

**ANNUAL REPORT
ON
THE LAW ENFORCEMENT
JUSTIFICATION PROVISIONS**

**PURSUANT TO SECTION 25.3
OF
THE *CRIMINAL CODE* 2002**

February 1, 2003 to January 31, 2004

**Prepared by
The Ontario Ministry of Community
Safety and Correctional Services**

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1. INTRODUCTION

Sections 25.1-25.4 of the *Criminal Code* provide a limited justification for otherwise illegal acts and omissions committed by law enforcement officers (and those acting under their direction) while investigating an offence under federal law, enforcing a federal law, or investigating criminal activity.

The law enforcement justification provisions also establish a system of accountability under which the competent authority, the Minister of Community Safety and Correctional Services, is required to make public an annual report on the use of specific portions of the law enforcement justification provisions by police services in Ontario.

In particular, the Minister must report:

- how many times a senior official made temporary designations under the provisions (subsection 25.1(6));
- how many times a senior official authorized a public officer to commit an act or omission that would otherwise constitute an offence, and that is likely to result in loss of or serious damage to property, or directed an agent to commit an act or omission that would otherwise constitute an offence (paragraph 25.1(9)(a));
- how many times a public officer proceeded without such an authorization from a senior official, due to exigent circumstances (paragraph 25.1 (9)(b));
- the nature of the conduct being investigated in these instances (paragraph 25.3(1)(d)); and
- the types of justified acts or omissions, which would otherwise constitute offences, that were committed in these instances (paragraph 25.3(1)(e)).

2. OVERVIEW OF THE LAW ENFORCEMENT JUSTIFICATION REGIME

In April 1999, the Supreme Court of Canada's judgment in *R. v. Campbell and Shirose* declared that under the common law, police were not immune from criminal liability for criminal acts they committed during an investigation. The Court also stated that, "if some form of public interest immunity is to be extended to the police...it should be left to Parliament to delineate the nature and scope of the immunity and the circumstances in which it is available."

On December 18, 2001, Bill C-24, *An Act to Amend the Criminal Code (Organized Crime and Law Enforcement)*, received Royal Assent. While most portions of Bill C-24 came into force on January 7, 2002, the law enforcement justification provisions, set out in sections 25.1-25.4 of the *Criminal Code*, were proclaimed on February 1, 2002, to allow time for the training and preparation of law enforcement personnel.

The law enforcement justification initiative provides a circumscribed justification for otherwise illegal acts and omissions committed by law enforcement officers (and others acting under their direction) in the course of investigating an offence under federal law, enforcing a federal law, or investigating criminal activity. The initiative also establishes a system of accountability.

The law enforcement justification provisions provide a designated public officer with a defence in law to the extent that his or her conduct is reasonable and proportional under the circumstances. Certain types of conduct, such as intentional causing of bodily harm, violation of the sexual integrity of a person and wilful attempt to obstruct, pervert or defeat the course of justice, are excluded from the justification provisions.

An essential element of the law enforcement justification provisions is that they apply to designated public officers only. In the case of police services in Ontario, the Minister of Community Safety and Correctional Services is the competent authority for making designations.

The Minister is responsible for designating a senior official who, in turn, advises the Minister on public officer designations. Under ordinary circumstances, only the Minister may issue public officer designations to members of Ontario police services; however, in exigent circumstances, the senior official may make temporary public officer designations. Temporary designations are valid for a period of 48 hours or less and are made only if the senior official believes that due to exigent circumstances, it is not feasible for the Minister to designate a public officer and under the circumstances, the public officer would be justified in committing an act or omission that would otherwise constitute an offence.

A public officer must receive a written authorization from the senior official for acts or omissions that would otherwise constitute an offence and that would likely result in loss of, or serious damage to, property, or for directing another person to commit an act or omission that would otherwise constitute an offence.

A public officer may proceed without a written authorization from a senior official for acts or omissions that would otherwise constitute an offence and that would likely result in loss of or serious damage to property, or for directing another person to commit an act or omission that would otherwise constitute an offence, only under very limited circumstances. He or she must believe, on reasonable grounds, that the grounds for obtaining an authorization exist, but it is not feasible under the circumstances to obtain the authorization, and that the act or omission is necessary to:

- preserve the life or safety of a person;
- avoid compromising the identity of a public officer acting in an undercover capacity, a confidential informant, or a person acting covertly under the direction and control of a public officer; or
- prevent the imminent loss or destruction of evidence of an indictable offence.

3. STATISTICS

A. Temporary Designations

Paragraphs 25.3(1)(a), (d) and (e) of the *Criminal Code* require the following information to be made public:

- The number of temporary public officer designations made by the senior official.
- The nature of the conduct being investigated in these cases.
- The nature of the justified acts or omissions, which would otherwise constitute offences, that were committed by the designated public officer.

From February 1, 2003 to January 31, 2004, police services in Ontario reported one temporary designation of a public officer. In this case, the nature of the conduct being investigated was a homicide, however the officer did not commit any justified acts or omissions.

B. Authorizations for Specific Acts and Omissions

Paragraphs 25.3(1)(b), (d) and (e) of the *Criminal Code* require the following information to be made public:

- The number of cases in which the senior official:
 - authorized a public officer to commit a justified act or omission that would otherwise constitute an offence and that would likely result in loss of or serious damage to property, or
 - authorized a public officer to direct another person to commit a justified act or omission that would otherwise constitute an offence.
- The nature of the conduct being investigated in these cases.
- The nature of the justified acts or omissions, which would otherwise constitute offences, that were committed.

For the period February 1, 2003 to January 31, 2004 police services in Ontario granted authorization on two occasions to public officers to commit a justified act or omission that would otherwise constitute an offence. In both cases, the nature of the conduct under investigation was Criminal Code Part VII Offences. Also in both cases, the committed justified act was “found in a Gaming House.”

C. Instances of Public Officers Proceeding Without Senior Official Authorization

Paragraphs 25.3(1)(c), (d) and (e) of the *Criminal Code* require the following information to be made public:

- The number of times that public officers proceeded without the senior official's authorization, based on reasonable grounds to believe that the grounds for obtaining an authorization existed and that the justified act or omission that would otherwise constitute an offence was necessary due to exigent circumstances.
- The nature of the conduct being investigated when public officers proceeded in this manner.
- The nature of the justified acts or omissions, which would otherwise constitute offences, that were committed when the public officers proceeded in this manner.

For the period February 1, 2003 to January 31, 2004, police services in Ontario reported that no Public Officer proceeded without a Senior Official's written authorization.

IV. CONCLUSION

The Ministry of Community Safety and Correctional Services reports that for the period February 1, 2003 to January 31, 2004:

- one temporary Public Officer designation was made by any police service in Ontario for the investigation of a homicide. No justified omissions or committed acts occurred.
- two Senior Official authorizations occurred allowing a public officer to commit a justified act or omission that would otherwise constitute an offence and that would likely result in loss of or serious damage to property, or authorized a public officer to direct another person to commit a justified act or omission that would otherwise constitute an offence. Both authorizations were for the investigation of Part VII offences under the Criminal Code and both justified acts were "found in a gaming house."
- no Public Officer proceeded without the authorization of a Senior Official.

The ministry continues to develop tools and processes to assist police services in implementing the provisions of the Law Enforcement Justification program, and to monitor the program for its effectiveness.