her position as a police officer with the issue, or represent the views as those of a police force.

Where authorized to do so, however, an officer may express views on any issue, or attend and participate in a public meeting, as a representative of the force. No such authorization, however, is allowed during an election campaign to permit an officer on behalf of the force to support or oppose a candidate or a political party, or a position taken by a candidate or political party.

Finally, there are two express limitations on political activity. A police officer must not participate in soliciting or receiving funds, and must not engage in any political activity that places or is likely to place the police officer in a position of conflict of interest. This overriding obligation to avoid a conflict of interest is consistent with the way in which other public agencies have dealt with the liberalization of political rights.

The difficulty with expanding rights to political activity is much the same as for any liberalization of conflict of interest rules - ultimately only the individual can judge when the exercise of such a right could give rise to a conflict. This may be addressed by a residual obligation, in general terms, to exercise political rights in a manner consistent with other obligations.



Canada Mortgage and Housing Corporation, for example, has such a residual requirement. Employees are permitted to engage in an extensive list of political activities, but to balance the need for impartiality, employees are directed to:<sup>282</sup>

- avoid directing Public attention to themselves as being active supporters of a given party or candidate;
- refrain from conduct which might compromise or be perceived to compromise their ability to carry out their duties in an impartial manner; and
- be mindful that, in conducting any political activities, the perception of their political impartiality will depend upon many circumstances unique to them, such as the nature and public visibility of their political activities and their public service duties, their place of work and their level of responsibility as CMHC employees.

It seems likely that the question of political activity by police forces will be a matter of considerable discussion in the near future, particularly as the Ontario initiatives attract attention across the country. It is an area where there has been relatively little analysis in the past, and which would certainly justify further study. The issues involved in police political activity include virtually all of the subjects discussed in this paper, particularly including questions of conflict of interest, possible use of confidential information, and association issues.

Moreover, a somewhat different set of considerations arises when police political activity is carried out through a police association. There have been occasions when police associations have taken direct and public interest in the outcome of a municipal election, and there may be other instances where members of police associations, in pursuit of their collective interests, have contributed funds or assistance to a campaign. Such interesting considerations are, unfortunately, beyond the scope of the present paper.

### **7.3 Economic Transfers and Gratuities**

The acceptance of gratuities becomes problematic when it may reasonably be inferred that the gift could influence the fulfillment of an officer's duties and responsibilities. Any debate on the propriety of the acceptance of gratuities by police officers inevitably raises the well-known example of the officer who receives free coffee and donuts in the neighbourhood donut shop. On the one hand, a police officer "that most worldly and cynical of men - knows better than anyone else that "you don't get nothing for nothing" in this world."<sup>283</sup> Consequently, all proffered gifts should be refused. However, others take the position that officers should be encouraged to accept "freely offered minor gratuities and that such gratuities should be perceived as the building blocks of positive social relationships between our police and the public..."<sup>284</sup> The latter view appears to have made relatively few inroads yet in the police sector.

The language commonly utilized in discussing the permissible acceptance of gifts in the corporate sector centers on "customary", "modest" or "usual." The Code of Conduct for Ingersoll Rand states:

In today's competitive business climate, the offering or receipt of promotional material or gifts of nominal value is not unusual... The Corporation expects its employees to exercise sound and good judgement in avoiding any situation which might cast a detrimental reflection upon the Corporation.<sup>285</sup>

Algoma, on the other hand, sets out a number of tests which must be met before the gift can be accepted.

It is appropriate to accept a gift so long as:  
 It is not accepted with the intent to influence the recipient within his or her area of responsibility;  
 It is consistent with generally accepted business practices;  
 It is not in contravention of any law or regulation;  
 It is not in the form of cash, bonds or negotiable securities;  
 It is so limited in value that it is not an attempt to buy the recipient's favour as a bribe, payoff or other improper payment, and;  
 such that full, public disclosure would not embarrass or in any way reflect unfavourably on the Corporation or recipient.<sup>286</sup>

The idea that acceptance of an economically insignificant gift should be allowed can also be seen in the public sector. Here too, moderate hospitality is recognized as part of customary business practice. For example, the *Conflict of Interest and Post-Employment Code for Public Office Holders* allows the acceptance of gifts if they, "a) are within the bounds of propriety; b) do not bring suspicion on the office holder's impartiality and c) would not compromise the integrity of the Government."<sup>287</sup>

The concern with defining which gifts are significant has meant that many codes only prohibit the acceptance of gifts over a certain value. The *Ontario Act Respecting Conflicts of Interest of Members of the Assembly and the Executive Council*<sup>288</sup> prohibits the acceptance of any but incidental gifts and requires disclosure of any of those that are valued at over two hundred dollars (or a cumulative total of \$200 for a year). The *Manitoba Conflict of Interest Act*<sup>289</sup> requires disclosure of all gifts, as well as disclosure of the donor. The new *Alberta Conflict of Interest Act*,<sup>290</sup> on the other hand, requires Members to obtain approval of the Ethics Commissioner before keeping any gift. Approval is granted only where:

... the Ethics Commissioner is satisfied that there is no reasonable possibility that retention of the fee, gift or other benefit will create a conflict between a private interest and the public duty of the Member.<sup>291</sup>

Police forces are most likely to adopt either this requirement of prior consent or a blanket prohibition of the acceptance of gifts, possibly subject to an exception for minor and customary hospitality. Under the general heading of avoiding conflict-of-interest situations the *Code of ethics of Quebec police officers* stipulates that:

A police officer must not:

- (1) directly or indirectly solicit, accept or demand from any person a gift, a reward, a commission, a kickback, a discount, a loan, repayment of a debt, a favour or any other advantage or consideration liable to compromise his impartiality, judgment or fairness;<sup>292</sup>

In addition, police officers may not offer gifts which would impair the impartiality of that person in the performance of his duties.

This is also the case for the Vancouver Police Department. A member who comes into possession of a gift is required to "immediately forward it to the Chief Constable's Office accompanied by a written report outlining all the circumstances."<sup>293</sup> The Calgary Police Service directs members to acquire the prior consent of the Chief before accepting any gift.<sup>294</sup> The provision makes sure that members understand the extent of its coverage:

In order that there be no doubt about the extent or coverage of this policy it includes a prohibition against accepting free meals or drinks.<sup>295</sup>

The RCMP Administration Manual has extensive directives relating to the acceptance of gifts. The return of gifts from domestic sources is absolute,<sup>296</sup> accompanied by a letter explaining RCMP policy.<sup>297</sup> However, the RCMP also allows for "customary" and "incidental" gifts:

Unsolicited, infrequent benefits such as minimal hospitality or very small gift items which are a normal expression of business courtesy or advertising may be accepted providing they will clearly not result in any actual, apparent or potential conflict of interest nor cast suspicion of favoritism or lack of objectivity.<sup>298</sup>

This provision in theory at least is a very minor exception to a relatively stringent prohibition.

The acceptance of gratuities is sometimes considered under "corrupt practice" in some of the police Acts. For example, the *Alberta Police Service Regulation* consider it a corrupt practice if a member:

directly or indirectly solicit[s] or receive[s] a payment, gift, pass, subscription, testimonial or favour without the consent of the chief of police;<sup>299</sup>

There is obviously a fine line between conflict of interest and corrupt practice. Some definitions of corrupt practice closely resemble the conflict definitions seen above in this paper. For example, the *British Columbia Police (Discipline) Regulation* identify as a corrupt practice a situation where a member:

- b) places himself under a pecuniary or other obligation to any person in such a manner



- as might affect the proper performance of his duties as a member of the police force,  
or  
c) improperly uses his position as a member of the police force for private advantage.<sup>300</sup>

Similarly, in an Ontario case described above, an officer who used CPIC information to further his own outside business was originally charged with corrupt practice, in that he improperly used his position for private advantage.<sup>301</sup> In that case, the charge was reduced to avoid the element of corruption, which was not apparently thought to be borne out on the facts.

On the other hand, an OPP case which came to our attention involved a conviction for accepting a secret commission. An officer had accepted a cellular telephone and free repairs to his automobile from a tow truck company in return for directing service calls to that company. There, the element of corruption was clear. Some commentators also use the word much more loosely, referring to corruption when they talk about free coffee or meals and the favours expected by the donors. Whatever the label applied, the concern is for the impartiality of police in the execution of their duties.

#### 7.4 Confidential Information

An individual who makes use of confidential information, not available to the general public, to advance a personal or private interest is involved in a conflict of interest.<sup>302</sup> Whether the information is used for personal benefit or to benefit another, the employee is not acting in an impartial manner.

The duty of confidentiality arising from the employment relationship requires that employees not use confidential information learned in the course of employment to benefit themselves or to harm the interest of the employer.<sup>303</sup> For example, in *Laverty v. Cooper Plating*<sup>304</sup> a potential conflict of interest occurred because the sales manager had full knowledge of her employer's products, costs, pricing, customer accounts and other details that would be helpful to her common law husband's business which was in direct competition with her employer.

Algoma's Code of Ethics states:

Employees shall not use for their own financial gain, or disclose for the use of others, inside information obtained as a result of their employment with the corporation.<sup>305</sup>

The "insider information" provisions in the public sector codes are to the same effect. Manitoba's *Conflict of Interest Act* states:

No member or minister shall use, for personal gain or the gain of any other person, information which is not available to the public and which the member or minister acquires in the performance of his official powers, duties and functions.<sup>306</sup>

A case in which an employee of Revenue Canada used information obtained in the course of his

official duties to assist his personal investment decisions resulted in discharge.<sup>307</sup>

It is also universally held to be a disciplinary offence for police officers improperly to disclose confidential information. Confidentiality is often addressed in oaths of office as well as in codes of discipline. For example, the Oath of Office for police officers in Alberta states:

... and that I will diligently, faithfully and to the best of my ability execute according to law the office \_\_\_\_\_ of and will not, except in the discharge of my duties, disclose to any person any matter or evidence that may come to my notice through my tenure in this office, so help me God.<sup>308</sup>

The Oath of Secrecy for the RCMP states:

I, solemnly swear that I will not disclose or make known to any person not legally entitled thereto any knowledge or information obtained by me in the course of my employment with the Royal Canadian Mounted Police.<sup>309</sup>

The various police codes of conduct are similar in intent to those of the private and public sectors. This is made clearest by the code of discipline for the Sûreté du Québec which identifies as a breach of discipline, situations where an officer is found to be:

d) using for personal ends, or for the purpose of obtaining a benefit or a profit, information obtained while performing his duties or as a result of his position in the Police Force.<sup>310</sup>

The RCMP Administration Manual is more specific in orientation. A member cannot use confidential information: to endorse or support a person or organization;<sup>311</sup> to profit from a private business transaction;<sup>312</sup> to trade in securities;<sup>313</sup> or, without approval, to provide confidential information to the public.<sup>314</sup> The conflict of interest guidelines for the RCMP also deal with confidential information in the customary manner, stating:

Public servants should exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired during the course of their official duties, which information is not generally available to the public.<sup>315</sup>

A breach of confidence can also lead to other forms of conflict of interest. For example, the *Alberta Police Service Regulation* defines a breach of confidence to consist of:

ii) giving notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of the warrant or service of the summons.

v) signing or circulating a petition or statement in respect of a matter concerning



the police service, except through the proper official channel or correspondence or established grievance procedure;<sup>316</sup>

In addition, the use of confidential information can also give rise to concerns regarding the post-employment use of that information, as is further discussed below.

## 7.5 Preferential Treatment

Given the discretionary nature of the policing function, preferential treatment is of central concern to police managers. An obvious example of a conflict of interest situation arises where an officer is, or appears to be, partial to certain individuals. However, regulatory provisions, even in public codes, are not common. The Conflict of Interest and Post-Employment Code for Public Office Holders deals with the avoidance of preferential treatment:

A... public office holder shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends have an interest.<sup>317</sup>

Family relationships tend to be a major problem area in the public sector. Examples abound: A CPIC employee assisted his wife in processing her UIC application;<sup>318</sup> a Supply & Services employee tampered with a bidding process so as to benefit family members;<sup>319</sup> a Revenue Canada employee put her son in a privileged position by giving him the inside story on a contract to service the department's computers.<sup>320</sup> The Alberta Code of Conduct and Ethics for the Public Service deals specifically with relatives:

Employees who exercise a regulatory, inspectional, or other discretionary control over others shall, wherever possible, disqualify themselves from dealing with relatives, including parents, parents-in-law, brothers and sisters, and grandparents, with respect to those functions.<sup>321</sup>

The Alberta Government Personnel Manual - Management Employee<sup>322</sup> further describes how such a conflict of interest should be resolved. If substitution is not possible, an employee immediately should make the supervisor aware of the predicament.



264

We were told of a problem of disqualification which arose in one police department where, on two occasions, separate officers were involved in the investigation of relatives. In one case, the officer disqualified himself. However, in the other, the officer felt that he could maintain his impartiality and proceeded with the investigation. No official action seems to have been taken or even contemplated.

Relatives are not the only possible recipient of preferential treatment; friends are also a source of concern. A Metro Toronto officer is currently under investigation on an allegation that he used police surveillance to conduct a "private investigation" as a favour to a friend.<sup>323</sup>

For the most part, Canadian police services have not directly addressed preferential treatment as a problem. Members of the Winnipeg Police Department, being subject to the City of Winnipeg Code of Ethics for Employees, are directed to "not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to all..."<sup>324</sup> However, most police departments would have to handle such situations under the general conflict of interest provision - i.e. directives to avoid situations which could affect one's ability to act objectively.<sup>325</sup>

Nevertheless, as seen above, many police discipline codes treat as a culpable breach of confidence the narrow issue of directly or indirectly informing a person for whom a warrant has been issued.<sup>326</sup> In one old case, a municipal officer was dismissed for breach of confidence, for informing a citizen that he was the object of a stake-out being conducted by detectives.<sup>327</sup>

The Montreal Urban Community code of discipline which was in force previous to the current Code of Ethics and Discipline of the MUC, had such a narrow provision.<sup>328</sup> The new Code includes a broad provision which force managers anticipate will encompass preferential treatment:

Police officers must at all times conduct themselves with dignity and avoid any behaviour likely to make them lose the confidence and the consideration that their duties require or to compromise the effectiveness of the service.<sup>329</sup>

The RCMP conflict of interest guidelines deal directly with the issue of preferential treatment. Section 8 states:

Public servants should not accord, in the performance of their official duties, preferential treatment to relatives or friends or to organizations in which they or their relatives or friends have an interest.<sup>330</sup>

The emphasis in the provision on organizations, as well as relatives and friends, leads to a broader consideration of associations as a form of conflict of interest.

The opposite of preferential treatment has also caused some problems. Discriminatory enforcement of the law against certain individuals or groups is perhaps even more destructive of public trust in police forces, particularly among those affected, and particularly where the discrimination is on grounds generally accepted as inadmissible, such as race, colour, sex or religion,

to name only a few. Detailed discussion of such issues is beyond the scope of this paper, but recent events involving the Winnipeg police force provided voluminous material for further study.<sup>331</sup>

## 7.6 Associations

The RCMP takes a broad approach to associations which give rise to conflicts of interest. The Manual states that a member shall not:

become a member of any organization which, by its nature, may influence constrain the impartial exercise of his/her duty;<sup>332</sup>

Police officers can be members of many different social, professional or community groups or organizations. Stepping back further, they can also be members of different ethnic, religious or racial groups, or may have roots in a particular culture. How do these various associations affect the manner in which officers execute their duties, and how can such conflicts be regulated? The Calgary Police Service requires their officers to:

be aware that one's personal values, beliefs, and attitudes may influence one's activities and thoughts, and integrate that awareness into all attempts to be accurate and impartial.<sup>333</sup>

The issue remains one of remoteness of the privately held interest, and each situation must be dealt with on its own facts.

Police forces also have dealt with the question of associations in a more specific fashion. The higher standard of conduct expected of police officers has led to prohibitions on the association of members with known criminals. For example, the *Regulation Respecting the Code of Ethics and Discipline of Members of the Sûreté du Québec*,<sup>334</sup> establishes a breach of discipline for a member to be:

consorting or fraternizing without a satisfactory reason with persons he knows to have a criminal reputation.

The Metropolitan Toronto Police Department's regulations make clear the basis of this prohibition:<sup>335</sup>

A Member shall not live with or associate with any person or persons through which association he is likely to bring discredit on the reputation of the Force or create doubt as to his ability to fulfill the conditions of his oath of office.



266

According to one arbitrator, such a relationship:

... where it places in doubt the integrity, honesty or moral character of the police officer, may weaken his effectiveness, cause embarrassment to the police force of which he is a member, and may as such be quite incompatible with his position.<sup>336</sup>

While such provisions often have the police image as a primary concern, the underlying motivation appears to be to avoid potential or apparent conflicts of interest. One case involving a conviction of discreditable conduct for a member's association with a criminal, revolved around the issue of whether the friend was known to be a criminal. The prosecution was required to show both that the individual was a criminal, and that his reputation as such was known in the community. The conviction was quashed because of the lack of such evidence.<sup>337</sup> Another case involved a member convicted of discreditable conduct for cohabitating with the wife of an accused who stood on trial on charges laid by the officer. This charge was sustained, because a reasonable person could have concluded that discredit to the force was likely to have resulted from the conduct of the officer.<sup>338</sup>

It will be obvious that any regulation of the associations and relationships of a police officer have significant implications for the officer's liberty and privacy. In some circumstances, where such issues attain public importance, important trade-offs may have to be made, for example as where dress or grooming requirements which clearly identify a person with a particular religion conflict with dress regulations of a police force. The issues involved here, while also fascinating, are beyond the scope of this paper.

## **7.7 Public Criticism**

An issue closely related to the disclosure of confidential information, discussed above, is that of public criticism by a police officer directed at the force. Often the disclosure of confidential information, without further comment, may be the most telling criticism possible, especially where the confidential information reveals wrongdoing. The usual prohibition involves:

signing or circulating a petition or statement in respect of a matter concerning the police force, except through the proper official channel of correspondence or established grievance procedure or in the bona fide performance of the member's duties...<sup>339</sup>

The RCMP similarly directs members not to:

sign a petition to any branch of the Federal or provincial government on any matter which is related to or in conflict with the internal administration operations or objectives of the RCMP,<sup>340</sup>

Cases involving criticism belong to the broad category of the duty of fidelity.<sup>341</sup> The obligation of loyalty owed to an employer disentitles employees from publicly criticizing their employer. To do so could place their employer's reputation in danger. To constitute a conflict of

interest, the criticism would have to be of such a character that the employer could no longer trust the officer to fulfill his or her duties impartially, or affect or appear to affect the impartiality of the officer on the force in the public.

In some cases, public criticism is privileged. Dickson, C.J.C., in *Fraser v. PSSRB* stated that it:

... would be appropriate if, for example, the government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability.<sup>342</sup>

In *Clough v. Revenue Canada*, an employee of Revenue Canada criticized the proposed free trade agreement. The arbitrator determined that his activities, "did not adversely impact on his ability to effectively perform his duties or on the public perception of that ability"<sup>343</sup> At least since the *Charter of Rights and Freedoms* came into effect, blanket prohibitions are considered inappropriate. Individual rights of expression must be balanced against the rights of the public to have an impartial police force.

The RCMP External Review Committee's discussion paper on off-duty conduct<sup>344</sup> relates a case in which an officer received an informal verbal reprimand for writing a letter criticizing a commission investigating his police force. The officer was required to write a second letter to the newspaper explaining that he had not written the first letter as a member of the police force. The Calgary Police Administration Manual attempts to avoid this problem by requiring that members:

when making a statement, or when involved in public activities, clarify whether one is speaking as a private citizen, a member of a specific group or organization, or as a member of the Police Service.<sup>345</sup>

It is impossible to assess whether such a disclaimer would be effective, particularly if the speaker is known to be a police officer, and the statement relies on expertise in or knowledge of police issues.

One possible exception from any restriction on public criticism is "whistleblowing", the disclosure of wrongdoing. Such a disclosure may involve the unauthorized release of confidential information, or public criticism of the police force, or both. While this issue has provoked considerable interest recently, mostly in the United States but also in this country,<sup>346</sup> it is also beyond the scope of this paper.



## Chapter VIII

### POST-EMPLOYMENT CONSIDERATIONS

A number of conflict of interest codes, particularly those involving legislators or their political and executive staffs, also deal with the issue of post-employment situations giving rise to a possible conflict. Conflicts between the interests of a present employer and a possible or actual future employer may arise in several ways.

First, it may be a concern that the possibility of future employment will affect the performance of present employment. Employees may use the authority of their present positions to assist in securing future employment, or employees may be less than diligent in carrying out their duties against a potential future employer. On the other hand, once the new employment has commenced, there will be concerns as to whether the employee is using confidential information, contacts or influence gained from the previous employment in an improper way. There will always be an appearance of conflict where the new employment involves any interaction whatsoever with the old employment, since perceptions of privileged access and special treatment will arise.

The RCMP is alone among Canadian police services in addressing post-employment concerns.<sup>347</sup> The method of dealing with post-employment concerns is to reiterate the familiar principle that:

Current and former holders of public office must ensure by their actions that the objectivity and impartiality of government service are not cast in doubt and that the people of Canada are given no cause to believe that preferential treatment is being or will be unduly accorded to any person or organization.<sup>348</sup>

In addition, the common prohibition utilized in post-employment regulations involves some form of post-employment restrictive covenant. It is usually in the form of a contract in the private sector. In the public sector, the usual vehicle is a legislated provision such as section 18 of the Ontario *Act Respecting Conflicts of Interest of Members of the Assembly and the Executive Council*.<sup>349</sup>

The Federal Conflict of Interest and Post-Employment Code for Public Office Holders<sup>350</sup> also applies to commissioned officers of the RCMP, and other members of the Force who are designated as having duties and responsibilities that raise post-employment concerns. Such individuals are required to notify the designated official, the "ethics commissioner" for the Force, of all firm offers of outside employment, and of the acceptance of any such offer. They are also required, before leaving public office, not to allow themselves to be influenced by any plans or offers of future employment.

After leaving office, persons affected by these rules are prohibited from being involved, on behalf of the new employer, in any ongoing transaction or issue in which they were involved on behalf of the government prior to termination of employment, where that transaction would result in the conferring of a benefit not for general application or of a purely commercial or private nature. There is also a one-year "cooling-off period", subject to reduction in certain circumstances, during which former government employees are restricted from accepting an appointment as a director or

employee of an entity with which they had significant official dealings, making representations on behalf of anyone to a department with which they had significant official dealings, or giving counsel for commercial purposes concerning the programs or policies of the department where they were employed or with which they had a direct and substantial relationship, during the period of one year prior to termination of employment.

Obviously, the considerations which lead to restrictions of this kind will not apply to most police officers. There is, moreover, considerable debate about the desirability of such restrictions on subsequent employment, and the way in which such matters should be handled. The enforcement of such restrictions is also problematic, unless it can be incorporated into a restrictive covenant in a contract of employment, or made into a statutory offence, since the authority arising from the employment relationship ceases upon termination.<sup>351</sup>



## Chapter IX

### CONCLUSION

As with any interesting research project, this study has turned up considerably more material than it has been possible to set out in any detail in the space available here. We have attempted to identify, throughout this paper, areas beyond its scope which are of interest, and which in some cases may themselves be appropriate subjects for further research.

On the central issues before us, conflict of interest and secondary employment, we have attempted to identify a trend toward more liberalization of the traditional rules applicable in police forces. This trend follows developments in both the private sector and the public sector, and may be also at least partly influenced by the increasing trend toward the philosophy of community policing. As police officers become more and more involved in the community, secondary employment becomes more justified as a way of participating in that community's economy. Similarly, opportunities for political activity, for forming relationships and associations, and for potential conflicts to arise in other ways, will all increase.

The traditional model for controlling such matters, a rigid set of prohibitions enforced through the discipline system, has the advantage of relatively low enforcement costs. The rules serve as a mandatory standard of behaviour, and information which reaches police management about breaches of the rules, whether that information comes from fellow officers, from internal affairs investigations, from public complaints, or from other sources, can lead to a relatively straightforward invocation of the discipline system to punish the breach.

While enforcement costs are very low, however, the social and personal costs may be very high. We have attempted to highlight throughout how restrictions can affect such individual interests as liberty, involvement in the community, privacy and family relationships. These costs must be weighed against the bureaucratic interests of simple administration of a code of prohibitions.

On the other hand, as police forces move toward a more sophisticated ethical code, and the interactive and responsive compliance structures which we have described above, the costs of enforcement of that code are significantly increased. Disclosure systems, for example, require a secretariat, standardized procedures, and a secure file-keeping system to ensure that access to sensitive personal data is strictly limited. An ethics commissioner or commission requires further resources, including the time required to deal with individuals on a case-by-case basis. In addition to this, the enforcement costs in the discipline structure are probably not significantly reduced, and may even be increased, since it will continue to be necessary to ensure that required standards of ethical conduct are met. When those standards are individualized, their enforcement may prove even more difficult.

Developing these new structures, making them work, and keeping their costs within bounds are important challenges for police management, just as they are for management in the private and public sectors. The goal to be attained, however, is a police community in which ethical behaviour is a part of the culture, voluntarily pursued and sensitively understood by police officers and police managers alike.

### ENDNOTES

1. Canada, Treasury Board, Conflict of Interest and Post-Employment Code for Public Office Holders. (Ottawa: Minister of Supply & Services, 1985).
2. This chain reaction was first identified by K. Kernaghan in 1975, Ethical Conduct of Government Employees (Toronto: Institute of Public Administration, 1975) at 2. More recently, the burgeoning private and public sector interest in ethics - in terms of personal ethics, codes of ethics and ethics education, - was identified by G. Thomson, "Personal morality in a professional context" (1991) 34(1) Can. Public Adm. 21.
3. S.J. Bonczek, "Ethics: Challenge of the 1990's" (July 1990) 72 Public Management 17.
4. Ethidex Code Data Base (Toronto: Centre for Corporate Social Performance & Ethics, 1990) Cominco, s.7.2.

See also the Ethics Tests set out in the Basic Constable Course - Police Ethics (Toronto: Ministry of the Solicitor General, 1989) at 5. The Ethics Tests are a series of self-administered questions, which allow police officers to scrutinize their conduct. For example: would I be at all ill-at-ease if this issue suddenly appeared as a newsworthy concern printed in a major daily publication?; would this be handled the same way by persons of integrity I most hold in high regard?

Many of the citations to corporate codes of ethics are taken directly from the Ethidex Code Data Base, and refer to the version of the code included there. The data base analyzes codes according to a stakeholder management model, and the sections are renumbered in accordance with that structure. Thus section references are to the data base, and not the original code. Where a citation is to an original code, the data is included where possible.

For an analysis of the stakeholder management model utilized in the Ethidex Data Base see: M. Clarkson & M. Deck, Analysing and Evaluating Codes: The Stakeholder Management Model, presented at the proceedings of the conference "How to Institute Successful Ethics Programs in Organizations" Wright State University, May 8-10, 1991.

5. "Police Ethics" (Jan. 1991) 58 The Police Chief 27.
6. Conflict of Interest (Victoria: B.C. Police Commission, 1988) at 6.
7. Kernaghan, *supra*, note 2 at 13.
8. General Company Procedures - Conflict of Interest. (Streetsville, Ontario: Du Pont Canada Inc. 1982) 60-1.
9. Bill C-46, *Members of the Senate and House of Commons Conflict of Interests Act*, 2d Sess., 34th Pad., 1989, cl.2(2).
10. *Regulation Respecting the Code of Ethics and Discipline of Members of the Sûreté du*

*Québec*, R.Q. 1987, c. P-13, s. 17. Note that the Code of ethics of Quebec police officers, O.C. 920-90 (1990), 1226.0.11 1760, "replaces the provisions concerning police ethics" in respect of all Quebec police forces, s.13; other provisions are still in effect.

11. S. Williams, Conflict of Interest (London: Gower Publishing, 1985) at 6.
12. Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens, Commissioner The Honourable W.D. Parker (Ottawa: Minister of Supply and Services, 1987).
13. *Ibid*, at 29.
14. *Ibid*, at 32.
15. J.P. Kingsley, "Conflict of Interest: A Modern Antidote" (1986) 29(4) Canadian Public Administration 585 at 591.
16. Parliament, Conflict of Interest Rules for Federal Legislators (Ottawa: Minister of Supply and Services, 1989) at 2.
17. *Ibid*.
18. Kingsley, *supra*, note 15.
19. Task Force on Ethical Conduct In the Public Sector, The Honourable Michael Starr and Mitchell Sharp (Ottawa: Supply and Services, 1984) quoting from a 1969 study prepared for the Privy Council by J. Williams, at 83.
20. *Re Van Der Linden and the Crown in Right of Ontario* (1981), 28 L.A.C. (2d) 352 at 356 (Swinton).
21. *Johnstone and Treasury Board* (Revenue Canada) (27 Jan 1987) P.S.S.R.B. File No.: 166-2-16279.
22. *Re L'Abbe and Corp. of Blind River* (1904), 7 O.L.R. 230 at 233 (C.A.).
23. *Elliot v. City of St. Catharines* (1908), 18 O.L.R. 57 at 61 (C.A.).
24. Ontario, Report on Ministerial Compliance with the Conflict of Interest Guidelines and Recommendations with Respect to Those Guidelines, Aird Report (Toronto: Queen's Printer, 1986) at 9. See also, Standing Committee on the Legislative Assembly. Report on the Report on Ministerial Compliance with the Conflict of Interest Guidelines and Recommendations with Respect to Those Guidelines (Toronto: Queen's Printer, 1986) at 2.

25. Privy Council, Green Paper on Members of Parliament and Conflict of Interest, The Honourable Allan MacEachen (Ottawa: Minister of Supply and Services, 1973).
26. *Ibid*, at 1.
27. Williams, *supra*, note 11.
28. Starr & Sharp, *supra*, note 19 at 22.
29. S.O. 1983, c.8, s.2. Extensive revisions to this legislation have recently been recommended. See Ontario, Municipal Conflict of Interest Review (Toronto: Queen's Printer, 1991).
30. *Re Evans and Holt* (1982), 141 D.L.R. (3d) 178 (Alta C.A.) at 186.
31. See *Re Russell and Toney* (1982), 137 D.L.R. (3d) 202 (Alta C.A.); and *Re McCaghren and Lindsay* (1983), 144 D.L.R. (3d) 503 (Alta C.A.).
32. *Re McCaghren*, *ibid*, at 510.
33. Starr & Sharp, *supra*, note 19 at 27.
34. *Ibid*, at 26.
35. Ontario, Standing Committee on Public Accounts, Report on the Allegation of Conflict of Interest Concerning Elinor Caplan, MPP (Toronto: Queen's Printer, 1986) at 56.
36. *Supra*, note 21 at 11, citing E.B. Jolliffe in *McKendry and Treasury Board* (May 31, 1973, File No.: 166-2-674, unreported) at 139.
37. *Supra*, note 16 at 1.
38. R.N. Roberts, White House Ethics (N.Y.: Greenwood Press, 1988) at 4.
39. Williams, *supra*, note 11 at 17.
40. Starr & Sharp, *supra*, note 19 at 25.
41. *Supra*, note 4, IBM, s.3.2.
42. Williams, *supra*, note 11 at 17.
43. W.K. Muir, Jr., "Police and Politics" (Summer-Fall 1983) 2 Criminal Justice Ethics 3 at 4.
44. Inquiry Re Alleged Improper Relationships Between Personnel of the Ontario Provincial Police Force and Persons of Known Criminal Activity, The Honourable Justice Campbell



Grant (Toronto: Queen's Printer, 1970) at 99.

45. D.G. Smith, "Beyond Public Concern: New Free Speech Standards for Public Employees" (1990) 57 University of Chicago L.R. 249 at 252.
46. R.G. Vaughn, Conflict of Interest Regulation in the Federal Executive Branch (Lexington, Mass.: Heath & Company, 1979).
47. *Criminal Code*, R.S.C., 1985, c. C-46, as amended, ss. 119 - 125 inclusive.
48. *Pearce v. Foster* (1885), 17 Q.B. 536 at 539.
49. *Re Wosk's and Teamster Union, Local 351* (1983), 13 L.A.C. 64 at 70.
50. *Re Poll-Twine and Canadian Automobile Workers' Union, Local 1839* (1988), 35 L.A.C. (3d) 123 (Willes).
51. C.J. Snow & E.M. Abramson, "By the Light of Dual Employment: Standards for Employer Regulation of Moonlighting" (1980) 55 Indiana L.J. 581 at 584.
52. *Canadian Aero Service v. O'Malley* (1973) 40 D.L.R. (3d) 371 (S.C.C.) at 381.
53. S.M. Grant, "Sex, Lies and Legal Ethics" (1991) The Law Society Gazette 103 at 118.
54. *Supra*, note 50.
55. E.A. Aust, The Employment Contract (Cowansville, Que.: Editions Yvon Blais, 1988) at 114.
56. *W.J. Christie v. Greer* (1981), 121 D.L.R. (3d) 472 at 477 (Man. C.A.).
57. *Supra*, note 55.
58. *Re Lumber & Sawmill Workers' Union and KVP Co.* (1965), 16 L.A.C. 73 at 85 (Robinson).
59. *Re Woodward Stores and United Food & Commercial Workers Union* (1987), 28 L.A.C. (3d) 59 (Fraser) at 66; *Re Consumers Gas and International Chemical Workers Union* (1972), 1 L.A.C. (2d) 304 (Brown); *Re United Brewery Workers and Pepsi-Cola* (1967), 18 L.A. c.105 (Hanrahan) at 106.
60. *Supra*, note 49 at 73.
61. Creating a Workable Company Code of Ethics (Washington: Ethics Resource Center, 1990) at 1-2. While figures for Canada are unavailable, the increased activity in the private sector

is readily observable.

62. *Re Fraser and Public Service Staff Relations Board* (1985), 23 D.L.R. (3d) 122 at 133 (S.C.C.).
63. *Ibid.*
64. I. Greene, "Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules for Canadian Cabinet Ministers" (1990) 23 Canadian Journal of Political Science 234.
65. *Ibid.*, at 237.
66. See for example, the Ontario *Public Service Act*, R.S.O. 1980, c. 418, ss. 11-16.
67. K. Kernaghan & J.W. Langford, The Responsible Public Servant (Halifax: The Institute of Public Administration of Canada, 1990) at 56.
68. See for example, the letter written by Prime Minister Trudeau to accompany his 1980 federal ministerial guidelines, quoted in Report Concerning Elinor Caplan, *supra*, note 35 at 431.
69. See the letter written by Prime Minister Mulroney to accompany his 1985 federal ministerial guidelines, quoted in Caplan, *supra*, note 35 at 433.
70. Aird Report, *supra*, note 24 at 2.
71. For a good review of conflict of interest legislation, see Office of ADRG, Conflict of Interest in Canada (Ottawa: Supply and Services, 1990).
72. For a good review of the various public sector conflict of interest codes, see, *ibid.*
73. For example, the *1843 Act For Better Securing the Independence of the Legislative Assembly of this Province*, Provincial Statute of Canada, Anno Regni Septime Victoriae, Third Session of the First Provincial Parliament of Canada, 1843, Derbyshire and Desbarats, Printers to the Queen's Most Excellent Majesty, Montreal, ensured that public servants were not able to sit as a member or to vote. Cullen, "The Challenge of Defining Conflict of Interest: Looking Back to See the Future" (1988/89) 19(3) Optimum 86 at 87.
74. R.S.C., 1985, c. P-1, ss. 14-16.
75. *Supra*, note 9.
76. *Supra*, note 1.



77. Canada, Treasury Board, Conflict of Interest and Post-Employment Code for the Public Service. (Ottawa: Minister of Supply & Services, 1985).
78. See for example, Bill 66, *Members' Conflict of Interest Act*, 4th Sess., 34th Leg. B.C., 1990; Bill 40, *Conflict of Interests Act*, 3rd Sess., 22nd Leg. Alta., 1991; *The Legislative Assembly and Executive Council Conflict of Interest Act*, S.M. 1983, c.27, C.C.S.M. c. L112; *Members' Conflict of Interest Act*, S.O. 1988, c.17; *An Act Respecting Conflict of Interest for Members of the House of Assembly and Members of the Executive Council*, R.S.N.S. 1989, c.86.
79. British Columbia, (Victoria: Ministry of Finance and Corporate Relations, 1983).
80. Alberta, (Edmonton: Public Service Commissioner's Office, 1987).
81. TPA 268 Rev. 11, 89.
82. *Municipal Conflict of Interest Act*, R.S.N.S. 1989, c.299.
83. *Municipal Conflict of Interest Act*, 1983, S.O. 1983, c.8.
84. *The Municipal Council Conflict of Interest Act*, S.M. 1983, c.44.
85. E.g., Code of Conduct (Burlington, Ont.: City of Burlington, 1988); Code of Ethics for Employees (Winnipeg: City of Winnipeg, 1982).
86. See for example, the Edmonton City Policy, A1203 1989.
87. M. Punch, Conduct Unbecoming (N.Y.: Tavistock Publications, 1985) at 3.
88. R. Williams, "Legal Aspects of Discipline by Administrators" (Chicago: Traffic Institute, Northwestern University, 1977) at 6, quoted in RCMP External Review Committee, Off-Duty Conduct, Discussion Paper 7 (Ottawa: Minister of Supply and Services Canada, 1991) at 54.
89. *Re St. Catharines Police Association and Board of Police Commissioners of the City of St Catharines* (1970), 15 D.L.R. (3rd) 532 (Ont. H.C.).
90. *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police* (1978), 88 D.L.R. (3d) 671 at 678, 23 N.R. 410 at 417 (S.C.C.).
91. *A.G. (N.S.W.) v. Perpetual Trustee Co.* (1955), A.C. 457 at 489-490.
92. T. Jefferson, The Case Against Paramilitary Policing (Philadelphia: Open University Press, 1990) at 46.

93. H. Cohen, "Exploiting Police Authority" (1986) Criminal Justice Ethics 23 at 29.
94. T. Deakin, Police Professionalism (Springfield, Illinois: Charles C. Thomas, 1988).
95. Kingsley, *supra*, note 15.
96. Jefferson, *supra*, note 92.
97. *Ibid.*
98. E.g. Alberta *Police Act*, S.A. 1988, c. P-12.01.
99. E.g. *Alta. Reg.* 356/90.
100. See for example the Ontario *Police Services Act, 1990*, S.O. 1990, c.10, s.31(6) & (7), which authorizes the board to establish guidelines for the effective management of the police force.
101. See for examples. 18(1) of the Ontario *Police Services Act, 1990*, *ibid*, which states that OPP officers are appointed under the Public Service Act, R.S.O. 1980, c.418.
102. While the focus of this section is on codes to regulate employment, mention should also be made of the extensive body of codes in the area of professional responsibility. Accounting, advertising, architecture, engineering, medicine, and law are some of the many professions which utilize codes of ethics. For an extensive collection of American codes, see, R. Gorlin, Code of Professional Responsibility, 2nd ed. (Washington: Bureau of National Affairs, 1990).
103. John Madison, quoted in Roberts, *supra*, note 38 at 201.
104. G.W. Cordner, "Written Rules and Regulations" (July 1989) Law Enforcement Bulletin 17 at 19.
105. *Ibid.*
106. *Supra*, note 5 at 32.
107. E.J. Delattre, Character and Cops: Ethics in Policing (Washington: American Enterprise Institute for Public Policy Research, 1989) at 33.
108. Bonczek, *supra*, note 3 at 17.
109. Roberts, *supra*, note 38 at 4.
110. Starr & Sharp, *supra*, note 19 at 33.

111. *Ibid*, at 187.
112. C. Harris, "Structuring a Workable Business Code of Ethics" (1978) 30 University Of Florida L.R. 310 at 318.
113. Kernaghan, *supra*, note 2 at 5.
114. Quoted in Williams, *supra*, note 11 at 18.
115. *Supra*, note 61.
116. *Ibid*, at IV-16.
117. *Supra*, note 5 at 32.
118. Code of Conduct: Principles of Ethical Behaviour for the Corporation and its Employees (Montreal: Royal Bank of Canada, 1984) at 2.
119. *Supra*, note 61 at IV-2.
120. *Supra*, note 4 at s.5.2.
121. *Ibid*, at s.1.4.5.
122. *Ibid*, at s.3.2.
123. *Ibid*, Johnson & Johnson at 3.2.
124. *Ibid*, Ingersoll Rand at 3.2.2.
125. Code of Business Ethics (Montreal: Bell Canada, 1986) at 13.
126. *Supra*, note 4 at Loblaws, s.1.6.
127. *Supra*, note 4 at Pepsico, s.1.6.
128. Faculty of Management, University of Toronto, 1990.
129. S.Q. 1983, c.55.
130. 1984, 6-25-1.
131. *Supra*, note 78 at s.2(c).



132. *Supra*, note 9 at s.3(c).
133. *Supra*, note 78 at s.5.
134. *Supra*, note 78 at s.3(6).
135. *Ibid*, at s. 3 (4).
136. E.g., Ontario *Conflict of Interest Act*, 1988, *supra*, note 78 at s.12(2) (a).
137. Premier's Office, Ontario Conflict of Interest Guidelines (Toronto: Queen's Printer, 1990).
138. *Supra*, note 100.
139. R.S.C., 1985, c.R-10 as am. R.S.C., 1985, c.8 (2nd supp.) s.37(d).
140. *B.C. Reg.* 113/76.
141. *RCMP Act*, *supra*, note 139 at Schedule 1.
142. There is usually a provision in the regulations stating that discipline may flow from a breach of any provision of the *Act or Regulations*. i.e., *N.S. Reg.* 101 /88, s. 5(i)(a)(iv).  
  
The *RCMP Regulations*, SOR 88/361, s. 50 states, as part of the Code of Conduct, that a member shall not "knowingly violate or otherwise breach any oath taken." Sections 41 and 43 of the *RCMP Act*, *supra*, note 139, set out the informal and formal disciplinary actions that can result from a contravention of the Code of Conduct.
143. Alberta is typical in allowing the Lieutenant Governor in Council to make regulations governing the discipline and performance of police officers, *Police Act*, *supra*, note 98, s.61(1)(f).
144. *N.S. Reg.* 101/88, s. 5(1)(a)(i).
145. *RCMP Reg.*, *supra*, note 142, at s.39(2)(a).
146. The relationship of conflict of interest to corruption will be discussed below.
147. *Supra*, note 10.
148. *Ibid*, at s.3.
149. *Ibid*, at s.8.

150. *Municipal Reg.* 106/90.
151. *Ibid*, at s.5(a).
152. *Ibid*, s.9.
153. *Ibid*, s.8(i).
154. *Ibid*, s.9.
155. *Ibid*, s.6(f).
156. *Supra*, note 10.
157. *Ibid*, s.16.
158. *Ibid*, s.17.
159. *Ibid*, s.18.
160. City of Winnipeg, Schedule A, By-Law No. 1, *Winnipeg Police Regulations* (1974).
161. *City of Winnipeg Act*, S.M. 1989-90, c.9.
162. *Supra*, note 85.
163. S.B.C. 1988, c.53.
164. 90-06-19, s.4.54(1)(e).
165. RCMP Administration Manual, Part 1.4, Rev. 1991, s.D.1.c.
166. *Ibid*, at Appendix 1.4.5. These guidelines are adapted from the Federal Code, *supra*, note 1. They will be replaced shortly by the Commissioner's Standing Orders which are currently being developed.
167. *Ibid*, s.1.1.b.2.
168. *Re Food Group and Retail, Wholesale & Department Store Union, Local 1065* (1987), 30 L.A.C. (3d) 250 at 254 (Stanley) at 254; *Canadian Imperial Bank of Commerce v. Boisvert* (1986), 13 C.C.E.L. 263 at 265 (Fed. C.A.); *Pearce v. Foster*, *supra*, note 48 at 539.
169. *CIBC, Ibid; Re Wosk's*, *supra*, note 49.



170. *Helbig v. Oxford* (1985), 9 O.A.C. 145 at 151; *Edwards v. Lawson Paper Converters* (1984), 5 C.C.E.L. 99 at 105 (Ont. S.C.).
171. *Pearce*, *supra*, note 48.
172. RCMP External Review Committee, Discussion Paper 6 (Ottawa: Minister of Supply and Services, 1990) at 3.
173. For example, a breach of the Code of Conduct for the City of Burlington, *supra*, note 85 at s. 9, is grounds for dismissal (in a serious case).
174. *Ross and Niagara* (1979), 0. P.R. 434 at 438.
175. Circular JO-61-15 (Feb 1988) Royal Bank at 1.
176. *Supra*, note 4 at s.1.6.
177. *Supra*, note 99 at s.6(1).
178. *Supra*, note 139 at s.41.
179. See for example, the Ontario *Police Services Act* 1990, *supra*, note 100 at s.61(1).
180. *Re McKendry and Treasury Board* (May 31, 1973) P.S.S.R.B. File No.: 166-2-674, unreported, discussed in *Re Regional Municipality of Hamilton-Wentworth and Canadian Union of Public Employees* (1978), 18 L.A.C. (2d) 46 at 54 (Kennedy).
181. *Ibid*, at 55.
182. *Re Tourigny and Treasury Board* (31 July 1987) P.S.S.R.B. File No.: 166-2-16434; *Re Wosk's*, *supra*, note 49 at 73.
183. *Re Woodward*, *supra*, note 59 at 63; *Re Wainwright School Division and CUPE* (1984), 15 L.A.C. (3d) 349 (Laux).
184. *Durand v. Quaker Oats Co.* (1988) 20 C.C.E.L. 223 at 234 (B.C.S.C.).
185. *Threader and Spinks v. Canada (Treasury Board)* (1986), 68 N.R. 143 at 151 (Fed. C.A.); *Re Van Der Linden and The Crown in Right of Ontario (Min. of Ind. and Tourism)* (1981), 28 L.A.C. (2d) 352 (Swinton).
186. See for example, the Conflict of Interest Acts for Ontario and Alberta, *supra*, note 78.
187. *Supra*, note 78 at s.23.

188. *Supra*, note 25 at 2.
189. Starr & Sharp, *supra*, note 19 at 63.
190. *Ibid*, at 20.
191. *Supra*, note 16 at 3.
192. *Supra*, note 12 at 353.
193. *Supra*, note 1 at s.46(4).
194. *Supra*, note 24 at 5.
195. Starr & Sharp, *supra*, note 19 at 70.
196. J.G. Smith, "The Nature of Conflict of Interest" (1980) Pitblado Lectures 157.
197. *Re Canadian Fram and United Automobile Workers* (1973), 3 L.A.C. (2d) 94 (Hinnegan).
198. Manitoba, Report on Conflict of Interest of Municipal Councillors (Winnipeg: Law Reform Commission. 1981) at 34.
199. *Supra*, note 78.
200. *Ibid*, at s.2(2).
201. *Ibid*. The Act allows 30 days to provide the new information.
202. The Canada Mortgage and Housing Corporation Conflict of Interest - Standards of Conduct (Ottawa: Public Affairs Centre, CMCH, 1989) at 12, is typical in providing for the accumulation of conflict of interest files separately from personnel files. They are retained for seven years after the conflict has been resolved or no longer exists. After that, records are destroyed.
203. *Supra*, note 4 at 3.2.
204. *Ibid*, Horne & Pitfield and Loblaws, s.1.4.5.
205. Employment and Immigration Canada Code of Conduct (Hull: CEIC, 1980) at 14.
206. S.N.B. 1978, c. C-16.1.
207. A good example is the federal office of Assistant Deputy Registrar General (ADRG) which

was originally created in 1974 to process the compliance documentation of those covered by Ministerial conflict of interest guidelines. The ADRG is currently charged with the administration and application of the federal Code as well as responsibility to prepare educational material about conflict of interest. A similar approach has been recommended for municipal conflict of interest enforcement in Ontario: see Municipal Conflict of Interest Review, *supra*, note 29 at 59-71.

208. *Supra*, note 9 at s.10(4).
209. Mary Janigan, "Avoiding Future Conflicts" (March 7 1988) 101 (11) Maclean's 12 at 14, quoting the Honourable Mitchell Sharp.
210. Bill 40, *supra*, note 78 at s.20(2).
211. *Supra*, note 137 at s.15(b).
212. *Supra*, note 86 at s.3.02(b).
213. *Supra*, note 1 at s.17.
214. *Supra*, note 85 at s.9.
215. *Ibid*, Cominco, s.7.2.
216. *Ibid*, Johnson & Johnson, s.1.6.
217. Ontario *Conflict of Interest Act*, 1988, *supra*, note 78 at s.15(1).
218. Bill 40, *supra*, note 78 at s.22(1).
219. This finding reinforces that made in the RCMP External Review Committee's discussion paper on off-duty conduct. Many of the kinds of off-duty conduct which can be subject to discipline can also be addressed as conflicts of interest. For example, the paper discusses secondary employment, political activity, confidential information, public criticism, abuse of authority and improper use of police equipment in, RCMP External Review Committee, Off-Duty Conduct, Discussion Paper 7 (Ottawa: Minister of Supply and Services, Canada, 1991).
220. The expression "conflict of commitments originated in Policies Relating to Research and Other Professional Activities Within and Outside the University (Cambridge: Harvard University, 1987).
221. *Supra*, note 4 at s.1.4.5.



222. Halifax Police Department Administration Manual 90-03-19 Chap. A-9, s.15.2.
223. Nose and O.P.P. (Mar. 1990), O.P.R. 867 at 868.
224. Brown & Beatty, Canadian Labour Arbitration, 3d ed. (Toronto: Canada Law Book Inc., 1991) 7:301 0 at p. 350.
225. (1988), 2 L.A.C. (4th) 48 (Davis).
226. Secondary employment includes both extra-duty and off-duty employment. The International Association of Chiefs of Police Model Policy on secondary employment, (Arlington, Virginia: IACP/BJA National Law Enforcement Policy Center, 1990) defines:

extra-duty employment as -

Any employment that is conditioned on the actual or potential use of law enforcement powers by the police officer employee.

off-duty employment as -

Any employment that will not require the use, or potential use of law enforcement powers by the off-duty employee.

The Nova Scotia *Police Act*, R.S.N.S. 1989, c.348 is the only Police Act to deal with the distinction between extra-duty and off-duty employment. Each municipal board is required to establish written policies for each (s.21 (1) & (2)).

The usual procedure for engaging police officers for such special duty across Canada is for employers to make a written request to the force. If the request is approved, officers are assigned at their regular hourly wage. Various systems are used to ensure a fair distribution of the work to all interested officers.

In terms of conflict of interest, discussions with police forces suggests that extra-duty employment is not a problem because, in working for the private employer, the officers nevertheless perform their regular duties as police officers. The police officers of the Communauté urbaine de Montréal on the other hand, are only deployed to ensure public safety or in accordance with ordinary police requirements. The force avoids a close relation with private industry. It was suggested to us that the force could appear to be partial if it served a large private employer.

227. Snow, *supra*, note 51 at 606.
228. *Supra*, note 10 at s.22.

The Vancouver Police Department also prohibits secondary employment, requiring officers to devote their whole time to the Police Service. Vancouver Police Department Regulations

& Procedure Manual, s.13 "Terms of Service".

229. *Supra*, note 165 at s. c.6.g.

230. *Ibid*, s. c.6.h.

231. *Ibid*, s. c.6.h.3. and s. c.6.i.

232. *Supra*, note 222.

233. Edmonton Police Service Policy & Procedure Manual 1991, Part 11, Chap. G, s.6.

The Edmonton Police regulation discussed here involves extra employment. This is their way of describing off-duty secondary employment and is not to be confused with extra-duty employment - see *supra*, note 226, for a discussion of the difference between extra-duty and off-duty secondary employment.

234. *Supra*, note 160 at s.124(17)(b).

235. *Supra*, note 233.

236. *Supra*, note 164 at s. 4.63(1).

237. *Calgary Police Association et al. v. Calgary Police Commission and Chief of Police City of Calgary*, [1988] 2 W.W.R. 741 (C.A.).

238. *Supra*, note 100.

239. *Police Act Regulations*, R.R.O. 1980, c. 791, s.61.

In response to the obligation set forth in the regulations, the OPP established the Standing Committee on Secondary Employment to review all applications for off-duty employment. The Director, Professional Standards Branch first reviews or investigates the application, then forwards it to the members of the Standing Committee who also review it and make recommendations to the Commissioner who has final approval. This process was originally put in place to assist officers who sought the permission of the Chief under the *old Police Act* before becoming involved in secondary employment. Though s.49(1) removes this obligation, the OPP has retained this process and recommends that officers continue to make use of it.

240. *Nose, supra*, note 223.

241. A. Reiss, "Private Employment of Public Police" (Dec. 1988) National Institute of Justice at 6.



242. The operation of a tavern by a police officer historically has given rise to great concern. The Arbitrator in *Ville de Trois-Rivières et Association des policiers et pompiers de la ville de Trois Rivières*, Droit du travail express numéro 86T-532 (T.A.), concluded:

[TRANSLATION] It is particularly evident that an officer should never be identified with a bar; it goes to the credibility of the police service. - quoted in, *Sûreté du Québec et Association des Policiers Provinciaux du Québec*, (1991) T.A. 1025-G at 15.

243. *Welch and Metro Toronto Police* (Dec. 1986), O.P.R. 738. A charge of insubordination was substituted for the convicted charge of corrupt practice. It was decided that the stigma associated with corruption was too strong for these circumstances. No mention was made of this situation being a conflict of interest.
244. O.P.P. Police Orders, Part 1, s.251.1.
245. *Supra*, note 10, s.22.
246. *Supra*, note 222.
247. *Supra*, note 244 at s.250-1.
248. *Supra*, note 165 at s.c.6.h.2.
249. *Supra*, note 4, I.B.M. s.1.4.5.
250. Kernaghan, *supra*, note 2 at 16; Ontario, Discussion Paper on Political Activity Rights for Police Officers (Toronto: Ministry of Solicitor General, 1991).

251. Political activities can extend from voting in an election, being a member of a political party, working to support a political candidate or party, soliciting funds for a candidate, commenting publicly on political issues, or standing as a candidate for elected office.
252. (1987), 41 D.L.R. (4th) 1 (S.C.C.).
253. *Re Fraser and the A.G. of Nova Scotia* (1986), 30 D.L.R. (4th) 340 (N.S.S.C.).
254. *Nova Scotia Civil Service Act*, R.S.N.S. 1989, s.40(5).
255. *Ibid*, s.40(7).
256. *Supra*, note 66.
257. Ontario, The Extension of Political Activity Rights for Ontario Crown Employees (Discussion Paper) (Toronto: The Management Board of Cabinet, 1991).
258. *Ibid*, at 5.
259. *Supra*, note 100.
260. *Supra*, note 10.
261. Vancouver Police Department Regulations and Procedures Manual, s.13 "Terms of Service".
262. *Supra*, note 164 at Section 4.6, "Conditions of Employment".
263. *Supra*, note 160 at s.124(16).
264. *Supra*, note 161.
265. *RCMP Regulations*, *supra*, note 142 at s.57(2).
266. R.S.C., 1985, c. P-33.
267. (1988), 52 D.L.R. (4th) 241 (Fed. C.A.).
268. *Osborne v. Treasury Board*, (1991) 82 D.L.R. (4th) (S.C.C.) 321 at 340.
269. *Supra*, note 257 at 2.
270. Discussion Paper, *supra*, note 250.
271. E. Gallant, "Political Rights for Public Servants: A Federal Perspective" (1986) 29(4)

Canadian Public Administration 665.

272. For example, William Ker Muir, *supra*, note 43 at 4, offers arguments for and against the restriction of police officers' political activities. See also the Ontario Solicitor General's discussion paper on political activity rights for Ontario police for further arguments, *supra*, note 250.
273. Report of the Special Committee on the Review of Personnel Management and the Merit Principle, D'Avignon Committee (Ottawa: Minister of Supply & Services, 1979).
274. *Ibid.*, at 171.
275. *Supra*, note 257.
276. (Toronto: Ministry of the Attorney General, 1986).
277. *Supra*, note 257 at 9.
278. *Supra*, note 276 at 282.
279. Discussion Paper, *supra*, note 250.
280. See Osborne, *supra*, note 268, in which the Supreme Court of Canada declared s.32(1)(a) (now s.33(1)(a) of the *Public Service Employment Act*) to be of no force or effect because, "The restrictions on freedom of expression in this case are over-inclusive and go beyond what is necessary to achieve the objective of an impartial and loyal civil service." p. 12,242.
281. *Supra*, note 100. The regulation as released did not specify a regulation number under the *Ontario Regulations*.
282. *Supra*, note 202 at 9.
283. A. Bouza, Police Administration (Toronto: Pergamon Press, 1978) at 221.
284. R. Kania, "Should we tell the police to say yes to gratuities" (Summ. 1988) 7 Crim. Just. Ethics 37.
285. *Supra*, note 4 at s.3.2.1.
286. *Supra*, note 4 at s.3.2.1.
287. *Supra*, note 1 at s.34(1).
288. *Supra*, note 78 at s.6.

- 289. *Supra*, note 78 at s.12(h).
- 290. *Supra*, note 78 at s.7(2)(b).
- 291. *Ibid*, at s.7(3).
- 292. *supra*, note 10 at s.9.
- 293. *supra*, note 261 at s.56.
- 294. *supra*, note 164 at s.4.56.
- 295. *Ibid*.
- 296. *Supra*, note 165 at c.1.h.1.
- 297. *Ibid*, at c.1.h.
- 298. *Ibid*, at c.1.h.7.
- 299. *Supra*, note 99 at s. 5(2)(c)(ii).
- 300. *B.C. Reg.* 330/75 at s.6.
- 301. *Supra*, note 243.
- 302. Kernaghan, *supra*, note 2 at 41.
- 303. Aust, *supra*, note 55 at 113.
- 304. (1987), 17 C.C.E.L. 44 (Ont. Dist. Ct.).
- 305. *Supra*, note 4 at s.2.3.3.
- 306. *Supra*, note 78 at s.16.
- 307. *Re Wilkes and Treasury Board* (2 March 1987) P.S.S.R.B. File No.: 166-2-16-170.
- 308. *Supra*, note 98 at Schedule 3.
- 309. *Supra*, note 139, Schedule.
- 310. *Supra*, note 10 at s.16.



311. *Supra*, note 165 at s.c.5.e.
312. *Ibid*, at c.5.f.
313. *Ibid*, at c.5.g.
314. *Ibid*, at c.8.a.
315. *Ibid*, Appendix 1.4.5., s.4.
316. *Supra*, note 99 at s.5(2).
317. *Supra*, note 1 at s.36(1).
318. *Perry and Treasury Board* (CEIC) (20 June 1988) P.S.S.R.B. File No.: 166-2-17340.
319. *Weber and Treasury Board (Supply & Services)* (8 Sept. 1986) P.S.S.R.B. File No.: 166-2-15616.
320. *Supra*, note 21.
321. *Supra*, note 79 at s.8.1.
322. "Administrative Instructions in Support of the Code of Conduct and Ethics" PMS-18-2, s.8.1.
323. K. Donovan, "Officer probed over 'private' surveillance" The Toronto Star (20 July 1991) A3.
324. *Supra*, note 85 at s. 2.
325. Calgary Police Services Administration Manual, *supra*, note 164 at s.4.54(1)(e).
326. Ontario Police Regulations, *Ont. Reg.* 791/80., s.1(e)(ii) of Schedule A.
327. *Lovegrove and Waterloo Police Force* (Nov. 1974), O.P.R. 182.
328. A.C. 1711-78, Que. Gaz. 1978.11.3343, s.7(d).
329. *Supra*, note 150 at s. 9.
330. *Supra*, note 165 at Appendix 1-4-5.
331. See, e.g., Manitoba. Report of the Aboriginal Justice Inquiry of Manitoba (Winnipeg: Queen's Printer, 1991): Report of the Commission of Inquiry into the Harvey I. Pollock, Q.C.



Case, Hon. E.N. Hughes, Q.C., Commissioner, Winnipeg, September 12, 1991.

332. *Supra*, note 165, at s. c.1.j.
333. *Supra*, note 164 at s. 4.54(1)(i).
334. *Supra*, note 10 at s. 8(f).
335. *Reg.* 4.2.0., s.4.2.1.
336. *Re Ville De Granby and Fraternité des Policiers de Granby* (1981), 3 L.A.C. (3d) 443 (Frumkin) at 445.
337. *Pattison and O.P.P.* (Aug. 1984), O.P.R. 608.
338. *Johnson and Barrie Police Force* (Feb. 1985), O.P.R. 643.
339. *Supra*, note 144 at s.1(e)(iii).
340. *Supra*, note 165 at c.1.i.
341. *Re Canada Post and CUPW (Varma)* (1984), 19 L.A.C. (3d) 356 (Swan) at 357.
342. *Supra*, note 62 at 133.
343. *Re Clough and Treasury Board* (29 Nov. 1988) P.S.S.R.B. File No.: 161-2-511 at 24.
344. *Supra*, note 219 at 54.
345. *Supra*, note 164 at s. 4.54(1)(m).
346. Ontario Law Reform Commission Report on Political Activity, Public Comment and Disclosure by Crown Employees, *supra*, note 276 at pp. 63-70, 230-243, and 322-352; K.P. Swan, "Whistleblowing and National Security", in P. Hanks and J.D. McCamus, eds., National Security: Surveillance and Accountability in a Democratic Society (Cowansville: Blais, 1989).
347. *Supra*, note 165 at Appendix 1-4-6.
348. *Ibid*, at Section "A", 1.
349. *Supra*, note 78.
350. *Supra*, note 1, Part III.

351. For a recent discussion of such issues, see S. Kelman, "What's Wrong with the Revolving Door?", an unpublished paper presented to the Law and Economics Workshop and the Public Policy Workshop of the Faculty of Law, University of Toronto, October 4, 1991.

## BIBLIOGRAPHY

- Abramson, E., and C.J. Snow, "By the light of dual employment: standards for employer regulation of moonlighting", (Summ.1979-1980) 55 Indiana L.J. 581.
- Alinec, P., "The loyalty of employees: where to after work?", (1987/1988) 1 National Labour Review 9.
- Arcuri, A., "Moonlighting and stress in police officers", (1990) 66 Psychological Reports 350.
- Axelrod, R., Conflict of Interest: A theory of divergent goals with applications to politics (Chicago: Markham Publications, 1970).
- Baillie, W. & D. Johnson, "Free from interests", (March 1988) Policy Options 3.
- Basic Constable Course - Police Ethics (Toronto: Ministry of the Solicitor General, 1989).
- Benson, C., "Codes of Ethics", (May 1989) 8 Journal of Business Ethics 305.
- Bigelow, P., "From norms to rules: regulating the outside interests of public officials", (1989) 37(3) Proceedings of the Academy of Political Science 141.
- Blalock, J., "Managing for effective Discipline: legal issues in discipline", (June 1976) The Police Chief 71.
- Bonczek, S.J., "Ethics: Challenge of the 1990's" (July 1990) 72 Public Management 17.
- British Columbia, Report of the Honourable E.N. Hughes, on the sale of the Fantasy Garden World Inc. (VanderZalm), (Victoria: Crown Publications, 1991).
- Browne, P., "Moonlighting appeal won by police; state liquor authority rule struck by court of appeals to allow some off-duty jobs", (May 1988) 199 N.Y.L.J. 1.
- Browne, E., "Evaluating conflict of interest theory", (Jan.1984) 14 British Journal of Pol. Science 1.
- Burke, F., "Written Rules: state ethic codes, commissions and conflicts", (1989) 62 Journal of State Government 195.
- Canada, Task Force on Ethical Conduct in the Public Sector, The Honourable Michael Starr and Mitchell Sharp (Ottawa: Supply and Services, 1984).
- Canada, Parliament, Conflict of Interest Rules for Federal Legislators (Ottawa: Minister of Supply and Services, 1989).
- Canada, Report of the Special Committee on the Review of Personnel Management and the Merit

- Principle, D'Avignon Committee (Ottawa: Ministry of Supply & Services, 1979).
- Canada, Treasury Board, Conflict of Interest and Post-Employment Code for Public Office Holders. (Ottawa: Ministry of Supply & Services, 1985).
- Canada, Office of ADRG, Conflict of Interest in Canada (Ottawa: Supply and Services, 1990).
- Canada, Office of ADRG, Conflict of Interest - Compliance Measures and Caveats (Ottawa: Supply and Services, 1991).
- Canada, Treasury Board, Conflict of Interest and Post-Employment Code for the Public Service. (Ottawa: Ministry of Supply & Services, 1985).
- Canada, Privy Council, Green Paper on Members of Parliament and Conflict of Interest, The Honourable Allan MacEachen (Ottawa: Ministry of Supply and Services, 1973).
- Canada, Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens, Commissioner The Honourable W.D. Parker (Ottawa: Minister of Supply and Services, 1987).
- Canada, Commission of Inquiry relating to public complaints, internal discipline and grievance procedures within the RCMP, (Ottawa: Information Canada, 1976).
- Canada, Community Based Policing: a Review of the Critical Issues, (Ottawa: Programs Branch, 1984).
- Clarkson, M. & M. Deck, Analysing and Evaluating Codes: The Stakeholder Management Model, unpublished, presented at the conference "How to Institute Successful Ethics Programs in Organizations", Wright State University, May 8-10, 1991.
- Cohen, H., "Exploiting Police Authority" (1986) Criminal Justice Ethics 23.
- Conflict of Interest (Victoria: B.C. Police Commission, 1988).
- Cordner, G.W., "Written rules and regulations: Are they necessary?", (July 1989) FBI Law Enforcement Bulletin 17.
- Crane, G., "The constitutional right of a police officer to make political contributions", (Wntr.1986) 13 Hastings Constitutional L.Q. 341.
- Creating a Workable Company Code of Ethics (Washington: Ethics Resource Center, 1990)
- Cullen, "The Challenge of Defining Conflict of Interest: Looking Back to See the Future" (1988/89) 19(3) Optimum 86.



- Dalton, M., "Director conflicts: the effect of disclosure", (April 1988) 17 Colorado Lawyer 639.
- Deakin, T., Police Professionalism (Springfield, Illinois: Charles C. Thomas, 1988).
- Delanre, E.J., Character and Cops: Ethics in Policing (Washington: American Enterprise Institute for Public Policy Research, 1989).
- Ethidex Code Data Base (Toronto: Centre for Corporate Social Performance & Ethics, 1990).
- Gallant, E., "Political Rights for Public Servants: A Federal Perspective" (1986) 29(4) Canadian Public Administration 665.
- Gorlin, R., Code of Professional Responsibility, 2nd Ed. (Washington: Bureau of National Affairs, 1990).
- Grant, S.M., "Sex, Lies and Legal Ethics" (1991) The Law Society Gazette 103.
- Greene, I., "Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules for Canadian Cabinet Ministers" (1990) 23 Canadian Journal of Political Science 234.
- Harris, C., "Structuring a Workable Business Code of Ethics" (1978) 30 University of Florida L.R. 310.
- Hirshman, L., "Departmental regulation of officer's private lives", (Jan.1977) Police Law Quarterly 32.
- Janigan, Mary, "Avoiding Future Conflicts" (March 7 1988) 101 (11) Maclean's 12.
- Johansen, D., Regulation of Conflict of Interests of Members of Provincial Legislative Assemblies (Ottawa: Library of Parliament, 1983).
- Kania, R., "Should we tell the police to say yes to gratuities" (Summ. 1988) 7 Crim. Just. Ethics 37.
- Kaplan, S., "Faster than the revolving door: federal employees who moonlight face scrutiny for conflicts", (Apr.1990) 12 Legal Times 1.
- Keely, J. & J.H. Ryan, "Should police moonlight in security jobs?", (June 1983) 27(6) Security Management 9.



- Kelcourse, K., "Conflict of interest (white-collar crime: 5th survey of Law)", (Wntr.1989) 26 Am Crim L.R. 713.
- Kelman, S., "What's Wrong with the Revolving Door?", an unpublished paper presented to the Law and Economics Workshop and the Public Policy Workshop of the Faculty of Law, University of Toronto, October 4, 1991.
- Kernaghan, K. & J.W. Langford, The Responsible Public Servant (Halifax: The Institute of Public Administration of Canada, 1990).
- Kernaghan, K., Ethical Conduct of Government Employees (Toronto: Institute of Public Administration, 1975)
- Kingsley, J.P., "Conflict of Interest: A Modern Antidote" (1986) 29(4) Canadian Public Administration 585.
- Lichtenberg, J., "Truth, neutrality and conflict of interest", (Spr. 1990) 9 Business and Professional Ethics J. 65.
- Manek, J., "Free speech rights of law enforcement employees: some liability considerations", (Fall 1987) 21 J. of National District Attorneys Association 7.
- Manitoba, Report of the Aboriginal Justice Inquiry of Manitoba (Winnipeg: Queen's Printer, 1991)
- Manitoba, Law Reform Commission, Report on Conflict of Interest of Municipal Councillors (Winnipeg: Law Reform Commission, 1981).
- Manitoba, Report of the Commission of Inquiry into the Harvey I. Pollock, Q.C., Case, Hon. E.N. Hughes, Q.C., Commissioner, Winnipeg, September 12, 1991.
- "Models for management: off-duty or secondary employment", (1988) 66 The Police Chief 87.
- "Moonlighting", (1979) 100 Legal Points 1.
- Muhammad, J., "Moonlighting: personal, social and organizational consequences", (1986) 39 Human Relations 977.
- Muir, W.K., Jr., "Police and Politics" (Summer-Fall 1983) 2 Criminal Justice Ethics 3.
- Ontario, Discussion Paper on Political Activity Rights for Police Officers (Toronto: Ministry of Solicitor General, 1991).

- Ontario, The Extension of Political Activity Rights for Ontario Crown Employees (Discussion Paper) (Toronto: Management Board of Cabinet, 1991).
- Ontario, Municipal Conflict of Interest Review (Toronto: Queen's Printer, 1991).
- Ontario, Standing Committee on Legislative Assembly, Report on the allegation of conflict of interest concerning Rene Fontaine, MPP., (Toronto: Queen's Printer, 1986).
- Ontario, Premier's Office, Ontario Conflict of Interest Guidelines (Toronto: Queen's Printer, 1990).
- Ontario, Conflict of interest in Ontario: a legislative history, (Toronto: Legislative Library, Research and Information Services, 1987).
- Ontario, Report on Ministerial Compliance with the Conflict of Interest guidelines and Recommendations with Respect to Those Guidelines, Aird Report (Toronto: Queen's Printer, 1986).
- Ontario Law Reform Commission, Report on Political Activity, Public Comment and Disclosure by Crown Employees (Toronto: Ministry of the Attorney General, 1986).
- Ontario, Inquiry Re Alleged Improper Relationships Between Personnel of the Ontario Provincial Police Force and Persons of Known Criminal Activity, The Honourable Justice Campbell Grant (Toronto: Queen's Printer, 1970).
- Ontario, Standing Committee on Public Accounts, Report on the Allegation of Conflict of Interest Concerning Elinor Caplan, MPP (Toronto: Queen's Printer, 1986).
- Ontario, Standing Committee on the Legislative Assembly, Report on the Report on Ministerial Compliance with the Conflict of Interest Guidelines and Recommendations with Respect to Those Guidelines (Toronto: Queen's Printer, 1986).
- Peach, J.A. & C.W. Ruckman, "Establishing and maintaining professional standards by the police executive for secondary employment" (Jan. 1977) 44(1) Police Chief 26.
- Petraglia, P., "Public Servants and free speech", (1986) 2 Adm. L.J. 6.
- "Police Ethics" (Jan. 1991) 58 The Police Chief 27.
- "Police for Hire", (Feb. 1990) 22(5) Police 22.
- Potter, R. H., "Ethics, discipline, and human nature: a new look at management and deviance," (1989) 31 Industrial Management 14.
- Reiss, A.J. Jr., Private Employment of Public Police (Washington: National Institute of Justice,

1988).

Ridley, F., "Political neutrality, the duty of silence and the right to publish in the civil service", (1986) 39 Parl.Aff. 437.

Rosenblum, E., "Court workers fight political activity ban", (Oct.1989) 124 N.J.L.J. 5.

Sardino, T., "Remarks: moonlighting by police officers", (1984) 51 The Police Chief 133.

Saskatchewan, Law Reform Commission, Report on conflict of interest to the A.G., (Saskatoon: Queen's Printer, 1977).

Schmitz, C., "Appearance of conflict enough to fire civil servant", (1986) 6(13) Lawyers Weekly 1.

Schwartz, A., "Discipline upheld for off-duty relationship", (Dec. 1984) 130 Chicago Daily Law Bulletin 2.

Smith, J.G., "The Nature of Conflict of Interest" (1980) Pitblado Lectures 157.

Smith, D.G., "Beyond Public Concern: New Free Speech Standards for Public Employees" (1990) 57 University of Chicago L.R. 249.

Smither, M., Municipal Conflict of Interest, (St. Thomas, Ontario: Municipal World, 1983).

Swan, K.P., "Whistleblowing and National Security", in P. Hanks and J.D. McCamus, eds., National Security Surveillance and Accountability in a Democratic Society (Cowansville: Blais, 1989).

Taylor, M.H. & A.E. Filmer, "Moonlighting: the practical problems", (1986) 29(4) Canadian Public Administration 592.

Thomson, G., "Personal morality in a professional context", (1991) 34(1) Can. Public Adm. 21.

Vaughn, R.G., Conflict of Interest Regulation in the Federal Executive Branch (Lexington, Mass.: Heath & Company, 1979).

Weller, Steven, "The effectiveness of corporate codes of ethics", (1988) 7 Journal of Business Ethics 389.

Williams, S., Conflict of Interest (London: Gower Publishing, 1985).

NOTES



This is Exhibit "27" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.



301



# **Royal Canadian Mounted Police External Review Committee**

## **Off-Duty Conduct**



302

## **Off-Duty Conduct**

303

**Royal Canadian Mounted Police  
External Review Committee**

**Chairman**

Honourable René J. Marin, OMM, QC, LLD

**Vice-Chairman**

F. Jennifer Lynch, QC

**Members**

Joanne McLeod, CM, QC

William Millar

Mary Saunders, QC

**Executive Director**

Simon Coakeley

The Committee publishes a series of discussion papers to elicit public comment to assist the Committee in the formulation of recommendations pursuant to the *Royal Canadian Mounted Police Act* (1986). The views expressed in this paper are not necessarily the views of the Committee.

Comments are invited; they should be addressed to:

Simon Coakeley  
Executive Director  
RCMP External Review Committee  
Postal Box 1159, Station "B"  
Ottawa, Ontario  
K1P 5R2

Fax: (613) 990-8969

304

**Royal Canadian Mounted Police  
External Review Committee**

Discussion Paper Series

Number 7: Off-Duty Conduct

Director of Research  
Lynne Bennett

with the assistance of:  
Simon Coakeley  
Yvonne Martin  
Suzanne Gervais

Consultant:  
Philip Stenning

with the assistance of:  
Siu Fong

Also published:

Discussion paper 1  
Suspensions - A Balanced View  
Suspensions - Consultation Report

Discussion paper 2  
Relocation - A Painless Process?  
Relocation - Consultation Report

Discussion paper 3  
Medical Discharge - A Police Perspective  
Medical Discharge - Consultation Report

Discussion paper 4  
Post-Complaint Management - The Impact of Complaint Procedures on Police Discipline  
Post-Complaint Management - Consultation Report

Discussion Paper 5  
Employee Assistance Programs - Philosophy, theory and practice Employee Assistance Programs -  
Consultation Report

Discussion Paper 6  
Disciplinary Dismissal - A Police Perspective

**FOREWORD**

305

This discussion paper is the seventh in a series produced by the Research Directorate of the RCMP External Review Committee.

It could not have been written without the cooperation and assistance of many people in the police community across the country. The Committee would like to extend its sincere appreciation to all those who have helped, particularly those who met with the consultant and provided valuable information to assist him in the preparation of this report.

Simon Coakeley  
Executive Director  
RCMP External Review Committee



zde

## **OFF-DUTY CONDUCT**

### **TABLE OF CONTENTS**

INTRODUCTION

SCOPE

METHODOLOGY

REGULATION AND CONTROL OF OFF-DUTY EMPLOYEE CONDUCT: SOME GENERAL PRINCIPLES

SPECIAL CONSIDERATIONS RELATING TO PUBLIC SERVICE EMPLOYMENT

SPECIAL CONSIDERATIONS WITH RESPECT TO PUBLIC POLICE OFFICERS

THE DISTINCTION BETWEEN EXTRA-DUTY AND OFF-DUTY EMPLOYMENT

INSTRUMENTS FOR THE REGULATION OF OFF-DUTY POLICE OFFICER CONDUCT

ORGANIZATIONAL RESPONSES TO OFF-DUTY MISCONDUCT

POLICE TRAINING WITH RESPECT TO OFF-DUTY CONDUCT

KINDS OF POLICE OFF-DUTY CONDUCT WHICH HAVE BEEN SUBJECT TO DISCIPLINE

- (1) CRIMINAL CONDUCT
- (2) OTHER ILLEGAL CONDUCT
- (3) POLITICAL ACTIVITIES
- (4) OUTSIDE EMPLOYMENT AND BUSINESS ACTIVITIES
- (5) DOMESTIC AND SOCIAL ACTIVITIES
- (6) IMPROPER DISCLOSURE OF POLICE INFORMATION
- (7) PUBLIC CRITICISM OF THE POLICE, CRIMINAL JUSTICE SYSTEM, ETC
- (8) ABUSE OF AUTHORITY
- (9) UNAUTHORIZED/IMPROPER USE OF POLICE EQUIPMENT/PROPERTY

CONCLUSIONS

TOWARD A MORE RATIONAL BASIS FOR THE REGULATION AND CONTROL OF OFF-DUTY POLICE OFFICER CONDUCT

ENDNOTES

REFERENCES

*"I will keep my private life unsullied as an example to all."*

from a "Law Enforcement Code of Ethics"

## INTRODUCTION

It is only in relatively modern times, and even now only in certain societies, that the private and work lives of individuals have come to be regarded as so separate and distinct.<sup>1</sup> Cultural traditions, as much as factors such as urbanization and industrialization, seem to play a key role in determining the extent of separation between a person's work life and his or her home life. In his well-known study of public policing in Japan, for instance, Bayley argued that one of the reasons for the enviable record of the Japanese police with respect to the propriety of their conduct is the extent to which the work group "dominates personal life"<sup>2</sup> in that country.

In North America, at least during the 20th century, our traditions have been very different. Influenced by the ideas of classical liberalism, in which individualism and privacy are celebrated, North American employees are likely to think that what they do during their off-duty hours is not their employer's business. To paraphrase the oft-quoted words of one arbitrator, the employer is not the custodian of the employee's character.<sup>3</sup>

Despite this attitude, it has long been recognized in labour relations law that some off-duty conduct of an employee may have sufficient negative implications for the employer that the latter is entitled to take steps to prevent it, or to respond to it with disciplinary or other measures should it occur. A great deal of attention has been devoted to trying to delineate with greater precision the extent of this right of employers to try to influence and react to off-duty employee conduct.<sup>4</sup> Arbitrators, judges, legislators, and more recently management consultants and health professionals have become involved. This paper reviews the broad principles of management and discipline which have evolved in this area in recent years.

There has been a recognition, too, that employment in public services may carry with it greater responsibilities for employees with respect to the propriety of their off-duty conduct than is the case with most purely private employees. Indeed, recent public interest in the private lives of those who hold, or aspire to, public offices, suggests that these expectations of those in public life are not limited to employees, as that term has traditionally been understood.

On the other hand, with the growth of modern concerns about the social responsibility and business ethics of even private corporations, the argument that public employees should be held to higher standards of conduct than private employees may be weakening. The enormous harm that may be caused to the environment, public health and public safety by incompetent, corrupt or unprofessional employees in some occupations has been recognized. Because of this, there appears to be a growing willingness to entertain monitoring or screening of off-duty conduct which might have a negative impact on an employee's performance on the job. The current debate over random testing of employees and prospective employees for illegal drug use is but the most obvious and controversial manifestation of this trend.

Because of its unique association with public safety and the integrity of the law and legal



208

system, the public police officer's job has always been regarded as involving special responsibilities in this respect. The special powers which are accorded to police to interfere with the liberty of citizens are also seen as requiring that police officers maintain an unusually high standard of personal conduct. From the very beginnings of the modern public police force, officers were urged

[t]o recognize always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.<sup>5</sup>

The special responsibilities of police officers in this regard were explicitly recognized by Mr. Justice Rand of the Supreme Court of Canada in *R. and Archer v. White* in which, referring to a member of the RCMP, he said:

...the member, by joining the Force, has agreed to enter into a body of special relations, to accept certain duties and responsibilities, to submit to certain restrictions upon his freedom of action and conduct and to certain coercive and punitive measures prescribed for enforcing fulfilment of what he has undertaken. These terms are essential elements of a status voluntarily entered into which affect what, by the general law, are civil rights, that is, action and behaviour which is not forbidden him as a citizen.<sup>6</sup>

To what extent this characterization of police discipline codes and procedures, penned 35 years ago, is still applicable in the current era is open to question. Today, employment discipline is generally regarded as intended to be remedial rather than "coercive and punitive",<sup>7</sup> and all such regulations must be measured against standards of civil rights enunciated in the *Canadian Charter of Rights and Freedoms*<sup>8</sup>. The general principle which it reflects, however -- that police officers can legitimately be held to higher standards of private as well as public conduct than those demanded of the citizenry at large -- seems to be just as well accepted today as it has been at any time in the past.<sup>9</sup> The debate now, as always, is over how much higher those standards may legitimately be, and in what respects (and with respect to what conduct) they may legitimately differ from standards demanded of ordinary citizens and other employees.

## SCOPE

This discussion paper explores one largely neglected aspect of this general responsibility of police officers. The main objectives of the paper are:

- (1) to identify the broad principles which define the extent to which police forces are permitted to regulate the off-duty conduct of their members, and discipline them for breaches of such regulations;

- (2) to identify the general areas of conduct which have been the object of such attempts at regulation and discipline;
- (3) to identify changes which have been occurring in both these areas in recent years, and the extent to which trends are discernible;
- (4) to compare, in a general way, the situation of police officers in this regard with that of other public and private sector employees; and
- (5) to consider what reforms are being suggested in this area, and the reasons why such reforms are needed.

The paper is not concerned, other than peripherally, with issues concerning disciplinary processes, such as procedure, competing forums, concepts of double jeopardy, standards and burden of proof, etc. This is because these issues are rarely unique to the handling of off-duty, as opposed to on-duty, infractions, and are in any event the subject of other papers which have been commissioned by the RCMP External Review Committee. For similar reasons, there shall not be substantial attention given to the issue of what sanctions are being meted out, or considered appropriate, for off-duty disciplinary infractions. While occasional reference is made to decisions from other countries, the focus of this paper is on the situation in Canada.

## METHODOLOGY

The bulk of the work undertaken in preparing this discussion paper consisted of conventional library and legal research, but focusing necessarily as much, if not more, on "arbitral jurisprudence" as on decisions of the "regular courts". In addition, however, approaches were made to officials associated with a dozen large police departments in Vancouver, Edmonton, Winnipeg, Toronto, Ottawa, Montreal, Halifax and Dartmouth, seeking more detailed information about relevant legislative and regulatory provisions, force policies and practices, and individual cases in which off-duty conduct had been the subject of decisions and rulings. Almost 40 interviews were held with officials in the following categories:

- (1) police managers (especially heads of internal affairs units);
- (2) police association and union representatives;
- (3) provincial police commission representatives;
- (4) persons involved in police training;
- (5) representatives of provincial Solicitor General's Departments;
- (6) representatives of public complaint and disciplinary review bodies;

- (7) municipal, provincial and federal government officials (especially lawyers and others concerned with conditions of public service employment and the administration of human rights legislation);
- (8) academics and others with expertise in employment and labour relations law.

From these interviews, much was learned about the policies and practices, not only of the police forces represented but also of other police forces in Canada. Time and other constraints precluded surveying a statistically representative sample. The object was to discover, as best we could within these constraints, what is the current range of attitudes, policies and practices with respect to the control and regulation of off-duty conduct of police and other public sector and private sector employees in Canada at present.

We are grateful to all those who assisted with our research in this way. Unfortunately, protection of the confidentiality of some of the information provided to us, as well as the privacy of officers involved in some of the cases we reviewed, precludes us not only from identifying publicly those who did assist us, but also from citing, as freely as we would have wished, the sources of much of the information we obtained. We regret that considerations of space have precluded us from referring specifically to much of the vast amount of information which was provided to us by these various sources. It has, however, greatly assisted our analysis.

#### **REGULATION AND CONTROL OF OFF-DUTY EMPLOYEE CONDUCT: SOME GENERAL PRINCIPLES**

In general, the extent to which an employer can legitimately seek to regulate the off-duty conduct of employees, and take action in response to breaches of such regulations, depends upon a number of factors. If employees are not unionized, the employer will be governed by the principles of the common law of master and servant (employment and labour relations law) developed by the courts over the years, as well as the provisions of specific statutory enactments which impinge on the employment relationship. With respect to the private sector, statutory provisions are almost never concerned with off-duty employee conduct. Such matters are not infrequently covered, however, by statutory provisions governing public sector employment (such as those in public service acts, municipal acts, election acts (re off-duty political activities, etc.)).

Where employees are unionized, the extent to which, and the circumstances under which, the employer can regulate employee conduct and discipline employees will usually be defined or constrained to a greater or lesser extent by the terms of a collective agreement. Such terms will normally prevail over the more general principles of the common law, because they are treated as the expression of the common will of the employer and the employees in the bargaining unit. They may often be interpreted and applied, however, in light of common law principles, thus allowing the common law to influence negotiated terms of employment indirectly.



Most often, in unionized situations, the employer's right to regulate off-duty conduct will be governed by a general management rights clause in the collective agreement. In these circumstances, the extent of the employer's right to promulgate and enforce rules concerning the off-duty behaviour of employees will be determined in light of general principles of reasonableness and notice. That is to say, any such rule promulgated by the employer will only be enforceable against employees if it is held to be a reasonable one (i.e. that there is a rational connection between the rule, the conduct which it seeks to regulate and the employer's legitimate interests), and if adequate notice of the rule has been given to employees.<sup>10</sup> If a rule (e.g. a rule prohibiting employees from working for a competitor during off-duty hours) is written into a collective agreement, however, these conditions will be deemed to have been met (since the collective agreement is the product of agreement between the employer and the bargaining unit employees).

Arbitration cases have established some reasonably clear principles by which the reasonableness of an employer's rule concerning the off-duty behaviour of employees can be assessed. The most often cited statement of these principles is that of arbitrator Anderson in *Re Millhaven Fibres*:

...[I]f the discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from the place of work, there is an onus on the Company to show that:-

- (1) the conduct of the grievor harms the Company's reputation or product;
- (2) the grievor's behaviour renders the employee unable to perform his duties satisfactorily;
- (3) the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him;
- (4) the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the reputation of the Company and its employees;
- (5) places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces.<sup>11</sup>

Even if it is not provided for in a collective agreement, however, it is now well recognized that the employer has the right to discipline an employee for participation in off-duty activities which conflict with that employee's duties to the employer. It has also been established that principles similar to the ones just cited will be used to determine whether this is the case with respect to particular activities.

As Palmer has noted, on the basis of a review of pertinent arbitration cases in Canada, there

is "an extremely broad range of activities over which an employer's interest may extend."<sup>12</sup> Just what this range is in any given instance will be determined largely by the nature of the employer's business, and the standards generally recognized within the industry of which it forms a part. Thus, as Brown & Beatty point out:

...depending upon the circumstances and context in which the grievance arises, the nature of the employer's operations, and the character of the conduct complained of, identical off-duty conduct may or may not expose an employee to disciplinary sanctions.<sup>13</sup>

### **SPECIAL CONSIDERATIONS RELATING TO PUBLIC SERVICE EMPLOYMENT**

While private sector employment relations are largely governed by the common law and the terms of collective agreements (at least as far as the regulation and control of off-duty conduct are concerned), public service employment is much more commonly regulated by legislation. This is true of the regulation of off-duty as well as on-duty conduct and, in recent years at least, has become especially true of the public police occupation.

Thus, for instance, as we shall note in more detail below, public service acts now routinely include provisions regulating certain aspects of off-duty public employee conduct, such as involvement in political activities. In the case of the public police, detailed codes of discipline or codes of conduct or ethics are now included in most provincial police acts, as well as the federal *RCMP Act*,<sup>14</sup> or in subordinate legislation (regulations or by-laws) enacted pursuant to them. All of these codes cover aspects of off-duty as well as on-duty conduct, although the extent to which particular provisions of them are applicable to off-duty conduct is often a matter of interpretation. Breaches of the codes are legislatively declared to be cause for disciplinary action.

The important point to bear in mind here is that such legislated provisions supersede the more general principles of the common law (and usually also override the provisions of collective agreements) discussed above, which largely govern private sector employment relations. Thus, a validly enacted provision regulating some aspect of off-duty conduct will be enforceable through a disciplinary process regardless of whether it conforms, for instance, with the *Millhaven* principles cited above. Only in the event of doubt as to the scope or meaning of a legislated provision (e.g. whether a prohibition on "discreditable conduct" is intended to cover a particular kind of off-duty behaviour) will common law principles be invoked as an aid to interpretation. Otherwise, the only way to attack the application of a legislated rule concerning off-duty conduct is to argue either that it is *ultra vires* (i.e. the legislating body was not authorized to promulgate such a rule), or that the rule violates some constitutional requirement (e.g. some requirement of the *Charter*).

By way of example, such a legal challenge was recently launched in the courts by the Calgary Police Association against provisions in the force's Police Administration Manual regulating "outside business interests" of members of the force, which had been enacted by the Calgary Police Commission. The Association argued that enactment of such a regulation was not authorized by the *Alberta Police Act*<sup>15</sup> or, if so authorized, was an unreasonable exercise of the Commission's



legislative authority and contrary to the rules of natural justice. It argued further that in any event it involved a violation of the principles of fundamental justice protected by section 7 of the *Charter*. The Alberta Court of Queen's Bench, and subsequently also the Alberta Court of Appeal, ruled in favour of the Calgary Police Commission on all of these grounds;<sup>16</sup> leave to appeal to the Supreme Court of Canada was refused.

The point, then, is that different (and often higher) standards of conduct can be, and frequently are, applied to public service employees through primary and subordinate legislation than those which are typically applied to private sector employees through the common law and collective bargaining.

Court rulings have established, too, that where such specific legislation has been enacted, it supersedes not only the common law but also the more general provisions of labour relations legislation.<sup>17</sup> Nowadays, such legislation usually also takes precedence over the terms of collective agreements, although this has not always been the case for all police forces in Canada. The Nova Scotia *Police Act*, for instance, used to contain a provision to the effect that "Nothing in this Act contained shall affect the provisions of any collective agreement entered into pursuant to the *Trade Union Act* and in force at the time this Act comes into force".<sup>18</sup>

Having said all this, it should be noted that some public service discipline codes specifically incorporate the *Millhaven* (common law) principles into their provisions (e.g. Section 4.5 of Revenue Canada, Customs and Excise's Code of Conduct and Appearance, and Section 19 of the Department of National Defence's Code of Discipline). In these cases, of course, public servants are in a similar position with respect to the regulation of off duty conduct, as private sector employees.

### **SPECIAL CONSIDERATIONS WITH RESPECT TO PUBLIC POLICE OFFICERS**

It has long been recognized that public police officers are not simply employees like others in public employment, but are holders of a particular public office (that of "constable" and "peace officer") by virtue of which they enjoy a relatively independent legal status.<sup>19</sup> In most jurisdictions, police officers are recognized as enjoying this status at all times, whether they are on duty or off duty (and typically in all parts of the province in which they are appointed).<sup>20</sup> While the implications of this special status for the regulation and control of off-duty police conduct do not appear to have been clearly established in any definitive court ruling, there does seem (from our interviews) to be general agreement about two aspects of it.

The first aspect involves off-duty police officers who witness criminal or other disorder over which they would legitimately have jurisdiction if they were on duty, and intervene to exercise their authority as peace officers (e.g. to arrest someone). These police officers are considered in most police circles to have automatically put themselves on duty. Thus any conduct which is in the purported legitimate exercise of formal police authority will be regarded not as off-duty conduct (even if it occurs during off-duty hours), but as conduct in the performance of duty. Within American legal parlance, an officer under such circumstances, even if off duty at the time, is said to be acting "under color of law",<sup>21</sup> and thus in the execution of duty. The case of *Lockhart v. Ens*<sup>22</sup>



illustrates well the potential dangers to officers involved in attempts to exercise their official authority while off duty and out of uniform. In that case an off-duty officer out of uniform attempted to give a motorist a ticket for a driving infraction. The driver of the vehicle, not realizing that he was being accosted by a police officer, and thinking that he was about to become the victim of a mugging or a robbery, wound up his car window, catching the officer's arm in it, and attempted to drive away, seriously injuring the officer in the process. (The driver was held civilly liable for the officer's injuries even though his mistake as to the officer's identity was believed by the court.)

The second aspect involves abuses of police authority during off-duty hours and must be distinguished from the out-of hours exercise of duty. In one case which came to our attention, a police officer whose wife was involved in a dispute with a third party over the purchase of a truck, went to the residence of the third party during his off-duty hours, showed his police badge and emphasized that the third party was dealing with a police officer's wife (presumably hoping that this would encourage the third party to take a different stand in his negotiations over the purchase of the truck). The third party complained to the officer's police force about this abuse of authority, and the officer was disciplined for discreditable conduct. It is clear that in such cases, the officer's conduct is not properly considered to be on-duty conduct (since he had not purported to be in the legitimate exercise of his authority as a peace officer, and had not therefore put himself back on duty), but as an off-duty abuse of his position as a police officer for personal advantage.

In some cases, the distinction we have just drawn seems to be somewhat blurred. In another case which came to our attention, for instance, an officer who was driving home in his own vehicle at the end of his shift (and therefore off duty) was involved in an accident with another vehicle. He drew up an incident report himself, and also persuaded his passenger to submit statements which falsely exonerated him from any blame for the accident, blaming instead the driver of the other vehicle. When his police force discovered this, he was disciplined for not following force procedures (he should have summoned traffic unit officers) and for discreditable conduct (his attempts to obstruct a proper investigation of the accident). While it was never determinatively decided, it would seem that this incident should properly be regarded as on-duty misconduct rather than off-duty abuse of the officer's position. This is because, as a peace officer, it was a potentially legitimate exercise of his authority to investigate the accident (even though his force's policies required him not to under these circumstances, and even though in this particular case he was abusing his authority for personal advantage). The matter, however, is not entirely free from doubt.

In another, perhaps clearer, case, an officer who was on his way home from work in his own car, was "cut off" on the highway by another vehicle. He began to flash his headlights at the other vehicle in front of him, indicating that the driver should pull over. When she did not, he followed her until she pulled into the driveway of her home. He pulled into the driveway behind her, and proceeded to write out a traffic ticket for her alleged driving infraction. During this encounter he used very abusive and insulting language. As a result of the other driver's complaint, the officer was disciplined for discreditable conduct. Again in this case, there was no doubt that the officer had the legal authority (and perhaps even a legal duty) as a peace officer to respond to a driving offence which he observed, even during his off-duty hours. By exercising this authority, the officer automatically put himself back on duty (or so prevailing opinion holds). His misconduct is thus most

305

properly viewed as on-duty rather than off-duty misconduct.

While this distinction may seem somewhat tendentious, it is important to make it because it has possible legal implications. This is because the civil law concept of vicarious responsibility (whereby employers are held legally responsible for the civil wrongs of their employees) applies only to such wrongs which occur in the execution of the employee's duties. Thus, an employer cannot normally be held vicariously liable for an employee's off-duty misconduct, but will normally be liable for an employee's on-duty misconduct, even if it involves abuse of the employee's authority.<sup>23</sup> While it has been argued that the independent legal status of constables precludes such vicarious liability at common law, this uncertainty has now been cured by statutory provisions holding police chiefs responsible for wrongs committed by their constables in the execution of their duties in virtually every jurisdiction in Canada.<sup>24</sup>

Concerns over the possibility of vicarious responsibility for the conduct of officers while off duty have led some police forces in the United States to adopt very specific policies concerning when officers may and may not exercise their peace officer powers while off duty.<sup>25</sup> The theory behind such policies is that if an officer purports to exercise his authority in violation of the explicit policy of the force he will not be regarded as acting "under color of law", and the department will thus not be civilly liable for any wrongdoing he may commit.<sup>26</sup> As we shall note below, many Canadian police forces have adopted policies concerning off-duty employment of their officers. Such policies, however, do not address this particular issue.

The other aspect of the continuous peace officer status of police officers which seems to be the subject of general agreement is that the main justification for it is thought to be that, because of the nature of police work, there is a need for police officers to be available for duty at all times, even when they are off duty. Virtually all police forces have internal regulations requiring such availability (often including requirements that officers reside within, or within a certain distance of, the area in which they work). This requirement that officers be available to be called up for duty at any time at short notice (e.g. to respond to a major emergency) is said to justify higher standards with respect to the off-duty conduct of police officers than is the case for other public service and private sector employees who are not required to be available for duty round-the-clock. In particular, disciplinary tribunals have argued in many cases that police forces are entitled to be very hard on officers who consume legal or illegal intoxicating substances to excess off duty, because such consumption is likely to render the officer unfit for emergency duty (although of course in the case of illegal substances, other considerations also come into play).



316

## THE DISTINCTION BETWEEN EXTRA-DUTY AND OFF-DUTY EMPLOYMENT

Another distinction which has to be understood in the context of the regulation and control of off-duty police conduct is that between off-duty and so-called extra-duty employment (sometimes also referred to as special-pay duty or call-out duty).

In every jurisdiction which we visited, provisions were made in force regulations or policies for such extra-duty employment. Such employment occurs when some member of the public (usually a private corporation) enters into an agreement with the police force for the provision of special police services for a fee. Obvious examples would be a sports stadium which contracts for the services of police officers to provide extra protection and order maintenance during a sporting event, or a jewelry store which contracts to have a police officer stand outside its premises during the hours in which it is open to the public. Such arrangements are almost always subject to the approval of the chief of police (although the logistics of assigning particular officers to these tasks are sometimes left, under the terms of a collective agreement, to a police association or union), and are governed by a standard form of agreement. Services under such agreements are generally provided by officers who are not scheduled to be on shift (i.e. who would otherwise be off duty) at the times for which the services are required, and collective agreements frequently include formulas for determining which officers will have priority with respect to the right to be offered such assignments. The standard agreements also usually specify the rates of pay which officers who are assigned to these duties are to receive. Such rates are typically negotiated with the police association or union, and are usually the equivalent of overtime pay rates. Usually, the person contracting for extra-duty services pays the officers directly for their services although, in some forces, the officers are paid by the force which then recovers the appropriate amount from the person contracting for the services.

There is variation among forces as to what kind of extra-duty assignments will be permitted. The general rule, however, seems to be that extra-duty assignments can only involve the kind of work which would be contemplated for officers on regular duty (keeping the peace, enforcing the law where appropriate, etc.). In some forces, there is no clear policy as to what kind of extra-duty assignments will be permitted; this decision is left to the discretion of the chief of police. There appears to be a growing trend, however, towards the adoption of formal written policies in this area. Indeed, the Nova Scotia *Police Act*<sup>27</sup> now requires all municipal police boards in that jurisdiction to establish written policies respecting both extra-duty and off-duty employment of the members of their forces, and specifies some minimum content for such policies. Some of the policies which have been established under this provision, however, do not seem to reflect a clear understanding of the difference between extra-duty and off-duty employment.

The important point about such extra-duty employment for the purposes of this paper, however, is that although officers who are off duty are assigned to extra-duty employment, while performing such tasks they are regarded as being fully on duty and subject to all the same rules and regulations as apply when they are engaged in their regular duties. This typically includes the

317

requirement to be in uniform unless the force specifically permits them to be in civilian clothes, and to be under the supervision and orders of superior officers.

These characteristics of extra-duty employment are well reflected in the *NS Police Act*, which provides that:

21(1) Every [municipal police] board shall establish a written policy respecting extra-duty employment by members of its police force and the policy shall

- (a) define extra-duty employment;
- (b) provide that requests for a member of the police force to be employed on extra duty be made to the chief officer;
- (c) require that a member of the police force engaged in extra-duty employment shall wear his uniform except where the chief officer determines that plain clothes are required;
- (d) require that at all times while on extra duty the member of the police force is under the orders of the police force and no one else.<sup>28</sup>

Extra-duty employment is thus, theoretically at least, in sharp contrast to true off-duty employment, in which police officers, while off duty, perform services pursuant to private arrangements with employers other than their police forces, which arrangements are not made through their police forces. They remain off duty at all times while engaged in such employment. Unlike the situation with extra-duty employment, therefore, the police force and police governing authority are not liable for any wrongdoings committed in connection with such off-duty employment unless they purport to exercise their authority as peace officers (as discussed above).

As we note below, true off-duty employment of police officers is the subject of some regulation (and in some instances outright prohibition) by most police forces.

Because officers undertaking extra-duty work are generally considered to be on duty, we do not consider these activities further in the paper. Reiss' exploratory study of this subject in the United States, however, provides a good starting point for anyone interested in this area.<sup>29</sup>

## **INSTRUMENTS FOR THE REGULATION OF OFF-DUTY POLICE OFFICER CONDUCT**

As noted earlier, in virtually all jurisdictions in Canada, police officer conduct is the subject of regulation through provisions of primary or subordinate legislation setting out codes of discipline, codes of conduct or codes of ethics. In most jurisdictions, such codes are enacted as part of a *Police Act* (as was, for instance, the case under Part II of the old *RCMP Act*<sup>30</sup>) or (more commonly) as part

of regulations enacted pursuant to such Acts (see e.g. the *Police (Discipline) Regulation*<sup>31</sup> passed pursuant to the *British Columbia Police Act*).<sup>32</sup>

These regulations are province-wide or, in the cases of the RCMP and the Royal Newfoundland Constabulary, force-wide. In addition provincial police acts also provide authority to police governing bodies, and sometimes also to chiefs or commissioners of police, to promulgate force-specific regulations. Until very recently, some provinces (e.g. Manitoba and Québec) did not have province-wide codes of discipline or conduct, and in these circumstances such codes varied greatly from one force to another, both in terms of their general scope and in terms of the extent to which they specifically regulated off-duty conduct.

Legislated codes of police discipline have shown a tendency to become very detailed. A not untypical, although perhaps somewhat extreme, example of this is a municipal regulation which sets out 149 separate offences against discipline under 21 broad headings. Of that total, 105 are worded in such a way that they could cover off-duty conduct. Such offences range from "engaging in employment for an employer other than the City" to "engaging in immoral practices".

All of the many disciplinary codes which we have examined include offences embracing off-duty conduct which are very broadly worded. The most common (and most commonly used) of these is the disciplinary offence of "discreditable conduct". A typical example of such an offence is found in the code of discipline in the *BC Regulation*, which provides that:

1. Discreditable conduct, that is, if he
  - (a) acts in a disorderly manner or in a manner prejudicial to discipline or reasonably to bring discredit upon the reputation of the police force,...<sup>33</sup>

While the breadth and vagueness of such rules are understandable, they arguably constitute an inducement to arbitrary and discriminatory enforcement. There is probably not a single police officer who could honestly say that he or she has never been "uncivil to a member of the public" either on or off duty, yet this offence appears in the discipline codes of most police forces.

The disciplinary offence of "discreditable conduct", which is a mainstay of police discipline, especially for off-duty conduct, carries with it the unfortunate result that officers may in effect be disciplined for matters over which they have little or no control. This is because whether or not a particular instance of conduct is reasonably likely to bring "discredit" on the police force (the nub of this offence) will depend upon whether the perpetrator's membership in the police force is likely to become publicly known. Where the officer is off duty and has not identified himself as a police officer (i.e. in cases other than the classic abuse-of-authority cases), whether his or her membership in the police force is likely to become known may depend upon circumstances entirely beyond the officer's control (e.g. the presence or absence of a diligent journalist). The inevitable result would seem to be that conduct of an officer who lives in a large, relatively anonymous, urban area is inherently less likely to be "discreditable" than the same conduct of an officer working in a small



rural community where everybody knows everyone else. The necessary implication is that officers working in small communities are held to higher standards of private conduct than officers working in large urban areas. While this increased responsibility for rural officers may well be explained as "part of the job", it can easily lead to a perception of unfairness on the part of officers.

A case which illustrates a recognition of this relativity of the notion of discredit is one which involved a relatively inexperienced officer in a small town. The officer was charged with several instances of discreditable conduct. One of these involved his going to a local bar in an intoxicated state and asking to see a nude dancer he had met on a previous occasion. Told that she was not there, he then asked another dancer to go with him to find the one he had been looking for. She refused, and while she was dancing in a booth for some patrons of the bar, the officer entered the booth flashing his police ID badge and identified himself as a member of the police force. He then went to another establishment to look for the other dancer, and again identified himself with his badge as a police officer. When members of the local municipal police force arrived as a result of a complaint, he identified himself to them as a police officer and told them that he was investigating a murder. He was taken to the local police station where he admitted that he had not in fact been investigating a murder but was merely conducting a "personal investigation". He was convicted in a service court of discreditable conduct. A review board which reviewed this decision commented that while this conduct was less serious than some other offences alleged against the officer, "in view of the fact that it occurred in a relatively small town, where the reputation of the [force] is important", the officer's conduct on this occasion could properly be regarded as discreditable.

In addition to disciplinary codes, Police forces have very extensive manuals of policies and procedures, approved by their governing authorities, some of which touch on off-duty conduct. These policies are drawn into the discipline net by general provisions in discipline codes which make it a separate disciplinary offence to act in contravention of such policies and procedures. A good example of this is provided by the policies of some forces which require members to reside within the municipality, or within a certain distance of it. Failure to conform to such a policy is typically a disciplinary offence itself. An order by a superior officer to conform to the policy constitutes a lawful order, and failure to comply with the lawful order of a superior officer constitutes the separate disciplinary offence of "insubordination".<sup>34</sup>

In addition to provincial and internal police force regulations and policies, some off-duty conduct of police officers in some jurisdictions is also regulated by other provincial legislation and/or municipal bylaws or policies. In many jurisdictions, for instance, off-duty political activities of police officers are regulated through the provisions of provincial election acts or municipal acts, while off-duty employment is regulated by city ordinances or policies detailing conflict of interest guidelines or codes of ethics.

In sum, police executives typically have available to them very extensive instruments with which to regulate and control off-duty activities of their members. Many of these instruments go far beyond the common law in the extent to which they purport to regulate such off-duty conduct. This is due to the fact that they often do not require any proof of a rational link between the impugned conduct and the legitimate interests of the police force, as the common law generally does. For



discipline to occur, it is sufficient to establish that the officer has violated a duly promulgated rule of conduct or policy; the force does not have the additional burden (which the private employer bears) of proving that the conduct in question did in fact (or was likely to) negatively affect the legitimate interests of the force in some way. Rather, this latter conclusion is often simply presumed from the existence of the rule or policy.

The rules tend to be so voluminous and so vaguely worded that no officer could be expected to fully comprehend their content and scope. Indeed, senior officers whom we interviewed (including those who were responsible for internal disciplinary matters) frequently admitted to uncertainty as to the scope and application of many of these rules. Even more frequently these senior officers indicated that they knew of no instances in which many of the rules had been invoked as the basis of disciplinary action against officers.

As Ericson<sup>35</sup> has pointed out, however, even if many (or most) of the rules are rarely or never invoked in practice, their very existence, and the possibility that they could be invoked at any point, constitute significant resources for police managers in controlling their officers' conduct both on and off duty.

#### **ORGANIZATIONAL RESPONSES TO OFF-DUTY MISCONDUCT**

The most common organizational reaction to off-duty employee misconduct, of course, is disciplinary action, or at least the threat of it. As our interviews confirmed, discovery (especially as a result of a public complaint) combined with minimal investigation proves sufficient by itself in many cases to induce self-correction on the part of an errant officer. We were told countless times that minor or first-time off-duty misconduct had been satisfactorily dealt with by the officer concerned being "spoken to" or simply "told", without any need for the invocation of formal disciplinary measures. For the officer concerned, this informal manner of responding has the particular advantage that it typically does not result in any entry on his or her formal service record.

At the more serious end of the offence scale, when discharge would be a likely outcome of a successful disciplinary charge, we learned that discovery and the threat of disciplinary action is frequently sufficient to induce an offending officer's resignation (after which disciplinary action is no longer possible).<sup>36</sup>

For these reasons, it is virtually impossible to obtain any data as to the actual extent of off-duty infractions for any police force; the dark figure is invisible and therefore unknown. We also found, however, that aggregate statistics on even recorded infractions are apparently not kept or monitored by most of the police forces that we visited. We asked our interviewees to tell us what proportion of public complaints and internal discipline cases during the last few years had involved off-duty conduct. Most indicated that they were unable to provide such statistics, and we were provided instead with informed guestimates which ranged wildly from less than 5 percent to more than 50 percent. Most forces, however, estimated that off-duty conduct is involved in less than 5 percent of formal disciplinary charges against their officers, indicating that off-duty misconduct is not regarded by them as a major problem.



Two alternatives to disciplinary action which are at least potentially available to some forces in some cases are those of medical discharge and so-called administrative release. The former may be available where off-duty conduct involves serious alcoholism or other substance abuse, the latter where off-duty conduct has led to criminal convictions resulting in incarceration or the loss of driving privileges. The argument here would be that whether or not the off-duty conduct constituted a disciplinary offence, the conduct or its consequences are such as to render the officer unfit or unable to perform his or her duties, and therefore liable to dismissal. In the case where an officer has been sentenced to a period of incarceration as a result of off-duty conduct, an argument might also be made that this constitutes an effective abandonment of his or her position of employment, again justifying termination.

While we are aware of attempts in other areas of public employment to adopt these alternative responses to problematic off-duty conduct,<sup>37</sup> we discovered no cases in which police organizations had attempted such alternatives. Indeed while administrative release is contemplated in legislation covering other public servants, it does not appear to be contemplated as an option (other than for probationary constables) in most legislation governing police organizations. The somewhat enigmatic subsection 37(2) of the *Alberta Police Act*, which provides that:

- (2) Notwithstanding the provisions of a collective agreement, the [municipal police] commission may terminate the services of a police officer for reasons other than disciplinary reasons.<sup>38</sup>

is a notable exception. We have not been able to ascertain, however, whether, or to what extent, this provision might have application to the control of, or response to, off-duty police officer conduct in Alberta.

Another, more limited exception appears to be provided for in paragraph 4(3)(c) of the Regulations under the *NS Police Act*, which is discussed further.<sup>39</sup> Medical discharge, on the other hand, is provided for in some police regulations.<sup>40</sup> Because this is the subject of another Discussion Paper published by the RCMP External Review Committee,<sup>41</sup> it will not be considered in this paper.

A notable and important trend in recent years, however, is the development of employee assistance and peer group counselling programs which have begun to play an increasingly important role in police forces' responses to certain kinds of off-duty conduct problems, notably alcohol, drug and stress-related problems.<sup>42</sup> The health orientation of such approaches has certainly not replaced disciplinary approaches. We were, however, told of a number of cases in which either disciplinary action was delayed to give officers a chance to sort out their off-duty problems with medical or counselling assistance, or disciplinary penalties were suspended on condition that the officer

successfully participate (or more commonly, continue to successfully participate) in some kind of treatment or counselling program.

In one such case, an officer, while off duty, had been found in an intoxicated state in the company of four prostitutes on a public street, and was consuming alcohol in his personal vehicle at the time. He was charged with discreditable conduct, found guilty, and the penalty imposed was that he should resign within seven days or be dismissed. On his appeal to the municipal police board, an agreed settlement of the matter was reached between the constable, the police chief and the board, under which the original penalty was replaced by the following:

- (1) Const. [X] will be reinstated on the [ABC] Police Department effective [date].
- (2) Const. [X] will not receive any pay or allowance from the date of his dismissal until [the date of his reinstatement].
- (3) For a period of one year commencing on [the date of his reinstatement], Const. [X] will be on probation with the [ABC] Police Department, the conditions of which are
  - (a) that he not drink alcoholic beverages
  - (b) that he continue to the satisfaction of the Chief with his present course of rehabilitation, including his attendance at A.A. and his ongoing participation in the Department's employee assistance program
  - (c) that he properly perform his duties as a constable with the Department.
- (4) At the conclusion of one year, the Chief shall report to the Commission and if the terms of the probation have been met to the satisfaction of the Commission, Const. [X] will revert to normal status.
- (5) If Const. [X] should breach any term of its probation, his dismissal from the Department will be confirmed by the Commission.<sup>43</sup>

In confirming its acceptance of these terms of settlement, the municipal police board emphasized that "it is expressly understood that the Commission views Const. [X]'s conduct on the evening of [date] as reprehensible and in normal circumstances as grounds for dismissal from the force." The board concluded:

The Commission was convinced on the evidence that Const. [X] is an alcoholic, that his behaviour on the evening in question was related to his alcoholism, and that since then he has taken steps to rehabilitate himself. This agreement was proposed by the Commission to give Const. [X] a chance to continue with that rehabilitation and to turn himself into a strong link and competent performer in the [ABC] Police Department.

Around the same time, this police board reached a similar agreement with another of its officers who had been involved in serious alcohol-related off-duty misconduct. The police force reports that both officers successfully fulfilled the conditions of their probation, are now fully reinstated, and have, together, been the mainsprings in the establishment of a successful peer group counselling program within the force. They are now considered highly valued members of the force. The apparently remarkable success of this approach in these two cases has convinced the force that this should be the way of the future in dealing with such cases.

There is some reason to think that this kind of approach to off-duty conduct which is determined to be the product of alcohol or drug dependency or addiction may, at least in some jurisdictions, now be mandatory rather than optional. This is because in some human rights legislation in Canada, alcoholism and drug dependency have been recognized as "disabilities" or "handicaps", on the basis of which discrimination in employment is prohibited. Section 25 of the *Canadian Human Rights Act*,<sup>44</sup> for instance, provides that "disability" means "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug". Section 3 provides that "disability" is a "prohibited ground[s] of discrimination", and Section 7 provides that:

7. It is a discriminatory practice, directly or indirectly,
  - (a) to refuse to employ or continue to employ any individual, or
  - (b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

[Emphasis added]

Such provisions are relatively new in Canadian law and their exact implications for the application of employment discipline (for on- or off-duty conduct) remain somewhat unclear. A recent decision of the Supreme Court of Canada,<sup>45</sup> however, suggests that this kind of legislation places an onus on an employer to take all possible steps to accommodate an employee so as to avoid discriminating against him or her on a "prohibited ground of discrimination", unless the employer can demonstrate that such steps would involve "undue hardship" for the employer. In particular, an occupational requirement or qualification established by an employer which has the effect of discriminating against a particular employee or class of employees on a "prohibited ground of discrimination" will



only be upheld as *bona fide* and lawful if the employer can demonstrate that the requirement or qualification is "objectively related" to, and "reasonably necessary" for the performance of the job, and that it accommodates the employee's protected "disability" at least up to the point of "undue hardship" to the employer.

Translated to the context of a police officer suffering from alcoholism or drug addiction, this case suggests that, in the absence of any clear statutory authority for discipline or dismissal, there would be an onus on the police force to demonstrate that not being an alcoholic or a drug addict is objectively related to, and reasonably necessary for, the performance of any work to which the officer might reasonably be assigned without undue hardship to the force. Since both alcoholism and drug addiction are remediable disabilities, it would also presumably be incumbent upon the force to demonstrate that it had taken all reasonable steps not causing undue hardship to the force, to "accommodate" the disabled officer (by, for instance, giving him or her a reasonable chance to obtain a cure for the disability, or at least bring it within manageable bounds), before any discipline for conduct arising out of it (let alone dismissal) could be justified.

It will be evident from this that such laws require careful and responsible judgments to be made, for instance about whether, and to what extent, alcoholism or drug addiction is or is not compatible with the performance of different kinds of police work, what would amount to reasonable "accommodation" of an alcoholic or drug-dependent officer, and at what point such accommodation would result in "undue hardship" to the force. The courts, however, have apparently not yet been faced with a concrete case in which to make such judgments.

There is, of course, the additional problem -- which is a very real one in the police context -- of how such legislative provisions are to be reconciled with equally explicit provisions in police legislation and regulations which characterize excessive consumption of alcohol, on or off duty, as a disciplinary offence. As noted below, most police discipline codes contain such provisions. Here there is the possibility that such provisions may be held constitutionally invalid as being in violation of *Charter* guarantees with respect to such standards as equality and non-discrimination on the basis of "mental or physical disability" (section 15), or "principles of fundamental justice" (section 7). This possibility would only exist to the extent that such provisions result in differential treatment for police officers compared with other employees, and the differential treatment could not be justified as reasonably necessary for the fulfilment of its legislative mandate by the police force. Since there are as yet apparently no reported cases in which such issues have been raised, we can do no more than speculate how they might be resolved by the courts.

Clearly, the more remedial, non-punitive approach to such problems will be likely to forestall such legal challenges. Those responsible for police discipline, however, would undoubtedly do well to prepare themselves for such challenges in the future. It is possible, too, that to the extent that occupational stress is being recognized as a medically treatable disability, conduct which can be successfully demonstrated to have been the product of such stress may also have to be responded to in ways other than the traditional disciplinary approach. The Ontario Workers' Compensation Appeals Tribunal, for instance, recently recognized work-related stress as sufficient basis for a compensable claim by an employee of a provincial youth centre.<sup>46</sup> This possibility, however, raises

issues which go far beyond the scope of this discussion paper.

There remains, of course, the mechanism of a public complaint as a way of responding to alleged off-duty misconduct of an officer. In this respect, however, practice and legislation vary significantly from one jurisdiction to another. Whether off-duty conduct can be the subject of a formal public complaint (i.e. handled under legislated processes for responding to such complaints) will depend on the definition of a "complaint" in the particular legislation concerned. Under the RCMP Act, for instance, the RCMP Public Complaints Commission has jurisdiction only to entertain complaints "concerning the conduct, in the performance of any duty or function under this Act, of any member or other person appointed or employed under the authority of this Act".<sup>47</sup> Complaints concerning off-duty conduct are thus excluded from the Commission's jurisdiction by definition. A similar situation is created by section 51 of the amendments to the *Québec Police Act*, which refers to "a complaint respecting the conduct of a police officer in the exercise of his duties and constituting a default under the Code of ethics."<sup>48</sup>

Such is not the case for most statutory bodies in Canada charged with responding to public complaints against the police. In most cases, "complaints" are defined either to include allegations of disciplinary offences,<sup>49</sup> or broadly enough to include virtually any conduct, whether on or off duty.<sup>50</sup>

## **POLICE TRAINING WITH RESPECT TO OFF-DUTY CONDUCT**

An important question to be addressed is how police officers learn about the standards of conduct they will be expected to meet while off duty.

In many forces, recruits are required to subscribe to a code of ethics on joining the force. The manual of one police department (which will not be identified) stated that all members of the force are required to abide by the following "Police Officers' Code of Ethics":

As a police officer I recognize that my primary obligation is to serve the public effectively and efficiently by protecting lives and property, preventing and detecting offences, and preserving peace and order.

I will faithfully administer the law in a just, impartial and reasonable manner, preserving the equality, rights and privileges of citizens as afforded by law.

I accept that all persons rich or poor, old or young, learned or illiterate, are equally entitled to courtesy, understanding, and compassion. I will not be disparaging of any race, creed or class of people.



In the performance of my duties I acknowledge the limits of my authority and promise not to use it for my personal advantage. I vow never to accept gratuities or favours or compromise myself or the Police Service in any way. I will conduct my public and private life as an example of stability, fidelity, morality, and without equivocation adhere to the same standards of conduct which I am bound by duty to enforce.

I will exercise self-discipline at all times. I will act with propriety toward my associates in law enforcement and the criminal justice system. With self-confidence, decisiveness and courage I will accept all the challenges, hardships, and vicissitudes of my profession. In relationships with my colleagues I will endeavour to develop an "esprit de corps".

I will preserve the dignity of all persons and subordinate my own self-interests for the common good. I will be faithful in my allegiance to Queen and Country. I will honor the obligations of my office and strive to attain excellence in the performance of my duties.

[Emphasis added.]

The notes which follow this code of ethics in the manual include the following advice on off-duty conduct:

Your conduct while off duty, as a member of the community, is as much under critical notice as when you are on duty. In this regard you must remember that the behaviour of an individual reflects upon the entire police service.

We asked officials at two major police training institutions to what extent standards of off-duty conduct are discussed in their basic recruit training programs. The answer was similar in each case. A single session on police ethics is included in each course. In one case this is a three-hour session, in the other a 90-minute session. Our informants were not able to estimate with precision the extent to which off-duty, as opposed to on-duty, conduct is the subject of discussion in these sessions. One said that he thought that it might occupy 20 minutes of a three-hour session. The other said that it would vary from class to class, depending on the level of interest in the subject shown by the students.

In one case, the main instructional material used for this session is a 15-page booklet on police ethics. Half of this booklet is devoted to a general discussion of ethics in a police context, in which off-duty conduct is not specifically addressed. The remainder of the booklet consists of a set of "Canons of police ethics", and a "code of ethics", which have been endorsed by the International and Canadian Associations of Chiefs of Police. A brief bibliography for further reading follows.

The "canons of police ethics" includes the following:

Article 6. Private Conduct

Law enforcement officers shall be mindful of their special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officer and the police service. The community and the service require that the law enforcement officers lead lives of decent and honorable citizens. Following the career of a police officer gives no individual special perquisites. It does give the satisfaction and pride of following and furthering a broken [sic] tradition of safeguarding the Canadian public. The officers who reflect upon this tradition will not degrade it. Rather they will so conduct their private lives that the public will regard them as examples of stability, fidelity and morality.

The four-paragraph "code of ethics" includes the following:

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying laws of the land and regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

In one case, we have been unable to ascertain what other instructional materials, if any, are used in teaching these sessions, and in particular whether decisions in actual disciplinary cases are used as examples for students. In the other case, we have been advised that no other written materials are used in these sessions. Officials of both institutions stressed, however, that issues of personal conduct, both on and off duty, are likely to arise in discussions in other sessions of the basic training course, although they were not able to give an indication of how often this in fact occurs.

#### **KINDS OF POLICE OFF-DUTY CONDUCT WHICH HAVE BEEN SUBJECT TO DISCIPLINE**

For reasons noted earlier, we are unable to provide any statistical data indicating what proportions of discipline cases involve which kinds of off-duty misconduct. What we shall do in this section of the paper, therefore, is provide examples of the kinds of off-duty conduct which are either contemplated in police discipline codes or reflected in actual discipline cases which have been brought to our attention. For clarity, we have classified these kinds of conduct into nine broad categories.



## (1) CRIMINAL CONDUCT

Conviction for a criminal offence, even if the relevant conduct occurred while the officer was off duty, is regarded as grounds for discipline in all Canadian police jurisdictions. In most police discipline codes, conviction is listed as a separate offence in its own right, often under the broad heading of "discreditable conduct". Section 17 of the *Alberta Municipal Police Disciplinary Regulations* provides a good illustration:

(a) DISCREDITABLE CONDUCT, that is to say, if he

...(v) is guilty of an indictable offence under a federal statute, plan offence punishable upon summary conviction under the *Criminal Code* (Canada)...<sup>51</sup>

This provision also provides a good illustration of the extent to which some police disciplinary codes demand higher standards of conduct from police officers than are demanded of other employees. It will be recalled that the common law rules stipulate that conviction of a criminal offence involving off-duty conduct will only be grounds for discipline if the offence is "serious" and "thus rendering his conduct injurious to the reputation of the Company and its employees" (*Millhaven*).

The common law rule places a burden on the employer to demonstrate a significant relationship between the criminal offence for which the employee was convicted and the legitimate interests of the employer. Just how difficult this can be is well illustrated by the arbitrator's decision in *Re Iron Ore Co. of Canada and United Steelworkers, Local 5795*.<sup>52</sup> This was a policy grievance, in which the union local was seeking to challenge a company rule. The rule being challenged was that any employee who was convicted of "trafficking in narcotics, armed robbery [or] sex-related criminal offences" would henceforth be terminated "whether or not the offence giving rise to the conviction takes place on Company property."

The arbitrator ruled that this was not a reasonable rule (the collective agreement authorized the company to make "reasonable rules and regulations to be observed by the employees") for general application. The reason for the ruling was that employee convictions for such offences involving off-duty conduct were not necessarily and inevitably prejudicial to the interests of the company. To be reasonable, a rule would have to require separate consideration of each case on its individual merits, rather than provide for automatic termination regardless of the particular circumstances of each case.

The provision of the Alberta police discipline code cited above is, of course, in one sense much broader than that which was proposed by the company in the *Iron Ore* case, because it applies to convictions for all criminal offences, rather than for particular classes of criminal offences. On the other hand, it is narrower, because it does not stipulate that dismissal will necessarily result from a conviction for the disciplinary offence. Most significantly, however, the Alberta provision does not require the police force to demonstrate that the officer's criminal conviction will have damaging effects on the force's interests. Instead, the provision defines such a conviction as "discreditable conduct"; by being criminally convicted, the officer has apparently automatically committed the

329

disciplinary offence of "discreditable conduct".

Not all police regulations are as harsh as the Alberta code in this regard. Regulations under the *NS Police Act*, for instance, provide that:

a member of a municipal police force may be dismissed upon conviction for an indictable offence or an offence punishable on summary conviction pursuant to an Act of the Province, a province or territory of Canada or the Government of Canada which, in the opinion of the municipal board of police commissioners or the chief officer... renders the member unfit to perform his duties as a member.<sup>53</sup>

While this provision is in one important respect broader than the Alberta provision (it includes convictions under provincial and territorial enactments), it does place a burden on the board to establish that the conviction "renders the member unfit to perform his duties". Mere proof of the conviction (whatever the offence) will not satisfy this requirement.

The Nova Scotia provision is also interesting because it seems to provide for a form of administrative release in such cases, rather than a disciplinary discharge. Conviction for a criminal offence is not defined as a disciplinary offence, therefore formal disciplinary process would not have to be followed before an officer could be dismissed under this provision of the Regulation. Somewhat anomalously, however, the "Code of Conduct and Discipline" set out in the next section of the Regulation provides for the following disciplinary offence:

[being] found guilty of an indictable offence or an offence punishable on summary conviction under any statute of Canada, the Province or any province territory in Canada which renders the member unfit to perform his duties as a member;<sup>54</sup>

The combined effect of these two provisions would seem to be that disciplinary proceedings need not be instituted if a dismissal is sought on grounds of a criminal or other conviction, but must be followed if some lesser penalty is sought.

A third approach is illustrated by the Regulations of the Winnipeg Police Department, which provide for the disciplinary offence of:

124 (20) COMMITTING AN OFFENCE, that is:

- (a) being convicted of an offence in a superior court of criminal jurisdiction, a court of criminal jurisdiction or a summary conviction court, which conviction is detrimental to the prestige of the Department
- (b) being convicted of being an accessory to or conniving at the commission of an offence against any Provincial or Federal Statute.

[Emphasis added.]



Again this seems somewhat anomalous in that under paragraph (a) some detriment to the prestige of the Department has to be shown in order to establish the disciplinary offence, while under paragraph (b) there is no such requirement.

There are ample cases to illustrate the point that the mere fact that an officer has not been convicted of a criminal offence (e.g. if charges have been withdrawn), or where the case has been diverted out of the criminal courts, does not mean that he or she cannot be disciplined for apparently criminal conduct. If it is thought to be "discreditable conduct", he or she can be disciplined in some police departments, although in others such an outcome is thought to preclude disciplinary proceedings. We have, however, come across cases in which disciplinary proceedings have been successfully pursued even after an acquittal in the criminal courts, an outcome which is usually explained by the fact that in some jurisdictions the standard of proof is not as high for disciplinary proceedings as for criminal proceedings. Indeed, the Supreme Court of Canada has held that disciplinary offences are not to be treated as "offences" for the purposes of Section 11 of the *Charter*,<sup>55</sup> and that conviction for a major service offence does not preclude prosecution for a criminal offence based on the same facts.<sup>56</sup> In reviewing a disciplinary case, however, the Ontario Police Commission has held that a disciplinary conviction had to be quashed when the officer's criminal conviction was set aside on appeal.

In some instances, disciplinary codes are explicit about the relationship between criminal and disciplinary proceedings. Section 5 of the *Regulation respecting the code of ethics and discipline of members of the Sûreté du Québec*, for instance, provided that:

A member may be the subject of a complaint notwithstanding the fact that he has been acquitted or convicted by a court of criminal jurisdiction of an offence with respect to which the facts giving rise to an accusation are the same as the facts on which the disciplinary charge is based.<sup>57</sup>

It is clear, even from our limited research, that actual discipline cases have involved convictions for a wide variety of criminal offences, ranging from attempted murder to shoplifting. Undoubtedly, however, the most common instances in this category involve convictions (or allegations) of shoplifting, impaired driving, assault or sexual assault.

There seems to be no doubt in any of these cases that conviction for a criminal offence is sufficient in itself to constitute a disciplinary default. Rather, discussion in the cases centres on what the penalty should be. Even quite minor cases of petty shoplifting, in which officers have sought to explain their misconduct as a product of stress or embarrassment, have resulted in dismissals from the force, with adjudicators arguing that the fact that this offence involves dishonesty makes an officer convicted of it inherently unsuitable for continued employment as a police officer. The Federal Court of Appeal, however, has recently ruled that such a blanket approach to the



determination of a penalty for a disciplinary infraction is inappropriate; each case must be considered on its own merits and in light of all relevant circumstances.<sup>58</sup>

## **(2) OTHER ILLEGAL CONDUCT**

As we have noted (see the provisions from the discipline codes quoted in the preceding section), many police discipline codes contain a specific disciplinary offence of having been convicted of a non-criminal offence (e.g. under non-criminal federal or provincial legislation). We have come across cases in which officers have been disciplined as a result of convictions for such offences, either pursuant to such specific discipline code provisions or under the umbrella offence of "discreditable conduct". In Ontario and New Brunswick, for instance, officers have been disciplined for, among other things, having been convicted of hunting at night contrary to provincial legislation.

In most jurisdictions which we visited, however, we were told that while disciplinary action in such cases is certainly theoretically possible, in practice it is rarely invoked, especially with respect to isolated (as opposed to repeat) incidents, and especially in cases of convictions for minor driving offences such as speeding. Two reasons were cited for this. In the first place, such offences are thought to be too trivial to justify discipline. Secondly, such incidents often do not come to the attention of the force (especially if they occur outside the force's jurisdiction), and most forces do not go out of their way to discover them. There is apparently no requirement in most forces that an officer report such a conviction to the force. We did encounter the following rule, however, in the regulations of one force we visited:

### **4.2.2. DISCREDITABLE ACTS TO BE REPORTED**

A member shall report forthwith to a supervisor or a member of the Internal Affairs Unit:

- whenever he is charged with a criminal offence, giving the particulars of the charge and the agency or individual laying the charge
- details of any instances where another member performs acts or conducts himself in a manner which will, or is likely to, bring discredit on the reputation of the Force.

Breach of this regulation is, of course, itself a separate disciplinary offence.

## **(3) POLITICAL ACTIVITIES**

Active participation in politics has always been thought to be incompatible with the impartial and independent exercise of discretion which is such an essential element of police work. Indeed, the vaunted "independence" of the police has usually been justified in terms of the need to protect the exercise of their authority from "improper political interference".<sup>59</sup> Despite this general

consensus about the need to "keep politics out of police work", it is only quite recently that many police discipline codes have included specific prohibitions on political activity by police officers, whether on or off duty. Indeed, we were somewhat surprised to find that many police discipline codes do not contain such prohibitions, and we have found only one case in which an officer has been charged with a disciplinary offence for political activities.

*Regulation 791 under the old Ontario Police Act*, referring to the Ontario Provincial Police Force, provided that:

- 62. No member of the Force shall,
- ...
- (b) take any part in politics or occupy an official position in a party organization, but this does not affect the right of the member to private political views or to vote.<sup>60</sup>

Members of the Provincial Police Force, however, are "Crown employees" subject to the Ontario *Public Service Act*, which provides that Crown employees other than deputy ministers or other Crown employees designated in regulations under the *Act* can run for elective office in municipal, provincial or federal elections, under certain specified conditions (sections 11 & 12). Section 12 provides that:

- 12.(1) Except during a leave of absence granted under subsection (2), a Crown employee shall not,
- (a) be a candidate in a provincial or federal election or serve as an elected representative in the legislature of any province or in the Parliament of Canada;
- (b) solicit funds for a provincial or federal political party or candidate; or
- (c) associate his position in the service of the Crown with any political activity.<sup>61</sup>

Subsection (2) provides that only Crown employees who are not deputy ministers or designated in the regulations can apply for such a leave of absence.

In 1980, OPP officers were not designated under the regulations. Consequently, an OPP constable applied for, and was granted, a leave of absence to run as a Conservative candidate in the federal election that year. He was not elected and, when he returned to his duties, he was charged with "discreditable conduct" for his political activities. He filed a grievance, which was upheld, the arbitrator acknowledging that there appeared to be a conflict between the provisions of *Regulation 791* and the provisions of the *Public Service Act* and its regulations, but concluding that the constable was within his rights in applying for a leave of absence and running for office.



The disciplinary charge against him had been held in abeyance pending the resolution of this grievance and, as far as we can tell, was never resumed. In 1983, the Ontario Divisional Court confirmed this view of the conflict between the provisions of *Regulation 791* and those of the *Public Service Act*.<sup>62</sup>

The Government of Ontario, however, responded to this situation by designating OPP officers under the *Public Service Act* regulations, so that they can now no longer run for political office, with or without a leave of absence.

Under Section 38 of Ontario's *Municipal Act*,<sup>63</sup> an employee of a municipality is entitled to a leave of absence to run for a municipal elected office, but if elected must resign. In 1985, a Durham Regional Police officer took leave of absence, was elected to municipal office and resigned from the force. He took legal action, however, to challenge the requirement that he resign. The action was settled by way of Minutes of Settlement under which the officer's resignation was withdrawn, and he was granted an unpaid leave of absence while he continued to hold elected office.

The Ontario *Police Services Act* now provides that "No municipal police officer shall engage in political activity, except as the regulations permit."<sup>64</sup> At the time of writing, however, the new regulations had not been published.

A similar approach to the regulation of political activities of police officers, both on and off duty, was taken by the *SQ code of ethics*:

21. A member must be politically neutral in the performance of his duties.

The following in particular constitute breaches of discipline:

- (a) being present in uniform at a political meeting, unless he is on duty at that place;
- (b) failing to show moderation in publicly expressing his political opinions;
- (c) during an electoral period, publicly expressing his political opinions, soliciting funds for a candidate for election, a party authority or a political party, or publicly expressing his support for a candidate for election or for a political party.<sup>65</sup>

As far as we have been able to determine, few municipal police forces have prohibitions on political activities of their members which are as explicit as this. On the contrary, we were told of many instances of police officers holding elected political offices (e.g. as members of municipal councils or school boards) in neighbouring municipalities to those where they were employed. Indeed we heard of one police officer who sits as a member of the local police commission in a nearby municipality.

In 1980, it was reported that a Niagara Regional Police officer had been given permission by his Chief to run for a seat on a county board of education within the force's geographical area of jurisdiction. The police chief was reported in the press at the time to have said that he gave his permission because:

[I]t is not a political thing. Police have a sense of duty the same as any fellow citizen, but they must remember they are policemen 24 hours a day. I would not sanction anyone running for councillor on regional council where, for example, he may be required to vote on the police budget.<sup>66</sup>

Senior police officers generally seem to agree, however, that it is not appropriate for police officers to run for, or hold, political office within the areas in which they work many would go further than this by banning such political activities altogether.

Arguments have been made in the United States that the involvement of police officers in the political process is beneficial rather than detrimental. Professor William Ker Muir, Jr., has argued that police officers' involvement in politics strengthens public debate about policing issues and leads to more open police institutions whose leaders are more focused on the larger community rather than just the police. Additionally he believes it develops police officers' communications and negotiation skills and dissipates police cynicism about the world being divided into good and bad.<sup>67</sup>

The current preference for community-based policing as the mode for the future, however, raises significant questions about the more traditional negative attitudes towards police involvement in politics. In particular, it raises the question of when involvement with the community, or with community organizations, can be characterized as sufficiently 'political' to be incompatible with the independent and impartial exercise of police authority.

At a seminar on community policing held at the Canadian Police College in 1986, one of the foremost U.S. exponents of community-based policing recounted early experiences with this style of policing in Flint, Michigan. He described how officers had been given great autonomy and flexibility to develop links with their local communities, and develop "problem-oriented" rather than "incident-oriented" solutions to policing problems, in conjunction with community members. Police officers were encouraged to become "social activists" within their communities. All was thought to be going well with this program until one day an officer of the force, during his off-duty hours, and not in uniform, was seen to be leading a march of community residents on the city hall, demanding more efficient garbage collection. The speaker noted that it was at this point that police officials began to realize that there might be more to community-based policing than they had bargained for!

A second issue which the prohibition of political activities raises is the question of how compatible such prohibitions are with the *Charter* guarantees of equality, and freedom of speech and association. In this connection, it is worth noting that the Supreme Court of Canada has upheld the constitutionality of the provisions of the Ontario *Public Service Act*.<sup>68</sup> In *Osborne v. Canada*,<sup>69</sup> however, the Federal Court of Appeal held that the provisions of section 33 of the federal *Public Service Employment Act*<sup>70</sup> which prohibited public servants from working for political parties were



in violation of the *Charter*, and therefore constitutionally invalid. An appeal of this case is currently before the Supreme Court of Canada.

These cases do not, however, resolve the issue of whether more extensive restrictions on political expression, such as those in the Ontario and Quebec police regulations cited above, would be found to be compatible with the requirements of the *Charter*. As far as we can determine, none of these provisions has yet been challenged in the courts.

#### (4) OUTSIDE EMPLOYMENT AND BUSINESS ACTIVITIES

This is the area of off-duty conduct in which the gap between official policies (and sometimes even the law) and practice seems to be the widest. We encountered many legislative provisions and force policies which prohibited any and all outside (or "secondary") employment of police officers. Yet we have encountered no force in which management does not concede that such secondary employment or business activity is commonplace among its members. In practice, it seems that such prohibition or regulation is enforced only when cases come to the attention of management where it is seen to be a problem. For the rest, deviation from the official rules seems to be routinely understood and tolerated.

Two trends in this area are clearly discernible. The first is a trend from outright prohibition to regulation. The second is a trend from reliance on unfettered discretion of police chiefs in this area (i.e. outside employment or business activities are only permitted if the chief's approval has been obtained, and there are no formal rules to guide the chief in exercising his discretion in this area) to more detailed and formal policies.

There are still many jurisdictions in Canada in which secondary employment or business activities of police officers are officially prohibited. For example, the *SQ code of ethics* provided:

A member of the Police shall occupy himself solely with the work of the Police Force and the duties of his position. He may not assume any other employment nor engage in any business, directly or indirectly.<sup>71</sup>

It is not entirely clear whether, or to what extent, the last three words of this regulation prohibit officers from arm's-length investments or other interests in businesses (e.g. investments in stocks and shares, or interests in businesses owned by family members). We have not been able to ascertain to what lengths the force goes to enforce this general prohibition.

More common than such outright prohibitions nowadays, however, are general regulatory provisions such as the following, which appeared in *Regulation 791* under the *Ontario Police Act*:

29. Except with the consent of the chief of police, granted in accordance with the bylaws of the board [of police commissioners] or council, as the case may be, no member of a police force shall engage directly or indirectly in any other occupation or calling, and he shall devote his whole time and attention to the



service of the police force.<sup>72</sup>

Under such a regulation, it was up to the police governing authority (the board or council) to decide whether to lay down policy guidelines for the chief in this matter, or leave it entirely to the chief's discretion.

As noted earlier, the *NS Police Act* now requires all municipal police governing authorities in that province to promulgate policies concerning off-duty employment of their members. It also provides that:

- (3) The chief officer shall determine whether employment is extra-duty employment or off-duty employment, and whether a particular kind of off-duty employment is permitted or prohibited within the off-duty police guidelines.<sup>73</sup>

The Nova Scotia Police Commission has drafted a model policy in this area (as well as a model policy concerning extra-duty employment) for the guidance of municipal police governing authorities. The model policy on off-duty employment reads:

Off-duty employment means all non-police related work performed by off-duty members of a municipal police department.

A member of a municipal police department may not undertake to perform any off-duty work, for remuneration or otherwise, which is likely to bring discredit upon the police force, nor perform such off-duty work which is likely to interfere with the efficient performance of his duties as a police officer.

A member shall not be involved in fund raising, solicitation activities, contract or work for any person for remuneration by any member of the public, that may bring discredit to the force or otherwise place the member in violation of any section of the Code of Conduct and Discipline as set out in part 2 of the Regulations made pursuant to the *Police Act*.

A member of a municipal police force shall not engage in the service of civil documents nor work as a private investigator or private guard or engage in the business of providing private investigators or private guards for hire, either within or outside of the municipality for which he is employed.

A member of a municipal police force shall not wear any article of uniform while engaged in off-duty employment.<sup>74</sup>

We were provided with copies of many of the policies on off-duty employment which municipal police governing authorities had promulgated under section 21 of the *Police Act*. Most, but not all, followed closely the Nova Scotia Police Commission's model policy set out above, thus ensuring

a high degree of uniformity on this issue, at least at the level of official policy, in police forces across the province (although of course the contract police services of the RCMP in the province are not subject to these policies).

It will be noted that the Nova Scotia policies cover only off-duty employment, and are silent on investments and business activities, which remain largely unregulated. We were told by members of the forces we visited in Nova Scotia that these areas tend to be regulated informally in accordance with the conflict of interest guidelines promulgated by city or town administrations for all their municipal employees. Indeed, we were told the same thing in many other jurisdictions we visited, in which police employment and/or business and investment activities are not formally regulated by written policies drawn up by the police forces or governing authorities themselves.

Even in those jurisdictions which had formal policies on these matters, we noted that in some cases the policies appeared to have been interpreted extremely permissively. In one jurisdiction, for instance, we learned that a police officer, employing his fellow officers while off duty, was providing firearms and street survival training under contract to his own and other local police forces. His regular job was that of firearms training officer for his force. This off-duty business activity was apparently approved not only by his own police force, but also by the provincial police commission, which was arranging for his company's services to be provided to other police forces. Although there was some acknowledgement that such off-duty business activity could be viewed as involving a substantial conflict of interest, it was apparently justified on the basis that the training this officer was providing was not available to police forces from other sources in the province. Under these circumstances, it was believed that any conflict of interest was outweighed by the benefits which police forces in the province were deriving from this service.

In another instance, we were told of a police officer who was running a business selling uniforms and equipment. His own police force was one of his business clients. Apparently this was not thought to be an unacceptable conflict of interest such that the force was prepared to take any action with respect to it.

In a third case, we were told of a president of a municipal police association who had been running a business which provided the services of off-duty police officers (who were members of his association) to guard provincial liquor outlets under contract. The contract stipulated that the pay for such services should be equal to the overtime rates which the police officers would earn in their regular employment. These overtime rates, of course, were determined by a collective agreement between the association and the police governing authority. The officer involved has now left the force, but this situation apparently persisted for several years without any disapproval by the force.

Some other jurisdictions have been even more explicit in defining acceptable kinds of off-duty employment and business activities. In June, 1985, the Calgary Police Commission inserted the following provisions in the Calgary Police Service's Administration Manual:

#### 87.0 OUTSIDE BUSINESS INTERESTS

87.1 A member will not invest in any of the following businesses or ventures or accept part-time employment in any of the following occupations:

- (i) bill collector;
- (ii) skip tracer;
- (iii) watchman, security guard, or other security work;
- (iv) taxi or limousine driver, or the owner or operator of a taxi service or limousine service;
- (v) owner, operator or employee in an establishment in which alcohol is consumed;
- (vi) owner, operator, or employee in an establishment in which gambling occurs;
- (vii) insurance adjuster or investigator;
- (viii) private investigator;
- (ix) escort, or an employee of an escort agency;
- (x) process server;
- (xi) armored car driver or guard;
- (xii) body guard;
- (xiii) any occupation which requires a member to be armed.

87.2 A member may invest in a business or venture not listed in Section 87.1 and may accept part-time employment in an occupation not listed in Section 87.1 providing the following conditions are met:

- (i) the member's effectiveness as a peace officer will not be adversely affected;
- (ii) participation in the business or other venture or part-time employment, will not create a conflict of interest with the member's duties as a peace officer; and
- (iii) the business or venture, or part-time employment, will not be demeaning to the member's position as a peace officer or to the Service.

87.3. Prior to investing in a business venture or accepting part-time employment to which s. 87.2 applies, a member must apply for and receive permission to do so from the Chief of Police. Applications must be in writing and include the name and address of the employer, or owner of the business, and the duties and responsibilities the member will be expected to fulfill.



- 87.4 A member who is notified by the Chief of Police that his application to invest in a business or venture, or accept part-time employment, does not meet the conditions specified in Section 87.2 may, within 30 days, appeal to the Commission.
- 87.5 A member will not, under any circumstances, use any of the resources of the Service to assist him in carrying out any function of a business or venture, or part-time employment.
- 87.6 A member who, at the time this Amendment comes into force, is employed in a part-time position in an occupation listed in Section 87.1 shall terminate such part-time employment, or dispose of such investments, as the case may be, within twelve months from the effective date of this Amendment.

This represented the most comprehensive attempt to regulate the area of off-duty employment and business activities ever undertaken in a Canadian police jurisdiction. As noted above, the new regulation was unsuccessfully challenged in *Calgary Police Association*. The Alberta Court of Appeal upheld the lower court ruling to the effect that the regulation was intra vires, not unreasonable and not in violation of the *Charter*. The court's unanimous judgment concluded:

...we hold the view that restrictions on extra-curricular activity found in the disciplinary regime of a modern police force are domestic and internal contractual arrangements that may be negotiated or modified by the parties in the usual course.<sup>75</sup>

The Ontario Provincial Police Force has since adopted a regulation modeled closely on the Calgary version.

It will be evident that these kinds of regulations create the possibility of two quite distinct disciplinary offences. First, there is the offence of engaging in secondary employment or business activities without the requisite permission (usually the permission of the chief). Second is the offence of engaging in secondary employment or business practices which are regarded as unacceptable.

Realistically, the second kind of case will arise only in those jurisdictions (which are now few in number) where permission is not required to engage in secondary employment or business activities. In such circumstances, discussion centres on whether particular kinds of employment or business activity are compatible with full-time employment with the police force. From our interviews, we would conclude that the three criteria set out in Section 87.2 of the Calgary policy represent an appropriate distillation of prevailing concerns of police forces in this area. They are a concern that the secondary activities not be such as to adversely affect the officer's job performance (e.g. because of long hours or physical demands which leave the officer too tired to work effectively as a police officer); a concern that the activities not involve a conflict of interest with the officer's

police work (this may, of course, vary according to what assignment the officer has); and a concern that the activities not adversely affect the reputation of the officer or the force.

We have come across few written decisions which discuss these matters in detail. The reason for this seems to be that proving lack of requisite permission for secondary employment or business activities is so relatively easy that tribunals rarely have the opportunity to address these larger questions. One such recent case, however, involved an implicit conflict between two governmental agencies. In this case, a constable in Manitoba had applied for registration as a real estate salesman, with the intention of selling real estate part-time when off duty. His application was the subject of a hearing by the Manitoba Securities Commission. The regulations of his police force prohibited its members from "engaging in employment, for an employer other than the City", and the Registrar of the *Real Estate Brokers Act*<sup>76</sup> had advised him that his application would not be entertained unless he could show that he had the permission of his chief of police. He had accordingly applied for such permission, which had been granted. In granting it, however, the chief's representative had reminded him of the rule against outside employment. Apparently because of this rule, however, the Securities Commission had adopted a long-standing policy of not granting licences to police officer applicants. When advised of this policy, the officer withdrew his application. After this, the Registrar had written to him saying that:

In my view, it is inappropriate for an individual, who carries the weight of authority granted him by virtue of his employment as a police constable and a peace officer, to also deal with members of the public in the capacity of a real estate agent. This is a long-standing policy of my office.

A few months later, however, the officer reapplied, enclosing a supporting letter from a real estate firm, in which it was pointed out (a) that the police force concerned did not object to his application, and was willing to tolerate self-employment but not employment by others, (b) that the Chairman of the Manitoba Police Commission had indicated that he was not opposed to the application or aware of any legal impediment with respect to it, and (c) that another police officer in the province was already registered as a salesman, and was in good standing. The Registrar referred the matter to the Securities Commission for a decision. In rejecting the application, the Commission wrote:

The policy [of not granting licences to police officers] is designed to protect the public from any mischief that might occur by reason of a person's position or perceived position. Police constables hold a special position in the community and depending on the citizen, are perceived in various lights. A constable could, because of his position, unknowingly bring pressure to bear on the public and by the same token, the public could use the police constable to their advantage. The policy is designed to deal with such situations. It is the opinion of this Commission that the policy is just as true and necessary today as it was fourteen years ago.



The officer sought judicial review of the Commission's decision by the Court of Queen's Bench of Manitoba. In upholding the officer's challenge to the Commission's decision, and directing the Commission to register the officer as a real estate agent, Mr. Justice Coleman concluded that:

In my opinion the Commission erred in refusing the applicant a licence by relying solely on the policy that has been uniformly applied against police officers in general without dealing with the application solely on its merits and on an individual basis. Furthermore I would respectfully find that such a general policy was of a discriminatory nature and that the onus on the registrar and/or the Commission of establishing that such policy was in the public interest was not established on the evidence.<sup>77</sup>

In reaching this conclusion, Coleman J. emphasized that the fact that practising as a real estate salesman might involve a breach of the force's regulations prohibiting outside employment "would be a matter solely between a police officer and his employer",<sup>78</sup> and should not have been given any weight by the Commission in arriving at its decision. He characterized the reasons cited by the Commission in support of its policy against police officers as "speculation", noting that no complaints had been received over the years against the one police officer who had "unintentionally" been licensed by the Deputy Registrar in contravention of the policy. He noted that police officers "by reason of their specialized training and experience are accustomed to dealing with the general public and in particular on matters of detail and integrity, all of which are excellent tools, not only for a real estate sales person, but also serves to the benefit of the general public", and that "when employed as a salesman [the officer] would not be in uniform and there would be no need in disclosing his identity as a police officer."<sup>79</sup> He also drew attention to the fact that schoolteachers, who could be school principals or vice-principals, thereby also occupying positions of responsibility and authority within the community, were not similarly prevented from being licensed.

It is, of course, a matter for speculation as to whether the court would have taken a similar position had there been evidence that the constable's force had been opposed to the granting of a licence. The case is important, however, in that it suggests that the courts, when given the opportunity, may require justification of even clear rules prohibiting secondary employment by police officers. In this respect, the case might be interpreted as evincing a desire to treat police officers as much as possible similarly to the way other employees are treated in this matter. What this means is that, although the legitimate requirements for the effective performance of the police job may vary from those of other jobs, there will nevertheless be an expectation that restrictions on off-duty employment and business activities by police officers must be justified in terms of those requirements. This is consistent with the necessity that they be justified under the common law (*Millhaven*) principles which apply to other employees. Such restrictions cannot simply be imposed by executive fiat.

Too much should not be read into Mr. Justice Coleman's decision in *Partridge*, however, especially in light of the unanimous decision of the Alberta Court of Appeal upholding the Calgary Police Commission's general secondary employment policy in *Calgary Police Association*. Mc Clung J.A., delivering the judgment of the court, held that the rules promulgated by the Commission



were clearly authorized by the Alberta *Police Act*, nor did their "imposition arise in breach of any rule of natural justice."<sup>80</sup> He further held that the rules were clearly supportable "to prevent conflicts with the recognized duties and responsibilities of police officers generally" and could not be considered unreasonable or in violation of *Charter* rights.<sup>81</sup>

It is worthy of note, however, that in its very short judgment, the court reached this conclusion without any detailed examination of the rules themselves. Thus, for instance, there was no discussion of the particular justifications which might legitimately be invoked for prohibiting each of the particular forms of employment and business activities prohibited by the rules. This might be thought to be a weakness in the persuasiveness of the decision, which could perhaps be exploited in future litigation.

#### (5) DOMESTIC AND SOCIAL ACTIVITIES

As we have noted, the disciplinary offence of discreditable or disgraceful conduct is so broadly defined that it can be applied to an almost infinite range of private or public off-duty conduct. Indeed, in our research and interviews we encountered an amazing variety of cases of discreditable conduct, ranging from a female police officer who posed nude for a magazine (not a Canadian case), to a male officer who cohabited with a 16-year-old girl in a small town, a male officer who engaged in homosexual practices in a public washroom, officers who painted an obscene message on a neighbour's fence, and several cases in which officers were disciplined for associating with known criminals or other undesirables (e.g. prostitutes). Many officers have been disciplined for using obscene or insulting language in public places, and for being intoxicated and disorderly in public. There have been, more recently, cases in which officers were disciplined for sexual harassment and expressions of racial hatred while off duty.

While in the past certain sexual orientations and practices (such as homosexuality) would undoubtedly have been regarded by police forces as amounting to discreditable or disgraceful conduct, even if engaged in off duty and in private, modern human rights legislation would preclude such disciplinary charges in most jurisdictions. This does not, of course, mean that such practices are now fully tolerated, let alone supported, by police organizations. A senior female police officer in England is currently the subject of disciplinary proceedings for allegedly swimming in her underwear in a businessman's swimming pool while on duty. She is, however, simultaneously pursuing a complaint that her force has persistently discriminated against her in employment decisions on the basis of sex.<sup>82</sup>

Along with the broadly defined offence of discreditable conduct -- which at least requires the police force to show some adverse relationship between the off-duty conduct and the legitimate interests of the police force, and in this respect parallels the standards of conduct applied to other employees -- some police discipline codes contain other equally broadly defined offences which do not require proof of such a rational connection between the conduct of the officer and the interests of the police force. Under the Winnipeg Police Department's regulations, for instance, it is an offence for any officer when in uniform and in public view, whether on or off duty, to use tobacco or chew gum.

With respect to racism and sexism, many police departments, mindful of the need for harmonious community relations, have promulgated explicit policies prohibiting such conduct by officers both on and off duty. The Metropolitan Toronto Police Force's *Standing Order No. 24* is regarded as something of a model in this regard. In addition to enjoining members of the force against "any expression or display of prejudice, bigotry, discrimination, and sexual or racial harassment", the Order contains the following paragraph:

Members of the Force are conspicuous representatives of government and are symbols of stability and authority upon whom the public can rely. As such, members of this Force must recognize that individual dignity is vital to a free system of law and that while all persons are subject to the law, they are equally entitled to dignified treatment by all persons involved in law enforcement. Therefore, members of the Force must, at all times, whether on duty or off duty, refrain from conduct or remarks which may be interpreted in a way that is detrimental to themselves, the Force, the Metropolitan Corporation, or any other person or agency involved in the administration of justice.

[Emphasis added.]

The Order specifies that "disciplinary action will be taken against members who contravene this Declaration of Concern and Intent".

Another area of regulation which can significantly affect the private lives of officers is regulation of where they may live. Many police forces specify that their officers must live either within the municipality where they are employed, or within a specified distance from it. Legal challenges to such regulations by police officers have proved unsuccessful,<sup>83</sup> and the Court of Queen's Bench in New Brunswick held in 1987 that such regulations do not violate officers' mobility rights under Section 6 of the *Charter*.<sup>84</sup>

Officers in charge of internal affairs units have consistently told us that the offence of associating with known criminals is a particularly difficult one to sustain, since innocent explanations are hard to rebut. A not untypical case recounted to us involved an officer who was a fitness enthusiast, and frequented a local gym during his off-duty hours. The force knew, and he knew, that the gym was operated and frequented by known criminals, and the force advised him that he should not continue his patronage of it. He, however, insisted that his only interest in being there was to do his physical training, and that alternative comparable facilities were not available to him elsewhere. The force apparently did not feel that a disciplinary charge would be sustainable under these circumstances.



348

Another explanation which is often difficult to refute is that an officer is associating with criminals in order to obtain information or cultivate an informant. Since this involves a claim that the officer is engaged in police work, however, it can be overcome with respect to further associations through the expedient of an order to the officer not to pursue such lines of inquiry. Such superior orders have been judicially recognized as lawful<sup>85</sup>. If the officer then continues the association, a charge of insubordination can be laid.

## (6) IMPROPER DISCLOSURE OF POLICE INFORMATION

In all Canadian jurisdictions, the improper disclosure of police information is a disciplinary offence. While addressed in codes of discipline under categories such as improper disclosure of information, breach of confidence or confidentiality, prohibition of such behaviour is also specified in standing orders concerning the release of news and information and in departmental media relations policies.

One of the most comprehensive statements concerning improper disclosure of police information is found in Alberta's *Municipal Police Disciplinary Regulations*, which define "breach of confidence" as follows:

- (i) divulges any matter which it is his duty to keep secret, or
- (ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons, or
- (iii) without proper authorization from a superior officer or in contravention of any rules of the police force of which he is a member communicates to the news media or to any unauthorized person any matter connected with the police force, or
- (iv) without proper authorization from a superior officer shows to any person not a member of the police force or any unauthorized member of the force any book or written or printed paper, document or report that is the property of or in the custody of the police force, or

...<sup>86</sup>

While certainly not as comprehensive as the one outlined above, most provisions prohibit the oral or written disclosure of confidential information to the public, press, radio, television or to an unauthorized person.

A few explicitly prohibit the inspection of or access to any confidential information by unauthorized persons. In one case we came across during our study, a young officer was charged and convicted of "disgraceful conduct" for taking a girlfriend into the police station while he was

34B

off duty, opening a locked safe containing confidential information (including information about informants) in her presence, and showing her around the exhibits room and armoury. In his decision, the trial officer said that he could "appreciate the fact that a young police officer may want to impress a young lady by playing his role as a policeman", but that such conduct could not be excused.

Generally, the disclosure of any police-related information is held to be 'improper' when such disclosure may be detrimental to effective operations of the police department or is without proper authority. Obviously, those forces which have clear and explicit policies in this area (e.g. a media policy) will find it easier to establish whether a particular disclosure was or was not authorized.

One of the most serious forms of improper disclosure of police information involves tipping off a friend or relative that he or she is under police investigation. One case involved an officer who informed his brother-in-law that a stake-out on his home was being conducted by detectives and instructed him to dispose of any drugs that might be on the premises. In another case which came to our attention, a female police officer was alleged to have disclosed at a social gathering the fact that allegations had been made to the police about a resident of a small town to the effect that he had been sexually abusing his children. The man's ex-wife complained to the police force, and at the time of our interviews this case was still under investigation.

Other cases suggest that, in certain limited circumstances, unauthorized disclosure of even potentially damaging police-related information will not constitute a disciplinary offence. In one case, charges of discreditable conduct were laid against an officer who attended a special meeting of the municipal council for the municipality in which he worked, and discussed police matters. The officer was convicted and appealed this decision to the provincial police commission. The commission held that he was not guilty of discreditable conduct, and commented:

How can this be considered discreditable conduct considering that the Council is the governing authority of the police force and he was notified by them to attend?

In another case, a constable who, acting on behalf of his police association, and without consulting his board of police commissioners, sent confidential documents that were prejudicial to the force and its chief directly to the provincial police commission, was convicted of discreditable conduct. On appeal, the Ontario Police Commission ruled that the constable's

...conduct is not discreditable for policy reasons that Police Associations should be at liberty to approach the Commission for advice and assistance without fear of prosecution.

The emergence of practices of community-based policing may well require some redefinition of the practical boundaries of the offence of improper disclosure of police information. If officers are to become more integrated with the communities where they work, and communities are to become more involved in policing policy and decision-making, a distinction between on-duty and off-duty community consultation may become harder to sustain. Police officers may be encouraged



to discuss policing matters with community members whenever the opportunity arises, and regardless of whether they happen to be on or off duty at the time. While unauthorized disclosure of such information will, of course, still be an offence, the scope of authorization seems likely to change in favour of greater openness. Definitions of what constitutes improper or prejudicial disclosure may well have to change too.

Within the rest of the public service, and in the private sector, there are no common standards in this area, since the restrictiveness of information policies varies enormously in both sectors, depending on the nature of the enterprise concerned. One important difference is that the public sector, including the police, is now regulated in most jurisdictions by so-called "freedom of information" legislation, which also contains provisions restricting the release of information which could jeopardize individual privacy. As far as we have been able to tell, however, this legislation does not differentially affect off-duty, as opposed to on-duty, conduct of public servants.

#### **(7) PUBLIC CRITICISM OF THE POLICE, CRIMINAL JUSTICE SYSTEM, ETC.**

Closely related to the issue of improper disclosure is that of public criticism by an officer of the police force, or of other aspects of, or functionaries within, the criminal justice system. Most police discipline codes include provisions which either explicitly or implicitly make such public criticisms a disciplinary offence. For example, Alberta's *Municipal Police Disciplinary Regulations* include the following in the definition of the offence of "breach of confidence":

signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedures.<sup>87</sup>

Cases in which attempts have been made to discipline police officers for publicly criticizing their departments when off duty have been rare, and rarely successful. In one case, which achieved considerable public notoriety, a police officer was charged with discreditable conduct when, despite warnings from his supervisor not to do so, he appeared in public in a rock band wearing his police uniform. When he complained to the press about what he perceived to be the unfairness of the disciplinary process, this was treated by the force as a further offence of discreditable conduct. Although he was initially convicted, he appealed the decision, and the case was eventually settled, the officer receiving a substantial cash payment in return for resigning.

In another case, an officer wrote to a newspaper; the letter was published and contained strong criticism of a member of a commission of inquiry which was investigating an incident involving the officer's police force. His rank and his association with the force appeared at the bottom of the letter. He apparently received an informal verbal reprimand for this, and wrote a second letter to the newspaper explaining that his first letter had been written in his personal capacity, rather than as a member of the police force.

Critics of such provisions may argue that they represent a violation of fundamental freedom

of thought, belief, opinion and expression, including freedom of the press and other media guaranteed by Section 2(b) of the *Charter* and thus raise the issue of whether such rights for police officers are limited by their positions as peace officers. Williams asserts that "...a policeman's rights are constrained by the employer-employee relationship in that he owes loyalty and trust to his employer the same as any employee, public or private."<sup>88</sup>

In contrast to police forces, the public sector sets out definitive statements prohibiting public criticism. For example, the Code of Conduct of Employment and Immigration Canada impresses upon employees the reticence required of a public servant under existing jurisprudence and the reticence required of a public servant as compared to an ordinary citizen and proceeds to specify:

CEIC/D employees must not indulge, through any public medium, in any criticism or adverse comment with respect to any Minister, deputy head, or governmental or Commission/Department policy, programs, services, on matters remote from collective bargaining (i.e. terms and conditions of employment) and those closely associated with political controversy. It must be emphasized that public criticism or denunciation by employees of their leaders or superiors is incompatible with the employment relationship and will be regarded as misconduct.

As a result of the rather unexpected jury acquittal in the now-famous *Ponting case* in England in 1984,<sup>89</sup> it began to be thought that there may be some circumstances in which whistle-blowers will be protected from disciplinary action. There is, however, little judicial support for such an exception,<sup>90</sup> especially in Canada where courts have been particularly unreceptive to the pleas of civil servants who have publicly criticized their departments or gone public about alleged irregularities.

In *Fraserv. Public Service Staff Relations Board*,<sup>91</sup> the Supreme Court of Canada upheld the dismissal of a federal public servant, holding that his persistent and highly visible attacks on one of the government's major policies demonstrated a lack of loyalty which was inconsistent with his duties as one of its employees. In *Re Ministry of Attorney-General, Corrections Branch and British Columbia Government Employees' Union*,<sup>92</sup> an arbitrator upheld the dismissal of two senior correctional officers who had strongly criticized the operations of the Corrections Branch of the British Columbia Attorney-General's Ministry on a radio show.

## **(8) ABUSE OF AUTHORITY**

Under the categories of abuse of authority, unlawful or unnecessary exercise of authority or less commonly that of corrupt practice, most codes of discipline specify that abuse of an officer's authority as provided by statute constitutes a disciplinary default. Regulatory provisions vary, however, in the way they define abuse of authority. Alberta's *Municipal Police Disciplinary Regulations*, for instance, contain the offence of

- (g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he is unnecessarily discourteous or uncivil to a member of the

public.<sup>93</sup>

By contrast, Manitoba's *Law Enforcement Review Act* provides for the following disciplinary default:

- (a) Abuse of authority, including
  - (i) making an arrest without reasonable or probable grounds,
  - (ii) using unnecessary violence or excessive force,
  - (iii) using oppressive or abusive conduct or language,
  - (iv) being discourteous or uncivil,
  - (v) seeking improper pecuniary or personal advantage,
  - (vi) without authorization, serving or executing documents in a civil process, and
  - (vii) discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap age, source of income, family status, political belief, or ethnic or national origin.<sup>94</sup>

Other regulatory definitions of abuse of authority which we have seen include such matters as the use (without reasonable justification) of a baton, billet, handcuffs or other restraining device, and influencing an individual in custody to make a guilty plea.

The wording of such provisions, while not directed to off-duty conduct *per se*, is often applied to it, as is illustrated by an incident reported in the annual report of a complaints review body:

Mr. X alleged that Inspector A "misused his position as an officer of the Law". The incident occurred when Mrs. A, the mother-in-law of Mr. X, decided to recover a vehicle which she had sold to him. Mrs. A and Inspector A [her husband], who was off duty, went to Mr. X's residence where Mr. X, after discussion, turned over the keys of the truck to Mrs. A who drove it away. Mr. X failed to state in his testimony in what manner Inspector A abused his position as police officer in his dealings with Mr. X. The Board agreed with the Chief of Police who found the presence of Inspector A in this situation to be inappropriate and made him aware of his role as a peace officer in disputes of this nature. The Board dismissed the appeal after hearing the evidence of Mr. X.

Most recorded abuse of authority cases have involved abuse of authority for personal advantage as in the case cited above. Another case cited to us involved an off-duty police officer



349

who attempted to cash a post-dated cheque at a bank after identifying himself as a police officer, and replied with obscene language when the teller refused to cash the cheque. He was dismissed from the force.

In a 1988 incident, two off-duty officers who arrested a taxi driver for impaired driving without sufficient cause were charged with unlawful exercise of authority. The officers appealed their convictions and penalties of two and three days leave respectively. In its decision to confirm the penalties, the provincial police commission raised the issues of the credibility of the officers and the sufficiency of the penalties in securing both general and specific deterrence. In another case, an off-duty officer who was accompanied by another officer and a civilian, all of whom, representing themselves to be police officers, questioned and searched two groups of citizens, was charged with a major offence of discreditable conduct. In disallowing an appeal and confirming the penalty of dismissal, the provincial police commission emphasized a higher standard of conduct for police officers:

Our whole police system is based on public trust in police officers' meeting a standard of conduct beyond that demanded of citizens generally. Police have special powers, and, in consequence, the highest standards of conduct are imposed. The present instance where, in the company of two experienced police constables, a civilian is allowed to break the law by identifying himself as a police officer is one which cannot be condoned; it is one that destroys that very relationship of public trust that police constables must have.

**(9) UNAUTHORIZED/IMPROPER USE OF POLICE EQUIPMENT/PROPERTY)**

All police forces have rules about the use of departmental equipment, although these rules vary somewhat from force to force. Most forces, for instance, allow their officers to take their service revolvers home with them, on the theory that in the event of an emergency call-out, they will arrive properly equipped. Use of such equipment for personal, as opposed to official, purposes, however, is regarded as a disciplinary offence by most forces.

Such prohibitions include the wearing of the police uniform on inappropriate occasions, as is illustrated by the case cited above in which the officer wore his police uniform while performing in a rock band.

Many police regulations also insist that when worn in public, the police uniform must be worn in its entirety or not at all. Thus, for instance, the Winnipeg Police Force's regulations include the offence of "appearing in public dressed partly in identifiable uniform and partly in civilian attire".

Other public and private sector employers undoubtedly impose rules concerning the wearing of uniforms while off duty (especially rules requiring tidy appearance, etc.) in order to protect the image of the employer's organization. The particular public responsibilities of the police, however, in addition to the need to ensure unequivocal public recognition of police officers, provide grounds

for more stringent regulations concerning the wearing of a police uniform.

Off-duty misuse of the police identification badge, of course, tends to be characterized as a form of abuse of authority, as discussed above.

## CONCLUSIONS

While we have been able to cover only a fraction of the great amount of pertinent material to which we were given access during the research for this paper, we have attempted to illustrate not only the broad range of off-duty conduct which police forces in Canada have sought to regulate, control and discipline their members for, but also the range of regulatory strategies and responses which police forces have adopted in this regard. We have also sought to compare these with the situations pertaining to other public and private sector employees.

Our review reveals a number of significant trends, most notable of which is the trend towards replacing vaguely defined prohibitions with quite detailed policies. Calgary's policy on outside employment and business activities provides the most vivid example of this trend, which reflects not only a move towards greater specificity in regulation, but a move in favour of clear rules rather than vague prohibitions whose interpretation and application depends on the discretion or judgment of chiefs of police and disciplinary tribunals. While this is undoubtedly a beneficial trend from the point of view of police officers who have to try to live in conformity with the rules, it may well carry some costs in terms of reduced flexibility for police managers. In the era of the *Charter*, however, it is probably not a trend which could have been long forestalled.

Another less clear trend has involved elimination, or at least relaxation, of prohibitory regulation which was once thought appropriate. This is particularly noticeable in the areas of secondary employment (which used to be prohibited entirely by many police forces), political activity, cohabitation arrangements and private sexual conduct. In other areas, however, regulation of off-duty conduct appears to be expanding; explicit restrictions on racial and sexual harassment provide clear examples. As new approaches to policing (such as so-called community-based policing) begin to take hold, it seems likely that other areas of regulation may have to be reconsidered.

The heavy reliance of police forces on the concept of "discreditable conduct" as the basis for regulating off-duty conduct, and the broad interpretations and applications of this term, raise some other difficult questions. On the face of it, the concept of "discreditable conduct" appears to mirror the common law rules respecting the regulation of off-duty conduct which apply to most other employees in the public and private sectors. For the concept seems to require that conduct will be subject to regulation only if a rational connection between it and the legitimate interests of the employing police force can be demonstrated. There can be no doubt from the cases, however, that the breadth with which "discredit" has been interpreted in the police context has allowed for interventions in officer's off-duty lives which are considerably greater than those normally authorized in the case of other employees. As we have noted, the courts (including the Supreme Court of Canada) have upheld the right of police forces to impose higher standards of off-duty



conduct on the part of their officers than those imposed on other citizens.

Even when this is acknowledged, it does not answer the question of what the limits might be in this regard. To put it another way, the breath of the concept of "discreditable conduct" raises serious questions about the extent to which engagement in the police occupation allows officers to have a private life over which the police force does not have supervisory jurisdiction. This is compounded by the prevalence of regulatory prohibitions which do not require proof of a rational connection between the conduct and the legitimate interests of the police force.

This issue has been raised most recently by the Metropolitan Toronto Police Association in connection with proceedings under the Metropolitan Toronto Police Force Complaints Act, 1984,<sup>95</sup> and now the *Ontario Police Services Act*, which provides that:

75. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part.<sup>96</sup>

Since the term "conduct" is not defined or limited anywhere in the Act, section 75 would appear to contemplate that the Public Complaints Commissioner can entertain any complaint concerning any conduct of a police officer, whether the officer was on or off duty at the time. Indeed, the Ontario Divisional Court has recently confirmed that off-duty conduct could be the basis for a complaint under the *Police Services Act*, even though at the time the conduct occurred the complainant did not know that the person involved was a police officer.<sup>97</sup>

This is merely a particularly clear example of the way current regulations seem to authorize almost unlimited supervision of, and intervention into, the private lives of officers. What is not clear from our review is what the limits of such supervision and intervention might be. On the face of it, one would think that the *Charter* might play an important role in setting such limits, and in defining for police officers a realm of truly private life for which they are not accountable to their police forces. The few *Charter* challenges which have been taken, and which we have noted, however, do not seem to offer police officers much comfort in this regard, since police force regulations have been consistently upheld as not violating *Charter* rights.

On the basis of our review, we would not expect this virtual immunity from legal challenge to continue for long. In the first place, there have been few such challenges so far. As more challenges emerge, as they undoubtedly will, the likelihood that some of them will be successful will increase. Secondly, as pointed out earlier, the cases which have been decided under the *Charter* so far are not noteworthy for the careful and detailed scrutiny of the regulations they display. More sophisticated arguments in future cases, requiring more exacting scrutiny by the courts for their disposition, may produce different results.

Quite apart from legal challenges, regulations regarding off-duty conduct of police officers raise more general social questions about how we regard our police, and what kind of people we expect them to be. How, for instance, can we expect them to be more in tune with the communities they serve and more empathetic towards those they police -- both ostensible and laudable goals of

community-based policing - if we deny to them the most basic rights to private lives and freedom of expression which other citizens enjoy'? In this regard, the words of the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police seem just as appropriate today as they were when it wrote them 15 years ago:

The discipline system with the greatest likelihood of success is one which, through its provisions and procedures, earns the respect of those for whom it is administered. Essential to such a system are provisions which demonstrably recognize and protect the rights of members.<sup>98</sup>

In order to achieve such a system, the first priority would seem to be the development of a rational principled basis for it. A key to this would seem to be the adoption of a fundamental principle which underlies legally authorized intervention with respect to off-duty employee conduct in the private sector namely, that such intervention can only ever be justified if the employer can demonstrate a rational connection between the off-duty conduct and the legitimate interests of the employer. As has frequently been noted in this paper, this basic principle is not consistently recognized in current rules governing police force interventions with respect to off-duty police officer conduct.

#### **TOWARD A MORE RATIONAL BASIS FOR THE REGULATION AND CONTROL OF OFF-DUTY POLICE OFFICER CONDUCT**

If it is accepted that there are characteristics and requirements of police work which distinguish it from other work, and these distinctive aspects are taken into account, there is no reason why the accepted common law principles respecting employer regulation and control of off-duty conduct should not be regarded as equally appropriate and adequate to the context of the police occupation. Such an approach (which is the normal one in other areas of employment) would require that the *bona fide* occupational requirements of police work and the police force's legitimate reputational interests be identified. It would also require that disciplinary action with respect to off-duty police officer conduct would, in each case, have to be justified through the demonstration of a rational connection between the impugned conduct and these legitimate requirements and interests.



Since most of the existing regulatory provisions respecting off-duty police conduct are rarely or never invoked, it may be that such an approach would not produce significantly different results in practice. It would probably serve to enhance the legitimacy of such discipline in the eyes of police officers, however, and may serve to forestall legal challenges which can be anticipated under the existing regime, some of which could be expected to be successful.

*Bona fide* occupational requirements and reputational interests respecting police work

In view of the current debates over the proper role of the public police, it is of course particularly difficult to identify a set of *bona fide* occupational requirements and reputational interests respecting public police work which would be universally accepted. The following are offered, therefore, merely as an illustration of how the regulation and control of off-duty police officer conduct might be made more consistent and principled, recognizing that the occupational requirements suggested may not necessarily be the most appropriate or acceptable ones. Even assuming that they are the right ones, however, the relative weight attached to them could be expected to vary according to the particular type of police work involved in any given case:

- (1) An understanding of, and respect for, prevailing notions of peace and good order - necessary for the peace-keeping functions of police work;
- (2) A respect for, and obedience to, the laws of the land - necessary for law enforcement functions;
- (3) A demonstrated commitment to impartiality and against unacceptable prejudice and discrimination
  - necessary for all police work involving contact with or consequences for members of the public;
- (4) Demonstrated honesty, trustworthiness, and conduct and deportment worthy of general social respect
  - necessary to ensure public confidence in, and hence accessibility to, police as service providers, especially in situations of conflict and crisis,
  - also necessary to ensure credibility of police as witnesses in court;
- (5) A specified minimum level of physical and mental fitness
  - necessary for (and to be determined by) actual physical and mental demands of police work;
- (6) Availability for, and fitness for, duty at all times
  - necessitated by the nature of peace officer status which is an incident

of employment as a police officer.

It could be suggested that beyond the limits of these *bona fide* occupational requirements and reputational interests, police officers are entitled to a private off-duty life in which they are free from interference or surveillance by their employing police forces. Furthermore, as under common law applicable in the private sector, the onus should always remain on the police force to justify intervention on the basis of these criteria. A *prima facie* presumption in favour of an officer's privacy and non-intervention should always be recognized.

#### Accommodating changes in the police role

The current preference for community-based policing raises questions as to whether the traditional *bona fide* occupational requirements for police work will still be appropriate or accorded the same relative weight and application in the future. For instance, our current notions of what the impartiality requirement consists of, and possible implications of this requirement for off-duty political activities of police officers, may well need review. The point illustrates the need for occupational requirements which form the basis for discipline to be kept in constant review to ensure that they appropriately reflect current conceptions of the police officer's (and police force's) role in society.

#### The nature of police force responses to off-duty police officer misconduct

Informal and formal discipline have been the most common police force responses to off-duty police officer misconduct. Changes in the nature of such responses, however, have resulted from two important trends in the late 20th century.

First has been a trend, within employment discipline generally, towards emphasis on the remedial rather than the punitive purposes of discipline. This has implications primarily for the allowable responses once misconduct has been established, rather than for the definition of misconduct itself.

The second important trend has occurred through the promulgation of human rights and anti-discrimination laws which have redefined certain conduct (especially that which is related to alcoholism, drug dependency, sexual orientation, and perhaps even occupational stress) either as the product of disabilities or, in the case of sexual orientation, as legally protected conduct, rather than as misconduct which can appropriately be the subject of (punitive) discipline. These laws now require that such conduct must be responded to using approaches which emphasize accommodation and, in the case of disabilities and were possible without undue hardship to the employer, remediation, rather than those of traditional punitive discipline.



Those two trends dovetail effectively to require an approach towards police force intervention with respect to off-duty conduct of police officers which will have (and in some cases quite different outcomes) from the more traditional punitive, disciplinary approach.

Implications of these suggestions

- (1) Many existing outdated (and rarely invoked) disciplinary offences relating to off-duty conduct, and all those which do not require a rational connection between the impugned conduct and the *bona fide* requirements of the police job to be demonstrated, could be removed from police disciplinary codes.
- (2) Disciplinary decisions with respect to off-duty police conduct would be based on a set of agreed, articulated and rational principles which, over time, would be the subject of consistent and accepted interpretation and application. (Greater publicity of decisions would facilitate this.) The result would be a disciplinary regime which would have greater legitimacy in the eyes of police officers and the public, and would actually be fairer and easier to defend.
- (3) The regulation and control of off-duty police officer conduct would be based on the same fundamental principles as the regulation of off-duty employee conduct in the private and public sectors more generally (although of course those general principles might often produce different outcomes when applied to police work than they would when applied to other occupations).
- (4) Managerial flexibility to adapt existing criteria for discipline, and interpretations and applications of the police role would be enhanced.
- (5) Approaches to responding to off-duty conduct of police officers would be more readily adaptable to changing conceptions of fundamental human rights, equity and protections against unlawful discrimination.
- (6) The right of officers to a private, off-duty life free from interference and surveillance by their employing police forces would become more clearly defined and more effectively protected.

Whether, and to what extent, these suggestions are adopted depends in part on the attitudes of legislators and other rule makers. More importantly, though, their adoption depends on how police officers and managers see their roles in society. It would appear that this perception is still evolving.



356

### ENDNOTES

1. See D. Flaherty (ed.) Essays in the History of Early American Law (Chapel Hill: University of North Carolina Press, 1969); P. Aries & G. Duby (eds) Histoire de la Vie Privée (5 vols) (Paris: Éditions du Seuil, 1985-87).
2. D. Bayley, Forces of Order: Police Behaviour in Japan and the United States (Berkeley: University of California Press, 1976) at 71.
3. *Re United Automobile Workers, Local 1524 and General Spring Products Ltd* (1968), 19 L.A.C. 392 (Weatherill) at 395.
4. See, for example, D. Brown & D. Beatty, Canadian Labour Arbitration, 3d ed., (Aurora, Ont.: Canada Law Book Co., 1990) para 7:3000 if [hereinafter Brown & Beatty]; E. Palmer Collective Agreement Arbitration in Canada, 2d ed., (Toronto: Butterworths, 1983) at 381-401 [hereinafter Palmer].
5. C. Reith, The Blind Eye of History (1952; rpt Montclair, N.J.: Patterson Smith, 1975) at 157.
6. (1956), 114 C.C.C. 77 (S.C.C.) at 80-81.
7. C. Shearing, Post-Complaint Management: The Impact of Complaint Procedures on Police Discipline, Discussion Paper 4 prepared for RCMP External Review Committee (Ottawa: Minister of Supply and Services Canada, 1990).
8. Part I of the *Constitution Act*, 1982, being Schedule B of the *Canada Act* 1982 (U.K.), 1982, c. 11 [hereinafter the *Charter*].
9. *Re Carpenter and Vancouver Police Board et al.* (1983), 47 B.C.L.R. 161, 149 D.L.R. (3d) 405 (S.C.); aff'd (1985), 63 B.C.L.R. 310, 18 D.L.R. (4th) 585 (C.A.); leave to appeal refused *sub nom. Vancouver Police Board v. Carpenter*, [1985] 2 S.C.R. xiii (1 October 1985); *Carpenter v. Vancouver Police Board*, [1986] B.C.W.L.D. 437 (S. C.); rev'd (1986) 9 B.C.L.R. (2d) 99, 34 D.L.R. (4th) 50, [1987] 2 W.W.R. 97, 23 Admin. L.R. 166 (C.A.); leave to appeal refused *sub nom. Vancouver Police Board v. Carpenter*, [1987] 1 S.C.R. xv (14 May 1987), 44 D.L.R. (4th) vii; (1988) 33 B.C.L.R. (2d) 183 (S.C.) [hereinafter *Carpenter*].
10. *Re Iron Ore Co. of Canada and United Steelworkers of America, Local 5795* (1983), 11 L.A.C. (3d) 53 (Bruce).

11. *Re Millhaven Fibres Ltd, Millhaven Works, and Oil, Chemical and Atomic Energy Workers Int'l, Local 9-670* (1967), 1 (A) Union-Management Arbitration Cases 328 (Anderson) at 329 [hereinafter *Millhaven*].
12. Palmer, *supra*, note 4 at 385.
13. Brown & Beatty, *supra*, note 4 at para 7:3010.
14. *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 [hereinafter old *RCMP Act*], as am. R.S.C., 1985, c. 8 (2d supp.) [hereinafter *RCMP Act*].
15. S.A. c. P-12.01 [hereinafter *Alberta Police Act*].
16. *Calgary Police Association et al. v. Calgary Police Commission and Chief of Police City of Calgary*, [1986] A.W.L.D. 809 (O. B.); aff'd (1988), 57 Alta L.R. (2d) 8, [1988] 2 W.W.R. 741 (C.A.) [hereinafter *Calgary Police Association*].
17. See, for example, *Carpenter*, *supra*, note 9.
18. S.N.S. 1974, c. 9, sub. 40(2), repealed by S.N.S. 1985, c. 33, s. 22.
19. P. Stenning, Legal Status of the Police, Study Paper prepared for the Law Reform Commission of Canada (Ottawa: Minister of Supply and Services Canada, 1982).
20. See, for example, *R. v. Johnson et al.*, [1966] 1 C.C.C. 226 (Ont. C.A.); *Adrian Messenger Services and Enterprises et al. v. The Jockey Club et al.*, [1972] 2 O.R. 369 (H.C.); *Police Services Act*, 1990, S.O. 1990, c. 10, sub. 42(2) [hereinafter *Ontario Police Services Act*].
21. K. Brophy, "Department Civil Liability for Officer's Off-Duty Acts" (Feb. 1982) 49:2 Police Chief 16 at 16-17 [hereinafter Brophy].
22. (1974), 54 D.L.R. (3d) 407 (Sask. Q.B.).
23. See *Short v. Henderson Ltd* (1946), 174 L.T. 417 (H.C.).
24. See, for example, *Alberta Police Act*, *supra*, note 15, s. 39.
25. See, for example, "Models for Management" (Dec. 1988) 55:12 Police Chief 71.
26. Brophy, *supra*, note 21.
27. R.S.N.S. 1989, c. 348, s. 21 [hereinafter *NS Police Act*].
28. *Ibid.* sub. 21 (1).

29. Albert J. Reiss Jr., Private Employment of Public Police, (Washington, D.C.: National Institute of Justice, 1988).
30. *Supra*, note 14, s. 25.
31. B.C. Reg. 330/75 [hereinafter *BC Regulation*].
32. R.S.B.C., c. 331.1 [hereinafter *BC Police Act*].
33. *Supra*, note 31, Appendix A, para. 1 (a).
34. See, for example, *Re Coates and Ontario Police Commission* (1979), 23 O.R. (2d) 568, 95 D.L.R. (2d) 560 (Div. Ct.).
35. R. Ericson, "Rules For Police Deviance" in C. Shearing (ed.) Organizational Police Deviance (Toronto: Butterworths, 1981) 83-110.
36. There would appear, though, to be an emerging legislative tendency to change this situation. Section 105 of the *Ontario Police Services Act*, *supra*, note 20, provides:

105. (1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 90 or 91.

(2) If the police officer resigns before a board of inquiry is constituted under section 93, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force.
2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply:

1. The board of inquiry loses jurisdiction over the police officer.
2. If the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

Similarly recent amendments to the *Québec Police Act*, L.R.Q. 1977 c. P-13, create a new



system of dealing with ethical misconduct by police officers and provide:

53. Any police officer who resigns remains subject to the jurisdiction of the commissioner with respect to any act he committed while he was a police officer.

*An Act respecting police organization and amending the Police Act and various legislation*, L.Q. 1988, c. 75, as am. L.Q. 1990, c. 27, s. 53.

For a complete discussion of the provisions of the Ontario *Police Services Act* and the new Québec legislation, see, RCMP External Review Committee, Disciplinary Dismissal -- A Police Perspective, Discussion Paper 6, (Ottawa: Minister of Supply and Services Canada, 1991).

37. Correctional Services Canada, "Report on Termination of Employment for Off-Duty Criminal Acts", (unpublished, 1990).
38. *Supra*, note 15, subs. 37(2).
39. N.S. Reg. 101/88. See page 30.
40. See, for example, R.R.O. 1980, Reg. 791 (made under the Police Act, R.S.O. 1980, c. 381 [hereinafter the *Ontario Police Act*]), para. 27(e) [hereinafter *Regulation 791*].
41. RCMP External Review Committee, Medical Discharge -- A Police Perspective, Discussion Paper 3 (Ottawa: Minister of Supply and Services Canada, 1989).
42. RCMP External Review Committee, Employee Assistance Programs -- Philosophy, theory and practice, Discussion Paper 5 (Ottawa: Minister of Supply and Services Canada, 1990).
43. In order to protect the identity of this and other unreported cases, all identifying elements have been removed.
44. R.S.C., 1985, c. H-6.
45. *Central Alberta Dairy Pool v. Human Rights Commission (Alta)*, [1990] 2 S.C.R. 489, 113 N.R. 161, [1990] 6 W.W.R. 193.
46. See, M. Conrod, "Ont. WCAT allows youth worker to collect for stress" [*Ontario*] *Lawyers Weekly*, 23 November 1990, at 13.
47. *RCMP Act*, *supra*, note 14, sub. 45.35(1).
48. *An Act respecting police organization and amending the Police Act and various Legislation*,

*supra*, note 36.

49. See, for example, *BC Police Act*, *supra*, note 32, s. 49.
50. See, for example, *Alberta Police Act*, *supra*, note 15, sub. 43(1); *NS Police Act*, *supra*, note 27, sub. 23(1); *Ontario Police Services Act*, *supra*, note 20, s.75.
51. *Municipal Police Disciplinary Regulations*, Alta Reg. 179/74, as am. *Municipal Police Disciplinary Amendment Regulation*, Alta Reg. 79/78, para 17(a). See now *Police Service Regulation*, Alta Reg. 356/90, para. 5(2)(e).
52. (1983), 11 L.A.C. (3d) 53 (Bruce) [hereinafter *Iron Ore*].
53. *Supra*, note 39, para. 4(3)(c).
54. *Ibid.*, para. 5(1)(j).
55. *Trumbley and Pugh v. Metropolitan Toronto Police*, [1987] 2 S.C.R. 577, 45 D.L.R. (4th) 318.
56. *R. v. Wigglesworth*, [1987] 2 S.C.R. 541, 45 D.L.R. (4th) 235.
57. O.C. 467-87, s. 5 2nd para. [hereinafter *SQ code of ethics*]. There is no similar provision under the new *Code of ethics of Québec police officers*, O.C. 920-90 [hereinafter *Québec Code*].
58. *Fedoriuk v. Commissioner of the RCMP*, [1989] 2 F.C. 400, 54 D.L.R. (4th) 168 (C.A.).
59. Stenning, *supra*, note 19.
60. *Supra*, note 40, s. 62.
61. *Public Service Act*, R.S.O. 1980, c. 428, s.12.
62. *Re Mahlberg and Ferguson et al.* (1983), 44 O.R. (2d) 239, 3 D.L.R. (4th) 755 (Div. Ct.).
63. *Municipal Act*, R.S.O. 1980, c. 302.
64. *Supra*, note 20, s. 46.
65. *Supra*, note 57, s. 21. There is no similar provision under the *Québec Code*, *supra*, note 57.
66. "Policemen allowed to run for county board of education" *The [Toronto] Globe and Mail*, 23 October 1980.



67. W. Muir, Jr., "Police and Politics", (Summer/Fall 1983) 2:2 Criminal Justice Ethics 3.
68. *Supra*, note 61, see *OPSEU v. Ontario (Attorney General)*, [1987] 2 S.C.R. 2, 41 D.L.R. (4th) 1 and *OPSEU v. Ontario (Attorney General)*(1988), 65 O.R. (3d) 689 (H.C.J.).
69. [1988] 3 F. C. 219, 52 D.L.R. (4th) 241 (C.A.).
70. R.S.C., 1985, c. P-33.
71. *Supra*, note 57, s. 22. There is no similar provision under the *Québec Code*, *supra*, note 57.
72. *Supra*, note 40, s. 29. See *Ontario Police Services Act*, *supra*, note 20, s. 49.
73. *Supra*, note 27, sub. 21(3).
74. As in most provinces, the involvement of police officers in the provision of private contract security services (i.e. through private firms) is prohibited by legislation respecting such services. See, *Private Investigators and Private Guards Act*, R.S.N.S. c. 356, sub. 20(2); *NS Police Act*, *supra*, note 27, para 21 (2) (c).
75. *Supra*, note 16, at 743 (W.W.R.).
76. R.S.M. 1987, c. R20.
77. *Partridge v. Securities Commission (Manitoba)*(1986), 61 Man. R. (2d) 301 (Q.B.) at 308.
78. *Ibid.*, at 307.
79. *Ibid.*, at 307-8.
80. *Supra*, note 16, at 743 (W.W.R.).
81. *Ibid.*
82. "Delay sought in sex bias case" *The [London] Independent*, 20 December 1990, at 3.
83. See, for example, *Re Coates and Ontario Police Commission*, *supra*, note 34.
84. *Re Lutwick and Town of Nackawic* (1987), 43 D.L.R. (4th) 746 (N.B.Q.B.).
85. *Wool v. The Queen and Nixon* (1985-86), 28 Crim. L.O. 162 (F.C.T.D.).
86. *Supra*, note 51, para 17(e), now *Police Service Regulation*, *supra*, note 51, para 5(2)(a).

87. *Ibid.*
88. R. Williams, "Legal Aspects of Discipline by Police Administrators", Paper, (Chicago: Traffic Institute, Northwestern University, 1977) at 6.
89. R. Norton-Taylor, The Ponting Affair (London: C. Woolf, 1985).
90. See, J. Baxter, State Security. Privacy and Information (London: Harvester/Wheatsheaf, 1990).
91. [1985] 2 S.C.R. 455, 23 D.L.R. (4th) 122.
92. (1981), 3 L.A.C. (3d) 140 (Weiler).
93. *Supra*, note 51, para 17(g) now *Police Service Regulation*, *supra*, note 51 para. 5(2)(i).
94. R.S.M. 1987, c. L75, para. 29(a).
95. S.O. 1984, c. 63, repealed.
96. *Supra*, note 20, s. 75.
97. *See, Marks v. Lewis and Wilcox* (1 December 1987) unreported, Ont. Div. Ct. 483/87.
98. Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police, Report (Ottawa: Information Canada, 1976) at 137.

## REFERENCES

## BOOKS AND ARTICLES

- Aries, P. & G. Duby (eds), Histoire de la Vie Privée (5 vols.), (Paris: Éditions du Seuil, 1985-87).
- Bayley, D., Forces of Order: Police Behaviour in Japan and the United States, (Berkeley: University of California Press, 1976).
- Baxter, J., State Security, Privacy and Information, London: Harvester/Wheatsheaf, 1990).
- Brophy, K., "Department Civil Liability for Officer's Off-Duty Acts", (Feb. 1982) 49:2 Police Chief, 16.
- Brown, D. & D. Beatty, Canadian Labour Arbitration, 3d ed., (Aurora: Canada Law Book Co., 1990).
- Canada, Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police, Report, (Ottawa: Information Canada, 1976).
- Carter, D.L. & D.W. Stephens, "Police Ethics, Integrity, and Off-Duty Behaviour: Policy Issues of Officer Conduct" in T. Barker & D.L. Carter (eds) Police Deviance, 2d ed. (Cincinnati: Anderson Publishing Co., 1991) 29.
- Conrod, M., "Ont. WCAT allows youth worker to collect for stress", [*Ontario*] Lawyers Weekly, 23 November 1990, 13.
- Correctional Services Canada, "Report on Termination of Employment For Off-Duty Criminal Acts", (unpublished, 1990).
- Ericson, R., "Rules for Police Deviance", in C. Shearing (ed.), Organizational Police Deviance, (Toronto: Butterworths, 1990) 83.
- Flaherty, D. (ed.), Essays in the History of Early American Law, (Chapel Hill: University of North Carolina Press, 1969).
- Marmo, M., "Off-Duty Behaviour by Police: Arbitrators Determine if On-the-Job Discipline is Appropriate", (1986) 14:2 Journal of Police Science and Administration, 102.
- "Models for Management" (Dec. 1988) 55:12 Police Chief, 71.
- Muir, W., Jr, "Police and Politics", (Summer/Fall 1983) 2:2 Criminal Justice Ethics, 3.

- Norton-Taylor, R., The Ponting Affair, (London: C. Soolf, 1985).
- Palmer, E., Collective Agreement Arbitration in Canada, 2d ed., (Toronto: Butterworths, 1983).
- RCMP External Review Committee, Disciplinary Dismissal - A Police Perspective, Discussion Paper 6, (Ottawa: Minister of Supply and Services Canada, 1991).
- RCMP External Review Committee, Employee Assistance Programs - Philosophy, Theory and Practice, Discussion Paper 5, (Ottawa: Minister of Supply and Services Canada, 1990).
- RCMP External Review Committee, Medical Discharge - A Police Perspective, Discussion Paper 3, (Ottawa: Minister of Supply and Services Canada, 1990).
- Reiss, Albert J. Jr, Private Employment of Public Police, (Washington, D.C.: National Institute of Justice, 1988).
- Reith, C., The Blind Eye of History, (1952; rpt Montclair, N.J.: Patterson Smith, 1975).
- Shearing, C., Post-Complaint Management: The Impact of Complaint Procedures on Police Discipline, Discussion Paper 4, prepared for the RCMP External Review Committee (Ottawa: Minister of Supply and Services Canada, 1990).
- Stenning, P. Legal Status of the Police, Study Paper prepared for the Law Reform Commission of Canada, (Ottawa: Minister of Supply and Services Canada, 1982).
- The [Toronto] Globe and Mail*, "Policeman allowed to run for county education board", 23 October 1980.
- The [London, U.K.] Independent* "Delay sought in sex bias claim", 20 December 1990, 3.
- Williams, R., "Legal Aspects of Discipline by Police Administrators", Paper, (Chicago: Traffic Institute, Northwestern University, 1977).

#### **CASES REFERRED TO**

- Adrian Messenger Services and Enterprises et al. v. The Jockey Club et al.*, [1972] 2 O.R. 369 (H.C.J.)
- Calgary Police Association et al. v. Calgary Police Commission and Chief of Police City of Calgary*, [1986] A.W.L.D. 809 (Q.B.); 57 Alta L.R. (2d) 8, [1988] 2 W.W.R. 741, (C.A.).
- Central Alberta Dairy Pool v. Human Rights Commission (Alta)*, [1990] 2 S.C.R. 489, 113 N.R. 161.



- Fedoriuk v. Commissioner of the RCMP*, [1989] 2 F.C. 400 (C.A.).
- Fraser v. Public Service Staff Relations Board*, [1985] 2 S.C.R. 455, 23 D.L.R. (4th) 122.
- Lockhart v. Ens* (1974), 54 D.L.R. (3d) 407 (Sask. Q. B.).
- Marks v. Lewis and Wilcox* (1 December 1987), unreported, Ont. Div. Ct 483/87.
- OPSEU v. Ontario (Attorney-General)* (1988), 65 O.R. (2d) 689, 11 A.C.W.S. (3d) 307 (H.C.J.).
- Ontario Public Service Employees Union et al. v. Ontario (Attorney-General)*, [1987] 2 S.C.R. 2, 41 D.L.R. (4th) 1.
- Osborne v. Canada*, [1988] 3 f.c. 219, 52 d.l.r. (4th) 241 (C.A.).
- Partridge v. Securities Commission (Man.)* (1990), 61 Man. R. (2d) 301 (Q-6.).
- R. v. Johnston et al.*, [1966] 1 C.C.C. 226 (Ont. C.A.).
- R. v. Wigglesworth*, [1987] 2 S.C.R. 541, 45 D.L.R. (4th) 235.
- R. and Archer v. White* (1956), 114 C.C.C. 77 (S. C. C.).
- Re Carpenter and Vancouver Police Board et al.* (1983), 47 B.C.L. R. 161, 149 D.L.R. (3d) 405 (S.C.); aff'd (1985), 63 B.C.L.R. 310, 18 D.L.R. (4th) 585 (C.A.); leave to appeal refused *sub nom. Vancouver Police Board v. Carpenter*, [1985] 2 S.C.R. xiii (1 October 1985); *Carpenter v. Vancouver Police Board*, [1986] B.C.W.L.D. 437 (S.C.); rev'd (1986) 9 B.C.L.R. (2d) 99, 34 D.L.R. (4th) 50, [1987] 2 W.W.R. 97, 23 Admin. L.R. 166 (C.A.); leave to appeal refused *sub nom. Vancouver Police Board v. Carpenter*, [1987] 1 S.C.R. xv (14 May 1987), 44 D.L.R. (4th) vii; (1988) 33 B.C.L.R. (2d) 183 (S.C.).
- Re Coates and Ontario Police Commission* (1979), 23 O.R. (2d) 568 (Div. Ct.).
- Re Iron Co. of Canada and United Steel Workers, Local 5795* (1983), 11 L.A.C. (3d) 53 (Bruce).
- Re Lutwick and Town of Nackawic* (1988), 43 D.L.R. (4th) 746 (N.B.O.B.).
- Re Mahlberg and Ferguson et al.* (1984), 44 O. R. (2d) 239, 3 D.L.R. (4th) 755 (Div. Ct.).
- Re Millhaven Fibres Ltd, Millhaven Works, and Oil, Chemical and Atomic Energy Sorkers Int'l, Local 9-670* (1967), 1 (A) Union-Management Arbitration Cases 328 (Anderson).



366

*Re Ministry of Attorney-General, Corrections Branch and British Columbia Government employees' Union* (1981), 3 L.A.C. (3d) 140 (Weiler).

*Re United Automobile Workers, Local 1524, and General Spring Products Ltd* (1968), 19 L.A.C. 392 (Weatherill).

*Short v. Henderson Ltd* (1946), 174 L.T. 417 (H.L.).

*Trumbley and Pugh v. Metropolitan Toronto Police*, [1987] 2 S.C.R. 577, 45 D.L.R. (4th) 318.

*Wool v. The Queen and Nixon* (1981), reported in (1985-86) 28 Criminal Law Quarterly 162 (F.C.T.D.).

#### STATUTES REFERRED TO

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11.

*Canadian Human Rights Acts*, R.S.C., 1985, c. H-6.

*Law Enforcement Review Act*, R.S.M. 1987, c. L75.

*Police Act*, L.R.Q. 1977, c. P-13.

*Metropolitan Toronto Police Force Complaints Act*, 1984, S.O. 1984, c. 63.

*Municipal Act*, R.S.O. 1980, c. 302 (Ontario).

*Police Act*, 1988, S.A. 1988, c. P-12.01.

*Police Act*, 1988, S.B.C. 1988, c. 53, R.S.B.C. c. 33 1.1.

*Police Act*, 1974, S.N.S. 1974, c. 9.

*Police Act*, R.S.N.S. 1989, c. 348.

*Police Act*, R.S.O. 1980, c. 381.

*Police Services Act*, 1990, S.O. 1990, c.10.

*Real Estate Brokers Act*, R.S.M. 1987, c.R20.

*Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, as am. R.S.C., 1985 c. 8 (2d supp.).

*Public Service Act*, R.S.O. 1980, c. 418.

*Public Service Employment Act*, R.S.C., 1985, c. P-33.

*An Act respecting police organization and amending the Police Act and various legislation*, L.O. 1988, c. 75 as am. L.Q. 1990, c. 27.

368

This is Exhibit "28" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

---

A Commissioner, etc.

369



Royal Canadian Mounted Police  
Gendarmerie royale du Canada

Canada

[Home](#) > [Values and Ethics Office](#) > Ethics and Integrity in the RCMP

## Ethics and Integrity in the RCMP

The Royal Canadian Mounted Police (RCMP) is a national government organization in which all Canadians take pride. In order to keep this confidence, we have a responsibility to meet the high expectations of Canadians in both our personal and professional conduct. Our ethical behavior must be evident in everything we do.

This brochure helps set out the ethical issues surrounding the relationship between the RCMP and the private sector as well as identify legislation that must be considered when decisions are made. It covers the areas of conflict of interest, post-retirement guidelines, hospitality and acceptance of gifts, the sponsorship program and proprietary information.

The operations of the RCMP are carried out by dedicated employees in all job categories. All employees of the RCMP are responsible for ensuring we maintain a professional relationship with our business partners. While we rely on our alliances with private-sector businesses, the Canadian public expects us to ensure that public funds are spent efficiently and in the public's best interest.

RCMP ethical standards are based on six core values: **integrity, honesty, professionalism, compassion, respect and accountability**. These core values make up the basis of every decision we make and help us determine how we should conduct ourselves everyday. Closely following these values allows employees to make informed and ethical judgements in business dealings and the workplace. It is critical that we make sound decisions as we are accountable for them in the end.

Common sense and this guide provide a framework to help us make choices. Your own judgement and values will be at the core of your behaviour and for which you will be held accountable.

We also believe it is essential that the Canadian public and our business partners have a clear understanding of our obligations and standards. In setting out clear obligations, I believe we will maintain the trust that the Canadian public has placed in us.

### Conflict of Interest

Consistent with our core values of integrity, honesty, professionalism, compassion, respect and accountability, employees are to avoid any actual, apparent or potential conflicts of interest. This applies to everyday work responsibilities and conduct. All employees must continue to uphold the organization's high standards and conduct themselves in ways that enhance the image of the RCMP. This image can be harmed by cases of outside individuals perceived to have benefitted inappropriately from their dealings





370

with the RCMP.

Employees are to respect existing policy in relation to gifts, hospitality and benefits; declining those which are prohibited and reporting those which may be permitted. Employees are to avoid being under an obligation, or the perception of obligation, to a person or organization that might benefit from special consideration. They are to avoid preferential treatment of family, friends, and organizations in which they have an interest, in relation to official matters.

As per Section 37 of the *RCMP Act* and Part 1, Principles, of the conflict of interest and Post-Employment code for the Public Service it is essential to ensure that an employee's duties are completed without a conflict of interest, either real or perceived. All steps must be taken to ensure impartiality and fairness in relationships as well as to protect the image of the RCMP in such areas as gifts, hospitality and secondary employment.

The onus is on the employee to take whatever actions are necessary to avoid being placed in a position of conflict of interest.

### Gifts

Gifts, hospitality or other benefits that could influence employees in their judgement and performance of official duties and responsibilities must be declined. Employees must not accept, directly or indirectly, any gifts, hospitality or other benefits that are offered by persons, groups or organizations having dealings with the government.

Accepting offers of incidental gifts, hospitality or other benefits arising out of activities associated with the routine performance of their official duties and responsibilities **is not prohibited** if such gifts, hospitality or other benefits:

- are within the bounds of propriety, a normal expression of courtesy or within the normal standards of hospitality;
- must not bring suspicion on the employee's objectivity and impartiality; and
- would not compromise the integrity of the RCMP or Government of Canada.

It may be exceptionally difficult to decline gifts, hospitality or other benefits offered by individuals or organizations from different cultures with particular approaches to gifts. In such cases, every effort should be made to decline the gifts without offending the persons involved. The inherent call for personal judgement is amplified here. If it is not possible to decline the gift, hospitality or other benefits, employees must immediately report the matter to a manager or supervisor. The manager or supervisor may require that a gift of this nature be retained by the RCMP or be disposed of for charitable purposes.

All gifts, awards and bequests, if they are money or converted into money, acquired in connection with the performance of a regular or civilian member's duties are to be deposited into the Consolidated Revenue Fund to the account of the *Benefit Trust Fund*. Public Service employees are required to turn over gifts to the RCMP via their supervisor.

While the RCMP recognizes customary business practices such as offering and accepting gifts or providing and receiving hospitality benefits, it is expected that all employees of the RCMP, regardless of status, respect the law and government policies. This is especially true in the operations of the RCMP where there is a greater onus on employees to exercise discretion.



It is important to note that this guide also applies when the RCMP is the organization acting as host. It is critical that all RCMP sponsored events and their respective budgets conform to Treasury Board policy and RCMP procedures and guidelines and be approved before any funds are dispersed.

### **Case Study 1: Accepting gifts**

*Bob, the NCO in charge of a drug squad, is asked to dine with a local pharmacist to discuss work issues and the pharmacist insists on paying for Bob's meal. Should Bob accept the meal?*

*Factors to consider:*

- *What is the reason for the free meal?*
- *Is Bob in a position to influence any decision affecting the company or organization?*
- *How does it make Bob feel?*
- *How would Bob's peers, colleagues, and the general public react if they knew?*
- *Will Bob's integrity and his objectivity be compromised or perceived to be compromised by accepting the gift?*

*Suggested Solution:*

*The Conflict of Interest and Post Employment Code states that acceptance of gifts, hospitality or other benefits that could influence, or be perceived to have influenced, employees in their judgement and performance of their official duties and responsibilities is not permitted.*

*Depending on the reason for the invitation, alternative avenues should be explored which would achieve the same results. For example: a one-on-one discussion can help promote better communications and understanding therefore a meeting at the office, parties paying for their own meal and declining the dinner may be the option. If you are in doubt or unclear as to the appropriate course of action, don't accept the gift or contact your immediate supervisor.*

### **Secondary Employment – Outside Activities**

Employees must seek approval from a supervisor prior to engaging in any outside activity (including secondary employment) which is likely to give rise to a real, potential or apparent conflict of interest. It is an employee's responsibility to report any outside activity that is directly or indirectly related to the

employee's duties.

Members should not accept remuneration from any government department, agency, or Crown corporation without permission as per section 55 of the *RCMP Regulations*.

All employees must arrange their personal affairs in a manner that ensures they are able to meet their obligations to the RCMP, including, where applicable, emergency duties.

### **Post-Employment Guidelines**

Employees must not take improper advantage of their work experience and/or position after leaving the Force. Restrictions on post-employment may apply, especially in the time period immediately following departure from the Force. (For more information, see *Conflict of Interest and Post-Employment Code for the Public Service*)

### **Use of RCMP (Government of Canada) Equipment**

The unauthorized personal use of RCMP equipment is prohibited. This applies to such items as computers and vehicles. Authorized personal use of vehicles is subject to current "personal use" in the *Income Tax Act* and Treasury Board Circular 1987-34: Executive Vehicles.

### **Use of the RCMP Name and Image**

The RCMP image enjoys world-wide recognition as a primary symbol of Canada and as such it is often assumed that this image is in the public domain and can be used without restriction. This is not the case. Use of the RCMP image is in fact strictly regulated pursuant to provisions in the *Trade-marks Act*, *Copyright Act* and the *RCMP Act*.

The RCMP name and a series of RCMP images are also protected from unauthorized use by virtue of their designation as "Official mark" pursuant to paragraph 9(1)(n) of the *Trade-marks Act*. No person may use these "Official marks" without the consent of the RCMP. Contact Public Affairs and Information Directorate for more information.

### **RCMP Sponsorship Program**

Since the genesis of the RCMP national sponsorship program in the early 1990s, the issue of ethics and conflict of interest have been at the very core of its strategic development and implementation. Beginning in 1995, the RCMP sponsorship guidelines and toolkit were developed to include sections on ethics, conflict of interest and rigorous and transparent financial accounting.

When pursuing a sponsorship agreement it is essential that all arrangements are developed on a firm foundation of ethics and a strong integrity-based approach. The policy centre for guidance on procedures and risk management assessment mechanism is Strategic Partnerships and Heritage Branch, Public Affairs and Information Directorate, at National Headquarters. Staff will be able to directly help individuals seeking advice and will guide them to toolkits developed to inform them on ways to proceed.

### **Protection of Information**

RCMP employees will take all necessary steps to protect third party proprietary information, in compliance with the spirit and intent of the *Access to Information Act*.

There are some exemptions to the release of information. This includes, but is not limited to, security issues and proprietary information. By law, federal institutions are required to protect some proprietary information or information given in confidence by private sector suppliers of goods and services. For example trade secrets, financial, commercial, scientific and technical information confidentially supplied to a government institution can be exempted from disclosure. However, to qualify, this information must always have been treated with confidence by the third party. Information in which a disclosure could result in financial loss or prejudice the competitive position of the third party or interfere with contractual negotiations can be exempted. This is by no means an exhaustive list of exemptions but serves to act as a guide. Please refer to the *Access to Information Act* for more information

It is important to note that suppliers of goods and services to the RCMP have similar obligations. All contracts must comply with Treasury Board and RCMP policies, standards and guidelines such as establishing safeguards for the protection of classified information provided to the supplier for the purposes of their contracts.

### **Case Study 2:**

*Bob, an RCMP member, has a house-sitting business. He waters plants, cares for pets, picks up mail, and so forth. Bob's business has always been steady, but he has received even more requests since he gave his RCMP-issued pager number to potential clients.*

*Bob's calling card for his personal business is truly a conversation piece. In addition to describing the services he offers, his card boasts of his 15 years with the RCMP. The motto on Bob's card reads: "If you find you need to roam, have a Mountie watch your home." Bob's RCMP pager number, RCMP telephone number and RCMP e-mail address are also on his card.*

*Bob knows that some of his RCMP colleagues do not appreciate all of the time he dedicates to his house-sitting business while he is at his RCMP job. Bob figures they are jealous that he is so ambitious. Is Bob acting appropriately?*

#### **Suggested Solution:**

*Bob's actions are inconsistent with several principles found in the Conflict of Interest and Post-Employment Code for the Public Service . These principles, noted as below, apply to all employees of the RCMP.*

- *Employees shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of an employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest.*



374

- *Employees shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.*
- *Employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.*

### **Related References**

*RCMP Act*

*RCMP Regulations, 1988*

*Conflict of Interest and Post-Employment Code for the Public Service (Section 27/28)*

*Guiding Principles of the RCMP*

*Criminal Code of Canada*

*R vs Hinchey*

### **Related Websites:**

- The Access to Information and Privacy Acts are available for viewing at the Department of Justice Canada website under laws of Canada: [www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)
- Treasury Board of Canada: [www.tbs-sct.gc.ca](http://www.tbs-sct.gc.ca)

### **Contact**

- Values and Ethics Office  
73 Leikin Drive,  
Building M4-3 Suite 622  
Mailstop 58  
Ottawa, ON K1A 0R2

General Office: 613-843-6595 or 613-843-6625

Fax: 613-825-8234

TTY/TDD: 613-993-2232 (Collect calls accepted)

E-mail

Date Modified: 2006-11-20

This is Exhibit "29" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A solid black rectangular box used to redact the signature of the Commissioner.

A Commissioner, etc.



Safari Power Saver  
Click to Start Flash Plug-in

You're right:  
than you think.

Scotiabank


**AUTO HOUSE**  
 519-344-1123 SARNIA





**THANK YOU CANADA**  
 Canada's best-selling car  
 16 years in a row

## NEWS LOCAL

# Police work at second jobs



By Shawn Jeffords, The Standard  
Friday, May 6, 2011 7:41:24 EDT AM

What does a disc jockey, an Avon salesperson and a bricklayer have in common?

They all work for the Sarnia Police Service, which recently released its annual "secondary activities" disclosure report. The list of odd jobs features 30 police officers and civilians who are engaged in an eclectic mix of hobbies and moneymaking jobs.

The list is made public to provide transparency to the community, said Chief Phil Nelson.

"It's important when you're a police officer that there is no conflict of interest," he said.

Almost a two-thirds of the 30 jobs are held by civilians working for the service, some of whom work part-time. Eleven police officers do additional work.

They include a farmer, an aesthetician, lawn maintenance person, several personal trainers, a professional musician, an artist and writer, a fence and deck builder, and a stable owner.

Under the Ontario Police Act, secondary jobs must be declared by officers or civilian employees. They must then be vetted by police management and approved if they are to continue, Nelson said, adding it's not always an easy call.

"We have turned people down in the past ... If it's a job where you'll be working at it every day off, it may take away from your police duties."

Sarnia Mayor Mike Bradley, who also chairs the city police board, said the regulations help avoid messy conflicts.

"You see it all the time in the States, where they allow officers to work in bars and other establishments where there is a clear conflict of interest," he said. "This ensures that doesn't happen."

Bradley said staff declare activities even when they don't generate much income. Some work at jobs such as volunteer driver for the Inn of the Good Shepherd or trainer for a AAA Atom hockey team. Some of the jobs are registered simply because they dedicate a lot time to the work, Bradley said.

"For a lot of them, this is just something else they like to do. It's often not even for the money."

371

Bradley said the service receives few complaints about the secondary duties. But the city does get negative feedback about firefighters who take on extra work, and there is no requirement to report, Bradley said.


"It's always been more controversial," he said.

[sjeffords@theobserver.ca](mailto:sjeffords@theobserver.ca)

For breaking news go to [theobserver.ca](http://theobserver.ca), or check us out on Facebook and Twitter.

378

This is Exhibit "30" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
A Commissioner, etc.

380



Ontario Provincial Police  
Municipal Policing

---

**Understanding  
Ontario Provincial Police (OPP)  
Municipal Policing Costs  
2013 Cost-Recovery Formula Update**

Produced by the  
OPP Municipal Policing Bureau  
OPP Corporate Communications  
OPP Business and Financial Services Bureau

November 15, 2013



## Table of Contents

<b>Executive Summary</b>	4
<b>OPP Municipal Policing - General</b>	6
<b>Police Adequacy and Effectiveness Standards Regulation under the Police Services Act</b>	8
<b>OPP Municipal Policing Bureau</b>	13
<b>OPP Municipal Policing Bureau Outreach Schedule</b>	14
<b>OPP Municipal Policing - Integrated Service Delivery</b>	15
<b>Cost Recovery for Salaries and Benefits</b>	16
<b>Estimates and Reconciliation in the Cost-Recovery Process</b>	16
<b>OPP Cost-Effectiveness and Efficiency</b>	19
<b>Detachment Staff Salary and Benefits Recovery</b>	21
<b>OPP Staff Strength: Understanding the Full-Time Equivalent Measure</b>	24
<b>OPP Staffing Process</b>	25
<b>OPP Deployment Model</b>	26
<b>Detachment Comparison - Services tailored to communities</b>	30
<b>OPP Municipal Policing Cost-Recovery Formula</b>	31
<b>2013 Update of the OPP Municipal Policing Cost-Recovery Formula</b>	33
<b>Municipal Policing Cost-Recovery Formula Comparison</b>	35
<b>Estimated Constable Cost Comparison</b>	36
<b>Full-time Equivalent (FTE) Summary for the 2013 Cost-Recovery Formula</b>	37
<b>2013 Formula FTE Staffing Table</b>	39
<b>Cost-Recovery Formula Support Salaries and Benefits Summary</b>	40
<b>2013 Cost-Recovery Formula Schedules</b>	42
<b>Schedule 1 - Overtime</b>	42
<b>Schedule 2 - Contractual Payouts</b>	45
<b>Schedule 3 - Shift Premium</b>	48
<b>Schedule 4 - Communications Centres</b>	50
<b>Schedule 5 - Prisoner Guards</b>	54
<b>Schedule 6 - Operational Support</b>	57
<b>Schedule 6A - Ontario Provincial Police (OPP) Academy and In-Service Training</b>	58
<b>Schedule 6B - Uniform Recruitment and Human Resources</b>	61
<b>Schedule 6C - Municipal Policing Support Services</b>	64
<b>Schedule 6D - Quality Assurance</b>	66
<b>Schedule 6E - Forensic Identification Field Unit</b>	69
<b>Schedule 7 - Office Automation</b>	73
<b>Schedule 8 - Telephone (Land lines and Cellular)</b>	75
<b>Schedule 9 - Vehicle Usage</b>	77
<b>Schedule 10 - Uniform &amp; Equipment Cost</b>	79
<b>Schedule 11 - Detachment Supplies and Equipment</b>	84
<b>Schedule 12 - Mobile and Portable Radios - Repairs &amp; Maintenance</b>	86

382

<b>Schedule 13 - Accommodations .....</b>	<b>88</b>
<b>Schedule 14 - Cleaning Contract Costs .....</b>	<b>91</b>
<b>Schedule 15 - Regional Headquarters Support Services .....</b>	<b>93</b>
<b>Appendix A - Sample Audit - Quality Assurance Unit .....</b>	<b>95</b>

## Executive Summary

*Understanding Ontario Provincial Police (OPP) Municipal Policing Costs* is a living document. It is refreshed as formula updates come into effect and as circumstances change.

### Background:

The OPP is unique among Ontario police services in that it is legislated by the *Police Services Act* (PSA) to carry out municipal as well as provincial policing responsibilities. Currently, the OPP delivers policing services to 324 municipalities, on a cost-recovery basis.

In late 2011, the Association of Municipalities of Ontario (AMO) and the Ministry of Community Safety and Correctional Services (MCSCS), including the Ontario Provincial Police (OPP), established the AMO/MCSCS/OPP Costing Project Team. The team was created to further an August 2011 commitment by the MCSCS Minister to ensure open and transparent communications related to OPP municipal policing costs. The team was composed of:

- o AMO executive staff
- o Municipal representatives
- o Ontario Association of Police Services Board (OAPSB)
- o OPP representatives
- o MCSCS representatives

### Objective:

Municipalities requested detailed information about OPP policing services and their costs in order to: fully understand the cost-recovery process, ensure accountability and identify any potential that might exist for cost efficiencies. The OPP met this request and remains committed to open and transparent communications about these issues.

*Understanding OPP Municipal Policing Costs* explains exactly how OPP municipal policing costs are calculated and recovered. It was originally released to municipalities on August 7, 2012 and serves as a foundation for on-going discussion and dialogue with municipal partners and stakeholders. In order to remain current, this document has now been revised, incorporating the updated 2013 Cost-Recovery Formula effective on January 1, 2014.

### Format:

The report begins with an overview and then more detailed information is presented, topic by topic. Each section has been designed to be read independently or in sequence. Because the financial information is detailed and sometimes complicated, brief explanations, questions and answers as well as charts and graphics are provided along with the financial schedules. To ensure



clarity, explanations of terms that may be familiar to some, but not necessarily to all, have been included.

**Conclusion (Summary of Findings):**

1. The OPP is providing municipal policing services that meet legislated Adequacy and Effectiveness Standards.
2. The OPP cost-recovery process is mandated and geared to achieving fair cost recovery from municipalities.
3. The OPP continually monitors its budget and actively seeks cost efficiencies which are passed on to municipalities. Despite this, OPP and policing costs in general are continuing to climb. Nevertheless, taken overall, OPP costs continue to compare favourably with other Ontario police services.
4. Uniformed officers' salaries and benefits make up a large proportion of the OPP policing budget (averaging 85 per cent for salary and benefits to 15 per cent for direct operating expenses).
5. Under the OPP model of policing, municipalities may choose to establish or eliminate "enhanced" policing services within their communities. Cost efficiencies may be found through these decisions.
6. The OPP is committed to: open and transparent communications regarding the provision of municipal policing services; the cost recovery for those services; and working together with municipalities to maintain public safety now, and into the future.

**Recommendations:**

- Ensure effective distribution of the report to all Section 10 "contract" municipalities and Section 5.1 "non-contract" municipalities, AMO, OAPSB and other partners and stakeholders.
- Actively pursue opportunities for dialogue and discussion with partners and stakeholders at conferences, workshops and meetings, etc.
- Build on this communication package format and approach for future Formula updates.
- Evaluate distribution and accessing of the report to ensure relevance.
- Explore opportunities for the AMO/MCSCS/OPP Costing Project Team to continue in its work.

**For more information:**

OPP Municipal Policing Bureau  
777 Memorial Ave, Orillia, ON L3V 7V3  
705-329-6200

## OPP Municipal Policing - General

### Explanation:

- As defined in the *Police Services Act* (PSA), municipalities are required to provide and fund adequate and effective police services in accordance with their needs.
- Under Section 5 of the PSA, a municipality may utilize one of the following policing options:
  - establish a police force;
  - enter into an agreement with one or more other municipal councils to constitute a joint board;
  - enter into an agreement with one or more councils to amalgamate their police forces;
  - or contract services from either a contiguous police force or from the Ontario Provincial Police (OPP) under Section 10 of the PSA; or
  - default to Section 5.1 of the PSA (non-contract policing option).
- The OPP delivers cost-effective and professional policing services to the province, including **324** municipalities; **171** on a Section 5.1 PSA "non-contract" basis and **153** on a Section 10 PSA "contract" basis.
- The OPP operates out of **77** host detachments and **89** satellite offices, five regional headquarters, one divisional headquarters and a general headquarters.
- The OPP is not only responsible to provide police services to parts of Ontario that do not have municipal police services but, in addition, is responsible for traffic safety on provincial roadways, waterways and trails, policing over 969,000 square kilometres of land and over 94,000 square kilometres of water. It also maintains investigative services to assist municipal police services.
- The OPP works closely with the Ministry of Community Safety and Correctional Services and stakeholders in the policing community to improve efficiency and effectiveness and to help shape the future of policing in Ontario.



### Questions and Answers:

**Q: What additional support services does the OPP provide to municipalities?**

**A:** The OPP provides many programs and services to municipalities including:

- Child Exploitation Investigations
- Tactics and Rescue Unit
- Aviation Services
- Drug Enforcement
- Emergency Response Team
- Major Case Management
- Technical Traffic Collision Investigation
- Snowmobile, ATV, Vessel Enforcement (SAVE)
- Underwater Search and Recovery
- e-Crime Investigations

**Q: Why do some municipalities policed by the OPP with similar geographies and populations have different staffing complements and budgets?**

**A:** Because municipalities are different in **other** important ways, for example:

**Municipality A:** with a population of 5,000; a retirement community with a lower number of calls for service; fewer violent incidents; likely fewer high schools and licensed establishments due to the mean age of the community.

**Municipality B:** with a population of 5,000; an industrial community with a high number of calls for service; larger number of schools; licensed establishments and a higher number of violent and property crime occurrences given the demographics of the community. Municipality B also has transient residents and an influx of people working in industry which increases response requirements for Calls for Service.

**Conclusion:** Municipality B will need more staffing and resources than Municipality A to address workload requirements. Another example would be a summer resort community where the population significantly increases on the weekends, requiring more capacity in the OPP response.

## **Police Adequacy and Effectiveness Standards Regulation under the *Police Services Act***

### **Explanation:**

- The Police Adequacy and Effectiveness Standards Regulation (Adequacy Standards) helps ensure the effective delivery of policing services. It was filed as O.Reg. 3/99 on January 8, 1999.
- The regulation was part of the government's overall strategy to provide Police Services Boards and police services the structure and tools they needed to ensure adequacy and effectiveness. All police services were to be in compliance by January 1, 2001.
- Additionally, the regulation required all Police Services Boards to develop a plan, setting out the steps needed to be taken by the board and the police service in order to meet the requirements of the regulation.
- The Adequacy Standards regulation content is high level and outcome oriented. It provides flexibility in implementation, including service delivery i.e., contracting with another police service or organization, or providing crime prevention initiatives on a regional or cooperative basis.
- The primary focus of the Adequacy Standards regulation is on what police services do, and not how they should do it. Overall, it is designed to address areas of provincial interest, improve the overall management, and ensures that all Ontarians receive core police services.

## **“Adequate and Effective Policing Services”**

### **Explanation:**

Section 4 PSA sets the responsibility for providing adequate and effective police services with the municipality. The PSA requires:

- Delivery of adequate and effective police services in accordance with local needs;
- Municipalities are to provide necessary administration and infrastructure to support adequate and effective police services;
- Five core police services are to be delivered:
  - Crime prevention;
  - Law enforcement;
  - Victim assistance;
  - Public order maintenance; and
  - Emergency response services.

# OPP Municipal Policing Services: *Police Services Act* (PSA) Section 10



Policing services to municipalities.

Enhanced policing services options for municipalities.

288

## Administration and Infrastructure

- In providing adequate and effective police services, a municipality, through a Section 10 contract or by default a Section 5 relationship with the OPP is responsible for providing all the infrastructure and administration necessary for providing such services including: vehicles, boats, equipment, communication devices, buildings and supplies.
- One of the objectives in developing the Adequacy Standards was to highlight the importance of police business planning and local accountability.
- As such, the regulation requires that every Police Services Board have policies and procedures in place regarding a number of functions/services.
- The regulation stipulates that every police service must prepare a business plan at least every three years to address:
  - The objectives, core business and functions of the police service;
  - Quantitative and qualitative performance objectives and indicators relating to the provision of: community-based crime prevention initiatives, community patrol and criminal investigative services, community satisfaction with police services, emergency calls for service, violent crime, property crime, youth crime and clearance rates, victim assistance and road safety;
  - Information and technology;
  - Resource planning; and
  - Police facilities.
- Annually, the OPP detachment commander is required to prepare a report for the board relating to the activities of the police service during the previous fiscal year.
- The OPP's business plan program ensures compliance with Adequacy Standards. Detachments seek input from their local Police Services Boards and communities to ensure local priorities are captured in detachment commitments.
- If a municipality contracts services under Section 10 of the PSA, the OPP becomes the service provider and ultimately overall authority is delegated to the OPP Commissioner.
- The regulation also requires every Police Services Board to enter into a protocol with its municipal council, have a skills development and learning plan; develop procedures for the investigation of complaints; and implement a quality assurance process relating to the delivery of adequate and effective police services, as well as compliance with the PSA and its regulations.



### **Crime Prevention**

- The regulation requires that every police service provide community-based crime prevention initiatives in accordance with local needs.
- The regulation also requires that every police service have procedures and processes on community-based crime prevention initiatives. Furthermore the regulation requires that every police service have procedures and processes on problem-oriented policing.

### **Law Enforcement**

- The regulation requires that every police service have in place processes to address:
  - Twenty-four hour policing;
  - Community patrol;
  - Communications and dispatch;
  - Supervision;
  - Traffic management, enforcement and road safety;
  - Criminal investigators;
  - Criminal investigation management plan;
  - Procedures on criminal investigation;
  - Criminal Intelligence;
  - Crime, call and public order analysis;
  - Waterways policing for municipalities designated under subsection 19(1) clause (2) PSA;
  - Court security for municipalities designated under section 137 (1) PSA;
  - Other law enforcement related procedures; and
  - Investigative supports.

### **Victim Assistance**

- The regulation requires that every police service have procedures on providing assistance to victims that:
  - Reflect the principles of the Victims' Bill of Rights, 1995; and
  - Set out the roles and responsibilities of members for providing victim assistance.

### **Public Order Maintenance**

- Every police service is required to have access to the services of a public order unit within a reasonable response time.
- A public order unit must consist of a unit supervisor, and, at minimum, four squads of seven officers including the squad leader.



- In addition, every police service must have procedures addressing the circumstances in which a public order unit may be deployed.
- The regulation further requires that every police service have procedures on police action at labour disputes.

### **Emergency Response Services**

- The regulation requires that every police service have access within a reasonable response time to the following emergency response services:
  - Tactical unit;
  - Hostage rescue team;
  - Major incident commander;
  - Crisis negotiator;
  - Police explosive forced entry technician; and
  - Explosive disposal technician.
- A minimum of 12 full-time tactical officers, including the tactical supervisor, have to be in a tactical unit or hostage rescue team.
- With regard to explosive disposal, a police service may also enter into an agreement with the Canadian Armed Forces or another organization to have these services delivered.

### **Summary**

- Section 5 PSA outlines the options by which a municipality can meet its obligation to provide police services – one of these is by entering into an agreement under Section 10 to have police services provided by the OPP.
- If a municipality fails to provide police services, then the OPP is obligated under the PSA to provide services to the municipality to ensure the Adequacy Standards are met.
- The OPP provides an array of assurance services to all levels within the organization, corporately, regionally and at detachment level to ensure compliance with Adequacy Standards and OPP/Ministry policies, and to establish a culture of continuous improvement within the OPP.

This is Exhibit "31" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

393



## Responsibilities

Mission Statement

Mandate

Declaration of Principles

Core Functions of Policing Services

Responsibilities Under the *Police Services Act*

---

### Mission Statement

The City of Orillia Police Services Board, in partnership with the Ontario Provincial Police (O.P.P.), is committed to providing an *effective and efficient* police service that improves the safety of the community and reduces crime in the City of Orillia.

The Board supports the O.P.P. to achieve this through education, community involvement, crime prevention, facilities and equipment.

- **Education** and programming in schools play a major role in reducing future incidences of crime. Educating adults both personally and professionally provide the necessary tools to protect them from criminal activity.
  - **Community Involvement** with various adult/youth volunteer groups and other emergency services help to foster positive relationships.
  - **Crime Prevention Programs** identify crime priorities and present solutions to prevent future incidences of crime.
  - **Facilities and Equipment** are essential resources for police to successfully perform their duties and maintain personal safety.
- 

### Mandate

The City of Orillia Police Services Board is established pursuant to the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended. The Board is responsible for ensuring that the level of policing in the City of Orillia continues to adequately and efficiently meet the requirements of its citizens and the principles identified under the *Police Services Act*.

394

## Declaration of Principles

The City of Orillia Police Services Board follows these 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 providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding 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.

---

## Core Functions of Policing Services

Section 4(2) of the *Police Services Act* outlines core functions that are the minimum required for adequate and effective police services in Ontario. The core functions include:

- Crime Prevention
- Law Enforcement
- Police Assistance to Victims of Crime
- Public Order Maintenance
- Emergency Response

In the case of the City of Orillia Police Services Board, the Ontario Provincial Police is responsible to ensure the delivery of these core functions.

---

## Responsibilities Under the Police Services Act

Section 10(9) of the *Police Services Act* identifies the following responsibilities for the City of Orillia Police Services Board:

- Participate in the selection of the Detachment Commander.
- Determine objectives and priorities for police services, after consultation with the Detachment Commander.
- Establish, after consultation with the Detachment Commander, any local policies with respect to police services (but the Board shall not establish provincial policies for the Ontario Provincial Police with respect to police services).
- Monitor the performance of the Detachment Commander.
- Receive regular reports from the Detachment Commander on disclosures and decisions made under section 49 (secondary activities).

- Review the Detachment Commander's administration of the complaints system under Part V and receive regular reports from the Detachment Commander on his or her administration of the complaints system.

The City of Orillia Police Services Board's website includes links to web pages or sites operated by third parties that will take you away from our site to destinations over which we have no control. Our privacy statement does not apply to the sites of third parties and we do not assume any responsibility for the actions of third parties. We encourage you to review the policies of these sites yourself upon your arrival.

Follow us: [facebook](#) [twitter](#) [YouTube](#) [News & Info](#)

© 2011 City of Orillia | [Copyright Information](#) | [Privacy](#) | [2big4email](#) | [Sitemap](#) | [Staff Directory](#)  
50 Andrew Street South, Suite 300, Orillia, Ontario, L3V 7T5 | Tel:(705) 325-1311 | Fax:  
(705) 325-5178 | Email: [info@orillia.ca](mailto:info@orillia.ca)

 **WARNING**

**Orillia, ON**  
 **-13°C** A few clouds



396

This is Exhibit "32" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.



A Commissioner, etc.

397

[HOME](#)[ABOUT ISN](#)[INVESTIGATIONS](#)[SECURITY](#)[TRAINING](#)[BACKGROUND SCREENING](#)[CAREERS](#)[CONTACT](#)

*ISN empowers our clients with strategic investigative and training solutions,  
using the Best People, the Best Methods, achieving the Best Results*

## INVESTIGATIONS

### INVESTIGATIONS

### SURVEILLANCE

### THREAT ASSESSMENTS

### EMERGENCY HOTLINE

## STAY CONNECTED

Catch up on the latest ISN  
news, news and articles.



## Investigations

Investigative Solutions Network Inc. (ISN) is a full service private investigations and training organization. It is comprised of a unique group of associates who, working with our diverse client base, provide a complete range of services that will help you navigate through the issues that often negatively affect businesses, organizations, families and individuals.

Our investigators have broad experience and proven track records based on exemplary police careers. They are specifically recruited based on demonstrated investigative ability, consistent professionalism, and a history of personal and professional success. Some of the top homicide, sex crimes, fraud, and forensic investigators have been recruited from the Toronto Police Service, as well as those who have worked with the Royal Canadian Mounted Police (RCMP) and the Federal Bureau of Investigation (FBI) on executive training, organized crime and counter terrorism. The range of investigative services includes but is not limited to:

### Investigations

- Criminal Investigations
- Civil Investigations
- Corporate Investigations
- Government Investigations
- Domestic Investigations
- Case Review
- Cold Case Review

### Surveillance

- Mobile and Physical Surveillance
- Electronic Surveillance/Sweeps

### Threat Assessments

- Risk/Threat Assessments and Planning Services
- Corporate Risk Management

### Loss Prevention

### Emergency Hotline

Our investigators go beyond finding the facts to providing professional, cost-effective reports, expert testimony, and ongoing

398

Home

Investigation Services

© 2014 Robert K. Smith, Director, Investigative Solutions Network Inc. All Rights Reserved. To: [info@investigative.ca](mailto:info@investigative.ca)

[HOME](#) > | [ABOUT ISN](#) > | [INVESTIGATIONS](#) > | [SECURITY](#) > | [TRAINING](#) > | [BACKGROUND SCREENING](#) > | [CAREERS](#) > | [CONTACT US](#) > | [LEGAL](#) > | [PRIVACY POLICY](#) > | [SITEMAP](#) > |

Copyright © Investigative Solutions Network Inc. 1099 Kingston Road, Suite 237, Pickering, ON L1V 1B5 Canada 1-866-790-4764 905-421-0046

This is Exhibit "33" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

400

HOME

ABOUT US

INVESTIGATIONS

SECURITY

TRAINING

BACKGROUND SCREENING

CAREERS

CONTACT

ISN

INVESTIGATIVE SOLUTIONS NETWORK INC.

ISN empowers our clients with strategic investigative and training solutions,  
using the Best People, the Best Methods, achieving the Best Results



## ABOUT ISN

## OUR TEAM

## MEDIA RESOURCE

## DAVE PERRY MEDIA APPEARANCES

## RON WRETHAM MEDIA APPEARANCES

## MIKE HARVEY MEDIA APPEARANCES

## NEWS &amp; ARTICLES

## TESTIMONIALS

## CLIENT TESTIMONIAL

During the Boston Bombing arrests, on Friday April 5th, 2013, ISN Co-CEO Ron Wretham spent 12 hours coordinating, as the events unfolded, with the CTV News Channel cameras.

Thank you very much Ron.

Very nice to hear from you. I am glad to hear that you are doing well. We are proud to have you as a client. We are looking forward to having you back in 2014.

## Our Team

Investigative Solutions Network Inc. (ISN) is a full-service private investigations and training organization. It is comprised of a variety of individuals who, working with our clients, provide a complete range of services that will help you navigate through the most difficult and complex situations, organizations, locations and individuals. Led by Dave Perry, a highly decorated police investigator, background screening and security professional, ISN offers an experienced, investigative, training and background screening.



Dave Perry, Co-CEO

Dave Perry is an experienced police investigator who has established an international reputation as one of Canada's premier investigators. As a result of a distinguished 27 year career with the Toronto Police Service, Dave is widely known, recognized, by various media outlets to provide expert opinion on criminal and international cases.

[Read More...](#)



Ron Wretham, Co-CEO

Ron Wretham has over 10 years as a detective and enforcement professional with the Toronto Police Service. In over a wide range of investigative fields, recognized as a strong leader, Ron has earned the respect from superiors, peers, and subordinates, recognized by the Herald Tribune Police Officer of the Year Award.

[Read More...](#)

## Michael Harvey, Vice President Operations

Michael brings with him a wealth of experience in Public Policing, Private Security and training, the...





401

and much more. Our way doesn't  
include a lot of red tape or bureaucracy  
and we have been able to achieve

As a result, it was one of the first  
businesses to be a three-generation and  
can tell us they have been going to do it  
in such a short period of time  
(though it's been a long time by now).  
We are grateful and excited to you  
for having the story in the end. It  
always has your professionalism  
and commitment to excellence.

As the last of the first  
generation, we are still going  
to be working hard to achieve  
the same level of excellence that we  
have achieved. Thank you  
again for all you have done with our  
company and for all the support you  
have given us. We are looking forward  
to your expertise once again in the  
future.

Wendy Hargrave

Jeffery Egan, President, CTV News  
Canada

[Read More >>](#)

## STAY CONNECTED

Catch up on the latest ISN  
news, press and blog posts.



Kimberly Perry is the Director of Business Development at ISN. She has a technology & sales background, with investigative management experience working with multinational companies and clients. She is highly focused with a comprehensive knowledge and understanding of marketing and sales. Kimberly is currently responsible for the planning, coordination and execution of investigations, security training and background screening.

[Read More >>](#)

### Kimberly Perry, Director Business Development



Kimberly is the Director of Business Development at ISN. She has a technology & sales background, with investigative management experience working with multinational companies and clients. She is highly focused with a comprehensive knowledge and understanding of marketing and sales. Kimberly is currently responsible for the planning, coordination and execution of investigations, security training and background screening.

[Read More >>](#)

### Roo Adams, Director Investigations



Roo Adams is a seasoned law enforcement professional holding 32 years with the Toronto Police Service and over 2 years in a managerial position in the private sector. Roo retired as a Senior Fraud Investigator from the Toronto Police Service Fraud Squad where he investigated Internal Corporate Fraud, Credit Card Issues, Mortgage Fraud, Internal Bank Frauds and Payment Card Information for fraudulent use related to a joint investigation under the Economic Action Plan. He was promoted and awarded Officer Legal Assistance in Criminal Matters. He continues to speak at various seminars on ongoing developments in Canada.

[Read More >>](#)

### Dr. Peter Collins, Forensic Psychiatrist

Dr. Peter Collins is the Psychiatrist with the Criminal Behaviour Analysis Unit of the Behavioural Sciences & Analysis Section - Ontario Provincial Police. Peter is also the Consultant Forensic Psychiatrist to the RCMP "C" Division Integrated National Security Enforcement Team (INSET), the Prefuge Unit of the Florida Department of Law Enforcement and the Behavioural Science Unit of the Calgary Police Service.

[Read More >>](#)



### Chris Wilson, Executive Trainer



Chris Wilson is a decorated law enforcement professional including 26 years with the Toronto Police Service and over 5 years in the private sector law enforcement arena. Chris retired from the Toronto Police Service at the rank of Staff Sergeant but the highlight of his career was serving 5 years as a Detective in the Homicide Squad. He has an impressive record including the fact that he solved 32 out of 50 homicide cases assigned to him.

[Read More >>](#)

### Kate Liles, Executive Trainer



Kate Liles is a retired Ontario Provincial Police Chief Superintendent and FBI former criminal profiler who has worked across Canada, the US and Australia. As a senior police officer, Kate demonstrated a skill set of law enforcement and uniformed officers. Her earlier behaviour analysis training and experience contributed to her later success in a variety of assignments and managerial positions. Please see [Kat's Story](#).

[Read More >>](#)

### Jim Van Allen, Executive Trainer



Jim Van Allen is a Certified Trainer and experienced Trainer and QA. As a former Consultant for the past 10 years, he has law enforcement and investigation experience having retired from the Ontario Provincial Police. Jim was the Manager of the OPP Criminal Profiling Unit for fifteen years. Jim is a graduate of the FBI National Academy and was awarded as a Member of the Order of Merit of the Police Forces by the Executive for Public Protection. He has been a member of the Council of Chiefs of the Police Forces of the Executive for Public Protection. He has been a member of the Council of Chiefs of the Police Forces of the Executive for Public Protection.

402



[Read More>>](#)



#### John Grims, K9 Services

John has been working with the Canadian Mounted Police for several years. He is a K9 handler and has been working with the K9 unit for several years. He has been working with the K9 unit for several years and has been working with the K9 unit for several years. He has been working with the K9 unit for several years and has been working with the K9 unit for several years.

[Read More>>](#)

[HOME](#) | [ABOUT ISN](#) | [INVESTIGATIONS](#) | [SECURITY](#) | [TRAINING](#) | [BACKGROUND SCREENING](#) | [CAREERS](#) | [CONTACT US](#) | [LEGAL](#) | [PRIVACY POLICY](#) | [SITEMAP](#)

Copyright © Investigative Solutions Network Inc. 1099 Kingston Road, Suite 237, Pickering, ON L1V 1B5 Canada 1-866-790-4764 905-421-0046

This is Exhibit "34" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

---

A Commissioner, etc.

\* Search for people, jobs, companies, and more...

Advanced

[Home](#) [Profile](#) [Network](#) [Jobs](#) [Interests](#)[Premium](#) [Upgrade](#)Assault Rifle vs 3M Film - Security Window Film Installations save lives by increasing response time. | [Read More »](#)**Jim Van Allen****President at Behavioural Science Solutions Group Inc.**  
Langley, British Columbia, Canada Security and Investigations**Previous** Alpha Group Center for Crime and Intelligence Analysis,  
Justice Institute of British Columbia, Investigative Solutions  
Network Inc.**Education** FBI National Academy[Send Jim a message](#)**356**  
connections**People Similar to Jim****R.W. (Rob) Goodfellow**

President and CEO - Investigative Research...

[Connect](#)**Ads You May Be Interested In****FERS Retirement Checklist**Learn your FERS benefits, create  
your own financial plan**Financial Crime Conf.**ACFCS Financial Crime Conf. in  
NYC Feb 5-7 - Use code  
LINKED14 for \$100 off**Secure File Transfer?**Moving Forward in 2014 and  
Beyond: Where Virtualization and  
Faxing Meet?**People Also Viewed****Peter Collins, CD**Associate Professor, Division of  
Forensic Psychiatry, University of  
Toronto**Kate LINES**Investigative Specialist at Investigative  
Research Group**Greg Cooper**Threat Assessment, Criminal Profiling  
and Law Enforcement Trainer and  
Consultant**Larry Wilson**Officer in Charge - "H" Division Major  
Crime Program at RCMP**R.W. (Rob) Goodfellow**President and CEO - Investigative  
Research Group**Professor Karl Roberts**Professor and Chair of Policing and  
Criminal Justice at the University of  
Western Sydney**Ross Bingley**

Director at Street Arts Security Inc.

**Dr Keith Ashcroft C Psychol CSci  
AFBPsS**Expert Witness | Consultant |  
Investigative Psychologist**Background****Summary**

Specialties: Experienced in threat assessment, risk assessment, analysis of anonymous and threatening documents, criminal / psychological profiling, investigative consulting, interviewing and interrogation training, statement analysis, behavioral analysis, workplace violence, school violence prevention, death investigations and case reviews, the Sovereign Citizen Movement, script and technical consultation

Has lectured internationally on forensic behavioural analysis, threat assessment and crime scene reconstruction to the federal police in The Netherlands, Belgium and South Africa

**Experience****President****Behavioural Science Solutions Group Inc.**

October 2008 -- Present (5 years 4 months)

Behavioural Science Solutions Group Inc. is a multi-disciplinary group of associates that provides threat assessments and violence reduction strategies. Jim is often contacted as a media consultant regarding psychological and behavioural interpretation of crimes, suspects and offenders

Our specialties include threat and risk assessments, investigative reviews, interviewing support and training.

Our staff are experts in domestic violence, stalking, threatening, extortion, sexual misconduct, school violence and workplace violence.

We can analyze anonymous threats, letters and internet postings for factors that assess risk and provide insight about the author.

+ 1 recommendation

**Peter Collins, CD**

Associate Professor, Division of Forensic Psychiatry, University of Toronto

[View](#)

## Trainer

Alpha Group Center for Crime and Intelligence Analysis  
August 2012 – 2012 (less than a year)

Training provided on threat and risk analysis at regional workshops across North America

## Independent Contractor - Consultant - Training Development

Justice Institute of British Columbia  
2010 – 2012 (2 years) | New Westminster

Assisted in the development of a framework for an online certification program - Threat Assessment and Threat Management. Provided content for one of five requisite courses - Psychology of Violence.

## Risk Assessment Consultant

Investigative Solutions Network Inc.  
2008 – 2012 (4 years)



Provide Risk Assessment Evaluations, consultation, and comprehensive reports to guide decision making on client safety or criminal enforcement regarding stalking, workplace threats, or domestic violence incidents. Safety planning and victim consultation is available.

## Member

Canadian Association of Threat Assessment Professionals  
2005 – 2012 (7 years)

Long term member of CATAP

- Presenter at 2012 Banff Conference on Risk Assessment Perspectives of Sovereign Citizens and Freeman

- Development of Structured Professional Judgement study of Sovereign Citizen Operational Risk Evaluation (SCORE)

## Member

International Criminal Investigative Analysis Fellowship  
1995 – 2011 (16 years)

Certified as an investigative analyst, criminal profiler

## Former Manager - Criminal Profiling Unit

Ontario Provincial Police  
June 1995 – October 2010 (15 years 5 months)



I was the Manager of the Criminal Profiling Unit and coordinated Unit operations and was a behavioural investigative consultant to criminal justice agencies across Canada.

1 recommendation



**Caroline Kerr MBCI**  
Risk and Business Continuity Coordinator at Red Cross

[View](#)

## Skills & Expertise

Most endorsed for...

22 Private Investigations

34 Enforcement

43 Police



**Larry McCann**  
Violent Crime Consultant at Academy Group, Inc.



**Sandra Bott**  
Sales representative, seniors specialist at Royal LePage Your Community

## People Similar to Jim



**R.W. (Rob) Goodfellow**  
President and CEO - Investigative Research...  
[Connect](#)

## Ads You May Be Interested In



**Equity at work conference**  
Get trained on workplace inclusion at Making People Count, Mar. 27-28, 2014



**Bloodborne Pathogens**  
New and fun for all healthcare workers. OuchSafety.



**Proximity Cards Sale**  
Tired of Paying too much for Proximity cards? Get a Free Test Sample.



406

- 33 Criminal Investigations
- 31 Risk Assessment
- 24 Criminal Justice
- 24 Interrogation
- 18 Workplace Violence
- 13 Interviews
- 12 Threat Management



Jim also knows about...

- 12 Investigation
  - 12 Criminal Law
  - 10 Evidence
  - 10 Crime Prevention
  - 8 Internal Investigations
  - 8 Training
  - 8 Public Safety
  - 4 Psychology
  - 4 Statement Analysis
  - 1 Investigative Case...
  - 1 Behavioural Analysis
  - Sovereign Citizen...
  - School Violence...
  - Death Investigations
  - Script and Technical...
- See 1+

## Education

### FBI National Academy

Diploma, Behavioural Sciences  
1996 – 1996

Applied Criminal Psychology,  
Crimes of Interpersonal Violence,  
Interviewing and Interrogation Module

## Additional Info

### Advice for Contacting Jim

The best way to contact [Jim](#) is by telephone 604-626-9572

[Jim](#) receives email at [behaviouralsolutions@gmail.com](mailto:behaviouralsolutions@gmail.com). However, email should never be regarded as a certain means of contact in emergent situations. Senders cannot be guaranteed that their server or the server of the intended recipient will exchange the message in an expedient manner. People facing imminent violence are urged to contact their local police agency for an immediate protective response.

## Honors & Awards

### Additional Honors & Awards

Member of the Order of Merit of the Police Forces 2010

407

## Organizations

## Additional Organizations

Canadian Association of Threat Assessment Professionals International Criminal Investigative Analysis Fellowship

Recent Activity

Given (2)



**Alana N. Cook**  
PhD Candidate

“Alana is a developer of the Multi-Level Guidelines (MLG) Structured Professional Judgment tool for Group Based Violence, together with Dr. Stephen Hart. This study introduces an important dimension to understanding this aspect of risk assessment and management which was lacking. This study is the subject of workshops that are relevant to risk assessment practitioners who... [more](#)

March 29, 2013, Jim was with another company when working with Alana N. at Simon Fraser University



**Peter Collins, CD**  
Forensic Psychiatrist - Law & Mental Health Program

“Peter Collins is an internationally renowned expert in Forensic Psychiatry having worked on thousands of high profile and difficult cases. His insights, advice and recommendations have greatly contributed to public safety in homicide, sexual assault, stalking, domestic violence and child molestation cases. Peter is a tireless contributor of his time and knowledge and is a... [more](#)

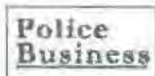
August 24, 2010, Jim worked with Peter at Centre for Addiction and Mental Health

[See More](#)

Groups



**Courthouse Security ...**  
[Join](#)



**Former Police Office...**  
[Join](#)



**INTERNATIONAL CRI...**  
[Join](#)



**Stalking and Threat ...**  
[Join](#)


[Help Center](#) | [About](#) | [Press](#) | [Blog](#) | [Careers](#) | [Advertising](#) | [Talent Solutions](#) | [Tools](#) | [Mobile](#) | [Developers](#) | [Publishers](#) | [Language](#)

[Upgrade Your Account](#)

[LinkedIn Corporation © 2014](#) | [User Agreement](#) | [Privacy Policy](#) | [Community Guidelines](#) | [Cookie Policy](#) | [Copyright Policy](#) | [Send Feedback](#)

408

This is Exhibit "35" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
\_\_\_\_\_  
A Commissioner, etc.

Search for people, jobs, companies, and more...



Advanced

Home

Profile

Network

Jobs

Interests

Business Services

Upgrade

IDP 30S ID Card Printer - New Plastic Card Printer! 2-year warranty, best cost per print, only \$1370 | [Read More](#)

## Tamara Williamson

Probation and Parole Officer at Ministry of Community and Social Services  
Ontario, Canada | Government Administration

Education | Simon Fraser University



15  
connections

[ca.linkedin.com/pub/tamara-williamson/33/160/770](http://ca.linkedin.com/pub/tamara-williamson/33/160/770)

### Background

### Experience

#### Probation and Parole Officer

Ministry of Community and Social Services  
2000 – Present (14 years)

- Manage a caseload predominantly of sexual offenders
- Communicate effectively with clients regarding immediate concerns and provide additional assistance with referrals to community resources
- Liaise with and maintain relationships with stakeholders within limits of confidentiality
- Use various techniques to conduct interviews of clients and collateral contacts in order to complete comprehensive assessments and reports in an accurate and concise manner
- Assess risk to re-offend using empirical risk assessment tools
- Write court ordered reports professionally and efficiently
- Prepare clients to move from one stage of change to the next using appropriate motivational strategies
- Facilitate weekly relapse prevention program to adult male, intellectually disabled offenders
- Monitor compliance and enforcement of Probation Orders, Condition Orders by relying on professional discretion and applying Ministry star
- Select, supervise and schedule volunteer officers, summer and place
- Facilitate Volunteer Probation and Parole officer training, acting as a
- Health and Safety Liaison - Ensure adherence to the office safety plan monthly inspection and compose monthly and annual reports

### Skills & Expertise

Most endorsed for...

- 1 Government
- 1 Policy
- 1 Enforcement
- 1 Investigation
- 1 Courts
- 1 Case Management
- 1 Report Writing
- 1 Community Outreach
- 1 Public Safety

### People Similar to Tamara



Jackie Mack

Program Supervisor, Municipal & First Nations  
[Connect](#)

### Ads By LinkedIn Members



Master's in Justice Admin  
Earn your master's degree 100% online. Set a higher target for your career!

[Learn More](#)



Architect Moshe Safdie  
Global citizen and innovator. NUVO's 15th Anniversary Cover Story.

[Learn More](#)

### People Also Viewed



Heather Boyd

Finance/Admin at Dairy Farmers of Nova Scotia

### Endorsers

1 person has endorsed Tamara for Risk Assessment



R.W. (Rob) G. GROUP

President and CEO - Investigative Research Group  
Ontario, Canada



Timothy Cowles  
Owner



Susan Blackburn  
Post-Display Supervisor at Broadcast Captioning and Consulting Services



Bill Hyndman  
Owner, Hyndman Ltd Contractors



Brenda Mercer



Diana Seminara  
Event Coordinator

1 Social Services

Tamara also knows about...

1 Corrections 1 Risk Assessment Policy Analysis Criminal Justice  
Public Policy Criminal Investigations Evidence Police Emergency Management  
Mediation Legal Research Crime Prevention

### Education

**Simon Fraser University**  
Post-Bachelorette, Criminology



**Trent University**  
HBA, English Language and Literature, General



### People Similar to Tamara



**Jackie Mack**  
Program Supervisor, Municipal & First Natio...  
**Connect**

### Ads You May Be Interested In

**Financial Crime Conf.**  
ACFCS Financial Crime Conf. in NYC Feb 5-7~ Use code LINKED14 for \$100 off

**Assault Rifle vs 3M Film**  
Security Window Film Installations save lives by increasing response time.

**Careers in Politics & PR**  
Excel with a Master's from GW  
Dynamic, Real-World Classes.

### Following

**Ministry of Communi...**  
Government Administration  
Follow

**Giffin Koerth Forensl...**  
Security and Investigations  
Follow

### Schools

**Simon Fraser Univer...**  
Vancouver, Canada Area  
Follow

**Trent University**  
Ontario, Canada  
Follow

Help Center | About | Press | Blog | Careers | Advertising | Talent Solutions | Tools | Mobile | Developers | Publishers | Language

Upgrade Your Account

LinkedIn Corporation © 2014 | User Agreement | Privacy Policy | Community Guidelines | Cookie Policy | Copyright Policy | Send Feedback



This is Exhibit "36" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

412

[Follow Investigative Research Group on](#)[Facebook](#)[Twitter](#)[LinkedIn](#)

**Investigative Research Group**  
The Most Professional PI Firm in Canada

[HOME](#)[OUR TEAM](#)[OUR SERVICES](#)[NEWS AND EVENTS](#)[INSIGHTS](#)[Q&A](#)[CAREERS](#)[CONTACT](#)

## Our Team

[BOARD OF DIRECTORS](#)[EXECUTIVE](#)[MISSION STATEMENT / AHI](#)[CORPORATE VISION](#)[OPERATIONAL GUIDELINES  
\(OAG\)](#)[OUR PROFESSIONALS](#)

## Quick Links

[FIDUCIARY'S MESSAGE](#)[SEARCH](#)

## Executive

**R.W. (Rob) Goodfellow****President and Chief Executive Officer**[robhg@irgcanada.com](mailto:robhg@irgcanada.com)

Mr. Robert Goodfellow is a retired Superintendent of the OPP with thirty years' experience at the provincial, national and international levels. Mr. Goodfellow has served in various locations throughout Ontario. His experience includes: general duties; major crimes; covert under-cover operations; behavioural sciences; forensic polygraph; fraud; and General Headquarter Executive Management.

Mr. Goodfellow's career postings include: Behavioural Sciences Section; Threat Assessment Unit; Provincial VICLAS Centre; Director, Operational Policy & Strategic Planning; Director, Contract Policing; Director, Crime Prevention Section; Director, Fraud Programs Branch, Ministry of Health & Long Term Care; Liaison Officer to the Ministry of Community Safety & Correctional Services (Deputy Ministers Office); Executive Officer to the Commissioner of the OPP; Executive exchange to SAPOL (South Australia Police); Director, Provincial Communications Operations; and Director, Behavioural, Forensic & Electronic Services (which included all aspects of forensic identification, e-crime/child exploitation, DNA, criminal profiling, polygraph, threat assessment, Ontario Sex Offender Registry, missing persons and unidentified bodies).

Mr. Goodfellow is a graduate of the FBI National Academy, Quantico, Virginia and has received training from the DEA. He has been recognized as an expert witness in many levels of court related to drug identification and enforcement. He is internationally recognized as an expert in body language, statement analysis, interviewing and interrogation. Mr. Goodfellow has studied in depth many of the criminal behavioural sciences including psychopathy, sexual deviancy and stalking. Mr. Goodfellow has lectured at the Canadian Police College, Ontario Police College and the Ontario Provincial Police Academy.

Mr. Goodfellow is a founding Director of CAVCA (Canadian Association of Violent Crime Analysts). He was Chairman of the Ontario Association of Chiefs of Police (OACP) Crime Prevention Committee and a member of the OACP Victims Assistance Committee.

Mr. Goodfellow has received many commendations and awards including the International Award of Honour from the International Narcotic Enforcement Officers Association (INEOA), in San Antonio Texas. It marked only the second time that award had been bestowed on a Canadian police officer.

## CLIFFORD STRACHAN

**VP - Operations**[cliffs@irgcanada.com](mailto:cliffs@irgcanada.com)

Mr. Clifford Strachan served as Senior Director in the Disputes and Investigations practice at Kroll Advisory Solutions. He was responsible for managing and investigating a wide variety of files including: internal and external frauds, procurement fraud, internal harassment and sexual harassment complaints, asset searches and recovery, regulatory compliance, litigation support and misuse of intellectual property. He was called upon on a regular basis to offer investigative strategies on a variety of cases. Cliff also has additional experience as a Senior Inspector at the Canadian Imperial Bank of Commerce (CIBC), where he investigated payment card crime and employee misconduct.

413

Prior to this, Cliff spent 30 years as a police officer with the Ontario Provincial Police and retired as a Commissioned Officer - Superintendent, having served in the Anti-Rackets Section (Fraud), the Criminal Investigation Bureau (homicide and other major crime) and also served as a Chief of Police for a municipal police service. His investigative experience and skill is highly sought after.

Cliff has testified in all levels of court and has prepared affidavits in support of Anton Piller Orders, Mareva Injunctions and Norwich Pharmacal Orders as well as other warrants. He has lectured on issues related to procurement fraud, employee misconduct and criminal and civil investigations; including fraud.

Cliff has led diverse teams in his career and held direct and indirect reporting responsibilities for large numbers of staff. Cliff will be responsible for all operational matters for IRG; including SIU Insurance, SIU Corporate, Risk Management, Financial and Corruption Investigations, Forensics, Covert and Undercover, Bill 168 and Workplace Investigations, Seniors Strategy, Surveillance and Special Projects.

#### **ASHALEE MOHAMED**

##### **VP - Client Solutions**

ashaleem@irgcanada.com

Ashalee Mohamed is a long tenured and dedicated member of the IRG team and has performed in many roles; including as an Investigator. Most recently Ashalee was the Director - Sales and Marketing, leading a dedicated team of professionals in exceeding client service expectations. Ashalee has valuable insight and experience in the investigative and insurance industry.

In her leadership role as VP - Client Solutions, her mandate includes; continuing to service her existing client portfolio, providing key strategies and solutions to clients, quality assurance and office management and business development. All current clients Ashalee is working with will be maintained under her portfolio and she will continue to be your key point of contact for IRG.

Ashalee has obtained an honours degree in Criminology with a minor in Political Sciences. Ashalee is an active member of Toronto Insurance Women's Association (TIWA), Canadian Association of Special Investigation Units (CASIU) and the Ontario Insurance Adjusters Association (OIAA). In addition, Ashalee also attends educational seminars, meetings and events related to Canadian Life and Health Insurance Association (CLHIA), Human Resources Professional Association (HRPA), Risk and Insurance Management Society (RIMS), Canadian Defence Lawyers-Legal Association of Canada (CDL).



Home / [About Us](#) / [Services](#) / [Contact Us](#) / [Privacy Policy](#) / [Terms of Service](#)

Home / [Privacy Policy](#) / [Terms of Service](#) / [Contact Us](#) / [About Us](#) / [Services](#)

Investigative Research Group - 1000 Lakeshore Blvd. W. Suite 1000 - Toronto, ON M6H 1L5

Phone: (416) 593-1111  
Fax: (416) 593-1112

This is Exhibit "37" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

4/15

Follow Investigative Research Group on:

Facebook

Twitter

LinkedIn



Investigative Research Group  
Multi-Disciplinary Professional Firm in Canada



[HOME](#) [OUR TEAM](#) [OUR SERVICES](#) [NEWS AND EVENTS](#) [INSIGHTS](#) [Q&A](#) [CAREERS](#) [CONTACT](#)

## Our Team

### BOARD OF DIRECTORS

#### EXECUTIVE

#### MISSION STATEMENT AND CORPORATE VISION

#### SPECIAL INVESTIGATIVE UNIT

#### OUR PROCESS



## Quick Links

### PRESIDENT'S MESSAGE

#### SEARCH

## Board of Directors

### WILLIAM OSTRANDER, LL.B, MA

#### Chairman/Owner

billostrander@irgcanada.com

For 23 years, William Ostrander was a corporate law partner for one of Canada's largest law firms. Mr. Ostrander received his LLB and his master's degree in political science from the University of Toronto. He is currently a director and investor in a number of corporations in Canada.

### RICHARD ARMSTRONG, P.Eng., B.A.Sc

#### Vice Chairman/Owner

Richard Armstrong is a Mechanical Engineer. Until recently, he was the Senior Partner/Senior Vice-President at the multi-discipline engineering firm Marshall Macklin Monaghan. Mr. Armstrong now provides senior level advice on engineering and related matter, and he is an investor in a wide range of businesses.

### GEOFF HORTON

#### Director

Geoff Horton is a Managing Director of Venturelink LP. Mr. Horton has been involved in managing the VentureLink Group of Funds since joining the predecessor manager in 2001. Prior to that, Mr. Horton was active in early and later stage venture capital investing. He is on the board of a number of corporations.

### BRIAN M. SARTORELLI

#### Director

Brian has been an investigator for many years. He was a Military Police officer for a number of years and left the Military to ultimately embark on his PI career. Brian founded IRG in 1992 and was President and CEO until July 2013 when he retired from that role. He sold the company in 2007 to the current ownership group of which he remains a shareholder, part owner and currently sits as an active member on the Board of Directors.



STAFF

Witnesses' Affidavits (Investigative Body Status)

[HOME](#) [PRIVACY STATEMENT](#) [SEARCH](#) [CONTACT](#)

Copyright © 2014 IRG. All rights reserved. No part of this publication may be reproduced without prior written permission.


Investigative Research Group

Investigative Research Group



466

This is Exhibit "38" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

  
\_\_\_\_\_  
A Commissioner, etc.

417

## Policeman charged in stolen-car conspiracy

[FIN Edition]

Toronto Star - Toronto, Ont.

Date: Dec 7, 1989

Start Page: A.10

Section: NEWS

---

### Document Text

---

An Ontario Provincial Police officer with 21 years' service has been charged with conspiracy, fraud and five counts of attempted fraud involving kickbacks in a stolen car and construction equipment scam.

Constable George E. Kleinsteinber, 40, who works in the Toronto OPP stolen-auto unit, was charged yesterday.

Superintendent Bob Guay said the charges came after police investigated a private investigation firm that recovered an unusually large number of stolen vehicles, worth about \$800,000.

Fifteen insurance firms in Ontario were charged finder's fees totalling about \$50,000 after recoveries of stolen equipment and vehicles in the Bolton, Coboconk and Alliston areas last summer, he said.

Private investigation firms were tipped off to where stolen vehicles were being kept before police officially recovered them.

The firms would then tell insurance companies that they could find cars for a fee, enabling the insurance companies to pick up cars and later resell them, recouping some of the money they had already paid out to the owner.

Also charged with conspiracy to defraud, five counts of attempted fraud and one count of fraud are Brian Malcolm Sartorelli, 34, of Barrie, owner and president of Simcoe Investigations, and private investigator Brenda Joyce Money, 30, of Barrie.

Timothy Hugh Sexton, 29, of Orillia, a licensed private investigator, is charged with conspiracy to defraud and two counts of attempted fraud.

Pool hall raid nets 16

on gambling charges

Sixteen people were arrested on gambling charges yesterday after police raided a pool hall called Shooters at Wilson Ave. and Keele St.

Metro police said the place operated as a betting house and brought in about \$30,000 a week.

It used a roof-mounted television dish with a descrambler to show horse races live, they said. People could place bets, watch telecasts of races in Maryland and Pennsylvania and collect winnings at track odds.

Betting slips and equipment were seized along with an undisclosed amount of money, a television descrambler and football pool betting slips.

Charged with keeping a common betting house, engaging in bookmaking, engaging in betting and recording bets are Mario Iaccino, 35, of Maple, and Antonio Bernardini, 47, of North York.

Robbery suspects

face new charges

Two men charged in the beating and robbery of an elderly man have been charged with robbing an 89-year-old disabled woman in her downtown Toronto home.

Police said two men got into the woman's house Saturday afternoon, put a knife to her throat and demanded money and slapped her repeatedly in the face.

They broke her walking canes so she couldn't move and ransacked the house, breaking furniture, pictures and china and stealing jewelry and a credit card.

Three men were arrested the next day shortly after Delbert Hamil, 83, was attacked and robbed in his downtown home in a similar way, police said.

John Thomas MacKay, 20, and Cordell Livingstone, 18, formerly of Glace Bay, N.S., are charged with robbery, forcible confinement, breaking and entering, mischief, possession of a dangerous weapon and possession of stolen property.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

418

419

**Officer charged with fraud***[ME2 Edition]*

Toronto Star - Toronto, Ont.  
Date: Dec 8, 1989  
Start Page: A.32  
Section: NEWS

---

**Document Text**

---

An Ontario Provincial Police officer with 21 years service has been charged with conspiracy, fraud and five counts of attempted fraud in connection with kickbacks in a stolen car and construction equipment scam.

Constable George E. Kleinsteinber, 40, who works in the Toronto OPP stolen-auto unit, was charged Wednesday.

Superintendent Bob Guay said police looked into a private investigation firm that recovered an unusually large number of stolen vehicles, worth about \$800,000.

Fifteen insurance firms in Ontario were charged finder's fees totalling about \$50,000 after stolen equipment and vehicles were recovered in the Bolton and Alliston areas last summer, he said.

Also charged with conspiracy and fraud are Brian Malcolm Sartorelli, 34, of Barrie, owner and president of Simcoe Investigations, and private investigator Brenda Joyce Money, 30, of Barrie. Timothy Hugh Sexton, 29, of Orillia, a licensed private investigator, is charged with conspiracy and attempted fraud.

Gambling charges

laid against 16

Sixteen people were arrested on gambling charges after police raided a pool hall called Shooters at Wilson Ave. and Keele St. Police confiscated betting slips, equipment, money, a television descrambler and football pool betting slips. Charged Wednesday with bookmaking and keeping a betting house were Mario Iaccino, 35, of Maple and Antonio Bernardini, 47, of North York. Another 14 people were charged with being in a betting house.

Pair charged again

in attack on elderly

Two men charged in the beating and robbery of an elderly man have also been charged with robbing an 89-year-old disabled woman in her downtown Toronto home. Police said two men got into the woman's house Saturday afternoon, put a knife to her throat, demanded money and slapped her repeatedly in the face. They broke her walking canes and ransacked the house. John Thomas MacKay, 20, and Cordell Livingstone, 18, formerly of Glace Bay, N.S., were arrested Sunday, shortly after men robbed and attacked an 83-year-old man.

2 high school boys

robbed near schools

Two Metro high school students have been robbed in separate incidents outside their schools. A 15-year-old was punched, kicked and robbed of \$3 and a bus token by five youths outside Central Technical School Wednesday morning.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

This is Exhibit "39" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.





# T.E.R.M.S.

- About Us <<
- Associates <<
- Services <<
- Clients <<
- Links <<
- Contact Us <<



## Threat Evaluation and Risk Management Strategies

### Executive Director

**Kostas A. Katsavdakakis, PhD**  
[Click here for CV](#)

Dr. Kostas Katsavdakakis is a licensed psychologist. He completed a post-doctoral fellowship at The Menninger Clinic in Topeka, Kansas, where he served as the primary interviewer in week-long intensive diagnostic evaluations of adults, including impaired corporate and mental health professionals faced with workplace related problems. Since returning to New York in 2002, Dr. Katsavdakakis served as the Assistant Director of Psychology of a maximum security forensic psychiatric hospital and currently devotes his time to a private criminal forensic and clinical practice, teaching and writing. He is an Adjunct Associate Professor at John Jay College of Criminal Justice where he teaches courses in Criminal Forensic Assessment and the Analysis of Criminal Behavior. Dr. Katsavdakakis is sought out by attorneys and the Court to help evaluate defendants charged with violent sexual and non-sexual crimes and consults with private parties for threat assessment and risk management evaluations. He has presented to various law organizations and mental health professionals on conducting violent risk and threat assessment in adults and youth.



### Associates

**Reid Meloy, PhD, ABPP**  
[Click here for CV](#)

Dr. Reid Meloy is a diplomate in forensic psychology of the American Board of Professional Psychology. He was formerly Chief of the Forensic Mental Health Division for San Diego County, and now devotes his time to a private criminal forensic practice, research, writing, and teaching. He is a clinical professor of psychiatry at the University of California, San Diego, School of Medicine; an adjunct professor at the University of San Diego School of Law; and a faculty member of the San Diego Psychoanalytic Institute. He is a Fellow of the American Academy of Forensic Sciences, and is past President of the American Academy of Forensic Psychology. In 1992 he received the Distinguished Contribution to Psychology as a Profession Award from





the California Psychological Association; in 1998 he received the first National Achievement Award from the Association of Threat Assessment Professionals; and in 2000 his stalking book received honorable mention, the Manfred Guttmacher Award, American Psychiatric Association. He is also President of Forensis, Inc., a nonprofit, public benefit corporation which conducts forensic psychiatric and psychological research. Dr. Meloy has authored or co-authored over one hundred eighty papers published in peer-reviewed psychiatric and psychological journals, and has authored, co-authored, or edited ten books: *The Psychopathic Mind* (1988), *Clinical Guidelines for Involuntary Outpatient Treatment* (1990), *Violent Attachments* (1992), *Rorschach Assessment of Aggressive and Psychopathic Personalities* (1994), *Contemporary Rorschach Interpretation* (1997), *The Psychology of Stalking: Clinical and Forensic Perspectives* (1998), *Violence Risk and Threat Assessment* (2000), *The Mark of Cain* (2001), *The Scientific Pursuit of Stalking* (2006), and *Stalking, Threatening, and Attacking Public Figures* (2008). He is also the co-developer with Dr. Steve White of the WAVR-21 ([www.wavr21.com](http://www.wavr21.com)), the first structured professional judgment instrument for the assessment of workplace violence risk. He is a sought after psychological expert on various criminal cases throughout the United States and Europe, and is currently a consultant to the counterintelligence division of the FBI. He is also a member of the Fixated Research Group for the United Kingdom's Home Office concerning threats to the Royal Family and other British political figures and is a consultant to Team Psychologie & Sicherheit based in Darmstadt, Germany.



### **Jim Van Allen** **[Click here for CV](#)**

Jim Van Allen is the President of Behavioral Science Solutions Group Inc.

Jim has fifteen years of specialized experience as a Certified Profiler, and Threat Assessment Analyst. He is a graduate of the FBI National Academy in Quantico, Virginia, and is a member of the Canadian Association of Threat Assessment Professionals.

Jim has lectured at Universities and Colleges, conferences and symposiums on applied criminal psychology, assessment and intervention of workplace violence and the pathways to violence of dangerous individuals. He has lectured internationally in the United States, The Netherlands, and Belgium. He has presented across Canada to Judicial officials, Crown Attorneys, Probation Officers, and to psychologists and psychiatrists, law enforcement, and corporate managers. He has testified as an expert in the Ontario Court of Justice, and Coroner's inquests regarding threat assessment, workplace violence, personality disorders, Psychopathy, and sexual misconduct.



#### ***Experience:***

Jim has assisted international agencies respond to workplace violence, stalking, domestic violence, extortion and product tampering, and other threats. Jim is also experienced in the assessment and prevention of school violence. He is recognized for his expertise in assessing risk and developing intervention strategies for dangerous people and situations and for designing successful personality based interview strategies.

Jim is also recognized for his analysis of anonymous threatening documents and electronic communications.

### **Stephen G. White, PhD** **[Click here for CV](#)**

Dr. Stephen White is a psychologist and the President of Work Trauma Services Inc., a consulting group he founded in 1982 to assist employers with serious workplace crises. His extensive work in organizational trauma reduction led to his specializing, since 1989, in the assessment and management of workplace violence risk. Dr. White has consulted throughout the United States on over 4,000 threat cases for numerous Fortune 500 companies, private and public organizations, colleges and universities, and law enforcement agencies. He has designed and provided detailed employer threat management team training for responding to a wide range of potential risk scenarios. Dr. White has testified before the California State Legislature on behalf of workplace violence prevention legislation, and has published in the areas of workplace trauma management. He is the co-author of *Threat Management of Stalking Cases In The Psychology of Stalking: Clinical and Forensic Perspectives* (Academic Press, 1998). Dr. White, in collaboration with Dr. Reid Meloy, developed and published in 2007 *The WAVR-21*, the first scientifically based structured guide for assessing workplace violence risk. Dr. White was among invited experts of both the FBI's National Center for the Analysis of Violent Crime and the American Society of Industrial Security to participate in their development of online and published guidelines for the prevention of workplace





violence. More recently his consultation and training has expanded internationally to meet the growing global needs of clients. Since the events of September 11th, he has worked with corporate business continuity teams to integrate human resilience planning into disaster recovery efforts. Dr. White is an Associate Clinical Professor in the Department of Psychiatry at the University of California, San Francisco, where he currently co-facilitates a professional development group for medical students. He is a frequent guest lecturer at local, regional, and national forums for human resource, security, and line managers, law enforcement agencies, employment law attorneys, and employee assistance professionals.

### Mary Ellen O'Toole, PhD

Mary Ellen O'Toole, PhD is recognized as one of the FBI's preeminent experts in the areas of criminal, violent and aberrant behavior. Dr. O'Toole's exemplary law enforcement career began in the San Francisco's District Attorney's Office as a Criminal Investigator and spans over 32 years. She was an FBI agent for 28 years, working more than half of her Bureau career in the organization's prestigious Behavioral Analysis Unit (BAU). As one of the senior and most accomplished agents in the Unit, Dr. O'Toole consulted on many of the FBI's most high profile and complex criminal cases, as well as white collar and political corruption cases. Dr O'Toole has consulted with law enforcement agencies throughout the world on crimes of violence and other criminal behavior. During her time in the unit, Dr O'Toole developed an expertise in Criminal Investigative Analysis (CIA) as well as offender behavior. She has provided assistance to law enforcement and prosecutors on a wide range of violent and criminal behavior including homicides, sexual assaults, kidnappings, product tampering, school shootings and extortions. She has a unique expertise in the areas of targeted school violence, workplace violence and threat assessment.



Dr O'Toole is recognized as the FBI's leading expert in the area of "psychopathy." Her work in psychopathy has put her on the forefront of mental health and law enforcement efforts to apply the concepts of this personality disorder to both violent and white collar offenders and their behavior and crime scenes. She lectures internationally on the application of the theory of psychopathy to real life situations. Dr. O'Toole is a much sought after speaker who has addressed multidisciplinary audiences from both the private and public sectors. She continues to lecture at the FBI Academy on psychopathy and interviewing. She has served as adjunct faculty to the FBI's Prestigious Leadership Development Institute (LDI) at the FBI Academy. While serving as an FBI Agent, Dr. O'Toole has been qualified as an expert witness for both the prosecution as well as defense counsel in high profile murder cases in the areas of crime scene assessment, criminal investigative analysis and offender behavior.

Dr. O'Toole is the FBI's primary researcher and author of *The School Shooter: A Threat Assessment Perspective* available @ [www.fbi.gov](http://www.fbi.gov). Her other publications and writings are in the areas of psychopathy, targeted school violence, threat assessment and stalking, serial murder, child abduction and CIA.

Dr. O'Toole represented the FBI in her media appearances on Larry King Live, Fox News, CNN, MSNBC, Discovery Channel, Forensic Files, Investigative Channel, Discovery Channel and National Public Radio. She is currently an analyst with MSNBC for the upcoming series "Criminal Mindscape" scheduled to air in the Fall, 2009.

[About Us](#) | [Associates](#) | [Services](#) | [Clients](#) | [Links](#) | [Contact Us](#)

© Copyright 2009, All Rights Reserved.

4024

This is Exhibit "40" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

# Jim Van Allen – Curriculum Vitae

## Personal Profile

- President – Behavioral Science Solutions Group Inc., Orillia, Ontario, Canada
- Threat Assessment Analyst  
Member of Canadian Association of Threat Assessment Professionals
- Certified Profiler – International Criminal Investigative Analysis Fellowship Inc.
- Behavioral investigative advisor to justice agencies across North America

## Experience

- Has prepared threat assessments and intervention strategies for private and public sector incidents with a potential for violence
- Experienced in a broad range of cases involving: workplace violence, stalking, domestic violence, school violence, threats against public figures and politicians, sexual misconduct, abduction and extortion
- Developed successful personality based forensic interview strategies that helped to conclude many high profile and difficult investigations
- Experienced analyst of anonymous written and electronic communications
- Has testified as an expert at all levels of the Ontario Court of Justice on stalking, workplace violence, Psychopathy, crime reconstruction and sexual misconduct

## Achievements

- Graduate – FBI National Academy, Quantico, Virginia
- Certification - International Criminal Investigative Analysis Fellowship
- Completed numerous senior and advanced courses in threat assessment, dynamics of crime, applied criminal psychology, crimes of interpersonal violence, and behavioral analysis at venues across North America
- Has trained and mentored twenty-four criminal profilers from Ontario, other Canadian provinces, Georgia, South Carolina, Virginia, Texas, Florida, California, and Australia
- Has lectured internationally in United States, The Netherlands, and Belgium on Threat Assessment, evaluation and intervention of workplace violence, and dangerous individuals and their pathways to violence
- Guest lecturer. University of Toronto, Laurentian University, Trent University
- Contributor to The Psychology of Criminal Investigations – The Search for the Truth
- Contributor to The Canadian Lawyer's Guide to The Law of Criminal Harassment and Stalking

## Related Career History

October	2008 - President – Behavioral Science Solutions Group Inc.
June	1995 - Manager, Criminal Profiling Unit, Ontario Provincial Police
January	1992 - Criminal Investigative Supervisor – Ontario Provincial Police
September	1986 - Area Crime Supervisor – Ontario Provincial Police
May	1979 - Appointed – Ontario Provincial Police



426

## Jim Van Allen – Curriculum Vitae

### Contact Information

Jim Van Allen  
President,

Behavioral Science Solutions Group Inc.  
3-200 Memorial Avenue, Suite 292  
Orillia, ON  
L3V 5X6  
Canada

Telephone 705-330-1997  
Fax 705-325-0771

Email: [jim.vanallen@sympatico.ca](mailto:jim.vanallen@sympatico.ca)

This is Exhibit "41" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

---

A Commissioner, etc.

PDF - Jim Van Allen CV.pdf

Create • Customize •

1 / 2 114% Tools Sign Comment

## Jim Van Allen – Curriculum Vitae

### Personal Profile

- President – Behavioral Science Solutions Group Inc., Orillia, Ontario, Canada
- Threat Assessment Analyst  
Member of Canadian Association of Threat Assessment Professionals
- Certified Profiler – International Criminal Investigative Analysis Fellowship Inc.
- Behavioral investigative advisor to justice agencies across North America

### Experience

- Has prepared threat assessments and intervention strategies for private and public sector incidents with a potential for violence
- Experienced in a broad range of cases involving: workplace violence, stalking, domestic violence, school violence, threats against public figures and politicians, sexual misconduct, abduction and extortion
- Developed successful personality based forensic interview strategies that helped to conclude many high profile and difficult investigations
- Experienced analyst of anonymous written and electronic communications
- Has testified as an expert at all levels of the Ontario Court of Justice on stalking, workplace violence, Psychopathy, crime reconstruction and sexual misconduct

### Achievements

Description

Advanced

Advanced

PDF Properties (pdf, http://ns.adobe.com/pdf/1.3/)

pdf:CreationDate--Text: 2009/10/11 13:03

pdf:Producer: PaperPort 11.0

XMP Core Properties (xmp, http://ns.adobe.com/xap/1.0/)

xmp:CreatorTool: PaperPort 11.0

xmp:ModifyDate: 2009-10-11T13:03:19-05:00

s of  
oral  
adian  
ustralia  
Threat  
individuals

This is Exhibit "42" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

430

## The Alpha Group Center for Crime & Intelligence Analysis Training



**HOME**  
About The Alpha Group  
What Others Say

**Who We Serve**  
Meet Our Instructors  
Alpha Group Courses

**Course Schedules**  
Order Books  
Certification

**Free Training**  
Funding Resources  
Contact Us

Steven Gottlieb,  
Executive Director

John Kaster

Tarveer Makhani

Jim Van Allen

Michael Ronczkowski

Warren Sweeney



### Jim Van Allen: Criminal Investigative Analysis & Threat Assessment

<b>Course Info</b> Criminal Investigative Analysis <b>AND</b> Threat Analysis	What Others Say	<b>Course Schedule</b> Criminal Investigative Analysis <b>AND</b> Threat Analysis
---	-----------------	---

Jim Van Allen, is one of only 75 certified profilers in the world. He was certified by the International Criminal Investigative Analysis Fellowship sponsored by the Federal Bureau of Investigation's National Center for the Analysis of Violent Crime. Mr. Van Allen's training consisted of a three-year program that included reviews of thousands of cases and specialized crime topics taught by nationally recognized experts in the field of violent crime and sexual deviancy research. specialized crime topics taught by nationally recognized experts in the field of violent crime and sexual deviancy research.

Prior Prior to his full-time teaching and consulting business, Jim served 31.5 years with the Ontario Provincial Police, and for 15 years was the Manager of the Criminal Profiling Unit and forensic behavioral consultant liaison to justice agencies across the United States and Canada. During his career Jim has assisted on an estimated 815 homicides and numerous serial sexual assault cases as well.

Jim is often consulted as an expert for both national and international media broadcasts concerning high profile crime cases. Among others, he has commented on the Internet Body Part Murder, the LAPD manhunt of Christopher Dorner, the Cleveland abductions of Ariel Castro, the Boston Marathon Bombing, NSA secrets leaked by Edward Snowden and numerous homicide cases where offender motivation has come into question.

Some of the more notable assignments of Mr. Van Allen's career involved the assistance he provided to the investigation of a series of abortion physician shootings, including the murder of Dr. Bernard Slepian in New York State as well as, numerous sexual serial homicide investigations and high profile child



abduction and murder cases. Jim has also prepared threat assessments and threat management strategies for domestic violence, stalking, school violence, workplace violence, extremism, extortion, high-risk sex offenders, the mentally ill, and threats towards justice officials, celebrities, public officials, private citizens and corporations. Further, Mr. Van Allen's cases have received national attention through television's *Discovery Channel*, *Exhibit A* and *72 Hours True Crime Series*.

Jim has also served as a media commentator in relation to several high profile cases including the Colorado Theatre Massacre, the Montreal Dismemberment YouTube Homicide, and a serial homicide in Winnipeg Manitoba. In recognition of his expertise, Mr. Van Allen was invited to participate in an extensive study on school violence sponsored by the US Department of Justice. He also joined with the FBI's Profiling Unit at the National Center for the Analysis of Violent Crime and collaborated with nationally recognized threat analysis experts to analyze 18 US fatal school shootings.

Jim Van Allen currently consults on criminal investigations and threat assessments and instructs on interviewing and forensic crime analysis to law enforcement officers and civilian personnel throughout the United States and Canada. He has also lectured in The Netherlands, Belgium and South Africa.

| For information regarding Courses, Books, or Training Materials, EMAIL Steven Gottlieb, Executive Director |  
| Call: Steve - (909) 989-4366 OR Diana Olson - (909) 256-3157 | Fax: (909) 256-3512 |  
| For questions or comments about the web site, EMAIL Tom Evans, Web Site Manager |  
| Copyright © 2010, The Alpha Group Center for Crime & Intelligence Analysis Training |

This is Exhibit "43" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A solid black rectangular box used to redact the signature of the Commissioner.

A Commissioner, etc.





**Florida Gulf Coast  
University  
Ft Myers, FL**

# **Criminal Investigative Analysis: Assessing Threats of Targeted Violence**

**March 17-21, 2014**

**Presented by**

**Jim Van Allen**

**Author of "Criminal Investigative Analysis: Assessing Threats of Targeted Violence"**



*The Alpha Group*  
Professional Speakers and Trainers  
Serving the Criminal Justice Community  
*We Turn Theory Into Practice™*



## The Program

This program is a continuation of the initial Criminal Investigative Analysis Course and relates to many types of violent criminal behavior. **However, the initial course is NOT a prerequisite to this program.** Due to the many variables associated with violent offenders, this course covers critical areas of targeted violence, examines *WHY* people commit them and offers both methods and strategies that can be used to assess their potential for violence as well as manage and reduce the risks that they pose.

Following a violent incident, we too often learn that there were threats and/or behaviors that, had we been more attentive to them, would have signaled violent intentions. **"Why didn't we see it coming?" That is the question the media asks after every high profile violent event.** Within law enforcement there is a need to recognize and understand the indicators of imminent violence. And, just as important, are those skills one must possess if they are to intervene and diffuse violent situations successfully.

Unless they have had risk assessment training, there are risk factors of potential violence that even law enforcement personnel can easily overlook. Many times we hear comments such as, "He just snapped" or, "I thought he was joking." Behavioral cues and comments made **PRIOR** to a violent event prove that people don't "just snap." **Threats are often made by desperate people with a grievance. And these people—as well as the risk they pose to others—can often be evaluated and reduced IF you know what to look for.**

To accomplish this objective you will first become acquainted with the importance of identifying risk factors and the implementation of threat management strategies and safety plans to protect the public. You will then delve deeply into the minds of violent crime offenders to learn the difference between individuals who are merely venting and those who pose a bona fide threat. You will also be acquainted with—and then shown how to use—a variety of risk assessment instruments and processes that will help you differentiate one from the other.

The topics presented in this program will examine the observable behaviors that provide an opportunity to assess a person's commitment to harm another person or group in our schools, at work or in other public places. Additional segments will focus on stalking and domestic terrorism as it relates to the "lone wolf" personality.

**This one week (36 hour) "hands-on" program will show you the importance of being proactive rather than reactive when dealing with potentially violent situations. You will learn the traits of offenders who resort to threatening, stalking and other violent behaviors and what to expect from the organized or disorganized personalities of these individuals.**

This course will also provide you with the **behavioral characteristics** and **markers** of those individuals planning targeted violence, both inside and outside the workplace. These red flags will be beneficial in conducting risk assessments of potentially violent situations. Protective factors that inhibit violence will also be covered with risk assessment.

Regardless of your previous experience with targeted violence, this course is for you. You can always do your job better when you apply fresh ideas and techniques. We've made sure our seminars give you exactly what you need to put you at your peak!

## This is an *Essential* Course for:

- Crime and Intelligence Analysts
- Violent Crime Investigators
- School Resource Officers
- Patrol Officers and Detectives
- Critical Incident and EMS Personnel
- Community Policing officers
- Law Enforcement Administrators and Managers
- School Administrators and Security Personnel
- Human Resource Personnel
- Hostage Negotiators

## Here's What You Will Learn

This course will provide you with an introduction to a broad range of techniques you can use to recognize the signals of an impending act of targeted violence. We'll demystify essential professional skills involving:

### Operational Issues

- Answering the Big Question: Do People Just Snap?
- What do Threats *Really* Say and Mean?
- Threat Assessment Tools and Methods
- Make it Stop! The Inhibitors to Violence
- Behavioral Red Flags—How to Recognize Important Behavioral Characteristics of Targeted Crime Offenders
- Personalities and the Links to Violence
- Delving into the World and Mind of the Psychopath
- Understanding Risk Factors Associated with Mental Illness and Violence
- Stalking and Personal Safety
- School Violence
- These Made Headline News! High-Profile School and University Shootings—*Can They be Prevented?*
- The Unique Dynamics and Characteristics of the "Lone Wolf"
- Workplace Violence and Domestic Violence in the Workplace
- Disgruntled Employees and the Risks They Pose
- When the Situation Becomes Critical! How to Terminate Employees and When and How to Do It!
- Diffusing Anger and Dealing with Difficult People—Understanding and Managing The Threats and Risks They Pose
- Written Threats—How to Evaluate Anonymous Letters and Emails
- Victims of Violence: The Loss of Control Over Their Lives
- Understanding Sexual Misconduct and Violence
- Evaluating the Dangerousness of Extremists
- Threat Management Teams and Violence Management Strategies
- *And much, much more!*

## The Hands-On Assessment Process

This hands-on, learn-by-doing program will show you how to assess written and oral threats to individuals and groups. Through the use of lectures, video presentations and case studies you will learn effective methods of distinguishing between low and high-risk situations. Class exercises will give you the opportunity to analyze a variety of threats commonly seen within the workplace, schools and stalking incidents. This format of instruction will facilitate interactive participation and provide you a sense of confidence when evaluating violent threats.

## About Our Assessing Threats of Targeted Violence Programs

Law enforcement officials send their sworn officers and civilian personnel to our courses because of our actual experience in evaluating risk and our proven ability to provide high-quality, performance-oriented training. Class exercises are based on real-world crime problems law enforcement personnel confront each day. As such, students return to their agencies with not only the knowledge of **what** they should do, but, more importantly, **how** they should do it. Skills are developed by instructors who are intimately familiar with the use of criminal investigative analysis and threat assessment techniques, and by the students' use of our **comprehensive, easy-to-understand course materials**.

These elements contribute to the continued popularity of our Criminal Investigative Analysis: Assessing Threats of Targeted Violence training programs. Our success, however, comes from our achievement of one important goal: *We turn Theory Into Practice.*™

## What Others Say About Our Training

*"An internationally experienced criminal investigator, Detective Sergeant Jim Van Allen's presentation style and ability to explain difficult concepts in a simple and familiar fashion are a perfect match for discussing such an imposing topic as Criminal Behavioral Profiling. I must confess, Jim Van Allen remains my personal favorite guest speaker bar none."*

**Dr. Dax Urbszat, B.Sc., LL.B., M.A., Ph.D.**  
Former Acting Director, Forensic Science Program  
University of Toronto (UTM)

*"Jim's forthright style of instruction distilled complex concepts into straightforward, common sense approaches that were easily understandable. His unique sense of humor lent to establishing a fun and collaborative working environment too."*

**Cpl. Kim Bruce**  
Royal Canadian Mounted Police

*"Mr. Van Allen is one of only a handful of accredited Criminal Investigative Analysts in the world. He tailors his training to the needs of his students and, more importantly, is able to convey information in a way that is easily assimilated. I have no hesitation recommending Mr. Van Allen as a trainer."*

**Dr. Gerard Labuschagne**  
South African Police Service

## About The Alpha Group

The Alpha Group is comprised of professional speakers, trainers, and researchers who provide their expertise and practical experience to criminal justice, public safety and victim service organizations. The organization is recognized internationally for its ability to provide training in crime and intelligence analysis, criminal investigative analysis, threats of violence, statement analysis, homeland security and terrorism analysis, and other such unique areas of law enforcement.

## About Your Trainer

Jim Van Allen is one of only 75 certified police profilers in the world. His training consisted of an intensive three year program which included reviews of thousands of cases and over 60 specialized crime topics taught by internationally recognized

experts in the field of violent crime and sexual deviancy research.



Prior to his full-time teaching and consulting on active risk assessment cases, Jim served 31.5 years with The Ontario Provincial Police and for 15 years was the Manager of the Criminal Profiling Unit. During his career Jim has assisted on an estimated 815 homicide, stalking and serial arson investigations and numerous serial sexual assault cases as well.

Jim has prepared threat assessments and threat management strategies for domestic violence, stalking, school violence, workplace violence, extremism, extortion, high risk sex offenders, the mentally ill, and threats towards justice officials, celebrities, public officials, private citizens and corporations.

One of the more notable assignments of Mr. Van Allen's career involved the assistance he provided to the Canadian and US investigation of a series of abortion physician shootings, including the murder of Dr. Bernard Slepian in New York State.

Other notable assignments include numerous sexual serial homicide investigations and high profile child abduction and murder cases. Additionally, many of Mr. Van Allen's cases have received national attention through the broadcasts of the **Discovery Channel, Exhibit A, Forensic Factor and the 72 Hour: True Crime** television series. Jim has also served as a media commentator in relation to several high profile cases including the Colorado Theatre Massacre, the Montreal Dismemberment YouTube Homicide, and a serial homicide in Winnipeg Manitoba.

In recognition of his expertise, Mr. Van Allen was invited to participate in an extensive study on school violence sponsored by the US Dept. of Justice. He also joined with the FBI's Profiling Unit at the National Center for the Analysis of Violent Crime and collaborated with nationally recognized threat analysis experts to analyze 18 US fatal school shootings.

Jim Van Allen currently consults on criminal investigations and threat assessments and instructs on interviewing and forensic crime analysis to law enforcement officers and civilian personnel throughout the United States and Canada. He has also lectured in The Netherlands, Belgium and South Africa.



436

## Course Times

The course begins at 8:00 AM on Monday, March 17, 2014 and concludes at 12:00 Noon on Friday, March 21, 2014. Course hours are from 8:00 AM to 5:00 PM Monday through Thursday and from 8 AM to 12:00 Noon on Friday.

## Tuition Information

Tuition is \$525 per person for the one-week (36 hour) program of instruction. It also includes:

- All in-class course materials.
- A copy of Jim Van Allen's *Criminal Investigative Analysis: Assessing Threats of Targeted Violence* workbook. This student workbook contains the course agenda, PowerPoint lectures and case analysis notetaking pages that will be used extensively throughout the class.
- A 4-hour training DVD produced by the California Department of Justice entitled "*Threat Assessment and Management: A New Way of Thinking*" that deals with all forms of interpersonal violence in both workplace and domestic situations. Among others, the DVD also covers incidents involving well-known celebrity cases.
- An impressive certificate of graduation which will be presented to you upon completion of the course.

These are more than reference materials...they're the "silent partners" you'll take back to your job to help you increase your knowledge and strengthen your skills.

**PLEASE NOTE:** Tuition does not include lodging, meals, transportation to and from the meeting site, parking, or items of a purely personal nature (pens, pencils, paper, etc.)

## Is This Course Tax Deductible?

Skill-building and professional enhancement programs such as the Criminal Investigative Analysis: Assessing Threats of Targeted Violence training course are usually tax deductible. Check with your financial advisor to verify applicability of the tax law to your particular situation.

## Registration Information

Reserve your seat now! Jim Van Allen's courses fill quickly and seating is limited. To register for the course, please contact the Alpha Group to request the registration form. Payment must be received no later than February 26, 2014. **Make Checks or money orders payable to The Alpha Group.** Please send the registration form and your remittance to: Diana, The Alpha Group, PO Box 8, Montclair, CA 91763. You may also register by phone by calling Diana at (909) 256-3157, by faxing your registration form to (909) 256-3512 or by emailing your registration form to her at: [crimecrush@alphagroupcenter.com](mailto:crimecrush@alphagroupcenter.com). For credit card payments, please call The Alpha Group at (909) 256-3157.

## Substitutions And Cancellations

Anyone can substitute for you. If this becomes necessary, please call and let us know. If you need to cancel and you contact us no later than February 26, 2014, we'll refund your tuition, less a \$25.00 per person processing fee. The tuition is nonrefundable for any cancellations made after February 26, 2014. The Alpha Group reserves the right to substitute speakers should the featured presenter become incapacitated. In the unlikely event that the course is cancelled, the Alpha Group's liability shall be limited solely to refunding of tuition payments.

## Course Location and Hotel Accommodation Information

Please contact the course host for course location and hotel accommodation information. The host is Florida Gulf Coast University, Lee Bushog, 10501 FGCU Pkwy South, Ft Myers, FL 3365. You may contact Lee by phone at (239) 590-7821 or by email at [lbushong@fgcu.edu](mailto:lbushong@fgcu.edu). Class Location: TBA

## For Additional Information

If you have any questions or need additional information about the Criminal Investigative Analysis: Assessing Threats of Targeted Violence training course, please contact Steve Gottlieb, Executive Director of the Alpha Group, by telephone at (909) 989-4366, by email at [crimecrush@alphagroupcenter.com](mailto:crimecrush@alphagroupcenter.com), or via our website at [www.alphagroupcenter.com](http://www.alphagroupcenter.com).



**The Alpha Group**

Professional Speakers and Trainers

Serving the Criminal Justice Community

*We Turn Theory Into Practice™*

P.O. Box 8 • Montclair, California 91763 • Telephone: (909) 989-4366 • Fax: (909) 256-3512

Email: [crimecrush@alphagroupcenter.com](mailto:crimecrush@alphagroupcenter.com)

Website: [www.alphagroupcenter.com](http://www.alphagroupcenter.com)

437

This is Exhibit "44" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

438

**FAX to: 613-825-0377 RCMP Commissioner fax**

**Commissioner Bob Paulson**  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa ON K1A 0R2

From: Donald Best

December 10, 2012

Fax: [REDACTED]

Mobile: [REDACTED]

Mailing Address: [REDACTED]

**RE: Unauthorized / illegal access to CPIC & internal police data**

Dear Commissioner Paulson,

I am a former Toronto Police officer.

I wish to report illegal / unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data.

The main suspect is a retired Ontario Provincial Police sergeant, and presumably still-serving OPP personnel who supplied him with the data. The retired OPP officer is working as a private investigator for a major Canadian law firm. (ie: large with hundreds of lawyers across Canada)

I have not contacted the OPP about this internal matter as the involved officer previously worked out of OPP HQ and is well known, etc.

Please have the appropriate investigators contact me, whether OPP or RCMP.

Yours truly,

[REDACTED]

Donald Best

This is Exhibit "45" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.



440

**FAX to: 613-825-0377 RCMP Commissioner fax**

**Commissioner Bob Paulson**  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa ON K1A 0R2

From: Donald Best

January 16, 2013

Fax: [REDACTED]

Mobile: [REDACTED]

Mailing Address: [REDACTED]

**RE: Unauthorized / illegal access to CPIC & internal police data**

Dear Commissioner Paulson,

On December 10, 2012 I faxed a letter to you reporting illegal / unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data. (Attached)

To date over a month later I have not been contacted by your officers.

As the RCMP must be interested in someone selling confidential information from police computers I can only presume that the report went astray during the Christmas season.

Yours truly,

Donald Best



441

**FAX to: 613-825-0377 RCMP Commissioner fax**

**Commissioner Bob Paulson**  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa ON K1A 0R2

From: Donald Best

December 10, 2012

Fax: [REDACTED]

Mobile: [REDACTED]

Mailing Address: [REDACTED]

**RE: Unauthorized / illegal access to CPIC & internal police data**

Dear Commissioner Paulson,

I am a former Toronto Police officer.

I wish to report illegal / unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data.

The main suspect is a retired Ontario Provincial Police sergeant, and presumably still-serving OPP personnel who supplied him with the data. The retired OPP officer is working as a private investigator for a major Canadian law firm. (ie: large with hundreds of lawyers across Canada)

I have not contacted the OPP about this internal matter as the involved officer previously worked out of OPP HQ and is well known, etc.

Please have the appropriate investigators contact me, whether OPP or RCMP.

Yours truly,

[REDACTED]

Donald Best

This is Exhibit "46" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.



\_\_\_\_\_  
A Commissioner, etc.

Royal Canadian Gendarmerie royale  
Mounted Police du CanadaFACSIMILE /MESSAGE  
TRANSMITTALENVOI D'UN MESSAGE  
PAR TÉLÉCOPIEURSecurity Classification/Designation  
Classification/désignation

Protected A

Precedence - Priorité

Date

2013-01-17

Reference No. - N° de référence

Your File - Votre n° de dossier

Our File - Notre n° de dossier

12-005262

PIRS ORI

IND SRRJ

CPIC ORI

IND CIPC

OSR - RSO

Unit Coll. - Code d'interclass. de serv.

TO  
À

Donald Best

FOR YOUR  
INFO.  
POUR VOTRE  
INFORM.FROM  
DE

Name - Nom

K. Gravelle

Div.

Sub-Div. - S.-div.

Branch - Service

HQ

Commr.'s Office

Section

Unit - Unité

SENDER - EXPÉDITEUR

Fax No. - N° de téléc.

Tel. No. - N° de tél.

612-825-0377

RECIPIENT - DESTINATAIRE

Fax No. - N° de téléc.

Bus. Tel. No. - N° de tél. bur. Res. Tel. No. - N° de tél. rés.

SUBJECT Your letters dated 2012-12-10 and 2013-01-16.  
OBJET

Total number of pages including this one:

Nombre total de pages, y compris celle-ci : 5

COMMENTS

COMMENTAIRES

Mr. Best,

Please find attached, a response dated 2012-12-21 to your inquiry of 2012-12-10.

Thank you,

KG,

This message is intended for the use of the addressee.  
Disclosure of message content may breach one or  
more laws. If you have received this communication  
in error, notify the sender immediately by telephone.Cette communication est exclusivement destinée à qui elle est adressée.  
La divulgation de son contenu peut constituer une infraction à une ou  
plusieurs lois. Si vous avez reçu cette communication par erreur, veuillez  
en aviser immédiatement l'expéditeur par téléphone.

Operator - Opérateur

K. Gravelle

Telephone No. - N° de téléphone

Daily No. - N° quotidien

TO BE DELIVERED BY  
À LIVRER D'ICI LE

Date

Time - Heure

Authorizing Signature - Signature de l'approbateur

Date

2013-01-17

REPLY REQUIRED BY  
RÉPONSE D'ICI LE

Time - Heure

**Canadian Police Information Centre**

1200 Vanier Parkway  
Ottawa, Ontario  
K1A0R2

**Centre d'information de la police canadienne**

1200, promenade Vanier  
Ottawa (Ontario)  
K1A0R2

OUR FILE - NOTRE RÉFÉRENCE

12-005262

YOUR FILE - VOTRE RÉFÉRENCE

Donald Best

**COPY**

December 21, 2012

**Re: Unauthorized/ Illegal access to CPIC and internal police data**

Dear Mr. Best,

Thank you for your letter with reference to the potential misuse of, and unauthorized access to the CPIC system.

As your allegation is within the jurisdiction of the Ontario Provincial Police (OPP), your letter has been forwarded to their Communication Technology Support Bureau, under which the administration of the CPIC system within the OPP falls.

I trust that you will soon be contacted by a Team Leader from this area.

Kind regards,



P. M. Dionne, C/Superintendent  
Director General, CPI Centre

Cc: K. Lohnes,  
OPP CPIC Audit





JAN. 17. 2013 9:57AM

RCMP/GRC 613 825-0377

NO. 0639 P. 3

COMMISSIONER'S  
OFFICE

JAN 16 2013

12-005262  
BUREAU DU  
COMMISSAIRE

**FAX to: 613-825-0377 RCMP Commissioner fax**

**Commissioner Bob Paulson**  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa ON K1A 0R2

From: Donald Best

January 16, 2013

Fax: [REDACTED]

Mobile: [REDACTED]

Mailing Address: [REDACTED]

**RE: Unauthorized / illegal access to CPIC & internal police data**

Dear Commissioner Paulson,

On December 10, 2012 I faxed a letter to you reporting illegal / unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data. (Attached)

To date over a month later I have not been contacted by your officers.

As the RCMP must be interested in someone selling confidential information from police computers I can only presume that the report went astray during the Christmas season.

Yours truly,

Donald Best

446

**FAX to: 613-825-0377 RCMP Commissioner fax**

**Commissioner Bob Paulson**  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa ON K1A 0R2

From: Donald Best

December 10, 2012

Fax: [REDACTED]

Mobile: [REDACTED]

Mailing Address: [REDACTED]

**RE: Unauthorized / illegal access to CPIC & internal police data**

Dear Commissioner Paulson,

I am a former Toronto Police officer.

I wish to report illegal / unauthorized access to CPIC, Ontario Ministry of Transport and other internal police data.

The main suspect is a retired Ontario Provincial Police sergeant, and presumably still-serving OPP personnel who supplied him with the data. The retired OPP officer is working as a private investigator for a major Canadian law firm. (ie: large with hundreds of lawyers across Canada)

I have not contacted the OPP about this internal matter as the involved officer previously worked out of OPP HQ and is well known, etc.

Please have the appropriate investigators contact me, whether OPP or RCMP.

Yours truly,

[REDACTED]

Donald Best



447

**FAX to: 613-825-0377 RCMP Commissioner fax**

**Commissioner Bob Paulson**

RCMP National Headquarters Headquarters Building  
73 Leikin Drive  
Ottawa ON K1A0R2

From: Donald Best

January 16, 2013

Fax: [REDACTED]

Mobile: [REDACTED]

Mailing Address: [REDACTED]

**RE: Unauthorized / illegal access to CPIC & internal police data**

Dear Commissioner Paulson,

I just received a voice mail from the OPP Professional Standards, Inspector Kearns, so please disregard my fax earlier today.

Yours truly,

Donald Best

448

This is Exhibit "47" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.



449

Date: Thu, 17 Jan 2013 10:00:35 -0500  
To: "Inspector Marty Kearns" <marty.kearns@ontario.ca>, "Sgt. Major Jeff Vibert" <jeff.vibert@ontario.ca>  
Subject: Donald Best  
From: [REDACTED]  
X-hush-end-of-body-position: 76  
Content-Type: multipart/mixed;  
boundary="=\_8b4d35a3c24d78cd4574a034918e18af"

Dear Inspector Kearns & Sgt. Major Vibert

Attached please find:

- 1/ Affidavit of Jim Van Allen, as sworn October 21, 2009
- 2/ Two invoices from Behavioural Science Solutions Group Inc. to Fasken Martineau DuMoulin LLP lawyers. (Note the redactions performed presumably by the law firm)
- 3/ Order of Justice Shaughnessy dated October 12, 2012, staying the execution of an arrest warrant for Donald Best until a date set for the hearing of the application. (The hearing date has not yet been set)

Regarding my information:

[REDACTED]  
(Dr's licence used to say "[REDACTED]" or "[REDACTED]" at various times. I think it said "[REDACTED]" Best" in October of 2009)  
dob: [REDACTED]

Address on Driver's License when Jim Van Allen did the checks on me in October of 2009:

[REDACTED]

You will see my Driver's Licence number listed in the Van Allen affidavit, along with other addresses he obtained from various sources.

You can probably be assured that any CIPC, MTO, or internal OPP records checks performed on me especially from August 2009 to January 15, 2010 were probably commissioned by the law firm or Jim Van Allen no matter who's badge number appears. Although Van Allen was formally retained by the law firm about October 7, 2009 according to his affidavit, I understand that some other investigator was retained prior to that.

Please don't hesitate to contact me for any reason.

Donald Best

cell: [REDACTED]

fax: [REDACTED]

email: [REDACTED]

This is Exhibit "48" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

\_\_\_\_\_  
A Commissioner, etc.

451

Date: Wed, 06 Feb 2013 20:51:16 -0500  
To: gdmmytruk@drps.ca  
Cc: "Sgt. Major Jeff Vibert" <jeff.vibert@ontario.ca>  
Subject: Donald Best, CPIC check December 2009  
From: [REDACTED]  
X-hush-end-of-body-position: 378  
Content-Type: multipart/mixed;  
boundary="=\_1281bdb0aec8922690e3733bc5fa9fc7"

Inspector George Dmytruk  
Durham Regional Police  
Professional Standards

Dear Inspector Dmytruk

Thanks for taking the time to speak with me on Monday. Here is my information and a summary of the situation, along with some exhibits.

**My information:**

Donald [REDACTED] BEST  
(Dr's licence used to say [REDACTED] " or [REDACTED] " at various times. I think it said [REDACTED]  
[REDACTED] in October of 2009 [REDACTED]  
[REDACTED]

dob: June [REDACTED], Ontario

Ontario Driver's License: B2 [REDACTED] 5 [REDACTED]

Address on Driver's License in October of 2009:

[REDACTED]  
[REDACTED]  
[REDACTED]

Toronto Police 1975 - 1990. Sergeant # [REDACTED] (Detective). Extensive background in deep cover operations against organized crime, both as a police officer and after leaving the police service in 1990.

**Background:**

In 2007, my Ontario-registered corporation 'Nelson Barbados Group Ltd.' launched a civil lawsuit in Barrie, Ontario against various corporations and individuals from Ontario and the country of Barbados. Nelson Barbados Group Ltd. is a one-man operation with me as the only executive etc.

The name of the civil lawsuit is:

'Nelson Barbados Group Ltd. vs Richard Ivan Cox et al'  
Superior Court of Justice (Ontario Central East Region)

Court file No. 141-07

The case was originally heard before Justice J. B. Shaughnessy in Barrie, Ontario, but then followed him to Whitby and then to the new court house in Oshawa where it is currently being heard in 2013.

The lawsuit name is sometimes shortened to 'Nelson Barbados Group Ltd. v Cox' or 'Nelson Barbados v Cox' and many other variations. The Court File number is the one constant.

This was and is a civil lawsuit before the courts in Ontario, like thousands of other civil lawsuits before the courts. The stakes were high with the amount being contested at over 100 million dollars, but it was like any other civil lawsuit in that the police do not generally take an interest in civil cases unless requested due to some unusual circumstance.

On January 15, 2010, I (Donald Best) was convicted in absentia of Contempt of Civil Court by Justice Shaughnessy and sentenced to 3 months in prison, a fine and various costs to be paid to the defendants. An arrest warrant was issued for me in the form of a Warrant of Committal. I was in the Southwest Pacific at the time and I understand that the warrant was placed upon CPIC by Peel Regional Police with a 50km return radius: presumably because I might be arrested at the airport. This is only a guess on my part as to why Peel Regional Police became involved in January of 2010.

On August 9, 2012 after some two years of various legal activity, Justice Shaughnessy set aside the warrant for my arrest, and allowed me a new hearing, based upon evidence presented to the court that the original evidence the court used to convict me was false and deliberately fabricated. With immunity from arrest I returned to Canada in early September 2012 and have been involved in court hearings and cross-examinations since then. The date for my new hearing has been set as April 30, 2013 before Justice Shaughnessy at the Oshawa court house.

#### **Durham Regional Police CPIC Checks in December 2009**

I understand that a Durham Regional Police Special Constable made two CPIC checks on me in December 2009 (I think December 17, 2009 or thereabouts).

In December 2009 the defendants in 'Nelson Barbados Group Ltd. vs Richard Ivan Cox et al' were attempting to locate me purportedly to serve legal documents upon me, but there was no warrant for my arrest, nor had Justice Shaughnessy found me guilty of contempt as he did a month later on January 15, 2010.

In all of the circumstances I can see no valid or authorized reason why a Durham Regional Police Special Constable would have conducted CPIC and other background checks into me in December of 2009. Perhaps there is something I am unaware of, but for the present I believe that any such CPIC check was probably initiated at the request of someone outside the police, for reasons of assisting the defendants and their lawyers to pursue their interests in the Nelson Barbados civil lawsuit.

There is precedent for my belief because as you will see in the following section of my email, the defendants and their lawyers had in October 2009 hired a former OPP Detective Sergeant to track me down. This person, Jim Van Allen, improperly accessed confidential



Toronto Police information and Ministry of Transport information about me. Mr. Van Allen was foolish enough to document his illegal activities in an affidavit that was distributed to the public and later published on the internet. (attached as exhibit) There were also rumours in the police community that Mr. Van Allen had performed various internal police records checks on me and my family members and businesses.

It is possible that Mr. Van Allen was the person who caused the Durham Regional Police Special Constable to perform CPIC checks upon my name; or it could have been someone else.

Notwithstanding my speculation as to the reason behind the CPIC checks performed in December 2009 by the Durham Regional Police member, certain questions appear to be relevant when the Professional Standards officers interview the Special Constable who made the checks:

- 1/ What caused the officer to run a CPIC check on Donald Best? Who asked the officer to run a CPIC check on Best?
- 2/ What information was given to the officer to facilitate the check? (Best's name, dob, dr's lic etc)
- 3/ Who gave Donald Best's name and date of birth (and perhaps driver's license number) to the officer to facilitate the check?
- 4/ What information was learned by the officer? What were the results of the check upon Donald Best?
- 5/ What information was relayed to the person requesting the check on Donald Best?
- 6/ Was the officer aware that Mr. Best was involved in a civil case before the Ontario Courts?
- 7/ Was some cover story given to the officer to induce him or her to perform the CPIC check upon Best?

#### **Events prior to October 30, 2009**

My witnesses in the Nelson Barbados Group Ltd. lawsuit have been targets of a well-documented campaign of harassment, intimidation and criminal acts that began in the 1990's in Barbados, and spread to the USA, Canada and other countries. I provide this information only as background for the current situation, but if the assigned Durham Regional Police investigators are interested in looking at the source materials, there are several thousand pages of sworn affidavits over the years that document the campaign against my witnesses: including firebombing of homes, kidnapping and beating of a witness at gunpoint, mail tampering, death threats, threats to rape witnesses wife, home invasion, identity theft, mischief to autos (loosening wheel nuts, shooting of vehicle) and many other crimes. As I discovered much to my horror; when there is \$100 million dollars at stake and many of the litigants come from a Caribbean society where violence against witnesses is not uncommon, becoming involved in a civil lawsuit even in Canada can have serious implications for personal and family safety and well-being.

Attached to this email is the October 21, 2009 affidavit of ex-OPP officer Jim Van Allen, who (according to the affidavit itself) was hired on October 7, 2009 by lawyer Gerry Ranking. Mr. Van Allen was tasked with finding my home address. At paragraphs 7 through 10, Mr. Van Allen repeats my Ontario Driver's license number, date of birth, address history and name in violation of many laws and protocols including the MTO Identity Information protocols,



Court Protocols for placing Identity Information into public court documents, and the relevant sections of the Criminal Code that deal with the reckless distribution of Identity Information.

In paragraph 12, Mr. Van Allen explains how he contacted the Toronto Police Association and was provided with my former address in Hamilton, that is in fact the address of my parents. After reading information from Mr. Van Allen's affidavit that was published on the internet, I called the legal director of the Toronto Police Association who confirmed to me that Mr. Van Allen apparently obtained my information from the TPA in an illegal manner that was probably criminal. Further, some of the members' address information from the TPA is sourced from the Toronto Police Service, which adds another layer of concern: Mr. Van Allen was apparently provided with my address information that was sourced from the official records of the Toronto Police Service.

Mr. Van Allen's reports and affidavit were distributed to members of the public and was published on the internet on October 30, 2009, along with calls for persons I had previously arrested and testified against to hunt down my family and me. There were also online calls to harm my witnesses and me. I can provide copies of these internet publications if you desire to see them.

Subsequent to my personal information being published on the internet, during the week of November 1, 2009, one of my children was approached and threatened because they were my child. On November 5, 2009 I was ambushed and physically assaulted on the street. I immediately made plans to leave Canada with my family and I did so on November 11, 2009.

There were many other incidents directed at my witnesses, my family and me, but the above summary sets the context of the circumstances in December of 2009 when your Durham Regional Police Special Constable engaged in CPIC searches of me and (probably) relayed the results to person(s) outside of the police force.

Please don't hesitate to contact me for any reason.

Donald Best

cell: [REDACTED]

fax: [REDACTED]

email: [REDACTED]

Attached please find:

1/ Affidavit of Jim Van Allen, as sworn October 21, 2009

2/ Two invoices from Behavioural Science Solutions Group Inc. to Fasken Martineau DuMoulin LLP lawyers. (Note the redactions performed presumably by the law firm)

3/ Order of Justice Shaughnessy dated October 12, 2012, staying the execution of an arrest warrant for Donald Best until a date set for the hearing of the application. (The hearing date has not yet been set)

455

This is Exhibit "49" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.



A Commissioner, etc.

456

On 7 February, 2013 at 7:57 AM, "George DMYTRUK" <GDMYTRUK@drps.ca> wrote:

Good morning Mr. Best,

Thank you for your information.

I will assign an investigator to review your concern of a CPIC violation. You will be contacted in the near future by the assigned officer.

Please contact me if you have any other questions.

George

Inspector George Dmytruk # 155

Professional Standards Unit

SIU Liaison Officer

Durham Regional Police Service

Police Headquarters, 605 Rossland Road East

Box 911 Whitby, Ontario L1N 0B8

905-579-1520 Ext. 4304

Cell 905-261-4162

gdmytruk@drps.ca

457

This is Exhibit "50" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

458

MIME-Version: 1.0  
Date: Fri, 15 Feb 2013 14:21:39 -0500  
To: "George DMYTRUK" <gdmytruk@drps.ca>  
Subject: RE: Donald Best, CPIC check December 2009  
From: [REDACTED]  
In-Reply-To:  
<31B31C5B9E232B4BB38BD954D949ED8819652A7B3D@MAIL2K8.primary.os  
hawa>  
References: <20130207015118.488726F446@smtp.hushmail.com>  
<31B31C5B9E232B4BB38BD954D949ED8819652A7B3D@MAIL2K8.primary.os  
hawa>  
X-hush-end-of-body-position: 121  
Content-Type: multipart/alternative;  
boundary="=\_7f1c7be8055e35cc46290649baaaaf38"

Dear Inspector Dmytruk,

I haven't yet heard from your investigator so I'm just touching base.

This email address ([REDACTED]) is probably the best way for your officer to make initial contact with me, as the cell phone signal is weak near my home.

Yours truly,

Donald Best



459

This is Exhibit "51" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

460

MIME-Version: 1.0  
Date: Tue, 19 Feb 2013 15:50:19 -0500  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Subject: Re: Complaint  
From: [REDACTED]  
In-Reply-To:  
<2AC885DB1E07E54CA5292656F215A53F2E0D429D10@MAIL2K8.primary.oshawa>  
X-hush-end-of-body-position: 128  
Content-Type: multipart/alternative;  
boundary="=\_034bc6ab1352ae4a319c21e834fd5460"

Hello Sgt. Rushbrook,

Thanks for letting me know you are on the case. I presume you have a copy of my February 6, 2013 email to Inspector George Dmytruk that lays out a summary.

Please don't hesitate to contact me for any reason.

Yours truly,

Donald Best

Sent using Hushmail

On 19 February, 2013 at 2:47 PM, "Laurie RUSHBROOK" wrote:

Mr. Best,

I am writing to advise I have been assigned to take carriage of the investigation into the complaint you have filed with the Durham Regional Police Service - Professional Standards Branch. I am in the initial stages of the investigation and will be gathering information over the next couple of weeks.

If you have any questions or concerns, please contact me. My information is provided below.

Regards,

Laurie Rushbrook

Sergeant Laurie Rushbrook #915

Durham Regional Police Service - Professional Standards Unit

605 Rossland Rd. E.

Whitby, ON L1N0B7

905-579-1520 X 4329

(c) 905-261-4019

This is Exhibit "52" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

462

---

Date: Wed, 13 Mar 2013 13:08:32 -0400  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Subject: Donald Best transcript: January 15, 2010  
From: [REDACTED]  
X-hush-end-of-body-position: 27  
Content-Type: multipart/mixed;  
boundary="=\_0a146422ef896ceea71f7a50e30befc7"

Dear Sgt. Rushbrook  
Attached is the January 15, 2010 transcript in the Nelson Barbados  
Group Ltd. case.  
Yours truly,  
Donald Best

---

Date: Wed, 13 Mar 2013 13:06:21 -0400  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Subject: Donald Best transcript: December 2, 2009  
From: [REDACTED]  
X-hush-end-of-body-position: 27  
Content-Type: multipart/mixed;  
boundary="=\_638bc42342772a3c9af139f03fc010d7"

Dear Sgt. Rushbrook  
Attached is the December 2, 2009 transcript in the Nelson Barbados  
Group Ltd. case.  
Yours truly,  
Donald Best

---

Date: Wed, 13 Mar 2013 13:04:38 -0400  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Subject: Donald Best transcript: November 2, 2009  
From: [REDACTED]  
X-hush-end-of-body-position: 23  
Content-Type: multipart/mixed;  
boundary="=\_44d76fe0370278b2967d7f59094a2e7e"

Dear Sgt. Rushbrook  
Attached is the November 2, 2009 transcript in the Nelson Barbados  
Group Ltd. case.  
Yours truly,  
Donald Best

---

MIME-Version: 1.0  
Date: Wed, 13 Mar 2013 13:02:11 -0400  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Subject: Donald Best transcripts  
From: [REDACTED]

463

X-hush-end-of-body-position: 35  
Content-Type: multipart/alternative;  
boundary="=\_5ee0ee017cbf6190b9ec746dffad4f42"

Dear Sgt. Rushbrook,

It was a pleasure talking with you today.

I am about to send you (in separate emails) three transcripts of court  
dates in the Nelson Barbados Group Ltd. case:

November 2, 2009

December 2, 2009

January 15, 2010

I am sending them in three separate emails as they are about 3mb each  
and I don't know the limits of your email system. Please let me know  
that you received each of the transcripts and if it doesn't work out  
I'll upload them to one of the file sharing services for you to  
download them through your browser.

Yours truly,

Donald Best



464

This is Exhibit "53" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

465

---

Date: Thu, 21 Mar 2013 08:53:01 -0400  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Cc: "Todd WILSON" <twilson@drps.ca>  
Subject: Re: Transcripts  
From: [REDACTED]  
In-Reply-To:  
<2AC885DB1E07E54CA5292656F215A53F2E0D5ECA80@MAIL2K8.primary.oshawa>  
X-hush-end-of-body-position: 97  
Content-Type: multipart/alternative;  
boundary="=\_83ca324f84bb4723a76b2d05ec4f4bc1"

Dear Sgt. Rushbrook,  
Thanks for the update.  
Donald Best  
Sent using Hushmail  
On 20 March, 2013 at 7:50 AM, "Laurie RUSHBROOK" wrote:

Mr. Best,  
Thank you for the transcripts. As I mentioned to you, I am in court this week, but will do my best to read through the information you provided. I have confirmed you were run by a Special Constable – he is no longer with our Service as he is now retired, but I will continue to look into this matter on your behalf and hopefully touch base with you some time toward the end of next week.

Laurie Rushbrook  
Sergeant Laurie Rushbrook #915

Durham Regional Police Service - Professional Standards Unit

605 Rossland Rd. E.

Whitby, ON L1N0B7

905-579-1520 X 4329

(c) 905-261-4019

---

466

This is Exhibit "54" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.

467

Date: Wed, 27 Mar 2013 16:38:53 -0400  
To: "Laurie RUSHBROOK" <lrushbrook@drps.ca>  
Subject: Donald Best - CPIC checks  
From: [REDACTED]  
X-hush-end-of-body-position: 536  
Content-Type: multipart/mixed;  
boundary="=\_ecca09914beb349c9a51862751aa8807"

Dear Sgt. Rushbrook,

It was nice talking with you today.

As per your request, attached is a PFD copy of the October 30, 2009 article culled from 'The Barbados Underground', an anonymous website that was heavily involved with a campaign of threats, intimidation and criminal acts against my witnesses, myself and our families. The article is one of many at this website that contained threats etc. and published my and other peoples' Identity Information contrary to the Criminal Code and in violation of other laws, rules and protocols. You'll see my information starting at page 3 and then my Identify Information as per Criminal Code 402.2 etc., reckless distribution of Identity Information.

For further background, although it is not an object of your current focus there is serious forensic and other evidence indicating the involvement of personnel from three Toronto law firms in the publication of information on the Barbados Underground website. If you wanted to have a closer look at evidence I could provide, you would find that the evidence is take-to-the-bank quality and an excellent prima facie case. But once again, I'm not asking you to go outside your focus area re the CPIC checks by the Durham Regional court constable, only offering this as available background.

If you are going to the Barbados Underground website yourself, I advise you to use a proxy and perhaps gets some advice from your IT guys. We know from our investigations that Barbados Underground monitors traffic closely and will try to penetrate your machine if you look interesting at all.

#### **Questions about the CPIC Checks by the Special Constable at the Courthouse**

As we discussed today, the questions I have about the CPIC checks as performed by the Durham Court Constable in December of 2009 are about the legitimacy of the checks, the reasons for the checks and the subsequent distribution of information.

I had the Barrie courthouse registrar spend two days examining the actual court file (every box!) and he made many copies of documents that I would be pleased to share if you desire. I have copies of all court orders on file and also all Judge's Endorsements handwritten during each hearing day. Nowhere in those court records, or in the court transcripts, does the judge authorize or request any police involvement, investigations or CPIC checks. Police involvement in an ongoing civil case would be a rarity indeed. I've never seen it in the 38 years I've been in public and private law enforcement but I suppose there's always a first time.

My thoughts remain as I told you, that it was probably somebody at the courthouse who requested your constable to run me on CPIC, or perhaps just requested a police check and

468

your man ran me not only on CPIC but also your internal records and MTO.

The lawyer Mr. Ranking originally hired the Private Investigator Jim Van Allen who illegally accessed the Toronto Police records, so I suppose Ranking or Van Allen could have made the request to your court constable or maybe even made the request through the judge, but it seems to me that either the lawyers Mr. Ranking or Mr. Silver approached the constable or perhaps the judge made the inquiry with your officer.

Anyway, my concern remains the who, why and who received what information from your man, even if it was only a negative report. It would be nice to know that the information didn't go from your officer to some nefarious person or criminal organization.

Thanks for your hard work,

Donald Best

Below is my original email to Inspector Dmytruk with my suggested questions to ask your (now retired) Special Constable at the Durham Regional Courthouse.

COPY:

Inspector George Dmytruk  
Durham Regional Police  
Professional Standards

Dear Inspector Dmytruk

Thanks for taking the time to speak with me on Monday. Here is my information and a summary of the situation, along with some exhibits.

**My information:**

[REDACTED]  
(Dr's licence used to say [REDACTED] at various times. I think it said "[REDACTED]"  
[REDACTED]  
[REDACTED]

dob: [REDACTED], Ontario

Ontario Driver's License: [REDACTED]

Address on Driver's License in October of 2009:

[REDACTED]

Toronto Police 1975 - 1990. Sergeant [REDACTED] (Detective). Extensive background in deep cover operations against organized crime, both as a police officer and after leaving the police service in 1990.



469

### **Background:**

In 2007, my Ontario-registered corporation 'Nelson Barbados Group Ltd.' launched a civil lawsuit in Barrie, Ontario against various corporations and individuals from Ontario and the country of Barbados. Nelson Barbados Group Ltd. is a one-man operation with me as the only executive etc.

The name of the civil lawsuit is:

'Nelson Barbados Group Ltd. vs Richard Ivan Cox et al'  
Superior Court of Justice (Ontario Central East Region)  
Court file No. 141-07

The case was originally heard before Justice J. B. Shaughnessy in Barrie, Ontario, but then followed him to Whitby and then to the new court house in Oshawa where it is currently being heard in 2013.

The lawsuit name is sometimes shortened to 'Nelson Barbados Group Ltd. v Cox' or 'Nelson Barbados v Cox' and many other variations. The Court File number is the one constant.

This was and is a civil lawsuit before the courts in Ontario, like thousands of other civil lawsuits before the courts. The stakes were high with the amount being contested at over 100 million dollars, but it was like any other civil lawsuit in that the police do not generally take an interest in civil cases unless requested due to some unusual circumstance.

On January 15, 2010, I (Donald Best) was convicted in absentia of Contempt of Civil Court by Justice Shaughnessy and sentenced to 3 months in prison, a fine and various costs to be paid to the defendants. An arrest warrant was issued for me in the form of a Warrant of Committal. I was in the Southwest Pacific at the time and I understand that the warrant was placed upon CPIC by Peel Regional Police with a 50km return radius; presumably because I might be arrested at the airport. This is only a guess on my part as to why Peel Regional Police became involved in January of 2010.

On August 9, 2012 after some two years of various legal activity, Justice Shaughnessy set aside the warrant for my arrest, and allowed me a new hearing, based upon evidence presented to the court that the original evidence the court used to convict me was false and deliberately fabricated. With immunity from arrest I returned to Canada in early September 2012 and have been involved in court hearings and cross-examinations since then. The date for my new hearing has been set as April 30, 2013 before Justice Shaughnessy at the Oshawa court house.

### **Durham Regional Police CPIC Checks in December 2009**

I understand that a Durham Regional Police Special Constable made two CPIC checks on me in December 2009 (I think December 17, 2009 or thereabouts).

In December 2009 the defendants in 'Nelson Barbados Group Ltd. vs Richard Ivan Cox et al' were attempting to locate me purportedly to serve legal documents upon me, but there was no warrant for my arrest, nor had Justice Shaughnessy found me guilty of contempt as he

did a month later on January 15, 2010.

In all of the circumstances I can see no valid or authorized reason why a Durham Regional Police Special Constable would have conducted CPIC and other background checks into me in December of 2009. Perhaps there is something I am unaware of, but for the present I believe that any such CPIC check was probably initiated at the request of someone outside the police, for reasons of assisting the defendants and their lawyers to pursue their interests in the Nelson Barbados civil lawsuit.

There is precedent for my belief because as you will see in the following section of my email, the defendants and their lawyers had in October 2009 hired a former OPP Detective Sergeant to track me down. This person, Jim Van Allen, improperly accessed confidential Toronto Police information and Ministry of Transport information about me. Mr. Van Allen was foolish enough to document his illegal activities in an affidavit that was distributed to the public and later published on the internet. (attached as exhibit) There were also rumours in the police community that Mr. Van Allen had performed various internal police records checks on me and my family members and businesses.

It is possible that Mr. Van Allen was the person who caused the Durham Regional Police Special Constable to perform CPIC checks upon my name; or it could have been someone else.

Notwithstanding my speculation as to the reason behind the CPIC checks performed in December 2009 by the Durham Regional Police member, certain questions appear to be relevant when the Professional Standards officers interview the Special Constable who made the checks:

- 1/ What caused the officer to run a CPIC check on Donald Best? Who asked the officer to run a CPIC check on Best?
- 2/ What information was given to the officer to facilitate the check? (Best's name, dob, dr's lic etc)
- 3/ Who gave Donald Best's name and date of birth (and perhaps driver's license number) to the officer to facilitate the check?
- 4/ What information was learned by the officer? What were the results of the check upon Donald Best?
- 5/ What information was relayed to the person requesting the check on Donald Best?
- 6/ Was the officer aware that Mr. Best was involved in a civil case before the Ontario Courts?
- 7/ Was some cover story given to the officer to induce him or her to perform the CPIC check upon Best?

#### **Events prior to October 30, 2009**

My witnesses in the Nelson Barbados Group Ltd. lawsuit have been targets of a well-documented campaign of harassment, intimidation and criminal acts that began in the 1990's in Barbados, and spread to the USA, Canada and other countries. I provide this information only as background for the current situation, but if the assigned Durham Regional Police investigators are interested in looking at the source materials, there are several thousand pages of sworn affidavits over the years that document the campaign against my witnesses: including firebombing of homes, kidnapping and beating of a witness



at gunpoint, mail tampering, death threats, threats to rape witnesses wife, home invasion, identity theft, mischief to autos (loosening wheel nuts, shooting of vehicle) and many other crimes. As I discovered much to my horror; when there is \$100 million dollars at stake and many of the litigants come from a Caribbean society where violence against witnesses is not uncommon, becoming involved in a civil lawsuit even in Canada can have serious implications for personal and family safety and well-being.

Attached to this email is the October 21, 2009 affidavit of ex-OPP officer Jim Van Allen, who (according to the affidavit itself) was hired on October 7, 2009 by lawyer Gerry Ranking. Mr. Van Allen was tasked with finding my home address. At paragraphs 7 through 10, Mr. Van Allen repeats my Ontario Driver's license number, date of birth, address history and name in violation of many laws and protocols including the MTO Identity Information protocols, Court Protocols for placing Identity Information into public court documents, and the relevant sections of the Criminal Code that deal with the reckless distribution of Identity Information.

In paragraph 12, Mr. Van Allen explains how he contacted the Toronto Police Association and was provided with my former address in Hamilton, that is in fact the address of my parents. After reading information from Mr. Van Allen's affidavit that was published on the internet, I called the legal director of the Toronto Police Association who confirmed to me that Mr. Van Allen apparently obtained my information from the TPA in an illegal manner that was probably criminal. Further, some of the members' address information from the TPA is sourced from the Toronto Police Service, which adds another layer of concern: Mr. Van Allen was apparently provided with my address information that was sourced from the official records of the Toronto Police Service.

Mr. Van Allen's reports and affidavit were distributed to members of the public and was published on the internet on October 30, 2009, along with calls for persons I had previously arrested and testified against to hunt down my family and me. There were also online calls to harm my witnesses and me. I can provide copies of these internet publications if you desire to see them.

Subsequent to my personal information being published on the internet, during the week of November 1, 2009, one of my children was approached and threatened because they were my child. On November 5, 2009 I was ambushed and physically assaulted on the street. I immediately made plans to leave Canada with my family and I did so on November 11, 2009.

There were many other incidents directed at my witnesses, my family and me, but the above summary sets the context of the circumstances in December of 2009 when your Durham Regional Police Special Constable engaged in CPIC searches of me and (probably) relayed the results to person(s) outside of the police force.

Please don't hesitate to contact me for any reason.

Donald Best

cell:

fax:

email:

Attached please find:

- 1/ Affidavit of Jim Van Allen, as sworn October 21, 2009
- 2/ Two invoices from Behavioural Science Solutions Group Inc. to Fasken Martineau DuMoulin LLP lawyers. (Note the redactions performed presumably by the law firm)
- 3/ Order of Justice Shaughnessy dated October 12, 2012, staying the execution of an arrest warrant for Donald Best until a date set for the hearing of the application. (The hearing date has not yet been set)

This is Exhibit "55" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

[REDACTED]

A Commissioner, etc.



474

Read: Jim Van Allen  
From: Jim Van Allen <behaviouralsolutions@gmail.com>  
To: orilliaservice <orilliaservice@hushmail.com>  
Sent: Saturday, February 8, 2014 at 12:36 PM

Your message

To: behaviouralsolutions@gmail.com  
Subject: Jim Van Allen  
Sent: 08/02/2014 7:53 AM

was read on 08/02/2014 9:35 AM.

---

Jim Van Allen  
From: orilliaservice <orilliaservice@hushmail.com>  
To: behaviouralsolutions <behaviouralsolutions@gmail.com>  
Sent: Saturday, February 8, 2014 at 10:53 AM

Jim Van Allen  
Director,  
Behavioural Science Solutions Group Inc.

Dear Mr. Van Allen,

Attached please find a Summons To Witness for you as issued by the Court of Appeal for Ontario.

YOU ARE REQUIRED TO ATTEND, on Wednesday, February 19th, 2014 at 2:30pm, at the office of Simcoe Court Reporting 134 Collier Street, Barrie, ON L4M 1H4, for Examination out of court as witness before hearing

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents and things as indicated in the summons.

IF YOU FAIL TO ATTEND OR REMAIN UNTIL THE END OF THIS EXAMINATION, YOU MAY BE COMPELLED TO ATTEND AT YOUR OWN EXPENSE AND YOU MAY BE FOUND IN CONTEMPT OF COURT.

This summons was issued at the request of, and inquiries may be directed to:

Paul Slansky - Barrister and Solicitor

1062 College Street Lower Level  
Toronto, Ontario M6H 1A9  
Tel: (416) 536-1220  
Fax: (416) 536-8842



476

**Behavioural Science Solutions Group Inc.***A Behavioural Analysis & Threat Management Company*

PO Box 3101, Stn LCD, Langley, BC V3A 4R3  
Telephone (604) 626 - 9572 Fax: (604) 371-1649

# Fax

<b>To:</b> Mr. Paul Slansky – Barrister & Solicitor	<b>From:</b> Jim Van Allen
<b>Fax:</b> 416-536-8842	<b>Pages:</b> 2
<b>Phone:</b> 416-536-1220	<b>Date:</b> 8 Feb 2014
<b>Re:</b> ONT Court of Appeal – D. Best	<b>CC:</b>

☐ **Urgent**    ☐ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

Dear Sir

Further to our telephone conversation of 8 February 2014, please review the attached memo requesting alternative arrangements for my examination due to my relocation to British Columbia.

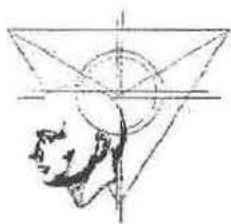
My contact information is included to assist further discussions on this matter.

Please contact me as required.

Thank You



477

**Behavioural Science Solutions Group Inc.***A Behavioural Analysis & Threat Management Company*

P.O. Box 3101, Stn LCD, Langley, BC, V3A 4R3  
Telephone (604) 626-9572 Fax (604) 371-1649

---

**8 February 2014**

**Paul Slansky – Barrister and Solicitor  
1062 College Street Lower Level  
Toronto, Ontario  
M6H 1A9**

**RE: Summons to Witness – Jim Van Allen**

**Att: Mr. Paul Slansky**

Dear Sir:

Further to our telephone conversation on 8 February 2014, pleased by advised that I relocated to Langley, British Columbia in May of 2011.

Physical appearance at the Barrie Court (as specified in the Summons) would require considerable travel and related expenses. I request your consideration of other options to complete this examination.

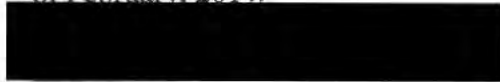
Please be advised that I can be contacted at telephone # 604-626-9572, or be email address: [behaviouralsolutions@gmail.com](mailto:behaviouralsolutions@gmail.com)

I will not be able to produce a copy of my Corporate Minute Book that is currently in the possession of my lawyer pending a government application process.

Sincerely,

Jim Van Allen

This is Exhibit "**57**" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.



A Commissioner, etc.



47A



---

**Van Allen (Director) - BSSG**

---

**Jim Van Allen** <behaviouralsolutions@gmail.com>

Mon, Feb 10, 2014 at 10:09 AM

To: che claire &lt;che@checlairelaw.com&gt;

Good Morning Mr. Clair

Deliveries can be sent to:

Behavioural Science Solutions Group Inc.

C/O Magellan Law

# 225 – 20316 56 Ave.,

Langley, BC

V3A 3Y7

Att: Mr. Steve Fruitman

Telephone: 778-726-0175

Sincerely,

Jim Van Allen

604-626-9572

**From:** che claire [mailto:che@checlairelaw.com]

**Sent:** February-09-14 3:58 PM

**To:** behaviouralsolutions@gmail.com

**Subject:** Van Allen (Director) - BSSG

Dear Mr. Van Allen,

I am a lawyer working in association with Mr. Slansky.

Thank you for calling yesterday, Saturday February 8, 2014 and confirming that you received a

copy via email of the Summons to Witness to James Arthur (Jim) Van Allen, Director, Behavioural Science Solutions Group Inc.. (Attached also to this email)

We appreciate your willingness to testify and as per your request are making arrangements for you to appear via video conferencing from British Columbia. We will be contacting you with further information about your requested method of testimony.

Please reply to this email and tell us which address you wish any further documentation be couriered to.

Yours truly,

—  
**Mr. Che Claire** BA LLB

Barrister and Solicitor

Che Claire Law Professional Corporation

p:647-719-4LAW (4529)

f:1.877.974.4LAW

@ www.checlairelaw.com

This e-mail is privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please delete it and advise che@checlairelaw.com immediately.

481

This is Exhibit "58" referred to in  
the affidavit of **Che Claire**  
sworn before me, this 11th day  
of February, 2014.

A black rectangular redaction box covering the signature of the Commissioner.

A Commissioner, etc.

# EXHIBIT 58

SEE ATTACHED CD

Donald Best (Appellant) v. Richard Ivan Cox, et al. (Kingsland  
Estates Ltd, PricewaterhouseCoopers East Caribbean Firm  
(Respondents)

Court File No. C57123

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED IN BARRIE

**AFFIDAVIT OF CHE CLAIRE**

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9

Tel: (416) 536-1220  
Fax (416) 536-8842  
LSUC #25998I

Counsel for the Applicant/Appellant

483



Donald Best (Appellant) v. Richard Ivan Cox, et al. (Kingsland  
Estates Ltd, PricewaterhouseCoopers East Caribbean Firm  
(Respondents)

Court File No. C57123

---

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED IN BARRIE

**MOTION RECORD**

Paul Slansky  
Barrister and Solicitor  
1062 College Street, Lower Level  
Toronto, Ontario  
M6H 1A9

Tel: (416) 536-1220  
Fax (416) 536-8842  
LSUC #25998I

Counsel for the Applicant/Appellant