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MEMORANDUM

DATE: October 28, 2024

TO: Kenneth Weatherill, Assistant Deputy Minister, Public Safety
Ministry of the Solicitor General

FROM: Chantelle Blom, Director, Crown Law Office Civil
Ministry of the Attorney General

RE: **All Chiefs Memo: Attorney General of Ontario Position on Third-Party
Production Motions for Police Records**

I am writing with respect to the new position that the Attorney General is taking in response to third-party civil motions for orders requiring the Attorney General or the Crown to produce copies of police investigative records in cases where *Criminal Code* charges were laid. These motions are brought most frequently by victims of motor vehicle accidents or assaults who are seeking compensation in the civil courts for their injuries.

The Attorney General recently instructed my office to assert Crown immunity in these motions. Both the Attorney General and the Crown are immune from non-party production motions, both at common law and pursuant to [section 19\(2\) of the Crown Liability and Proceedings Act, 2019](#) (“CLPA”).

This immunity only applies to the Attorney General and the Crown. The practical implication for police services is that the investigating police service will have to respond to civil motions seeking production of police records from cases where *Criminal Code* charges were laid, and will have to produce the requested record, if ordered to do so by the court.

Individual police services already respond to motions seeking the production of police investigative records in matters where no *Criminal Code* charges were laid. The new position that the Attorney General is taking applies in cases where *Criminal Code* charges were laid and will therefore result in an incremental increase in workload for some police

services, as police services will now also have to respond to motions seeking the production of police records where *Criminal Code* charges were laid.

If needed, Attorney General staff are available to provide training to police services on best practices for responding to these motions, and to discuss strategic options for addressing the anticipated incremental workload that may occur for some police services. Attorney General staff are also available to discuss file specific concerns and questions as they may arise on a go forward basis.

The Attorney General will continue to oppose production of records by either the police or the Crown where there is an ongoing criminal prosecution. In such cases, the Crown will assert Crown immunity on its own behalf and will oppose any order for production by the police service from being made until after the criminal prosecution is complete.

The Attorney General will also continue to screen records for use in civil actions in cases where the records are already in the possession of the accused. In such cases, pursuant to the Ontario Court of Appeal decision in [DP v Wagg](#), a court order is not required, but permission of the Attorney General for the accused to use the records in the civil action is.

The Attorney General will continue to encourage litigants to use this approach, instead of commencing third-party production motions. We will continue to highlight this option for litigants in response to third party production motions, to encourage litigants to discontinue their motions in favour of this approach.

These changes were communicated to legal advisors to police services on August 28th. A copy of that letter is attached here as an FYI.

Questions about any of the above can be directed to Sona Advani, Senior Crown Counsel and the WAGG Team Lead at Crown Law Office – Civil (sona.advani@ontario.ca).

Yours truly,



Chantelle Blom
Legal Director
Crown Law Office Civil