

BACKGROUNDER

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BRINGING MADE-IN-CANADA DEMOCRATIC ACCOUNTABILITY TO AUTONOMOUS POLICING

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Executive Summary

Ongoing pro-Palestinian protests in Canada have led to Canadians questioning police willingness to enforce the law ...

"Police have a unique role to play in our democratic system. On the one hand, their criminal investigations must be free of political influences. Yet on the other, they must not become the law unto themselves."

- RCMP spokesperson **Tim Cogan**, in response to allegations of political interference in policing in the Liberal sponsorship scandal.¹

Elected Representatives and the media are confused about what police independence means in Canada. Media accuse politicians who address policy issues with police of interfering in police operations. Ongoing pro-Palestinian protests in Canada have led to Canadians questioning police willingness to enforce the law in the face of troubled protest behaviour that has crossed into criminality. Canadians want police to enforce the law unbiasedly and believe police are accountable to the public.

In examining the origins and evolution of Canada's police independence doctrine, this study will show that Canadians have a point as our police are responsible to government ministers, meaning they are accountable to the Canadian public. However, Canadians know that the police must be insulated from political pressures. Canadian history contains examples of elected representatives inappropriately interfering in police operations. Perhaps the term 'independence' is inappropriate, given police are subject to laws, policies, and ministerial oversight. Police are autonomous, not independent.

The study proposes a model of made-in-Canada democratic policing, allowing politicians to properly converse with police on policy directions while avoiding a form of "governmental policing" where elected representatives too easily influence police operations with partisan politics. Finally, the study's policy recommendations set Canada toward "apolitical and autonomous" policing.

Introduction

Examining police independence, autonomy and accountability

On January 10, Prime Minister Justin Trudeau held a meeting with Toronto police Chief Myron Demkiw to discuss protesters who had set up a weeks-long intimidation blockade into a Toronto Jewish neighbourhood at Avenue Road and the 401 highway.²

The next day, Toronto Police charged a protester who had waved a Hamas flag and they banned protest activity on the overpass.

Reporters intensely questioned the prime minister about the details of his meeting with the chief and the subjects they covered. Reporters were convinced Trudeau had explicitly asked the police chief to enforce the law, to which Trudeau responded, “the federal government has no ‘direct line’ to decisions made by Toronto police.”³ ‘Reporters’ questions were about finding evidence ‘pressured’ the police chief.⁴

Trudeau stated he discussed the government’s ongoing concerns about a troubling rise in anti-Semitic attacks across Toronto and many Canadian cities since October 7th, 2023.

Reporters pursued this line of questioning due to Canada’s long-standing principle of police independence, where politicians are at arm’s length from the police, especially regarding day-to-day operational issues. However, media get curious whenever politicians meet directly with police during an operation.

However, leading Canadian legal scholars say there is a general misunderstanding surrounding police independence, and they insist a legitimate role for politicians in police issues exists.

This study will seek to understand the tradition of political independence in Canada and to clarify where politicians may legitimately become involved. Finally, it will present recommendations to find an appropriate balance between independence and democratic accountability in police law enforcement.

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Legitimate third parties create accountability by limiting police autonomous action so they do not become a law unto themselves. Accountability is the necessary counterbalance to independence.

In fact, even the term ‘independence’ becomes part of the problem as what is really being discussed is autonomy. As will be discussed, police are subject to law, policies and ministerial accountability; thus, they are not truly independent. Perhaps using the term police autonomy may be more helpful.

Some legal scholars have already begun avoiding the term ‘police independence’ because it misdirects the public into believing that executive-police relations are one of independence. Perhaps governments and police forces should start using the term ‘police autonomy’ more often than independence or replace it altogether.

Sadly, public misunderstandings about police independence have created what legal scholars call a ‘chilling effect’ over politicians speaking out on important matters involving police. We have forgotten the police are accountable to the people.⁵

For a year, Canadians have become concerned because pro-Palestinian protesters have adopted tactics that have moved from legitimate protest toward protests characterized by hateful rhetoric, targeted harassment, and incitement to violence.⁶

Such protests have caused many Canadians to lose confidence in the police and the rule of law.⁷ Many among them view police as being too slow and ineffective in the enforcement of the law in the face of these changed tactics.⁸

Citizens assume the police will protect them and will act against targeted harassment and hateful conduct.

Politicians and policymakers should care when police conduct erodes public trust and confidence in police institutions. Police must always respect protesters’ right to protest. However, protesters involved in targeted harassment and intimidation, hateful speech, and promoting a banned terrorist group are not engaging in *Charter-protected* activities.

At the same time, we know Canada has an unfortunate history of politicians inappropriately inserting themselves into police matters.⁹ Politicians—most problematically insert themselves to advance partisan interests. For example, elected representatives criticized the RCMP over its handling of demonstrations associated with the 1997 APEC summit in Vancouver. An inquiry questioned the involvement of senior cabinet ministers—including the prime minister—in directing senior RCMP to respond harshly to demonstrators for political reasons.

The former RCMP commissioner was recently the subject of an inquiry into a mass shooting incident in Nova Scotia, where it was alleged she interfered in police work to advance federal gun control legislation. Finally, at the provincial level, an inquiry examined the alleged conduct of the Ontario premier and his staff in directing a response to an occupation at a provincial park.

When restoring democratic accountability to law enforcement, we must ensure that the police remain insulated from partisan politics.

Elected representatives—often based on fear due to the above incidents of improper political involvement in police—have become reluctant to even address public safety matters. Growing public concerns about pro-Palestinian encampments at universities across Canada led some elected representatives to wade into this issue. McGill University in Montreal was one of the best illustrations of this dilemma, given the explicit reluctance of city police to dismantle encampments.

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McGill University, Pro-Palestinian Protests and Police Independence

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Canadians—and especially Jewish Canadians and their supporters—perceived police in many Canadian cities as showing lax enforcement over pro-Palestinian protests.

This past May, Quebec Premier Francois Legault—in response to reports of harassing and intimidating behaviour against specific students—called for the dismantling of an unauthorized encampment on McGill University’s campus that had been set up by pro-Palestinian demonstrators.¹⁰

Within days, Legault was backtracking on his statement in response to criticism from Quebec’s opposition parties.¹¹ The opposition politicians believed Legault was telling Montreal Police (the “SPVM”) how to do their job and accused him of violating the principle of police independence.

Gabriel Nadeau-Dubois—the co-leader of the province’s leftist Québec solidaire party—issued this warning: “Separation of powers is important. It’s not a decoration. The right to protest is important in a democratic society and it’s deeply disturbing to see Mr. Legault intervening in that situation.”¹²

Was Nadeau-Dubois justified in being “deeply disturbed” by what Legault said? Did the Premier interfere in the situation? Did Legault say or imply the “right to protest” was not important simultaneously as he expressed the government’s desire to see the encampment gone?

The Premier, however, spoke out of public concerns about enforcing laws at McGill University and protests in Montreal. Many residents of Montreal saw police as unresponsive to public pressure to enforce the law and check growing harassment and hateful rhetoric.

The SPVM stands for Service de police de la Ville de Montréal (Montréal City Police Service). It is the municipal police agency for Montreal and its neighbouring urban communities.

Under Section 48 of Quebec’s *Police Act*—police forces like the SPVM, “When conducting police investigations and interventions, they act with full independence, free of any interference.”

However, the SPVM—like police forces across Canada at the federal, provincial and territorial levels—clearly comes under the jurisdiction of the responsible minister.

Minister François Bonnardel leads the Quebec Ministry of Public Safety, which is responsible for overseeing the SPVM, a municipal police service. Politicians have the power to amend Quebec’s Police Act, which governs the SPVM and allows it to address situations like the McGill encampment. So, politicians and the public should feel free to express concerns about police service laws they help create.

Many Canadians—including politicians, unfortunately—are confused over the idea of police independence, as they are about many issues surrounding their laws, government, and constitution.

American news and crime shows inundate the daily lives of Canadians. We too often confuse American judicial concepts with our own, which we know little about. We do not often use the term “separation of powers” as much as the Americans.

Our system has a separation of powers apportioned between the executive, legislative, and judicial branches.¹³

While we do have a separation of powers in the Canadian system, legal scholars remind us that our separation of powers is not about checks and balances as in the U.S. constitutional order.¹⁴ Our system maintains fluid and overlapping roles for the legislative, executive, and judicial branches of government.

Canada’s Westminster system has a fusion between the executive and the legislative branches, with the prime minister and other cabinet ministers being members of Parliament. In a system of strict separation of powers, such as the U.S., membership of the legislative and executive powers cannot overlap.

Senator Eugene Forsey—one of Canada’s foremost constitutional experts—wrote that the government and the House of Commons cannot be at odds for more than a few weeks. He wrote that if they differed on any matter of importance, there is a need for a new government or Parliament.¹⁵

This study will show how Canada’s police system evolved into one where police are accountable to relevant cabinet ministers—both federally and provincially—which means that through our responsible government system, police are accountable to Parliament and, thereby, the Canadian public.

Nadeau-Dubois was conflating our concept of police independence with a strict separation of powers. He missed the differences between the two concepts. He would have had a point if the premier were trying to tell the Montreal Police exactly how or when to remove the encampments.

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The Montreal public—especially Jewish students at McGill and McGill University administration—was alarmed about troubling encampment behaviour.

According to a Leger poll, almost half of Canadians opposed the university encampments in early May.¹⁶ A clear majority of Canadian respondents in late July told Leger that police were right to remove the McGill and Victoria Square encampments in Montreal.¹⁷

The Quebec public and opposition politicians are misguided in their criticism of the Premier from mentioning public safety concerns and expressing his policy preferences regarding encampments.

Nadeau-Dubois and others miss the fact that our police independence tradition derives from democratic accountability through ministerial oversight. Most importantly, he failed to appreciate the difference between the government expressing its policy preferences involving public interest according to law that unavoidably involves police with the government interfering in police operational matters.

The distinction between the expression of a policy preference and police interference is critical to understanding this issue and finding potential ways to overcome the confusion.

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Inconsistent Law Enforcement at Protests

Canadians are alarmed by the lack of consistent law enforcement surrounding high-profile protests over the years.

The aftermath of the police response to the trucker convoy protests continues to unsettle Canadians, and rightly so. Our government used emergency legislation initially designed to address a foreign invasion or terrorist attack to stop that protest.

One year earlier, Canadians watched helplessly as protesters claiming to support an anti-pipeline segment of the Wet'suwet'en Nation initiated rail blockades that adversely affected Canadians. Many believed police were reluctant to enforce the law against Indigenous protesters who blockaded essential infrastructure.¹⁸

Jewish Canadians similarly raised concerns about the presence of Hamas flags at pro-Palestinian rallies.¹⁹ Hamas is a radical Islamist-nationalist terrorist organization that emerged from the Muslim Brotherhood movement in the 1980s.²⁰ Since 1990, Hamas has been responsible for terrorist attacks against both civilian and military targets in Israel and elsewhere. Canada listed Hamas as a terrorist organization in 2002.²¹

They also expressed concerns about chants that mention violence directed at Jewish people.²²

In several cases, pro-Palestinian protesters targeted Jewish neighbourhoods, institutions, and restaurants during rallies. For many Canadians, these protests rose to the level of criminal harassment and intimidation.

Canadian urban police forces seemed late in noticing and responding to these troubling developments and seemed reluctant to respond and lay criminal charges. Fortunately, police did respond to some of the worst hate crime incidents, but enforcement was very rare.²³

Jewish Canadians believed this police approach demonstrated a police double standard in tolerating overt anti-Semitic attacks on their community that they would not tolerate for many other minority communities.²⁴

One can see how police operational independence can easily provide cover for hateful and potentially criminal behaviour. Police respond differently at protests. Often, the public justifiably senses that police are applying inconsistent or double standards in policing them. This affects citizen's trust in police and

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Image 1: One individual photographed a cut-out effigy of Israeli Prime Minister Benjamin Netanyahu on McGill's main Roddick Gates.²⁵ The effigy hangs by a hangman's noose wearing black and white prison garb. Many interpreted the prisoner attire as reminiscent of concentration camp clothing. This photo was given to reporters by concerned McGill Jewish students. Source: <https://montrealgazette.com/news/local-news/students-horrified-after-seeing-netanyahu-hanged-in-effigy-on-mcgills-roddick-gates>.

erodes our sense of the rule of law. We want to see the police as impartial and providing equal treatment under the law to all citizens and groups.



Image 2: A person videotaped an interaction at a Toronto shopping mall where a masked pro-Palestinian protester told someone, "I will lay you to sleep." and "I'll put you six feet deep." in the presence of uniformed police officers.²⁶

Canada's Police Independence

Canada traces its policing traditions to Britain. The “Blackburn” doctrine on police independence derives from a 1968 British common law case. Blackburn challenged a confidential letter from the London police commissioner to constables not to enforce some gambling laws. London officials knew gambling houses were associated with organized crime, so they wanted police to devote more resources to this issue. The police responded that they felt it should not be a high-priority item for them.

In *R v Police Commissioner of the Metropolis Ex parte Blackburn*, Lord Denning concluded the commissioner of the London police, “like every constable in the land,” was and should be independent of the executive. ... he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”²⁷

However, most legal scholars contend Lord Denning’s conclusion was controversial in its day.²⁸ They say many inaccurately concluded it established an absolute relationship of independence between the police and government.

Some legal scholars say the case was chiefly concerned with civil liability for police actions or whether courts could review police decisions not to enforce certain laws. They believe this limits the case’s applicability.²⁹

Philip C. Stenning—a criminal research professor and a leading authority on police independence—said UK policing models influenced colonies like Canada. Common law police institutions are traceable to two distinct British policing models. The Royal Irish Constabulary (RIC) was the inspiration for provincial police services in Canada, as well as the federal police (RCMP and its predecessor, the North-West Mounted Police). The RIC model used military-like rank structures under the governance of a government minister.

The UK also produced the “London Met” model. The British designed this as a more civilian institution. This model featured Chief Constables or Chiefs of Police as the heads of police organizations and various kinds of local “police authorities” or “police commissions” (later “police services boards” in Ontario) as the governing authorities. Britain established its police forces in its overseas colonies during the nineteenth and early twentieth centuries under the RIC model, not the London Met model.

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Police Independence and the Constitution

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In 1999, the Supreme Court of Canada based its *R. v. Campbell and Shirose* decision on a favourable reading of the “Blackburn doctrine” involving police independence. Most importantly, most justices in that ruling related police independence from the executive with respect to criminal investigations to the constitutional principle of the rule of law.

Kent Roach—a law professor at the University of Toronto and another leading authority on police independence—said *R. v. Campbell and Shirose* elevated the common law doctrine on police independence into a constitutional principle. He said this could overrule the minister’s statutory authority on police in some areas. He believed this decision still showed that the precise nature and ambit of police independence remained unclear.

Roach argued the Canadian court’s decision to elevate this British doctrine into a constitutional principle presents problems for Canada because Canada adopted an RIC model placing police under ministerial authority.³⁰

In 1980, a Quebec Court of Appeal ruling in *Bisaillon v. Keable* rejected the common law principle of police independence.³¹ In the ruling, the judges countered the common law idea of police independence by saying that Canada had a different system than the UK. In the ruling, the judges cited how the Minister of Justice in Quebec had statutory powers over Quebec police. They also mentioned the Solicitor General had statutory powers over the RCMP.

Canada, they wrote, had a federal police service that served under the minister, whereas Britain evolved into a more local police force system.

The Supreme Court reversed the Quebec Court of Appeal ruling in *Bisaillon v. Keable*. Scholar Roach pointed out that the justices overruled the original rulings on other grounds that were *unrelated to the police independence principle*.³² The judges also did not weigh in on the Court of Appeal’s dismissal of the common law doctrine of political independence.

Thus, Roach and other Canadian legal scholars tell us the principle is still very murky and contested ground, legally and politically.³³

Canadians can and should urge their elected representatives in their respective jurisdictions to support the creation of a made-in-Canada, democratically accountable doctrine of police independence that respects our constitution and courts.

Finding the Right Balance Between Independence and Accountability

Police in Canada do not function like civil servants in the public sector. Their chief obligation is to the law, not their cabinet minister, as in the case of other public servants.³⁴

However, one can see the law does not enforce itself. Legislators created Canada's *Criminal Code* and codified provincial offences with an expectation of enforcement.

Legal expert Roach has called Canada's doctrine of police independence "complex" and a "delicate balance."³⁵

He puts it as follows:

The rule of law would be offended and there would be a danger of creating a police state if a police officer could be instructed that he or she must or must not investigate or lay charges against a particular person. Such interference with police investigations would bring the administration of justice into disrepute. On the other hand, the police—like other governmental actors must be accountable to superiors and **ultimately responsible to the people through the responsible ministers.** (Emphasis added).

The vital importance of police independence from interference in individual investigations must be weighed against the ability of the government to **provide general policy direction to the police and to ensure accountability for police conduct.**³⁶ (Emphasis added).

This interpretation suggests elected representatives ought to feel free to comment on matters involving the police for the purpose of laying out general policy, given that police are responsible to their responsible ministers.

Opposition parties and the media should have given Quebec Premier Legault more leeway to address his policy preferences on encampments at McGill and other Quebec universities.

The legal interpretation above suggests Prime Minister Trudeau was not in the wrong in addressing rising anti-Semitism and even a specific protest problem in Toronto with Toronto's police chief. One can see the difference between Legault's public words and Trudeau's meeting. We can evaluate the premier's words more

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easily because they were public, whereas Trudeau’s meeting was in private.

One can see how mandating transparent communications between police and politicians could help solve the problem.

Government imposing such a legal requirement would help courts better distinguish between giving general policy direction from applying improper political pressure.

Stenning elaborated on the inherent tensions within police independence.³⁷ Police should not be subject to direction by a governing authority or a minister. Police independence implies constraints on the police-government relationship.

Stenning recognized the difficulty in squaring the circle between independence and being accountable. Our tradition values police independence while placing police under ministerial oversight.

However, one can easily agree that police being free from external constraints or direction from a government does not mean they become ‘a law unto themselves.’

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Public Inquiries and Interpretations of Police Independence

Both federal and provincial authorities have commissioned inquiries over the last few decades examining police conduct, which invariably delves into the concept of police independence. Ontario held the Ipperwash Inquiry after an Indigenous protest at a provincial park involved the death of one First Nation protester. Inquiry officials were also concerned over allegations of political interference in police operations.

At that inquiry, Ontario Attorney General Charles Harnick testified that at a meeting involving Ontario politicians and police, he heard Ontario Premier Mike Harris say in a loud voice, “I want the fucking Indians out of the park,” and “use guns if you have to.”³⁹

However, Justice Sydney Linden, in the Ipperwash Inquiry Report, wrote, “Although one may disagree with his view, it was legitimate for the Premier to take the position that the First Nations people were illegally occupying the [Ipperwash provincial] park and that he wanted them out of [the park] as soon as possible.”

Justice Linden said this despite the Ontario premier’s choice of strong language and mention of enforcement involving firearms. The premier “did not give directions on the manner in which the OPP should enforce the law; how, when, and what arrests should be made; tactical decisions; or other actions the police should take to end the occupation. In my view, the Premier did not give instructions to or interfere with OPP operations at Ipperwash...”⁴⁰

Justice Linden, however, stressed the presence of police officers at some meetings with politicians may have been inappropriate. He cautioned, “Even though there may not be actual interference by politicians in police operations, the public’s perception of non-interference by the government is a fundamental principle that the Premier, Ministers, and other politicians must adhere to...”⁴¹

Finally, he addressed the line between appropriate and inappropriate political intervention in police matters. He wrote:

Important democratic and public safety considerations justify the exchange of information between the police and government, but when such exchanges

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are necessary, care must be taken to ensure that they do not become covert or veiled attempts to inappropriately direct police operations.⁴²

Canadian legal scholars and police inquiry officials agree the exact definition of police independence is murky, but they converge on one observation: police independence means politicians stay out of day-to-day police operations, but politicians may communicate to police on general policy direction and express concerns about police conduct.⁴³ Moreover, those same legal scholars agree that police independence is *most* engaged when it involves a criminal investigation, such as choices police may make on whom to charge.⁴⁴

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Seeking an Ideal Made-In-Canada Executive-Police Relationship

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Kent Roach developed a helpful typology of four models of police independence.⁴⁵ His models range from “democratic policing” to “governmental policing.” The model of full police independence is the most absolute where police are completely insulated from politics. This model is cynical about politicians and ministerial accountability.

Next is the democratic policing model. It allows the police to maintain independence in their core functions. It allows ministers to raise general policy matters with police. Police keep ministers and staff informed about police operational matters under democratic policing. This model is closest to the ideas promoted in this study and best reflects Canada’s evolution.

Finally, the “governmental policing” model involves close government supervision of police and has limited faith in police.

However, other legal scholars offer more valuable ideas for reform. Lorne Sossin—former dean of Osgoode Hall Law School and a sitting justice on Ontario’s Superior Court—offered ideals to aspire to for police independence.⁴⁶

Executive-police relations, he argued, should aspire to be “*political but not partisan.*”

Politicians must aspire to focus on the public interest in conversations with police. They should aspire to transcend narrow partisan interests. He knew this was easier said than done. Politicians are self-interested like anyone, according to public choice theory.⁴⁷ They cannot easily ‘compartmentalize’ their partisan interests from their non-partisan political interests.

Public interest and partisan interests can also simultaneously motivate politicians. For example, Prime Minister Trudeau can speak to the Toronto police chief and address legitimate public interests of rising anti-Semitism in Canadian cities. The prime minister could also be speaking to the police chief because of the optics of being tough on the protesters. One cannot expect politicians to not be political in some ways.

Sossin puts it thus:

An apolitical and autonomous police is not premised on the belief that the

police can or should be uninterested in, unaffected by or disconnected from political institutions. Rather, it suggests a mode of response to those very institutions and preferences. The question is not whether the police are engaged in politics but rather how the police should be engaged in politics.⁴⁸

In a “political but not partisan” model, politicians and police are imperfect human beings who aspire to remove partisan calculation from interactions as much as possible. Laws requiring recorded communications should make politicians think twice about pushing partisan interests or improperly pressuring politicians.

Of course, such a requirement may incentivize politicians to avoid verbal interactions to skirt the law, but such opportunities are harder to come by.

Lawmakers requiring police to prioritize neutral law enforcement will make them think twice about picking favourites or engaging in biased policing. Finally, an independent parliamentary officer for executive-police relations in all jurisdictions could discourage violating these principles.

Finally, Sossin believes police can aspire to be “autonomous but not independent.” He thinks this is a more realistic description of a police force. Politicians and the public trust them to be professional and experts in what they do. They act autonomously but are still subject to limited internal and external oversight.

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Policy Recommendations

- Governments must restore a sense of democratic accountability to police law enforcement. Elected representatives must stop the 'chilling effect' that has emerged around politicians speaking out on policy issues that involve police. Governments across Canada—as well as opinion influencers—should remind politicians that police independence also includes democratic accountability through ministerial responsibility. Police independence does not mean they must stay silent. Politicians should avoid discussing operational issues with the police until the courts clarify the law.
- Both governments and police forces should perhaps begin using the term 'autonomy' instead of 'independence' to refer to the reality of executive-police relations. Police are subject to law, policies, and ministerial oversight. This properly defines them as autonomous, not independent.
- The federal and provincial and territorial governments should consider amending police service laws to reflect a made-in-Canada doctrine of police independence that respects ministerial accountability and our constitution. These amended statutes should also reflect an 'apolitical and autonomous' ideal of executive-police relations as conceived by Justice Lorne Sossin.
- Amended policing laws should include provisions requiring recorded communications—as much as possible—between politicians and police.
- Lawmakers should consider creating an independent parliamentary officer position to address executive-police relations, like the auditor-general or parliamentary budget officer. Alternatively, another existing entity could fill this role. [again, for the whole country?]
- Lawmakers in their corresponding jurisdictions should ensure amended laws require police, especially at protests, to prioritize the enforcement of laws—in a neutral manner without distinction—against harassment, incitement, and intimidation, as well as laws against aiding banned terrorist entities.
- Politicians and the Canadian public need legal clarity on police independence to build a constitutionally sound executive-police relationship. This study has made clear the doctrine is still murky and unclear. The federal Governor in Council should consider submitting a proposed amended RCMP statute to the Supreme Court of Canada as 'test legislation' for a policy-related reference case. In the provincial or territorial case, the Lieutenant Governor in Council (provincial cabinets) may request a reference to its provincial court of appeal.

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Provincial reference cases may eventually reach Canada's Supreme Court. In either case, the Supreme Court must submit an advisory opinion on proper executive-police relations considering the 1999 *Campbell* decision.

References

- "Four Arrests Made at Pro-Palestinian Demonstration Downtown: Police." CBCnews, June 9, 2024. <https://www.cbc.ca/news/canada/toronto/pro-palestinian-demonstration-four-arrested-1.7229559>.
- "Canadian police enabling antisemitic hate—someone's going to get killed." *National Post*. Accessed July 25, 2024. <https://nationalpost.com/opinion/john-robson-canadian-police-enabling-antisemitic-hate-someones-going-to-get-killed>.
- Cosh, Colby. "CBC editorial independence is a lie." *National Post*. Accessed July 25, 2024. <https://nationalpost.com/opinion/cbc-editorial-independence-is-a-lie>.
- Content, Wire. "Justin Trudeau Says Some Pro-Palestinian Protests Cross Line Into Hate, Harassment," *Toronto Star*, March 7, 2024. https://www.thestar.com/politics/justin-trudeau-says-some-pro-palestinian-protests-cross-line-into-hate-harassment/article_84c78f48-783c-52b0-b994-d7e68610759c.html.
- "Danielle Smith Discussed COVID Charges 'almost Weekly' with Justice Officials, According to Leaked Call." CBCnews, July 5, 2023. [https://www.cbc.ca/news/canada/calgary/alberta-premier-danielle-smith-leaked-call-artur-pawlowski-1.6743685#:~:text=%22As%20I%20have%20previously%20stated,referred%20to%20CBC%20News"%20reporting](https://www.cbc.ca/news/canada/calgary/alberta-premier-danielle-smith-leaked-call-artur-pawlowski-1.6743685#:~:text=%22As%20I%20have%20previously%20stated,referred%20to%20CBC%20News).
- "Federal Government Has No 'direct Line' to Decisions Made by Toronto Police: Trudeau." CBCnews. Accessed July 25, 2024. <https://www.cbc.ca/player/play/video/1.7082267>.
- "Four models of police-government ..." Accessed July 18, 2024. <https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn000034501698-eng.pdf>.
- Hager, Mike, and Colin Freeze. "Rallies Raise Question of Whether Canada Should Have a Law against Public Cheering of Terrorism." *The Globe and Mail*, October 15, 2023. <https://www.theglobeandmail.com/canada/article-rallies-raise-question-of-whether-canada-should-have-a-law-against/>.
- "The idea of the political "Independence" of the police." Accessed July 25, 2024. https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/meetings/pdf/Stenning.pdf.
- Klein, Kevin. "Protests don't align with Canadian standard of Tolerance." *Winnipeg Sun*. Accessed July 25, 2024. <https://winnipeg.sun.com/opinion/klein-protests-dont-align-with-canadian-standard-of-tolerance>.
- "Legault shouldn't be telling police what to do with McGill Encampment, opposition parties say." CTV news. Accessed July 25, 2024. <https://montreal.ctvnews.ca/deeply-disturbing-that-legault-asked-police-to-dismantle-mcgill-encampment-opposition-parties-1.6877732>.

- "Majority of Canadians support removal of anti-Israel encampments: Poll." *National Post*. Accessed July 25, 2024. <https://nationalpost.com/news/canada/clear-majority-of-canadians-agree-with-removal-of-anti-israel-encampments-poll-finds>.
- "Montreal Police Work to Maintain Peace in City amid Israel-Gaza War." CBCnews, June 18, 2024. <https://www.cbc.ca/news/canada/montreal/spvm-montreal-police-peace-work-1.7237618>.
- "The overview: Four models of police- ..." Accessed July 25, 2024. https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/meetings/pdf/Roach.pdf.
- Pannozzo, Linda. "Ipperwash and the Freedom Convoy." March 17, 2023. <https://lindapannozzo.substack.com/p/ipperwash-and-the-freedom-convoy>.
- Potter, Andrew. "Why won't the police enforce the law?" December 20, 2023. <https://www.readtheline.ca/p/andrew-potter-why-wont-the-police>.
- "Pro-Palestinian campus protests: How Canadians feel." CTV news. Accessed July 25, 2024. <https://www.ctvnews.ca/canada/nearly-half-of-canadians-are-opposed-to-university-protest-encampments-poll-suggests-1.6878074>.
- "Public choice theory." Accessed July 25, 2024. <https://www.sjsu.edu/faculty/watkins/public-choice.htm>.
- "Quebec premier wants police to dismantle McGill encampment." CTV News. Accessed July 25, 2024. <https://montreal.ctvnews.ca/premier-legault-reiterates-that-mcgill-pro-palestinian-camp-must-be-dismantled-1.6872771>.
- "The Separation of Powers." Canadian Judicial Council. Accessed July 25, 2024. <https://cjc-ccm.ca/en/resources-centre/understanding-your-judicial-system/separation-powers>.
- Stephen LeDrew, "Canada should enforce the law with Wet'suwet'en anti-pipeline protests." *National Post*. Accessed July 25, 2024. <https://nationalpost.com/opinion/stephen-ledrew-canada-should-enforce-the-law-with-wetsuweten-anti-pipeline-protests>.
- "Students say Netanyahu hanged in effigy on McGill's Roddick Gates." *Montreal Gazette*. Accessed July 25, 2024. <https://montrealgazette.com/news/local-news/students-horrified-after-seeing-netanyahu-hanged-in-effigy-on-mcgills-roddick-gates>.

Endnotes

1. Susan Delacourt "To serve and protect its political bosses," *Toronto Star*, 17 April 2004
2. "Federal Government Has No 'direct Line' to Decisions Made by Toronto Police: Trudeau," CBCnews, accessed July 25, 2024, <https://www.cbc.ca/player/play/video/1.7082267>.
3. *Ibid.*
4. *Ibid.*
5. Penney, Jonathon W., "Understanding Chilling Effects" (2022). *Articles & Book Chapters*. 3080. https://digitalcommons.osgoode.yorku.ca/scholarly_works/3080.
6. "Justin Trudeau Says Some Pro-Palestinian Protests Cross Line into Hate, Harassment," *Toronto Star*, March 7, 2024, https://www.thestar.com/politics/justin-trudeau-says-some-pro-palestinian-protests-cross-line-into-hate-harassment/article_84c78f48-783c-52b0-b994-d7e68610759c.html.
7. "Klein: Protests don't align with Canadian standard of Tolerance," *Winnipeg Sun*, accessed July 25, 2024, <https://winnipegsun.com/opinion/klein-protests-dont-align-with-canadian-standard-of-tolerance>.
8. *Ibid.*
9. *Ibid.*
10. "Quebec premier wants police to dismantle McGill encampment." CTV News, accessed July 25, 2024, <https://montreal.ctvnews.ca/premier-legault-reiterates-that-mcgill-pro-palestinian-camp-must-be-dismantled-1.6872771>.
11. "Legault shouldn't be telling police what to do with McGill Encampment, opposition parties say." CTV news. Accessed July 25, 2024, <https://montreal.ctvnews.ca/deeply-disturbing-that-legault-asked-police-to-dismantle-mcgill-encampment-opposition-parties-1.6877732>.
12. "Legault shouldn't be telling police what to do with McGill Encampment, opposition parties say." CTV news. Accessed July 25, 2024, <https://montreal.ctvnews.ca/deeply-disturbing-that-legault-asked-police-to-dismantle-mcgill-encampment-opposition-parties-1.6877732>.
13. "The Separation of Powers," Canadian Judicial Council. Accessed July 25, 2024, <https://cjc-ccm.ca/en/resources-centre/understanding-your-judicial-system/separation-powers>.
14. Sossin, Lorne, "The Oversight of Executive Police Relations in Canada: The Constitution, the Courts, Administrative Processes and Democratic Governance" (2004). Commissioned Reports, Studies and Public Policy Documents. Paper 166. <https://digitalcommons.osgoode.yorku.ca/reports/166>.
15. Eugene A Forsey, "How Canadians govern themselves," 2020, https://learn.parl.ca/static/files/Learn/assets/PDF/ParliamentaryPrimer/how_cdn_govern_themselves_10th_ed-e.pdf.

16. "Pro-Palestinian campus protests: How Canadians feel." CTV news, accessed July 25, 2024, <https://www.ctvnews.ca/canada/nearly-half-of-canadians-are-opposed-to-university-protest-encampments-poll-suggests-1.6878074>.
17. "Majority of Canadians support removal of anti-Israel encampments: Poll." *National Post*, accessed July 25, 2024, <https://nationalpost.com/news/canada/clear-majority-of-canadians-agree-with-removal-of-anti-israel-encampments-poll-finds>.
18. Stephen LeDrew: "Canada should enforce the law with Wet'suwet'en anti-pipeline protests." *National Post*, accessed July 25, 2024, <https://nationalpost.com/opinion/stephen-ledrew-canada-should-enforce-the-law-with-wetsuweten-anti-pipeline-protests>.
19. Mike Hager and Colin Freeze, "Rallies Raise Question of Whether Canada Should Have a Law Against Public Cheering of Terrorism," *The Globe and Mail*, October 15, 2023, <https://www.theglobeandmail.com/canada/article-rallies-raise-question-of-whether-canada-should-have-a-law-against/>.
20. Public Safety Canada, "Currently Listed Entities," Public Safety Canada, June 25, 2021, <https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#25>.
21. *Ibid.*
22. Mike Hager and Colin Freeze, "Rallies Raise Question of Whether Canada Should Have a Law Against Public Cheering of Terrorism," *The Globe and Mail*, October 15, 2023, <https://www.theglobeandmail.com/canada/article-rallies-raise-question-of-whether-canada-should-have-a-law-against/>.
23. "Four Arrests Made at Pro-Palestinian Demonstration Downtown: Police." CBCnews, June 9, 2024, <https://www.cbc.ca/news/canada/toronto/pro-palestinian-demonstration-four-arrested-1.7229559>.
24. "Canadian police enabling antisemitic hate—someone's going to get killed." *National Post*, accessed July 25, 2024, <https://nationalpost.com/opinion/john-robson-canadian-police-enabling-antisemitic-hate-someones-going-to-get-killed>.
25. "Students say Netanyahu hanged in effigy on McGill's Roddick Gates." *Montreal Gazette*, accessed July 25, 2024, <https://montrealgazette.com/news/local-news/students-horrified-after-seeing-netanyahu-hanged-in-effigy-on-mcgills-roddick-gates>.
26. Andrew Potter, "Why won't the police enforce the law?" December 20, 2023, <https://www.readtheline.ca/p/andrew-potter-why-wont-the-police>.
27. Kent Roach, "The overview: Four models of police- ...," accessed July 25, 2024, https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/meetings/pdf/Roach.pdf.
28. *Ibid.*
29. *Ibid.*
30. *Ibid.*
31. *Ibid.*

32. *Ibid.*
33. *Ibid.*
34. Wesley Pue, "The Prime Minister's Police? Commissioner Hughes APEC Report" (2001) 39, *Osgoode Hall Law Journal*, 165 at 167.
35. Roach, Kent. "Police Independence and the Military Police." *Osgoode Hall Law Journal* 49.1 (2011): 117-149. DOI: <https://doi.org/10.60082/2817-5069.1074> <https://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss1/4>.
36. *Ibid.*
37. Philip C. Stenning, "The idea of the political "Independence" of the police", accessed July 25, 2024, https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/meetings/pdf/Stenning.pdf.
38. The concept of police independence in the context of executive-police relations was examined at the APEC Inquiry, the Donald Marshall Inquiry, the McDonald Commission, and the Maher Arar Inquiry. The topic was investigated more recently during Nova Scotia's Mass Casualty Commission.
39. Linda Pannozzo, "Ipperwash and the Freedom Convoy," March 17, 2023, <https://lindapannozzo.substack.com/p/ipperwash-and-the-freedom-convoy>.
40. *Ibid.*
41. *Ibid.*
42. *Ibid.*
43. Linda Pannozzo, "Ipperwash and the Freedom Convoy," March 17, 2023, <https://lindapannozzo.substack.com/p/ipperwash-and-the-freedom-convoy>.
44. Roach, Kent. "Police Independence and the Military Police."
45. Kent Roach.
46. Lorne Sossin, Gov, accessed August 11, 2024, https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/meetings/pdf/Sossin.pdf.
47. "Public choice theory", accessed July 25, 2024, <https://www.sjsu.edu/faculty/watkins/publicchoice.htm>.
48. Lorne Sossin, Gov, accessed August 11, 2024, https://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/meetings/pdf/Sossin.pdf.



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