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Solicitor General  
Canada

Solliciteur général  
Canada

**ANNUAL REPORT**  
**ON THE**  
**LAW ENFORCEMENT JUSTIFICATION PROVISIONS**  
**Pursuant to Section 25.3 of the *Criminal Code***

**2002**

**Canada**



Solicitor General  
Canada

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**ANNUAL REPORT**  
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**TABLE OF CONTENT**

I — INTRODUCTION.....2

II — OVERVIEW OF THE LAW ENFORCEMENT  
JUSTIFICATION REGIME .....3

III — STATISTICS .....5

*i* – Temporary Designation

*ii* – Authorizations for Specific Acts and Omissions

*iii* – Instances of Public Officers proceeding without  
senior official authorization

IV — CONCLUSION .....7

# SOLICITOR GENERAL OF CANADA'S ANNUAL REPORT ON THE LAW ENFORCEMENT JUSTIFICATION PROVISIONS

## 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 Solicitor General of Canada, is required<sup>1</sup> to make public an annual report on the use of specific portions of the law enforcement justification provisions by members of the Royal Canadian Mounted Police.

In particular, the Solicitor General must report:

- how many times a senior official made temporary designations under the provisions;<sup>2</sup>
- 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;<sup>3</sup>
- how many times a public officer proceeded without such an authorization from a senior official, due to exigent circumstances;<sup>4</sup>
- the nature of the conduct being investigated in these instances;<sup>5</sup> and
- the types of justified acts or omissions, which would otherwise constitute offences, that were committed in these instances.<sup>6</sup>

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<sup>1</sup> *Criminal Code of Canada*, R.S.C. 1985, c. C-45, section 25.3 [hereinafter Code].

<sup>2</sup> *Ibid.*, subsection 25.1(6).

<sup>3</sup> *Ibid.*, paragraph 25.1(9)(a).

<sup>4</sup> *Ibid.*, paragraph 25.1(9)(b).

<sup>5</sup> *Ibid.*, paragraph 25.3(1)(d).

<sup>6</sup> *Ibid.*, paragraph 25.3(1)(e).

This report addresses only the RCMP's use of specific portions of the law enforcement justification provisions from February 1, 2002 – January 31, 2003.

## II. 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."<sup>7</sup>

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 only proclaimed on February 1, 2002, to allow time for the training and preparation of law enforcement personnel.

The law enforcement justification provisions respond to the judgment in *Campbell and Shirose* by providing a limited justification for otherwise illegal acts and omissions committed by law enforcement officers (and others acting under their direction) while investigating an offence under federal law, enforcing a federal law, or investigating criminal activity. They also establish a system of accountability.

An essential element of the law enforcement justification provisions is that they apply to designated public officers only.<sup>8</sup> In the case of RCMP members, the Solicitor General of Canada is the competent authority responsible for making designations.<sup>9</sup>

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 intentionally causing bodily harm, violating the sexual integrity of a person and

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<sup>7</sup> *R. v. Campbell and Shirose*, [1999] 1 S.C.R. 565.

<sup>8</sup> Code, *supra* note 1, paragraph 25.1(8)(b).

<sup>9</sup> *Ibid.*, paragraph 25.1(1)(a).

willfully attempting to obstruct, pervert or defeat the course of justice, are excluded from the justification provisions.<sup>10</sup>

The Solicitor General is responsible for designating a senior official, who then advises the Solicitor General on public officer designations.<sup>11</sup> Under ordinary circumstances, only the Solicitor General may issue public officer designations to RCMP members; however, in exigent circumstances, the senior official may make temporary public officer designations. The senior official may designate a public officer for a period of 48 hours or less if the senior official believes that due to exigent circumstances, it is not feasible for the Solicitor General 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.<sup>12</sup>

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.<sup>13</sup>

A public officer may only 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, 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.<sup>14</sup>

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<sup>10</sup> *Ibid.*, paragraph 25.1(8)(c).

<sup>11</sup> *Ibid.*, subsections 25.1(1) and 25.1(5)

<sup>12</sup> *Ibid.*, subsection 25.1(6).

<sup>13</sup> *Ibid.*, paragraph 25.1(9)(a).

<sup>14</sup> *Ibid.*, paragraph 25.1(9)(b).

### III. STATISTICS

#### III.I 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.<sup>15</sup>
- 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, 2002 to January 31, 2003, the RCMP reports that the senior official made two temporary designations.

- Both temporary designations related to an investigation into alleged offences of assault, aggravated assault, assault with a weapon, theft, causing a disturbance, obstruction, and mischief.
- Justified acts or omissions that would otherwise constitute offences under the *Radiocommunication Act*<sup>16</sup> and the *Radiocommunication Regulations*<sup>17</sup> were committed.

#### III.II 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.<sup>18</sup>
- 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.

<sup>15</sup> *Ibid.*, subsection 25.1(6).

<sup>16</sup> R.S.C. 1985, c. R-2, section 4.

<sup>17</sup> SOR/96-484, sections 44, 46 and 47.

<sup>18</sup> Code, *supra* note 1, paragraph 25.1(9)(a).

From February 1, 2002 to January 31, 2003 the RCMP reported that eleven authorizations were granted, for directing another person to commit a justified act or omission that would otherwise constitute an offence.

- In five of these instances, the RCMP was investigating the trafficking of stolen or fraudulent personal identification. Justified acts or omissions that would otherwise constitute *Immigration and Refugee Protection Act* offences relating to the possession and/or purchase of identification documents were committed.
- In five other instances, the RCMP was investigating the smuggling and sale of contraband liquor and tobacco and the production of false customs declarations. Justified acts or omissions that would otherwise constitute *Customs Act* and *Excise Act* offences relating to purchasing, possessing, or making a false customs declaration for contraband liquor and/or tobacco products were committed.
- In one other instance, the RCMP was investigating a firearms offence. A justified act or omission that would otherwise constitute a *Criminal Code* offence relating to the possession of firearms was committed.

From February 1, 2002 – January 31, 2003, the RCMP reports that no authorizations were granted to public officers to commit justified acts or omissions that would otherwise constitute offences and that would likely result in loss of or serious damage to property.

### III.III 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.<sup>19</sup>
- 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.

From February 1, 2002 to January 31, 2003, the RCMP report that no public officers proceeded without the senior official's written authorization in these circumstances.

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<sup>19</sup> *Ibid.*, paragraph 25.1(9)(b).

#### IV. CONCLUSION

Between February 1, 2002 and January 31, 2003, the RCMP has made two temporary designations.<sup>20</sup> There have been eleven instances in which the senior official authorized a designated public officer to direct another person to commit a justified act or omission that would otherwise constitute an offence.<sup>21</sup> There have been no cases in which a designated public officer proceeded without the senior official's authorization in these circumstances.<sup>22</sup>

The RCMP's focus throughout the first year of the law enforcement justification provisions' operation has been on implementation. For instance, the RCMP and Justice Canada have developed and administered a comprehensive training program on the proper application of the law enforcement justification provisions for RCMP members, other law enforcement authorities, and Crown prosecutors across the country.

As well, the RCMP has focused on developing appropriate internal accountability mechanisms for the implementation of the law enforcement justification provisions.

The Parliamentary review of sections 25.1 to 25.4 of the *Criminal Code* and their operation, which must be undertaken by January 6, 2005, will provide an opportunity to assess the effectiveness of the operation of the law enforcement justification provisions as a whole, and for interested parties to make their views known.

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<sup>20</sup> *Ibid.*, subsection 25.1(6).

<sup>21</sup> *Ibid.*, paragraph 25.1(9)(a).

<sup>22</sup> *Ibid.*, paragraph 25.1(9)(b).

Solicitor General  
of Canada



Solliciteur général  
du Canada

Ottawa, Canada K1A 0P8

To: All Senators and Members of Parliament

I am pleased to provide you with a copy of the 2002 Annual Report on the Law Enforcement Justification Provisions, tabled in the House of Commons on June 11, 2003.

This report is issued in accordance with section 25.3 of the *Criminal Code*, and provides information on the RCMP's use of specified provisions within the law enforcement justification regime. The law enforcement justification regime, which is set out in sections 25.1 to 25.4 of the *Code*, provides a limited justification for law enforcement officers and others acting at their direction to commit acts and omissions that would otherwise constitute offences during the investigation of an offence under, or the enforcement of, an Act of Parliament, or during the investigation of criminal activity.

The law enforcement justification regime was added to the *Criminal Code* following the 1999 Supreme Court of Canada judgment in *R. v. Campbell and Shirose*, in which the Court ruled that the police were not immune from liability for offences committed in good faith during the course of an investigation. The Court observed that if such immunity was necessary, it should be left to Parliament to provide for it. The law enforcement justification regime is an important tool for law enforcement, particularly in the fight against organized crime. However, this regime does not extend blanket immunity to law enforcement officers: it establishes limits, controls and a system of accountability, which includes this annual report.

As the report notes, the three-year Parliamentary review of the legislation, which must be undertaken by January 6, 2005, will provide an opportunity to assess the effectiveness of the operation of the law enforcement justification regime as a whole, and for interested parties to make their views known.

A handwritten signature in cursive script that reads "Wayne Easter".

Wayne Easter, P.C., M.P.

Enclosure: 1

Canada