

Carswell's Criminal Law Practice Community Page Exclusive Feature

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Quis custodiet ipsos custodes?

(attributed to the Roman poet Juvenal from his Satires VI, lines 347-348 and translated as "Who watches the watchmen?")

Interview with [Ian D. Scott](#),
Former Director of Ontario's Special Investigations Unit, and the editor of the upcoming
new publication, [Issues in Civilian Oversight of Policing in Canada](#)

Carswell's Criminal Law Practice Community Page (CCLPCP): *Thank you very much for taking time out of your busy schedule for this interview and congratulations on your new publication, Issues in Civilian Oversight of Policing in Canada. Could you explain for our Community Page readers, as there are varying degrees of familiarity with this subject matter, what civilian oversight is as it relates to policing?*

Scott: The question of civilian oversight of policing is a critical one to address in a political democracy that prides itself on upholding the rule of law. It is through policing agencies that the state enforces the laws it enacts. Policing represents the most overt power of the state in a civil society, and its legitimacy is largely based upon the willing deference of its citizenry to permit police agencies to manage rule-breaking behaviour. If policing fails to maintain public confidence, it fails to maintain its legitimacy, and it will cease to effectively function. Civilian oversight, then, has a crucial function in facilitating and sustaining public confidence – it is through acceptance of oversight mechanisms that the public will maintain or gain confidence in the important institution of policing.

Civilian oversight is the process by which policing is made accountable. It takes many different forms. The most obvious one is legislation creating a method for addressing public complaints and investigating police misconduct. However, other tools of oversight include the *Charter*, jurisprudence, Royal Inquiries, Ombudsman reports, inquests, police commissions, police services boards and ministerial directives. *Issues in Civilian Oversight of Policing in Canada* hopes to play a part in this necessary dialogue between policing, on the one hand, and the public it serves as represented by oversight mechanisms, on the other.

CCLPCP: *Obviously, the law enforcement community will already be very familiar with this concept. Who else would benefit from better understanding and deeper knowledge of civilian oversight of policing?*

Scott: Many members of the legal community have an interest in civilian oversight. In the criminal defence bar, allegations of police abuse are being used to successfully stay proceedings against accused. And both civil and administrative lawyers are involved in either hearings before police disciplinary tribunals and litigation of allegations of police misconduct. Also, lawyers involved in civil rights have a keen interest in the issue of police powers. Finally, the public quite rightly has a keen interest in allegations of police misconduct, fueled in part by social media exposure.

CCLPCP: *You were the director of the SIU in Ontario until very recently, before you started your own practice and teaching career. Why did you decide to write this book?*

Scott: The idea for *Issues in Civilian Oversight of Policing in Canada* began approximately four years ago during my term as the Director of the SIU. It became clear to me that there was a paucity of material in Canada addressing the topic of police oversight. In particular, there was no recent book addressing the state of civilian oversight across the country, and there were few recently published articles dealing with this issue. I decided to write a book to fill this gap but realized that I would require contributors who had expertise in the oversight field. I asked a few of them if they would be interested, and most responded in an overwhelmingly positive way. I had a good working relationship with Canada Law Book and proposed the idea for a publication on the issue of civilian oversight of policing, which would be a combination of my writings and the contribution of others.

CCLPCP: *Who are some of your contributors?*

Scott: Two of them, Nathalie des Rossiers and [Kent Roach](#) are well respected academics, Nathalie being Dean of Ottawa Law School and Kent, Professor of Law at the University of Toronto. Other writers have an expertise and intimate knowledge of a specific area of oversight. Lisa-Marie Inman, for example, wrote the chapter on the Commission for Public Complaints Against the RCMP, and is Director of the RCMP's complaint review process. Peter Tinsley who wrote the chapter on the Military Police Complaints system was the Commission's chairperson. Julian Falconer, who practises law in the area of police accountability, co-authored the chapter on the use of civil litigation as a vehicle for police reform. André Fiset, who practises police labour law in Quebec, contributed the chapter on that province's oversight mechanisms. And RCMP Detachment Commander Kevin Kunetski co-authored a chapter containing original research on the criteria for effective independence of civilian-led investigations of the police.

CCLPCP: *In your opinion, what are the most important decisions to date that shaped the law of civilian oversight of policing in Canada? And why?*

Scott: I wrote a chapter on the background to the December 2013 Supreme Court of Canada decision styled [Schaeffer v. Wood](#) which describes the unlikely confluence of factors leading to a ruling underscoring of the importance of independent police officers' notes. There are other important decisions that are discussed in the book such as [Ward v. Vancouver \(City\)](#) permitting damages for *Charter* breaches by the police, [Hill v. Hamilton-Wentworth Police Services Board](#) which confirmed the existence of tort of negligent investigation, and [Odhavji Estate v. Woodhouse](#) which established the tort of malfeasance in public office in relation to the police in this country.

But in my view, the major drivers for change in civilian oversight in Canada have been the recommendations contained in reports by provincial inquiries into police misconduct. For example, the Braidwood Commission report into the tasing death of Robert Dzierkanski led to the establishment of the Independent Investigations Office in British Columbia. And the 2007 Manitoba Taman Inquiry into the death of Crystal Taman by retired Ontario judge [Roger Salhany](#) led to the creation of the Independent Investigations Unit in that province which should be operational next year.

Another force that has driven reform of civilian oversight is the Ombudsman's offices in Ontario and Quebec. Ontario's Ombudsman, André Marin, wrote two reports on the Special Investigations Unit which spurred the government into action. And Quebec's Ombudsperson, Madame Raymonde Saint-Germain, wrote a very critical report about proposed legislation to create an oversight agency for that province which caused a new government to establish a more rigorous model of oversight.

CCLPCP: *Tell us more about the current legislation in place, across Canada, to address and govern the issues arising from civilian oversight of policing.*

Scott: Legislation across Canada falls into two categories – one to address public complaints of a non-criminal nature, and the other focused on serious criminal allegations. All provinces and the federal government have a system for addressing complaints from the public. Typically, the legislation establishes an office which is responsible for the intake of all public complaints for the jurisdiction, a referral of those complaints back to the affected police service, and a monitoring of the complaint investigation. On the other hand, the investigation of allegations involving death and serious injury by a unit independent of the police is in different stages of development across the country. Ontario has the grand-daddy of independent investigative units with the twenty-four year old SIU; British Columbia, Alberta and Nova Scotia all have variations of the SIU, while Manitoba and Quebec have passed enabling legislation but do not yet have operational units. Saskatchewan, New Brunswick and Newfoundland do not have independent investigative units for serious police misconduct allegations.

CCLPCP: *Can you share with our readers what you believe the future of civilian oversight of policing will be?*

Scott: The lamentable truth is that there will continue to be deaths and serious injuries caused by police action. As we recently saw in the Sammy Yatim shooting, more of these incidents are being captured by social media. And, if police services adopt the recommendation from The Honourable Frank Iacobucci's recent report, *Police Encounters with People in Crises*, to equip police officers with wearable cameras, many more of these incidents will be digitally captured. The imagery is often very disturbing whether or not the level of force used was justified. In my view, it is almost inevitable that all provinces will have a form of independent investigative agency for serious police misconduct allegations in the future for the simple reason that the public won't trust internal investigations. Further, there is likely to be more litigation around these issues in the civil courts due to the expansion of torts such as negligent investigation and malfeasance in public office. Finally, in my view, the *Charter* has changed more than the law in relation to available remedies for police misconduct – it has made the public much more aware of their rights and less deferential to those in authority. All this adds up to a citizenry who will insist on a higher level of police accountability in the future.

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Ian D. Scott was the Director of Ontario's Special Investigation Unit from October 2008 to October 2013. The SIU is the exclusive investigative agency for determining whether on-duty police officers will be charged with a criminal offence if they are involved in death or serious injury incidents or allegations of sexual assault. Before becoming the SIU's Director, he was involved in police oversight issues both as a prosecutor of police officers in the criminal justice system and internal disciplinary matters. He has lectured extensively and made submissions on behalf of the Ministry of the Attorney General and the SIU on oversight issues. In his last year as Director, he was also the president of the Canadian Association for Civilian Oversight of Law Enforcement. Ian has been a member of the Ontario bar since 1983. He is currently in private practice, as well as adjunct professor at Western Law School. Ian is also the author of [*Police Services Act of Ontario: An Annotated Guide, Third Edition*](#), co-author of [*Salhany's Police Manual of Arrest, Seizure and Interrogation, Tenth Edition*](#), and editor of [*Issues in Civilian Oversight of Policing in Canada*](#).

For further information and in-depth discussions on the various issues regarding civilian oversight of policing in Canada, please consult **Issues in Civilian Oversight of Policing in Canada**.

The views expressed herein are those of the author and do not necessarily reflect those of Thomson Reuters.