



Knowing Their Authority

Perspectives on Lawsuits and Complaints



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“Deeds Speak”



Presentation Overview

- Trends and Risk Areas
- Broad Duties with Limited Authorities
- Failing to Ask, “What is my Authority?”
- Knowing their Authority

“Deeds Speak”



Trends and Risk Areas

- Civility
- Arrest and Investigative Detention
- Search and Seizure
- Entry into Dwellings
- Use of Force
- Negligent Investigations



Trends and Risk Areas

- Many reasons why public complaints are filed and statements of claim are served.
- Common theme in a number of complaints and lawsuits: Officer knows his/her duty, but:
 - Does not know his/her authority; or
 - Fails to adequately articulate his/her authority.



Broad Duties

- *Police Services Act* duties include:
 - preserving the peace
 - preventing crimes and other offences
 - assisting victims of crime
 - apprehending criminals and other offenders
 - executing warrants
- Common law duties include:
 - preserving life
 - protecting property



Limited Authorities

- Police have broad duties but the law only provides them with limited powers.
- Conduct is not rendered lawful merely because it assisted in the performance of police duties.
- Police conduct that interferes with individual liberty or freedom will only be lawful if authorized by law.

R. v. Simpson (1993), 12 O.R. (3d) 182 (C.A.)

Figueiras v. Toronto (Police Services Board), 2015 ONCA 208



Limited Authorities

- Fundamental question that an officer must ask him/herself before engaging a police power: **“What is my authority?”**
- Seeds of a public complaint or lawsuit are often planted when this question is not asked.



Limited Authorities

- Authority may be in a statute:
 - i.e. arrest under s. 9 of the *Trespass to Property Act*
- Authority may fall within the officer's common law ancillary powers (*Waterfield Test*):
 - (1) Does the police conduct in question fall within the general scope of any duty imposed on the officer by statute or common law?
 - (2) If so, in the circumstances of this case, did the execution of the police conduct in question involve a justifiable use of the powers associated with the engaged statutory or common law duty?



What is my Authority?

- To arrest a person for being intoxicated in a public?
 - *Liquor Licence Act* prohibits intoxication in a public place (s.31(4)); and
 - Empowers police to arrest without warrant if the arrest is necessary for the safety of any person (s.31(5)).



What is my Authority?

- Mere consumption of alcohol or impairment insufficient for arrest.
- Arrest must be necessary for the safety of any person.
- Arrest is unlawful if other options are available to maintain safety.

Radovici v. Toronto Police Services Board, [2007] O.J. No. 2663 (SCJ)

Lamka v. Waterloo Regional Police Services Board, [2008] O.J. No. 4353 (Small Claims)

Wilson v. Ontario Provincial Police, [2008] O.J. No. 4019 (Div.Ct.)



What is my Authority?

- To enter someone's dwelling?
 - Warrant
 - Informed Consent
 - Exigent Circumstances
 - Hot Pursuit



What is my Authority?

- Police responded to a landlord and tenant dispute and entered the unit without the tenant's consent. An altercation led to an unlawful arrest and subsequent public complaint.

Cheung and McGrath and Toronto Police Service, OCCPS #10-03

- Police arrested the accused in his home. They had no authority to arrest inside the home without a warrant and no exigent circumstances existed. Police were found to have committed trespass to property.

M. (A.) v. Matthews, 2012 ABQB 185



What is my Authority?

- And do I know how to articulate it?
- In most circumstances, an officer's exercise of authority based on a subjective belief and be objectively reasonable.
 - i.e. to demand a Breathalyzer sample, the officer must subjectively believe that the suspect drove while impaired and there must be reasonable grounds for this belief.

R. v. Bernshaw, [1994] S.C.J. No. 87



What is my Authority?

- Inability to articulate a police authority to a suspect or citizen may lead to allegations of incivility or unlawful exercise of authority.
- Inability to articulate a police authority in Court may result in an adverse credibility or reliability finding and subsequent complaint or lawsuit.



Knowing their Authority

- Police services need to provide their officers with sufficient training, resources and supervision to ensure that they know their authority.



Training

- Initial police training and annual requalification should be augmented with supplemental “refreshers” to ensure that officers know their authorities.
- YRP is implementing a strategy to provide legal “refreshers” through:
 - Short roll call videos on individual topics
 - Special information sessions
- Providing officers with court testimony training.



Resources

- YRP Legal Services provides resources to front line officers:
 - Legal advice;
 - Case briefs;
 - Newsletters.



Supervision

- Proper supervision is required to ensure that officers ask the question, “What is my authority” before they engage in conduct that interferes with individual liberty or freedom.
- Whenever possible, advice should be given to the front line through the supervisors to facilitate the sharing of legal issues and information that may be of common interest to fellow members of a platoon, unit, bureau or district.

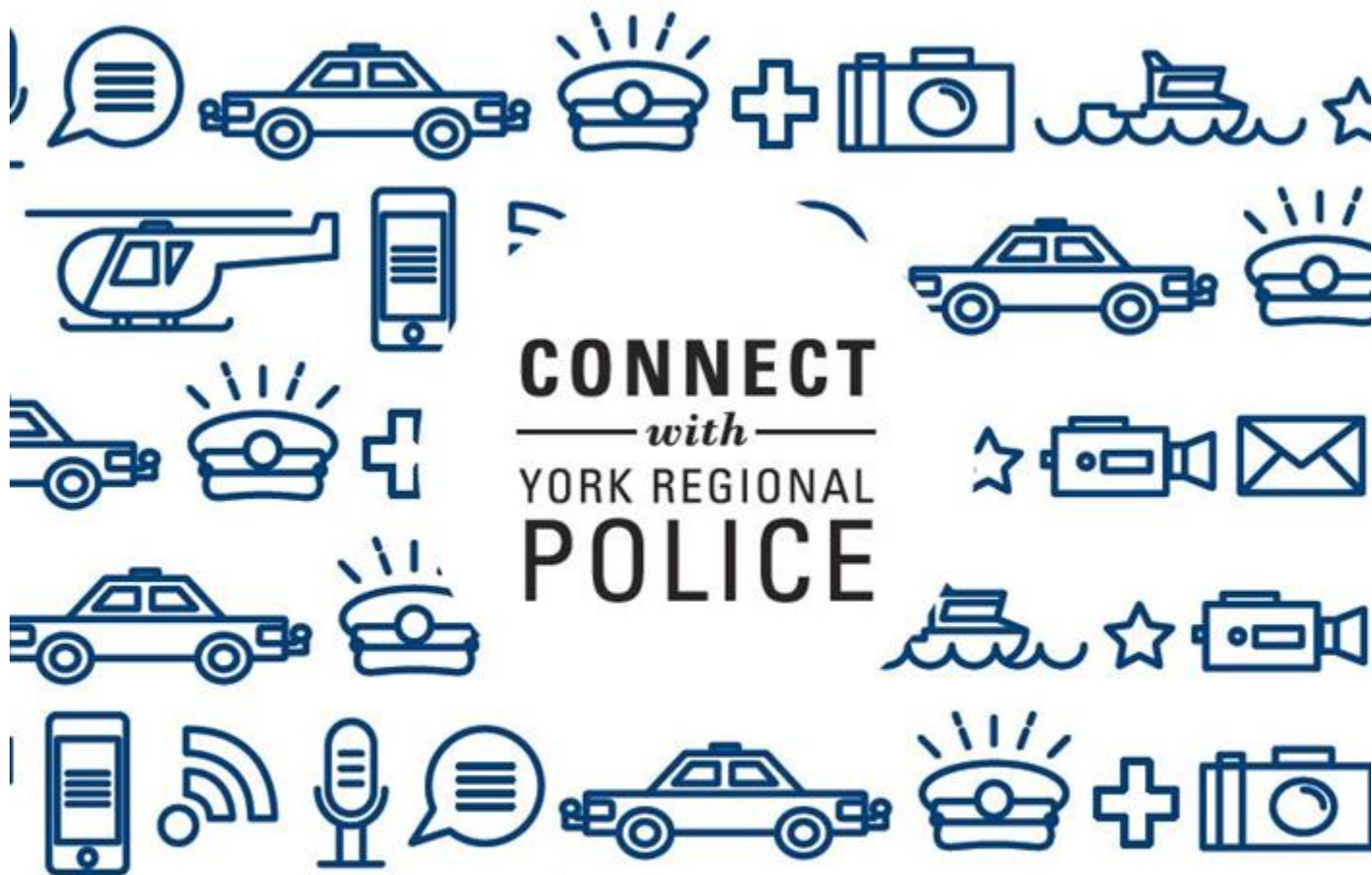


The ultimate authority must always rest with the individual's own reason and critical analysis.

Dalai Lama



Thank you
Questions?



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