Court File No. CV-22-00682804-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

RENA AHMAD, in her personal capacity and as Estate Trustee on behalf of the Estate of Ejaz Choudry, Deceased, NEMRAH AHMAD, HASEEB CHOUDRY and UMAR CHOUDRY, by his Litigation Guardian RENA AHMAD and MUIZZ CHOUDRY, by his Litigation Guardian RENA AHMAD

Plaintiffs/Respondents

- and -

PEEL REGIONAL POLICE SERVICES BOARD, NISHAN DURAIAPPAH, JOHN DOE OFFICER 1, JOHN DOE OFFICER 2, JOHN DOE OFFICER 3, JOHN DOE OFFICER 4, and JOHN DOE OFFICER 5

Defendants/Moving Parties

FACTUM OF THE INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION

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FACTUM OF THE INTERVENER,
CANADIAN CIVIL LIBERTIES ASSOCIATION

PART I - INTRODUCTION

1. Canadian courts have long recognized that "covertness is the exception and openness the rule" for all judicial proceedings, both criminal and civil.[1] The strong presumption of open court proceedings is not easily rebutted. A discretionary order which restricts the openness of court proceedings can only be granted in exceptional circumstances, and the benefits of such an order in protecting a serious risk to an important public interest must outweigh the negative impacts of restricting court openness.

[1] *Attorney General of Nova Scotia v MacIntyre*, 1982 CanLII 14 (SCC) at p. 185.

2. Open justice is critical for many reasons, including preserving the integrity of the evidentiary process, ensuring citizens can understand how disputes are decided, and allowing the public to scrutinize and hold judicial institutions and decision-makers accountable.

3. Where a court is reviewing the conduct of state actors, openness is even more important. Police officers wield state power and must be accountable for their actions, especially with regard to the use of lethal force. The current application, which seeks to anonymize police officers defending a civil action involving allegations of misconduct towards a vulnerable community member, must be considered in light of the importance of transparency in this particular context. When police officers join the force and accept their badge, they accept the requirement to be held accountable to the very same members of the public they swear to serve and protect.

4. The Canadian Civil Liberties Association ("**CCLA**") is a national civil liberties organization that has long been concerned with the appropriate balance between civil liberties and other competing rights and interests. The CCLA's mandate is to reconcile fundamental rights and freedoms with other rights and countervailing interests. This mandate includes ensuring that the police are held accountable to the public.

5. CCLA intervenes to assist the Court with the legal principles pertaining to the importance of open courts. CCLA also makes submissions regarding the difference between confidentiality under the *Special Investigations Unit Act, 2019* (the "***SIU Act***")[2] and court openness; the standard of harm required to meet the first branch of the

[2] SO 2019, c 1, Sched 5 [*SIU Act*].

Dagenais/*Mentuck*/*Sherman Estate* test (the "***DM/Sherman* test**");[3] and necessary considerations regarding police interaction with marginalized communities under the third branch of the *DM/Sherman* test.

PART II - SUMMARY OF FACTS

6. The CCLA accepts the facts as described by the Plaintiffs/Respondents.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. THE IMPORTANCE OF OPEN COURTS

7. The openness of court proceedings is a fundamental principle of our justice system, protected by the constitutional guarantee of freedom of expression. Open courts are essential for the functioning of Canadian democracy. The principle of open justice is deeply embedded in the common law, having existed for centuries before the enactment of the *Charter*.[4]

8. A party seeking a discretionary limit on court openness must satisfy the tripartite test recently restated by the Supreme Court of Canada in *Sherman Estate v Donovan*.[5] The *DM/Sherman* test has a high-threshold and requires an applicant to show: 1) court openness would lead to a serious risk to another important public interest; 2) that the order is necessary to prevent the risk because reasonably alternative measures will not

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[3] The test for obtaining a discretionary order restricting court openness was reformulated in *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman*] based on earlier iterations of the same test in *Dagenais v Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC); *R v Mentuck*, 2001 SCC 76 [*Mentuck*]; and *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.

[4] *Canadian Broadcasting Corp. v New Brunswick (Attorney General),* 1996 CanLII 184 (SCC) at para 21.

[5] *Sherman*, *supra* note 3.

prevent it, and; 3) as a matter of proportionality, the benefits of the order outweigh its negative effects.[6]

9. The rationale for open courts is deeply established and often repeated. As the Supreme Court of Canada stated in *Vancouver Sun (Re):*

> "Public access to the courts guarantees the integrity of judicial processes by demonstrating "that justice is administered in a non-arbitrary manner, according to the rule of law". Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public's understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts."[7]

10. In the seminal Supreme Court of Canada decision *Edmonton Journal v Alberta (Attorney General)*, Justice Wilson recognized the public interest in open courts as rooted in four primary concerns: (a) maintaining an effective evidentiary process; (b) ensuring the judiciary and juries behave fairly and are sensitive to the values espoused by the society; (c) promoting a shared sense that our courts operate with integrity and dispense justice; and (d) providing an ongoing opportunity for the community to learn how the justice system operates and how the law being applied daily in the courts affects them.[8]

11. The importance of promoting confidence in our justice system through openness in judicial proceedings is especially heightened when the proceedings involve members of marginalized communities. Canadian courts have recognized that prejudicial

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[6] *Sherman*, *supra* note 3 at para 38.
[7] 2004 SCC 43 at para 25 [emphasis added] [*Edmonton Journal*].
[8] 1989 CanLII 20 (SCC) at para 61.

interactions of police with Indigenous, Black and racialized people can "encourage a loss of trust in the fairness of our criminal justice system."[9]

12. The evidence-gathering function of court openness is also relevant to police use of force cases. The police engage with the public on a near daily basis. If a police officer has had prior problematic interactions with members of the public, or members of vulnerable communities, this may be relevant to the discipline process, the court process, mediation, or other resolution attempts.[10] To the extent that police officers have a history of use of force, publicity with respect to the applicable court matter may motivate members of the public to come forward and, for example, file a complaint to the appropriate oversight body, or participate in an inquest. Indeed, transparency may help prevent future incidents of use of lethal force.

B. CONFIDENTIALITY UNDER SIU ACT DOES NOT APPLY TO COURT PROCEEDINGS

13. The fact that the Special Investigations Unit ("**SIU**") does not identify officers it investigates as a result of provisions of the *SIU Act*[11] is not relevant to whether sealing orders and publication bans should be placed on the names of defendant officers in a court proceeding.

14. Without agreeing that the legislative choice in the *SIU Act* is correct, an SIU investigation is not an adjudicative hearing. The decision to anonymize officers when

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[9] *R v Le,* 2019 SCC 34 at para 95 [*Le*]. See also *R v Spence*, 2005 SCC 71 at para 5.
[10] *Canadian Broadcasting Corporation v Canada*, 2007 CarswellOnt 9352, [2007] OJ No 5436 (SCJ), at para 25 [*CBC v Canada*].
[11] *SIU Act, supra* note 2 at ss. 33 – 34 (and in particular s. 34(3)(1)).

criminal charges have not been laid in an investigative setting is not relevant where the open court principle applies.

15. In *Ontario (Public Safety and Security) v Criminal Lawyers' Association* ("***CLA***"),[12] the Supreme Court of Canada drew a distinction between government records (such as law enforcement investigative records) and adjudicative records of courts and tribunals, holding that only the latter are subject to the open court principle. [13]

16. Subsequently, the Toronto Star brought a constitutional challenge to the application of *Freedom of Information and Protection of Privacy Act* ("***FIPPA***") to Ontario adjudicative tribunals. [14] The issue raised was that the personal privacy exemption from disclosure under *FIPPA* meant that the public could not access tribunal adjudicative records, in contravention of the open court principle. The Attorney General of Ontario argued that the open court principle did not apply to tribunal records, and that instead the test from CLA (putting the onus on a requester to demonstrate the basis for access[15]) applied to them as government records.

17. In the Toronto Star case, this Court agreed that the open court principle – and the presumption of openness in the then *Dagenais*/*Mentuck* test – applies to tribunal adjudicative records and reiterated the distinction between government investigative records and adjudicative records:

> [60] …nothing in *CLA* contradicts the "general principle that the open court principle trumps desires for anonymity". The key to unravelling this apparent contradiction is in the type of information being requested. As McLachlin C.J.C. described it in *CLA*, the Criminal Lawyers Association applied to

[12] 2010 SCC 23 [*CLA*].
[13] *CLA*, *supra* note 12 at para 40.
[14] *Toronto Star v. AG Ontario*, 2018 ONSC 2586 [*Toronto Star*].
[15] *CLA*, *supra* note 12 at para 31.

> obtain "a 318-page report looking into alleged police misconduct" which contained "records prepared in the course of law enforcement investigations". The request was denied by the Minister of Public Safety and Security partly because the content of the document contained solicitor-client privileged material and partly because it was a law enforcement investigatory record.
>
> [61] The *CLA* case, in other words, did not deal with Adjudicative Records such as those in issue here; and since the documents were investigative and were not part of a record before an adjudicative tribunal, the open court principle did not apply [...]
>
> [63] Adjudicative Records, on the other hand, like court records, are not only entirely compatible with transparency but require it for the sake of the integrity of the administration of justice. The rationale for maintaining confidentiality over records accumulated by law enforcement and forensic examiners at the investigation stage of a complaint or dispute does not, absent some special circumstance, continue into the open hearing or post-hearing stage of proceedings. Thus, while access to government business records, including the content of personnel and investigative audits, is granted or withheld subject to the *CLA* test of "meaningful public discussion", the question of access to documents filed in the Adjudicative Record before administrative tribunals must be answered in accordance with the *Charter*, including s. 2(*b*) and the open court principle.[16]

18. In the case at hand, it is the openness of a court proceeding that is at issue. In the same way that a criminal charge against an officer - the commencement of a court proceeding - results in their public identification under the *SIU Act*,[17] it is well-established that, barring the rare exception, in matters before the courts, court openness takes precedence.

19. The distinction between adjudicative and investigative records was recognized in Justice Tulloch's 2017 *Report of the Independent Police Oversight Review*:

> "When police officers are charged by the SIU they formally become accused persons before the court […] The court system in Canada has always recognized the "open court principle" as a hallmark of a democratic society and the cornerstone of the common law. This means that, with limited

[16] *Toronto Star, supra* note 14 at paras 60-63 [citations removed; emphasis added].
[17] *SIU Act*, *supra* note 2 at s. 33(1).

> exceptions, everything that happens in a court is public and can be published by the media. This includes the accused's name, their charges, evidence entered as exhibits, and the testimony heard in court."[18]

20. It is worth noting that adjudicative disciplinary hearings conducted by police services under the *Police Services Act*,[19] are presumptively open to the public, as required under section 9(1) of the *Statutory Powers Procedure Act*.[20]

C. DM/SHERMAN FIRST BRANCH: SPECULATIVE HARM DOES NOT PASS THE THRESHOLD

21. While physical safety has been recognized as an important public interest that can justify a discretionary order restricting openness, the jurisprudence is clear that mere speculation of a threat to physical safety is not enough.[21] An applicant asking for such a discretionary order must show that the risk is "real and substantial" and that it is "well grounded" in evidence.[22]

22. While it is possible for a court to find harm on the basis of logical inferences, *Sherman* emphasizes that "an inference must still be grounded in objective circumstantial facts that reasonably allow the finding to be made inferentially."[23] The process of drawing inferences from evidence is not the same as speculating. If there is an evidentiary gap between the primary fact and the inference sought, the inference cannot be drawn.[24]

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[18] The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review* (Ontario: Queen's Printer for Ontario, 2017) at pp. 122 - 123 [emphasis added].
[19] RSO 1990, c P.15 at s. 83(1).
[20] RSO 1990, c S.22 at s. 9(1).
[21] *Sherman, supra* note 3 at para 97.
[22] *Mentuck*, *supra* note 3 at para 34.
[23] *Sherman, supra* note 3 at para 97.
[24] *R v Carter*, 2015 ONCA 287 at para 57.

23. Where an applicant raises physical safety concerns, it is not enough to merely assert that a discretionary order restricting openness will make them feel safer. This Court has held that it is inappropriate for a court to simply err on the side of caution when a restriction on court openness is involved: "the test, of course, is not whether it is safer to impose a publication ban. If that were the test, then publication bans would routinely be granted. The test is whether it is necessary to do so."[25]

24. Earlier this year, the British Columbia Court of Appeal considered the connection between publication of names and the identification of home addresses under the first branch of the *DM*/*Sherman* test in the context of a civil forfeiture claim where applicants were concerned with their physical safety due to retributive gang violence.[26] The lower court granted a publication ban only on the addresses, finding that, while the public knowledge of the simple fact that defendants were involved in the litigation may have contributed to the risk they faced, "the analysis required by *Sherman Estate* does not require the elimination of *all* potential risk to the public interest to be protected."[27] The lower court found that the risk to the defendants' physical safety arose "from the disclosure of the defendants' place of residence, and not from revealing the defendants were involved in civil forfeiture proceedings."[28]

25. On appeal, the defendants argued, among other things, that the lower court judge erred and relied on evidence that a third party can determine a person's address using

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[25] *R v Kossyrine & Vorobiov*, 2011 ONSC 6081 at para 16 [emphasis added]. See also: *CBC v Canada*, *supra* note 10 at para 30.
[26] *Eghtesad v British Columbia (Director of Civil Forfeiture)*, 2024 BCCA 32 [*Eghtesad*].
[27] *Eghtesad*, *ibid*, at para 27.
[28] Eghtesad, *supra* note 26 at para 29.

their name through a provincial database.[29] The British Columbia Court of Appeal rejected this argument and dismissed the appeal.[30]

26. In the specific context of civil trials concerning allegations of police officer misconduct, the Supreme Court of California in the United States, for example, has found that "vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure of officer names."[31]

27. Similarly, this Court has rejected an application for an anonymity order and publication ban in the context of a coroner's inquest, involving allegations of police officer misconduct, holding that despite the alleged "crude threats and vitriolic rants" made against the officer on social media, "there [was] no evidence of any specific threats or acts of intimidation" against the officer.[32]

D. DM/SHERMAN THIRD BRANCH: SIGNIFICANT NEGATIVE IMPACTS

i. The public interest in police accountability

28. This case is not a purely private dispute. It engages an unequivocally important public interest in addition to court openness: holding police accountable for their actions. This public interest is especially heightened when police are alleged to have used lethal force against vulnerable members of marginalized communities.

29. Police officers "hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from

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[29] *Eghtesad*, *supra* note 26 at paras 33 – 36.
[30] *Eghtesad*, *supra* note 26 at paras 35 – 36.
[31] *Long Beach Police Officers Assn. v City of Long Beach*, 59 Cal.4th 59 (Cal. 2014) at p. 11 [*Long Beach Police*]. See also: *CBS, Inc. v Block*, 42 Cal.3d 646 (1986) at p. 652.
[32] *Doe v Baker*, 2018 ONSC 6240, at paras 23 and 29.

insignificant."[33] A police officer "possesses both the authority and the ability to exercise force. Misuse of [this] authority can result in significant deprivation of constitutional rights and personal freedoms, not to mention bodily injury and financial loss."[34]

30. Systems of police accountability and transparency are crucial for placing limits on the broad powers wielded by the police and are a reflection of the health of Canada's democracy. The idea that "the police are a law unto themselves is unacceptable in a democracy that prides itself on restraint in the use of coercive state-sponsored force and on accountability for the use of such powers."[35]

31. In *Canadian Broadcasting Corporation v Ferrier*, the Court of Appeal for Ontario emphasized the importance of transparency when it comes to police discipline, noting that the purpose of the statutory framework imposed by the *Police Services Act* is to "increase the transparency of and public accountability for the way in which the conduct of the police is dealt with."[36] The Court of Appeal for Ontario also cited the Honourable Patrick J. LeSage's 2005 *Report on the Police Complaints System in Ontario*, where he suggests that greater transparency of disciplinary hearings leads to a greater public understanding and acceptance of the system.[37]

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[33] *Long Beach Police*, *supra* note 31 at p. 10.
[34] *Ibid*.
[35] Kent Roach, *The Overview: Four Models of Police-Government Relationships* (Ipperwash Inquiry Symposium on Government/Police Relations, Osgoode Hall Law School, York University, 29 June 2004), Ontario, Archives of Ontario (RG 18-214-3-48) at p. 3.
[36] 2019 ONCA 1025 at para 72.
[37] *Ibid*.

ii. Context of allegations of police brutality towards marginalized communities

32. There is a heighted need for transparency and accountability in situations involving allegations of police misconduct towards vulnerable members of marginalized communities – such as Indigenous, Black and racialized people suffering from mental health issues. This heightened need is based on the long history of prejudicial interactions between the police and members of racialized communities and a long-standing criticism of police responses to mental health crises.

33. In *R v Grant*, the Supreme Court of Canada cautioned that, "[a] growing body of evidence and opinion suggests that visible minorities and marginalized individuals are at particular risk from unjustified 'low visibility' police interventions in their lives."[38]

34. The Supreme Court of Canada has accepted recent studies that demonstrate that Indigenous, Black and racialized people are treated differently by the police and the criminal justice system and that such differential treatment encourages a loss of trust in the justice system.[39] For example, the Supreme Court acknowledged a 2018 report by the Ontario Human Rights Commission which found that between 2013 and 2017, a Black person in Toronto was nearly 20 times more likely than a White person to be involved in a police shooting that resulted in civilian death.[40] Indeed, Canadian courts have recently

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[38] *R v Grant,* 2009 SCC 32 at para 154.
[39] *Le, supra* note 9 at paras 89 – 97.
[40] *Ibid.,* at para 91, citing: Ontario Human Rights Commission, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (Ontario Human Rights Commission, 2018).

recognized that overt and systemic racism continues to be a reality in Canadian society, as reflected "most notably in the criminal justice system."[41]

35. In their interactions with the police, disadvantaged groups with mental health issues face a "double whammy as one potentially prejudicial outcome is layered upon another to further increase existing discriminatory barriers."[42] This double whammy amplifies the need for proper accountability and transparency in this case.

iii. Naming names is pivotal to police accountability and transparency

36. Naming names of parties involved in court proceedings is an important part of accountability and transparency because it allows members of the public to meaningfully "see justice to be done."[43] Seeing justice being done is especially important for marginalized members of the community, such as racialized individuals and individuals suffering from mental health issues, who do not have inherent confidence and trust in the police or the justice system due to the inequalities they face. The Supreme Court of Canada has recognized that the over-policing of racialized individuals not only takes a toll on racialized communities' physical and mental health, but also encourages a loss of trust in the fairness of our criminal justice system.[44]

37. Establishing trust in the judicial system for marginalized communities and encouraging everyone's participation in the justice system requires transparency, including disclosure of the names of litigants. A perception that courts are protecting the

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[41] *R v Morris*, 2021 ONCA 680 at para 1.
[42] *C.M. v York Regional Police*, 2019 ONSC 7220 at para 55.
[43] *The King v Sussex Justices*, *Ex parte McCarthy*, [1924] 1 K.B. 256, at p. 259; *Edmonton Journal*, *supra* note 7 at para 20.
[44] *Le*, *supra* note 9 at para 95.

identities of officers in lethal force cases risks seriously undermining public confidence in our justice system. Further, this Court has recognized the important role that names of parties play in engaging the public and encouraging informed debate.[45]

38. In a case involving allegations of police misconduct, the names of police officers are not mere "slivers of information."[46] Instead, names of police officers in this case are important for meaningful public discussion. Recently, this Court has found that:

> "[S]erious allegations of government wrongdoing and constitutional violations must be litigated in public, with as much public and media access to the central documents of [the] case as possible. Without access to the core documents […], meaningful public discussion and criticism of state action on matters of significant public interest would be substantially impeded […] Where government misconduct is alleged, sunlight remains the best of disinfectants."[47]

39. CCLA encourages this Court to consider the precedent that will be set by its decision in this case, including the impact on shrouding the police in anonymity for future use of force cases.[48]

PART IV - ORDER REQUESTED

40. The CCLA takes no position on the disposition of this Motion. CCLA does not seek costs and respectfully requests that no costs be awarded against CCLA.

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[45] *R v Jha,* 2015 ONSC 1064 at para 21 and *R v Hosannah*, 2015 ONSC 380 at para 37: "a trial without the name of the accused would be disembodied and less likely to be reported and the subject of informed debate." See also Carole Lucock & Michael Yeo, "Naming Names: The Pseudonym in the Name of the Law" (2006) 3:1 U Ottawa L & Tech J 53 at 67.
[46] *R v Sammy,* 2002 CarswellOnt 2383, [2002] OJ No 2912 at para 17.
[47] *Muslim Association of Canada v Attorney General of Canada*, 2023 ONSC 1923 at paras 58 – 59.
[48] *R v O.N.E,* 2001 SCC 77 at para 14.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of March, 2024.

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SCHEDULE "A"

LIST OF AUTHORITIES

JURISPRUDENCE

1. *Attorney General of Nova Scotia v MacIntyre*, 1982 CanLII 14 (SCC)
2. *Canadian Broadcasting Corporation v Canada*, 2007 CarswellOnt 9352, [2007] OJ No 5436 (SCJ)
3. *Canadian Broadcasting Corporation v Ferrier,* 2019 ONCA 1025
4. *Canadian Broadcasting Corp. v New Brunswick (Attorney General),* 1996 CanLII 184 (SCC)
5. *CBS, Inc. v Block*, 42 Cal.3d 646 (1986)
6. *C.M. v York Regional Police*, 2019 ONSC 7220
7. *Dagenais v Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC)
8. *Doe v Baker*, 2018 ONSC 6240
9. *Edmonton Journal v Alberta (Attorney General),* 1989 CanLII 20 (SCC)
10. *Eghtesad v British Columbia (Director of Civil Forfeiture)*, 2024 BCCA 32
11. *Long Beach Police Officers Assn. v City of Long Beach*, 59 Cal.4th 59 (Cal. 2014)
12. *Muslim Association of Canada v Attorney General of Canada*, 2023 ONSC 1923
13. *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23
14. *R v Carter*, 2015 ONCA 287
15. *R v Grant,* 2009 SCC 32
16. *R v Hosannah*, 2015 ONSC 380
17. *R v Jha,* 2015 ONSC 1064
18. *R v Kossyrine & Vorobiov*, 2011 ONSC 6081

19. *R v Le,* 2019 SCC 34

20. *R v Mentuck*, 2001 SCC 76

21. *R v Morris*, 2021 ONCA 680

22. *R v O.N.E,* 2001 SCC 77

23. *R v Sammy*, 2002 CarswellOnt 2383, [2002] OJ No 2912

24. *R v Spence*, 2005 SCC 71

25. *Sherman Estate v Donovan*, 2021 SCC 25

26. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41

27. *The King v Sussex Justices, Ex parte McCarthy*, [1924] 1 K.B. 256

28. *Toronto Star Newspapers Ltd. v Ontario (Attorney General),* 2018 ONSC 2586

29. *Vancouver Sun (Re),* 2004 SCC 43

SECONDARY SOURCES

30. Carole Lucock & Michael Yeo, "Naming Names: The Pseudonym in the Name of the Law" (2006) 3:1 U Ottawa L & Tech J 53

31. Ontario Human Rights Commission, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (Ontario Human Rights Commission, 2018)

32. The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review* (Ontario: Queen's Printer for Ontario, 2017)

33. Kent Roach, *The Overview: Four Models of Police-Government Relationships* (Ipperwash Inquiry Symposium on Government/Police Relations, Osgoode Hall Law School, York University, 29 June 2004), Ontario, Archives of Ontario (RG 18-214-3-48)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Police Services Act,* RSO 1990, c P.15

Hearings

Hearings, procedure

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

2. *Special Investigations Unit Act, 2019,* SO 2019, c 1, Sched 5

Investigations

Public notice if charges laid against official re incident

33 (1) Subject to subsections (2) and (3), if an investigation under section 15 results in charges being laid against an official, the SIU Director shall, as soon as practicable, give public notice setting out the following, but no other, information:

1. The official's name.
2. The charges laid and on what date.
3. Information respecting the official's first scheduled court appearance respecting the charges, if known.
4. Any other information that may be prescribed.

Omission of official's name

(2) If the public release of the official's name may result in the identity of a person who reported that he or she was sexually assaulted being revealed in connection with the sexual assault, the SIU Director may omit the official's name from the notice, subject to prior consultation with the person.

Other omissions

(3) If the regulations so provide, the SIU Director shall, in the prescribed circumstances, omit the information specified by the regulations from a notice.

Public notice if no charges laid against official re incident

34 (1) If an investigation under section 15 does not result in charges being laid against an official, the SIU Director shall publish a report on the website of the Special Investigations Unit containing the following information:

1. The reasons why the investigation was thought to be authorized under section 15.
2. A detailed narrative of the events leading to the investigation.
3. A summary of the investigative process, including a timeline noting any delays.
4. A summary of the relevant evidence considered, subject to subsection (2).
5. Any relevant video, audio or photographic evidence, de-identified to the extent possible, subject to subsection (2).
6. The reasons for not laying a charge against the official.
7. Any other information that may be prescribed.

Omission and reasons

(2) The SIU Director may omit from the report any information required to be provided under paragraph 4 or 5 of subsection (1), if the SIU Director is of the opinion that a person's privacy interest in not having the information published clearly outweighs the public interest in having the information published, and includes in the report the reasons for the omission.

Excluded information

(3) The SIU Director shall ensure that the following information is not included in the report:

1. The name of, and any information identifying, a subject official, witness official, civilian witness or affected person.
2. Information that may result in the identity of a person who reported that he or she was sexually assaulted being revealed in connection with the sexual assault.
3. Information that, in the opinion of the SIU Director, could lead to a risk of serious harm to a person.
4. Information that discloses investigative techniques or procedures.
5. Information, the release of which is prohibited or restricted by law.
6. Any other information that may be prescribed.

Report copies

(4) The SIU Director shall give a copy of the report to each of the following persons:

1. The affected person or, if he or she is deceased, to his or her next of kin.
2. Each subject official in the investigation.
3. Each designated authority of a subject official or witness official in the investigation.
4. The Minister.

Same, minor or incapable person

(5) If a person referred to in paragraph 1 of subsection (4) is a minor or is incapable as defined in the *Substitute Decisions Act, 1992*, the copy shall be given to,

(a) the person's parent or guardian, in the case of a minor; or

(b) in the case of an incapable person who is not a minor, the incapable person and his or her substitute decision maker under that Act.

No publication

(6) Despite subsection (1), if the incident investigated under section 15 was the reported sexual assault of the affected person, and the SIU Director is of the opinion that the person's privacy interests in not having the report published clearly outweighs the public interest in having the report published, the SIU Director may decide not to publish the report, subject to prior consultation with the person.

3. *Statutory Powers Procedure Act,* RSO 1990, c S.22

Hearings to be public; maintenance of order

Hearings to be public, exceptions

9 (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the

> public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

RENA AHMAD, in her personal capacity and as Estate Trustee on behalf of the Estate of Ejaz Choudry, Deceased et al. Plaintiffs/Respondents	-and-	PEEL REGIONAL POLICE SERVICES BOARD et al. Defendants/Moving Parties	Court File No. CV-22-00682804-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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