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REPORT PREPARED BY
THE HONOURABLE GEORGE FERGUSON, Q.C.

ON THE

REVIEW AND RECOMMENDATIONS CONCERNING VARIOUS ASPECTS OF POLICE MISCONDUCT

VOLUME I

COMMISSIONED BY:

JULIAN FANTINO
CHIEF OF POLICE
TORONTO POLICE SERVICE

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VOLUME I

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TERMS OF REFERENCE

PART I: DISCLOSURE OF POLICE MISCONDUCT

a. To review and provide your analysis of the current law in Ontario as it pertains to when, in what manner and under what circumstances does the Police Service have an obligation to bring to the attention of the Crown, alleged or proven acts of misconduct of a police officer who will be a witness or was otherwise involved in an investigation that has led to a criminal proceeding.

b. To compare the law in Ontario as described in paragraph (a) above with the law in other common law jurisdictions, especially the United States, England, Australia and New Zealand.

c. To make recommendations as to when, in what manner and under what circumstances (having regard to your findings with respect to paragraphs (a) and (b) above), misconduct of a police officer should:

   i. be brought to the attention of the Crown by the police, and
   ii. be disclosed by the Crown to the defence.

d. To make recommendations as to the implications of *R. v. O'Connor* and the privacy interests of police officers on paragraphs (a) & (b) above.

e. To make recommendations as to what, if any, legislative or statutory measures could be made to effect the disclosure of police misconduct as described in paragraphs (a) & (b) above, by the police to the Crown, and by the Crown to the defence in a fair and efficient manner having regard to the right of the accused to a fair trial as well as the privacy interests of the police officer whose misconduct may be the subject of disclosure.

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misinterpretation of the law of disclosure or because of a policy that takes erring on the side of disclosing to the extreme, I cannot say. The point is this: not everything that is disclosed by the police to the Crown must then be unilaterally turned over to the defence. Nothing could be further from the truth. Before disclosing anything to the defence, the Crown must comply with its *Stinchcombe* obligation. That obligation does not merely involve a wholesale turning over of the police work product, but rather a studied analysis of all material to determine if it is relevant to the defence and therefore requires disclosure within the meaning of *Stinchcombe*.[17] Unless this Crown responsibility is conducted with diligence, the recommendations that follow will be largely meaningless and may result in injustice to the accused or to the privacy interests of the police. The importance of the Crown's "gate-keeper" role, to a fair trial, especially regarding the disclosure of personal information, cannot be overemphasized. A less than diligent exercise of this function may well lead to a deterioration of trust by the police in the Crown and a consequent reluctance to hand over relevant records, a failure by the Crown to hand over relevant records to the defence or the unnecessary and potentially harmful disclosure of personal information.

Defence counsel on the other hand, must be fair and realistic in their request for employment information about an involved or witness officer. "Shotgun" or "fishing expeditions" only serve to increase delays and foster an atmosphere of mistrust among all parties.

I turn now to the issue of how and which police records should be disclosed.

As indicated above, the subpoena/disclosure application process employed by defence counsel has taken the parties into the *O'Connor* procedure. The outcomes have been almost universally unsuccessful for the defence and have been judicially described as "fishing expeditions". The procedure has also served to seriously delay or prolong criminal trials. Yet the right of the defence to relevant employment records of a witness or otherwise involved police officer, particularly of the misconduct or "discipline" variety, should be obvious to all. The question is how to accomplish this without resorting to the extended exercise in futility that currently governs the issue.

Toronto is not the only jurisdiction to grapple with this issue. Similar problems have existed in the United States, England, Australia and New Zealand for some time. A variety of measures

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[17] *Supra* note 3.

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RECOMMENDATIONS

1. That, upon written request from the Crown Attorney to the Chief of Police for information regarding acts of misconduct by a member of the Service who may be a witness or who was otherwise involved in a case before the court, the Chief of Police or his designate shall supply the Crown Attorney with the following information:
    a. Any conviction or finding of guilty under the *Canadian Criminal Code* or under the *Controlled Drugs and Substances Act* for which a pardon has not been granted.
    b. Any outstanding charges under the *Canadian Criminal Code* or the *Controlled Drugs and Substances Act.*
    c. Any conviction or finding of guilt under any other federal or provincial statute.
    d. Any finding of guilt for misconduct after a hearing under the *Police Services Act* or its predecessor *Act.*
    e. Any current charge of misconduct under the *Police Services Act* for which a Notice of Hearing has been issued.

2. Applications or subpoenas for personnel, employment, complaint, Internal Affairs, or other related information will be contested and will not be produced, unless ordered to do so by a court of competent jurisdiction.

3. Any member whose records are to be produced to the Crown pursuant to Recommendation #1 above or whose records are the subject of an application or subpoena pursuant to Recommendation #2 above shall be notified in writing.

4. Any information to be produced to the Crown pursuant to Recommendation #1 above, shall be obtained through the Toronto Police Service, Professional Standards Information System (P.S.I.S.).