

# The Law of POLICING

Navigating the Changing Landscape of  
Oversight, Discipline & Civil Liability

## Chairs:



**Julian Falconer**  
Partner  
Falconer Charney LLP



**Brian Gover**  
Partner  
Stockwoods LLP

## With the participation of:

**Gerry McNeilly**  
Independent Police Review  
Director

**Ian Scott**  
Director  
Special Investigations Unit

## Learn about these and other critical issues:

- The *McNeil* case: how is it playing out on the ground?
- Managing the risks of civil liability of police forces to the public and to employees
- A six-month update on Ontario's new Office of the Independent Police Review Director
- Hot issues at the SIU
- Best practices for conducting police internal investigations and much more!

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This conference has accreditation  
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Please see inside for details.



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# SCRUTINY OF POLICE FORCES HAS NEVER BEEN MORE INTENSE

These are very turbulent times for police forces, police associations and their advisors. **Governing legislation is being amended** in several provinces, and police discipline at the RCMP is under scrutiny. The Supreme Court of Canada has mandated **disclosure of police disciplinary records** to accused persons. The Braidwood Inquiry continues to make front-page news as it investigates the use of tasers at Vancouver Airport and elsewhere. And police forces are increasingly the target of **civil litigation** both by members of the public and their own employees, even where officers are represented by an association.

The Canadian Institute's all-new conference on **The Law of Policing** is designed to give you two days of up-to-date substantive law as well as **practical advice** on implementing it in your organization. To name just a few sessions:

- **Gerry McNeilly**, Ontario's new Independent Police Review Director, will report on his office's first six months of operation
- Ontario SIU director Ian Scott and lawyer Joseph Markson will face off on hot topics at the SIU, including counsel involvement in the preparation of police notes
- You'll enjoy stimulating panels on implementing the controversial *McNeil* case, adjudication, internal investigations, use of force and other pressing topics
- **Brian Gover** will bring you up to date on important recent cases and issues

And much more!

Sessions are designed to provide **balanced** information from a **variety of perspectives**.

**PLUS**, if you're involved in police discipline, you won't want to miss the pre-conference workshop on the **Fundamentals of Administrative Law**, led by Nini Jones.

Don't miss this outstanding event. Register today by using our convenient online registration system, [www.CanadianInstitute.com/Police](http://www.CanadianInstitute.com/Police), by calling 1-877-927-7936 or faxing the registration form to 1-877-927-1563.

We look forward to seeing you there.

## Who Should Attend

- Police Chiefs and Superintendents and their Counsel
- Professional Standards Directors and Investigators
- Representatives of Police Associations and their Counsel
- Police Discipline Adjudicators
- Criminal Law Practitioners
- Police Commissioners
- Government Policy Drafters
- Crown Attorneys

## Accreditation:



This Conference has been accredited by the Law Society of Upper Canada toward the professional development requirement for certification.

Conference:	Civil Litigation	10.5 hours
	Criminal Law	2 hours
	Labour Law	3 hours
Workshop A:	Civil Litigation	2.5 hours

You may apply 11.25 hours for the conference and 3 hours for the workshop toward your continuing legal education requirements in **British Columbia**.

The **Barreau du Québec** automatically recognizes the same number of hours for this training activity, the latter having been accredited by another law society subject to MCLE.



The Law Society of Saskatchewan has approved this conference for 1 Loss Prevention Credit under the outgoing Loss Prevention Credit Program (to be applied to the reporting period July 1, 2007 to June 30, 2010). It has also been approved by the Law Society as an Accredited CPD Activity that qualifies for 11 CPD Hours under the new CPD Program (to be applied to the reporting period January 1, 2010 to December 31, 2012).

## FACULTY LIST

### CO-CHAIRS:

**Julian Falconer**  
Partner, Falconer Charney LLP

**Brian Gover**  
Partner, Stockwoods LLP

### SPEAKERS:

**Harry Black, Q.C.**  
Harry G. Black Q.C. Professional Corporation

**Superintendent Jean Michel Blais**  
Director, Appropriate Officer Representative Directorate, RCMP

Margaret E. Beare, PhD  
Chair of Sociology, York University

**Bonnie Bokenfohr**  
Director, Legal Services and Risk Management Branch  
Edmonton Police Service

**Lynda A. Bordeleau**  
Partner  
Perley-Robertson, Hill & McDougall LLP, Ottawa

**Peter Brauti**  
Partner, Brauti Thorning Zibarras LLP

**Susanne Burkhardt**  
Director of Development & Community Engagement  
Scadding Court Community Centre

**Tony Corrie**  
Staff Supt., Central Field Command  
Toronto Police Service

**George Cowley**  
Director of Legal Services (ret'd)  
Toronto Police Service

**J. Thomas Curry**  
Partner, Lenczner Slaght Royce Smith Griffin LLP

**Mike Hamel**  
Former Acting Inspector, Internal Affairs  
Special Task Force, Toronto Police Service

**Caroline V. (Nini) Jones**  
Partner, Paliare Roland Rosenberg Rothstein LLP

**Chris Lawrence**  
Technical Advisor  
Force Science Institute, Minnesota State University

**Joseph Markson**  
Markson MacDonald

**Eugene Mazzuca**  
Partner, Blaney McMurtry LLP

**Gerry McNeilly**  
Independent Police Review Director

**Joanne Mulcahy**  
Harry G. Black QC Professional Corporation

**Ian Scott**  
Director, Special Investigations Unit

**Owen Wigderson**  
Barrister & Solicitor

**Jill Witkin**  
Deputy Crown Attorney



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## DAY 1: Wednesday, May 5, 2010

8:00 **Registration Opens; Coffee Served** 

9:00 **Announcements and Opening Remarks**

**Co-Chair:**

**Brian Gover**  
Partner  
Stockwoods LLP

9:10 **A Review of the Top Cases and Hot-Button Issues of the Year**

**Brian Gover**  
Partner  
Stockwoods LLP

- What approach are courts taking to reviewing decisions of hearing officers/adjudicators in the police context?
- Can chiefs of police or commissioners seek judicial review of their own delegates' decisions?
- Top precedents in police discipline
- Trends in disciplining unsatisfactory performance as opposed to misconduct
- Is disability a valid defence in disciplinary matters, and if so when?
- *Charter* violations: should they always trigger disciplinary proceedings?
- Indemnification of officers facing criminal charges such as assault, the facts of which arose while on duty
- The appropriate role of in-house counsel to policing bodies
- What amounts to discreditable conduct?
- Psychological abuse as a ground for complaint
- Multiplicity of fora in the review of police conduct
  - unpacking the layers of potential liability
  - experiences with human rights tribunals

10:15 **Networking Refreshment Break** 

10:30 **Living with the Aftermath of the *McNeil* Case**

**Moderator:**

**Joseph Markson**  
Markson, McDonald

**Panelists:**

**Harry Black, Q.C.**  
Harry G. Black Q.C. Professional Corporation

**Bonnie Bokenfohr**  
Director, Legal Services and Risk Management Branch  
Edmonton Police Service

**Owen Wigderson**  
Barrister & Solicitor

**Jill Witkin**  
Deputy Crown Attorney

- How are police forces interpreting their obligations?
- What needs to be disclosed?
- An update on post-*McNeil* litigation and judicial consideration

- Can police officers with troubling disciplinary histories remain in positions that may lead to court testimony?
- How is *McNeil* affecting the prosecution and defence of criminal cases?
- Will criminal defence attorneys who also defend police in criminal or administrative proceedings perceive a conflict of interest in aggressively pursuing disciplinary records?

11:45 **Use of Force: Where does the Law Stand Today?**

**Chris Lawrence**  
Technical Advisor  
Force Science Institute, Minnesota State University

**Joanne Mulcahy**  
Harry G. Black QC Professional Corporation

- When will use of force lead to disciplinary action or worse?
  - what is allowed and what isn't?
- Tasers and the Braidwood Inquiry
- Debunking some popular misconceptions about the use of force
  - insight into the evolving science
  - the National Use of Force Framework
  - less-lethal weapons
- Recent case law

12:45 **Networking Luncheon for Speakers and Delegates** 

2:00 **Civil Liability of Police Forces to Members of the Public**

**Julian Falconer**  
Partner  
Falconer Charney LLP

**Eugene Mazzuca**  
Partner  
Blaney McMurtry LLP

- Did *Hill v. Hamilton* open any floodgates in terms of actions for negligent investigation?
  - meeting the standards in litigation
  - case law update
- Personal injury and wrongful death actions
  - care of persons in custody
- Liability for off-duty conduct
- Liability for procedural breaches in the course of investigations
- Recent case law on malicious prosecution in relation to police
- Dealing with the increasing complexity of litigation
- Risk management tips for police forces

3:15 **Networking Refreshment Break** 

3:30 **Understanding the Emerging Risk to Police Forces of Civil Liability to Employees**

**J. Thomas Curry**  
Partner  
Lenczner Slaght Royce Smith Griffin LLP

**Julian Falconer**  
Partner  
Falconer Charney LLP

- Important recent decisions that create police exceptions to the *Weber* line of cases
  - implications for police associations
- Risk management for police forces
- Vicarious liability for human rights violations

4:30 **Co-Chair's Remarks**

4:45 **Conference Adjourns**

## DAY 2: Thursday, May 6, 2010

8:30 **Coffee Served** ☞

9:00 **Announcements**

Co-Chair:

**Julian Falconer**  
Partner, Falconer Charney LLP

9:05 **Ontario's Office of the Independent Police Review Director: the First Six Months**

**Susanne Burkhardt**  
Director of Development & Community Engagement  
Scadding Court Community Centre

**Gerry McNeilly**  
Independent Police Review Director

- What are the initial statistics on complaints?
  - volume
  - types of cases
- How has the new scheme changed the complaint investigation process?
  - the new activist role of the OIPRD
  - how is it working in practice?
- Meeting the timelines set out in the *PSA*
- What new infrastructure is being set up around Ontario, and what is the cost?
  - does the office have adequate resources to meet the caseload?
  - public education about the changes
- Working with the new regs
- Developments in B.C., Manitoba and Nova Scotia: how will their approach differ and how will it be the same?
- What hasn't changed under the new regime?
- How is it working from the point of view of complainants and police?

10:30 **Networking Refreshment Break** ☞

10:45 **Conducting Police Internal Investigations**

Moderator:

**Margaret E. Beare, PhD**  
Chair of Sociology  
York University

**Tony Corrie**  
Staff Supt., Central Field Command  
Toronto Police Service

**Mike Hamel**  
Former Inspector, Internal Affairs  
Toronto Police Service

- Receiving complaints
- Classifying complaints
- Who should investigate?
- Best practices
- Interviewing under the *PSA* or comparable statutes
- Dealing fairly with a systemically high proportion of unfounded complaints
- Issues regarding statements
  - voluntariness
  - compellability
  - can you subpoena witnesses and records?
  - can you protect the identity of witnesses?
  - privacy, privilege and confidential information
- At what point does a complaint become a criminal investigation?
  - does the investigation change at that point, and if so how?
- disclosure issues where there is a potential for criminal charges
- When should an external investigation manager be brought in?
  - the UK experience
  - choosing the manager
- Recent case law

12:00 **Networking Luncheon for Speakers & Delegates** 

1:15 **Improving the Adjudicative Process**

Moderator:

**George Cowley**  
Director of Legal Services (ret'd)  
Toronto Police Service

Panelists:

**Superintendent Jean Michel Blais**  
Director, Appropriate Officer Representative Directorate  
RCMP

**Peter Brauti**  
Partner  
Brauti Thorning Zibarras LLP

**Lynda A. Bordeleau**  
Partner  
Perley-Robertson, Hill & McDougall LLP, Ottawa

- Can the process be made more efficient?
  - use of case management methods and pre-hearing conferences
  - joint submissions on penalty
  - meeting time limits
- Ensuring procedural fairness
  - will we see the introduction of procedural rules where they currently do not exist?
  - selection of adjudicators: is there structural bias where one party selects the adjudicator?

- avoiding conflicts of interest
- How does police discipline law differ from employment law?
- Is ADR becoming more prevalent?
- How do panels across the country strive for comparable penalties for comparable offences?
- What are adjudicators looking for from counsel?
- The jurisdiction of the hearing officer
- can he or she order disclosure, particulars etc?
- The courts' approaches to reviewing decisions of police hearing officers/adjudicators
- Is there ever an argument for *in camera* hearings?
- Recent case law

## 2:30 Networking Refreshment Break

## 2:45 Current Issues at Ontario's Special Investigations Unit (SIU)

**Joseph Markson**  
Markson MacDonald

**Ian Scott**  
Director  
Special Investigations Unit

- How are stakeholders responding to changes implemented in the wake of the Ontario Ombudsman's report?
  - jurisdiction
  - mandate
- The right to counsel in SIU investigations
- An update on judicial guidance on the rules governing police officers during SIU investigations
- Should police counsel be involved in preparing or editing office s' notes?
- Will Manitoba and other provinces follow the Ontario model?
- Will the Braidwood Inquiry lead to changes in the B.C. model?
- The Ontario Ombudsman's office's follow-up investigation of the SIU's progress in implementing previous recommendations

## 3:45 Co-Chair's Closing Remarks

## 4:00 Conference Concludes

## Pre-Conference Workshop

Tuesday, May 4

2 p.m. – 5 p.m. (registration opens at 1:30 p.m.)

## The Fundamentals of Administrative Law

**Caroline V. (Nini) Jones**

Partner

Paliare Roland Rosenberg Rothstein LLP

*Police are familiar with the model of criminal justice, and operate within an organizational model derived from the military. But disciplinary and other decisions fall under administrative law, not criminal law, and those involved in the process need to understand the distinctions and what they mean. In this popular Canadian Institute workshop, you'll receive an intensive introduction to the essential concepts of administrative law in just half a day.*

- The policy underlying the system of administrative justice
- The source of tribunal jurisdiction
- Natural justice / the principles of fundamental justice
- Constitutional and *Charter* issues
- Applicable procedural statutes
- Guideline, policy and rule-making authority
- Independence and bias: key legal principles
- What is a privative clause, and what is its practical implication?
- Burden of proof, standard of proof
- Judicial review
  - sources of authority
  - difference from appeals
  - remedies
  - what does "standard of review" mean?
- Leading cases in administrative law

*Nini Jones completed her LL.B. at the University of Toronto Faculty of Law, where she won various prizes, including the Dean's Key. She practices labour, employment, administrative, human rights law, as well as general civil litigation and has appeared before various administrative law tribunals, and all levels of courts. Ms. Jones represents police associations throughout Ontario in all aspects of police employment and labour relations.*

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# The Law of POLICING

Navigating the Changing Landscape of Oversight, Discipline & Civil Liability

## Top Reasons to Attend

- ✓ Hear from Ian Scott, Gerry McNeilly and others
- ✓ Get updates from leading members of the police bar
- ✓ Learn about the latest risks to police forces in civil litigation
- ✓ Benefit from balanced presentations and practical tips
- ✓ Exchange ideas with an informed and diverse audience

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