

Amended pursuant to Supreme Court Rule 16-1(19)(b)(i)
Original filed October 13, 2023

No. S-236974
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF SURREY

PETITIONER

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA AND BRITISH COLUMBIA
MINISTRY-MINISTER OF PUBLIC SAFETY
AND SOLICITOR GENERAL

RESPONDENTS

AMENDED PETITION TO THE COURT

ON NOTICE TO:

BC Minister of Public Safety & Solicitor General
c/o Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9JV

AND TO:

Attorney General of British Columbia
c/o Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9JV

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

- (b) serve on the petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: Vancouver Registry 800 Smithe Street Vancouver, BC, V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner is: Dennis James Aitken LLP 900 –543 Granville Street Vancouver, BC V6C 1X8 Attention: Craig P. Dennis, K.C. and Owen James E-mail address for service of the petitioner: cdennis@djacounsel.com and ojames@djacounsel.com

(3)	<p>The name and office address of the petitioner’s lawyer is:</p> <p>Dennis James Aitken LLP 900 –543 Granville Street Vancouver, BC V6C 1X8 Attention: Craig Dennis, K.C. and Owen James</p> <p>Hunter Litigation Chambers 2100 – 1040 West Georgia Street Vancouver, BC V6E 4H1 Attention: Brian Duong and Devin Eeg</p>
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CLAIM OF THE PETITIONER

PART 1: ORDERS SOUGHT

1. An order in the nature of *certiorari* quashing the July 19, 2023 decision by the British Columbia Minister of Public Safety and Solicitor General (“**Minister**”) purporting to direct the City of Surrey (“**City**”) to transition the City’s police of jurisdiction from the police force established by the City under s. 3 of the *Police Act*, R.S.B.C. 1996, c. 367 [**Police Act**] to the Surrey Police Service (“**SPS**”).

2. A declaration that ss. 7 and 8 of the *Police Amendment Act*, S.B.C. 2023, c. 30 [**PAA**] are unconstitutional and of no force or effect.

3. An order setting aside or quashing Order in Council No. 618 dated November 16, 2023 purporting to appoint an administrator under s. 8(2) of the *PAA* and resulting in the suspension of the Surrey Police Board (the “**Board**”).

2.4. A declaration that the Province of British Columbia (“**Province**”) is without lawful authority to assign to the City the responsibility to transition the City’s police of jurisdiction from the police force established by the City under s. 3 of the *Police Act* to the SPS without provision for resources required to fulfill the responsibility.

3.5. Costs.

4.6. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Minister’s July 19, 2023 Decision

Impugned Decision

~~5.7.~~ Section 3 of the *Police Act* requires the City, as a municipality with a population of more than 5,000 persons, to provide policing by means of one of the methods stated in that section.

~~6.8.~~ Continuously since 1951, the City has fulfilled that statutory obligation by deploying the Royal Canadian Mounted Police (“**RCMP**”) as the City’s police of jurisdiction (“**POJ**”).

~~7.9.~~ Twice since the municipal election in October 2022, in which policing was a the central campaign issue, the City’s duly-elected municipal council has resolved to retain the RCMP as the City’s POJ.

~~8.10.~~ The Minister, repeatedly and publicly, has acknowledged that the power to decide upon the City’s POJ rests with the City: “the City of Surrey is responsible for policing ... It’s laid out in the *Police Act*. They are the ones who get to decide what kind of model they want.”

~~9.11.~~ Despite that, the Minister on July 19, 2023 purported to direct the City to transition the City’s POJ from the RCMP to the SPS (“**July Decision**”).

12. The In response to this Petition (originally filed on October 13, 2023), the Province enacted the PAA which received royal assent on October 26, 2023. Section 7 of the PAA, purports to legislate SPS as the City’s POJ. Section 8, which was exercised on November 16, 2023, by the Lieutenant Governor in Council at the recommendation of the Minister, empowers the Province to suspend the Board and to appoint a sole administrator in its place for the purposes of implementing s. 7 of the PAA.

13. Sections 7 and 8 of the PAA purport to reverse resolutions by the City’s municipal council (“City Council”) that gave effect to the expressed voting preferences of Surrey residents who, in reliance on the Minister’s representations that the POJ was their decision to make, voted in a municipal election for candidates who campaigned on the platform of retaining the RCMP as the City’s POJ. In so doing, s. 7 of the PAA suppresses the expression of Surrey voters who cast their ballot in the well-founded belief, fueled by the Minister’s public statements, that the decision concerning the City’s POJ would be made by the duly-elected new City Council.

~~10.14.~~ Further, the estimated cost increase for the City to transition to the SPS compared to retaining the RCMP is in excess of \$464 million over a 10-year period. The Province has offered to fund only \$150 million of that amount, leaving an over \$314 million unfunded shortfall.

The Parties

~~14.15.~~ The Petitioner is a municipal corporation with an address for service of 800-543 Granville Street, Vancouver, British Columbia.

~~42.16.~~ The City is the second largest city in British Columbia. As of May 2021, the City had a population of about 590,000.

~~43.17.~~ The Respondent Minister is the minister responsible for policing and law enforcement superintendence in the Province.

~~44.18.~~ The Minister ~~has~~ and the Attorney General of British Columbia have an address for service of PO Box 9290 Stn Prov Govt, Victoria, British Columbia, c/o Attorney General of British Columbia.

Policing and Law Enforcement in the City

~~45.19.~~ Under s. 3(2) of the *Police Act*, the City, as a municipality with a population of more than 5,000 persons, must provide policing and law enforcement in Surrey. The City must do so by means of one of the following:

- a. establishing a municipal police department (to be governed by a municipal police board);
- b. contracting with the Minister for the services of the provincial police; or
- c. contracting with an existing municipal police department, with approval from the Minister.

Police Act, at s. 3(2)

~~46.20.~~ The police force that the municipality selects to provide policing and law enforcement is that municipality's POJ.

~~47.21.~~ The RCMP's "E" Division, headquartered in the City, is British Columbia's provincial police force.

~~48.22.~~ Reflecting the City's determination under s. 3(2) of the *Police Act*, the RCMP has at all material times been the City's POJ, providing policing and law enforcement services in the City since 1951.

~~49.23.~~ A Municipal Police Service Agreement ("**MPSA**") and Municipal Police Unit Agreement ("**MPUA**"), each dated April 1, 2012, govern the RCMP's delivery of policing and law enforcement services in the City. Under the MPUA, the City and the Province agreed to have the RCMP provide policing in Surrey until March 31, 2032.

~~20.24.~~ The City has at all material times provided adequate and effective policing. For as long as the RCMP has been the POJ, the Minister has never: (i) notified the City of any failure to properly staff or equip its police force, (ii) notified the City of any other failure to

maintain law and order, or (iii) appointed constables or used the provincial police force to remedy a failure by the City to maintain law and order.

The Surrey Police Service

~~21-25.~~ On or about November 5, 2018, the ~~then~~ City of Surrey Council ("**City Council**") passed a motion to develop a municipal police department that would replace the RCMP as the City's POJ.

~~22-26.~~ On or about February 27, 2020, the Minister approved the City's plan to provide policing and law enforcement services in the City by means of a municipal police department.

~~23-27.~~ On or about June 29, 2020, the Lieutenant Governor in Council issued Order-In-Council 382/2020, which appointed members to the ~~Surrey Police Board~~ (the "**Board**") effective July 6, 2020.

~~24-28.~~ On or about August 6, 2020, the Board established the SPS.

~~25-29.~~ In or around September 2020, Canada, the Province of British Columbia, and the City established the Surrey Police Transition Trilateral Committee ("**SPTTC**"). The purpose of the SPTTC included overseeing the integrated transition from the RCMP to the SPS as the City's POJ. The transition would occur in two phases:

- a. Phase I – SPS officers would be deployed under the command of the RCMP until May 2023;
- b. Phase II – the SPS would assume command of policing in Surrey.

~~26-30.~~ Commencing in or around November 2021, SPS officers were deployed with the RCMP to support operations under RCMP command.

~~27-31.~~ To date, only Phase I of the phased transition has commenced. There is no agreement, plan, or timeline governing Phase II. The RCMP maintains full operational and administrative authority as the City's POJ, with limited support from SPS officers deployed to the MPU.

~~28-32.~~ As set out in the section that follows, City Council decided in 2022 to continue with the RCMP as the City's POJ.

~~The City's Plan to Retain the RCMP as POJ~~

2022 Municipal Elections

33. On or about February 27, 2020, when asked about the City's choice of policing, the Minister made public statements representing that it was the City's choice to decide which policing model to adopt. He stated: "the City of Surrey is responsible for policing ... It's laid out in the *Police Act*. They are the ones who get to decide what kind of model they want."

34. In the same statement, the Minister also represented that City Council was democratically elected and it was on that basis that the City could choose their policing model: "The City of Surrey is democratically elected, they had the motion, they took it to council, they have given the province the notice and it is on that basis that the City of Surrey has the right and the authority to say 'We want to move to a new policing model.'"

35. Again, on or about May 12, 2021, when asked to comment on a potential referendum on the City's choice of POJ, the Minister indicated that the choice of POJ was made by City Council and "if they want to overturn it, you know that they need to take it up with Surrey council".

36. On October 15, 2022, the City held a municipal election. Throughout the election, the City's choice of POJ was a defining issue and the candidates campaigned on their proposed policing model for the City.

29-37. Voters elected a new mayor, Brenda Locke, and council. Mayor Locke campaigned on a promise to keep the RCMP as the City's POJ.

30-38. On or about October 19, 2022, the Minister asked the City to provide a plan to support any decision to retain the RCMP as the City's POJ.

The City's Plan to Retain the RCMP as POJ

34-39. On or about November 14, 2022, City Council passed a motion that:

- a. endorsed maintaining the RCMP as its POJ; and
- b. directed the City to prepare a plan on retaining the RCMP as POJ, to be endorsed by City Council before submission to the Minister.

32-40. On or about December 12, 2022, City Council endorsed the City's report entitled *Policing Surrey: A Plan to Retain the RCMP as Police of Jurisdiction in Surrey* (the "Plan").

33-41. The Plan included an RCMP staffing plan, a financial analysis with a comparison between RCMP and SPS operating costs, and a proposed governance structure for the Surrey Municipal Police Unit.

~~34.42.~~ On or about December 15, 2022, the City and the RCMP submitted the Plan to the Minister. The RCMP submitted an accompanying restaffing plan (the “**RCMP Plan**”) to the Director of Police Services (the “**Director**”) on the same date.

~~35.43.~~ At the Director’s request, on or about February 10 and 16, 2023, the RCMP and the City, respectively, delivered additional submissions to the Minister in respect of the RCMP Plan and the Plan (together with the Plan, the “**Amended Plan**”).

~~36.44.~~ On April 28, 2023, the Director publicly released a redacted report titled “City of Surrey Police Model Transition and Decision to Retain the RCMP: Director of Police Services Report to the Minister of Public Safety and Solicitor General” (the “**Director’s Report**”).

~~37.45.~~ On or about April 28, 2023, the Minister, in a news release endorsed the Director’s Report and recommended that the City continue transitioning to the SPS. The news release also indicated that the Province offered the City additional funds to “ensure no additional costs to Surrey residents” (the “**April Decision**”).

~~38.46.~~ On May 23, 2023, a minimally redacted version of the Director’s Report was made available to City Council and select staff of the City, on the condition that those individuals sign a confidentiality agreement.

~~39.47.~~ The Director’s Report stated that it was not a comparative assessment of the SPS and the RCMP and that it did not fully consider the impacts of the transition to the SPS. Nonetheless, the Director’s Report recommended that the Minister withhold support from the Amended Plan, and that the Minister’s approval of the City retaining the RCMP be conditional on the following, among others:

- a. A Strategic Implementation Plan Officer be appointed to oversee the transition and resolve issues;
- b. Individualized human resources plans be implemented to ensure ongoing deployment throughout RCMP restaffing and dissolution of the SPS;
- c. The City and the RCMP further amend their respective parts of the Amended Plan to provide:
 - i. detail on transition reversal components, including SPS dissolution, involvement of SPS officers and staff in the transition, and number of SPS employees impacted;
 - ii. a restaffing plan that does not draw upon other British Columbia RCMP detachments;
 - iii. updated costs modelling, in light of transition reversal costs and compliance with the new conditions on re-staffing the RCMP;

- d. Establish a Senior Contract Officer position with the BC RCMP to ensure condition (c) is met; and
- e. Appoint a Senior Transition Leader for the City with the authority to support the RCMP

(collectively, the “**Conditions**”).

40.48. At the press conference accompanying the April Decision, the Minister indicated that the Conditions would be binding on the City should it choose to retain the RCMP. The Director’s Report did not recommend any conditions should the City elect to retain the SPS as its POJ.

41.49. On May 30, 2023, Rick Stewart, president of the Surrey Police Union, wrote to Chief Constable Norm Lipinski of the SPS declining any request to participate in individual human resource planning to support an alternate policing model with the RCMP as the POJ. Regardless, the City worked with the RCMP to comply with the Conditions that were within its control.

42.50. On or about June 1, 2023, the Minister formally confirmed financial support in the approximate amount of \$150 million should the City elect to retain the SPS, with no similar promise of financial support should the City wish to retain the RCMP.

43.51. On or about June 15, 2023, City staff presented a further report on the retention of the RCMP as POJ to City Council (the “**Further Report**”). The Further Report concluded that maintaining the RCMP was feasible in consideration of, among other factors, the Director’s Report and submissions from the RCMP and the SPS.

44.52. On or about June 15, 2023, City Council again voted to retain the RCMP as its POJ, after reviewing the Further Report.

45.53. On June 19, 2023, the City sent the Further Report to the Minister for review.

46.54. On July 5, 2023, the RCMP provided City Council with an update on its Restaffing Plan.

47.55. On July 11, 2023, City Council considered the July 6, 2023 Weekly Status Report provided by City Staff to the City Manager which, among other subjects, explained why some of the Conditions could not be complied with and furnished data on RCMP re-staffing, including commitments from 81 SPS officers to join the RCMP.

Aftermath of the July Decision

48.56. On July 19, 2023, the Minister issued the July Decision. In a news release, the Minister directed the City to transition from the RCMP to the SPS as the City’s POJ. The

Minister cited s. 2 of the *Police Act* as the purported authority for the decision. The Minister also indicated that the Province “recommitted” to providing \$150 million in funding “so that costs are not passed on to [Surrey] residents and businesses.”

49-57. Since the July Decision, no or only limited material steps have been taken towards transitioning to the SPS.

50-58. In correspondence with the Province since December 2022, the City has attempted to illustrate to the Province the considerable unresolved issues on moving forward on the transition, particularly as it relates to Phase II. To date the City has not received a response as to how the Province, or the Government of Canada, propose to overcome those challenges including – and not least – funding the significant shortfall.

Legislative Amendments Following the Petition

59. This petition was filed on October 13, 2023. On October 16, 2023, Bill 36 was introduced by the Minister. Bill 36 introduced new legislation, the *PAA*, which received Royal Assent on October 26, 2023.

60. Section 7 of the *PAA* states that “the City of Surrey must provide policing” by means of establishing a municipal police department. In effect, s. 7 purports to impose the SPS as the City’s POJ. The *PAA* is silent on how the transition from the RCMP to the SPS is to occur. The *PAA* also amended several sections of the *Police Act*.

61. Section 8 of the *PAA* is another Surrey specific provision that empowers the Province to suspend the membership of the Board, including the Mayor as chair, and appoint a sole administrator in their place for the purposes of implementing s. 7 of the *PAA*. On November 16, 2023, the Minister, citing the July Decision, and in the purported exercise of the authority conferred by s. 8 of the *PAA*, announced an order in council appointing an administrator and the suspension of the Board.

Implications of the July Decision & the PAA

51-62. The City estimated in the Plan that dissolving the SPS and retaining the RCMP would save the City approximately \$235.4 million over the coming five-year period. Yet, the Minister’s decision and the *PAA*, which purport to force the City to transition to the SPS as its POJ, only promises \$150 million in funds, leaving the City with a shortfall of \$85.4 million from the 2023 to the 2027 fiscal years exclusive of anticipated capital costs.

52-63. The Plan also estimates that on a like-for-like basis, that is excluding transition costs, the SPS will cost \$31.9 million more annually than the RCMP. In his April Decision, the Minister acknowledged that an independent financial analysis confirmed the City’s estimate of “approximately \$30 million” in additional annual costs. The Province has not offered any additional funding to cover this ongoing shortfall.

53-64. In the updated Further Report, the City estimated the total ten-year costs of keeping the RCMP at \$2.13 billion, while transitioning to the SPS would cost \$2.55 billion over the same time period exclusive of anticipated capital costs. With the inclusion of anticipated capital costs, transitioning to SPS is expected to increase the City's costs by more than \$464 million over the next ten years. Again, the Province has not promised funding to fill what would be a significant shortfall.

Part 3: LEGAL BASIS

Judicial Review of the July Decision

54-65. Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. All exercises of public authority must find their source in law. It is the courts' constitutional duty to ensure that public authorities do not overreach their lawful powers.

Dunsmuir v. New Brunswick, 2008 SCC 9, paras. 28-29

55-66. On a petition for judicial review, the court may grant *certiorari* and set aside the administrative decision maker's decision when it is unauthorized or otherwise invalid.

Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 at ss. 2(2)(a), 3, 7 [JRPA]

56-67. The court may also grant a declaration in relation to the exercise or purported exercise of a statutory power.

JRPA at s. 2(2)(b)

The Legislative Framework

57-68. The *Community Charter*, S.B.C. 2003, c. 26 [“*Community Charter*”] governs the relationship between the Province and a municipality. In particular, s. 2(2) of the *Community Charter* provides, in part:

(2) The relationship between municipalities and the Provincial government is based on the following principles:

(a) the Provincial government respects municipal authority and municipalities respect Provincial authority;

(b) the Provincial government must not assign responsibilities to municipalities unless there is provision for resources required to fulfill the responsibilities;.....

(c) consultation is needed on matters of mutual interest, including consultation by the Provincial government on

(i) proposed changes to local government legislation,

(ii) proposed changes to revenue transfers to municipalities, and

(iii) proposed changes to Provincial programs that will have a significant impact in relation to matters that are within municipal authority ...

~~58-69.~~ The *Police Act* assigns to the City the responsibility to provide policing and law enforcement within the City and speaks to the respective roles of the Minister and the municipality. Relevant provisions that were in force at the time of the July Decision include:

2 The minister must ensure that an adequate and effective level of policing is maintained throughout British Columbia.

...

3 (2) A municipality with a population of more than 5 000 persons must provide policing in accordance with this Act and the regulations by means of one of the following:

(a) establishing a municipal police force;

(b) entering into an agreement with the minister under which policing in the municipality will be provided by the provincial police force;

(c) with the approval of the minister, entering into an agreement with another municipality that has a municipal police force under which policing in the municipality will be provided by the municipal police force of that municipality.

...

15 (1) Subject to this subsection-(2), a municipality with a population of more than 5 000 persons must bear the expenses necessary to generally maintain law and order in the municipality and must provide, in accordance with this Act and the regulations and the director's standards,

(a) policing and law enforcement in the municipality with a police force or police department of sufficient numbers

(i) to adequately enforce municipal bylaws, the criminal law and the laws of British Columbia, and

(ii) to maintain law and order in the municipality, and

(b) adequate accommodation, equipment and supplies for

(i) the operations of and use by the police force or police department required under paragraph (a), and

(ii) the detention of persons required to be held in custody other than on behalf of the government, and

(c) the care and custody of persons held in a place of detention required under paragraph (b) (ii).

...

17 (1) If the ~~commissioner~~director considers that a municipality to which section 15 (1) applies is not complying with that section, the ~~commissioner~~director must send to it and to its board, if any, a notice that

(a) identifies the non-compliance,

(b) directs the municipality to correct the failure to comply, and

(c) specifies the manner in which and the time within which the failure is to be corrected.

(2) On being notified by the ~~commissioner~~director that a notice sent under subsection (1) has not been complied with, the minister may, on terms the minister considers appropriate,

(a) appoint persons as constables to police the municipality,

(b) use the provincial police force to police the municipality, or

(c) take other steps the minister considers necessary.

(3) The municipality must pay all costs of policing incurred under subsection (2).

(4) Costs incurred by the government under subsection (2) are a debt due to and recoverable by the government from the municipality.

...

27 (1) On or before November 30 in each year, a municipal police board must prepare and submit to the council for its approval a provisional budget for the following year to provide policing and law enforcement in the municipality.

...

(2) Any changes to the provisional budget under subsection (1) must be submitted to council on or before March 1 of the year to which the provisional budget relates.

(3) If a council does not approve an item in the budget, the director, on application by the council or the municipal police board, must

(a) determine whether the item or amount should be included in the budget, and

(b) report the director's findings to the municipal police board, the council and the minister.

(4) Subject to subsection (3), a council must include in its budget the costs in the provisional budget prepared by the municipal police board.

(5) On certification by the municipal police board members that an expenditure is within the budget prepared by the municipal police board, the council must pay the amount of the expenditure.

(6) Unless the council otherwise approves, a municipal police board must not make an expenditure, or enter an agreement to make an expenditure, that is not specified in the board's budget and approved by the council.

70. Following the amendments in the PAA, the relevant sections of the *Police Act*, now read as follows:

3 (1) The government must provide policing and law enforcement services for the following:

(a) rural areas of the Province;

(b) municipalities with a population of up to 5 000 persons;

(c) municipalities with a population of more than 5 000 persons that enter into an agreement under subsection (2) (b) to engage the provincial police force to act as the municipal police department in their municipalities.

...

(2) Subject to the approval of the minister under section 3.1 (2) (a), a municipality with a population of more than 5 000 persons must provide policing and law enforcement in accordance with this Act and the regulations by means of one of the following:

(a) establishing a municipal police department;

(b) entering into an agreement with the minister on behalf of the government, under which policing and law enforcement in the municipality will be provided by the provincial police force;

(c) entering into an agreement with another municipality that has a municipal police department under which policing and law enforcement in the municipality will be provided by the municipal police department of that municipality.

(3) An agreement under subsection (2) (b) or (c) must contain terms that the Lieutenant Governor in Council approves.

3.1 (1) A municipality must, in either of the following circumstances, request approval of the minister respecting the means under section 3 (2) by which the municipality proposes to provide policing and law enforcement:

(a) the director has notified the municipality that the population of the municipality has reached more than 5 000 persons;

(b) the municipality proposes to change the means under section 3 (2) by which the municipality is providing policing and law enforcement under that section.

(2) After receiving a request under subsection (1), the minister may do either of the following:

(a) approve the means by which the municipality proposes to provide policing and law enforcement;

(b) reject the means proposed by the municipality if the minister considers that the provision of policing and law enforcement by that proposed means would adversely affect the ability of the minister or municipality to fulfill their respective duties under sections 2 and 15 (1).

(3) The following must provide to the minister any information, plans or records that the minister may require for the purposes of making a decision under subsection (2):

(a) the municipality;

(b) other municipalities that the minister considers may be affected by the decision;

(c) the municipal police board or municipal police department of a municipality referred to in paragraph (a) or (b) of this subsection;

(d) the provincial police force.

(4) Except as otherwise permitted by the minister,

(a) the means approved under this section by which a municipality is to provide policing and law enforcement must be implemented by the municipality, and

(b) the implementation must be carried out in accordance with directions issued, if any, by the director under section 40 (5).

...

17 (1) If the director considers that a municipality with a population of more than 5 000 persons is not complying with section 3.1 (4) or 15 (1), the director must send to it and to its board, if any, a notice that

(a) identifies the non-compliance,

(b) directs the municipality to correct the failure to comply, and

(c) specifies the manner in which and the time within which the failure is to be corrected.

(2) On being notified by the director that a notice sent under subsection (1) has not been complied with, the minister may, on terms the minister considers appropriate,

(a) appoint persons as constables to police the municipality,

(b) use the provincial police force to police the municipality, or

(c) take other steps the minister considers necessary.

(3) The municipality must pay all costs of policing and law enforcement incurred under subsection (2).

(4) Costs incurred by the government under subsection (2) are a debt due to and recoverable by the government from the municipality.

71. Section 7 of the PAA is a Surrey specific provision that requires the City to provide policing through a municipal police department. Section 7 reads as follows:

7 (1) In this section:

“agreement” means the Municipal Police Unit Agreement between the

government and the City of Surrey dated April 1, 2012;

“minister” means the minister charged with the administration of the Police Act.

(2) Despite the Police Act, the City of Surrey must provide policing and law enforcement by the means referred to in section 3 (2) (a) of that Act.

(3) The means referred to in subsection (2) by which the City of Surrey is required to provide policing and law enforcement is deemed to have been approved by the minister under section 3.1 (2) (a) of the Police Act.

(4) The minister may terminate the agreement by giving written notice of the termination to the City of Surrey.

(5) If the agreement is terminated by notice under subsection (4), the termination takes effect, despite Article 22 of that agreement, on the date specified in the notice.

72. Section 8 of the PAA is another Surrey specific provision that empowers the Province to suspend the membership of the Board, including the Mayor as chair, and appoint a sole administrator in their place for the purposes of implementing s. 7 of the PAA. Section 8 reads as follows:

8 (1) In this section:

"administrator" means a person appointed under subsection (2) (a) as an administrator;

"board" means the municipal police board of the City of Surrey;

"director" has the same meaning as in section 1 of the *Police Act*;

"minister" means the minister charged with the administration of the *Police Act*;

"revocation order" means an order of the Lieutenant Governor in Council that revokes the appointment of each person who is an administrator

"transition period" means the period that

(a) starts on the effective date of the first order made under subsection (2), and

(b) ends on the effective date of a revocation order.

(2) For the purposes of implementing the means referred to in section 7 (2) by which the City of Surrey is required to provide policing and law enforcement, the Lieutenant Governor in Council may, by order, do the following:

(a) appoint one or more persons as an administrator;

(b) if 2 or more persons are appointed as administrators, designate one of those persons as the chief administrator.

(3) During the transition period, the membership of each person who is a member of the board is suspended.

(4) During the transition period,

(a) if only one person is appointed as an administrator, the administrator is deemed to be both the board and the chair of the board, and

(b) if 2 or more persons are appointed as administrators,

(i) the administrators are deemed to be the board, and

(ii) the chief administrator is deemed to be the chair of the board.

(5) If, during the transition period, a person is appointed to the board under section 23 (1) (b) or (c) of the *Police Act*, the appointment is suspended and does not take effect until the transition period ends.

(6) The minister must recommend that the Lieutenant Governor in Council make a revocation order after the director determines that

(a) administrators are no longer required for the purposes of implementing the means referred to in section 7 (2) of this Act, or

(b) the means referred to in section 7 (2) of this Act has been implemented.

(7) On the effective date of a revocation order, each of the following are members of the board:

(a) the mayor of the council of the City of Surrey;

(b) unless the term of the person's appointment has expired, a person appointed to the board whose

(i) membership was suspended under subsection (3), or

(ii) appointment was suspended under subsection (6).

(8) This section applies despite the *Police Act*.

The Minister Encroached on the City's Jurisdiction

73. The July Decision must be assessed based on the Minister's powers under the *Police Act* as it was in force at the time. Therefore, this subheading refers to the sections of the *Police Act* as they read before the amendments in the *PAA*.

59-74. Section 3 of the *Police Act*, places responsibility for policing on the City and, correspondingly, authorizes the City to select a police force to discharge that responsibility.

~~60.75.~~ The *Police Act* does not authorize the Minister to impose on the City a police force that is not the police force selected by the City in the exercise of the City's powers under s. 3. The *Police Act* establishes clear jurisdictional boundaries between the City and the Minister that the July Decision violates. Section 2 of the *Police Act* does not authorize the July Decision.

Police Act at ss. 3(2), 23

~~61.76.~~ The *Community Charter* requires the Province to respect municipal authority. The Minister is without jurisdiction to enlarge the powers conferred on him by the *Police Act* beyond what the legislature intended. The rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is incompatible with the jurisdiction of another.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at para. 64

~~62.77.~~ The Minister's powers under the *Police Act* to intervene directly in the provision of policing are limited to situations where a municipality has failed to comply with s. 15 of the *Police Act* and has been given prior notice identifying the non-compliance and specifying the time and manner by which to cure any such non-compliance. Those circumstances do not exist in this case. No notice has ever been issued to the City that the City is not complying with s. 15 of the *Police Act*.

Police Act at s. 17

~~63.78.~~ Fundamentally, the choice of POJ is the City's to make. The Minister acted without jurisdiction by purporting to compel the City to remove the RCMP and to adopt a municipal police force as its POJ, contrary to the determination by the duly-elected City Council.

The July Decision was Fundamentally Flawed for Additional Reasons

~~64.79.~~ The July Decision cannot be justified in relation to the facts and law that constrained the Minister.

~~65.80.~~ The Minister misapprehended the Director's Report when he endorsed the Director's Report and adopted the Conditions recommended therein. The Minister failed to give any, or adequate, consideration to the limitations of the Director's Report, including:

- a. The Minister relied on the Director's Report as evidence that the SPS could assume the role of POJ more effectively than the RCMP when the Director's Report did not reach that conclusion.

- b. The Director's Report was not a comprehensive analysis of the impacts of transitioning to the SPS, nor was it a full comparative analysis of the effectiveness of the policing provided by the RCMP versus the SPS.
- c. The Director's Report set out Conditions aimed at addressing alleged re-staffing concerns that the RCMP may face while unwinding the transition to the SPS. However, the Conditions were either impossible or onerous to fulfill and further complicated the City's ability to provide policing.
- d. There were also no similar conditions imposed if the City elected the SPS as its POJ. The Minister improperly assumed that the SPS would not face the same alleged staffing concerns as the RCMP.

66-81. Further, there was ample evidence before the Minister regarding the higher costs of continuing the transition to the SPS relative to keeping the RCMP. Those cost overages are in vast excess of the \$150 million promised by the Minister. The Minister ignored those higher costs and how they could compromise the adequacy of the policing in Surrey.

67-82. In short, the Minister improperly relied on the Director's Report to the exclusion of the balance of the evidence before him. This led both to the onerous imposition of the Conditions and the unsupported conclusion that the SPS would provide more effective policing than the present POJ.

Sections of the PAA Constitute an Infringement on the Freedom of Expression

83. Sections 7 and 8 of the PAA infringe upon the s. 2(b) Charter rights of persons entitled to vote in the October 2022 municipal election in Surrey ("Surrey Voters").

2 Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication

Canadian Charter of Rights and Freedoms at ss. 1, 2(b) [Charter]

84. Courts have long stressed "the paramount importance for Canadian democracy of freedom of expression in the political realm". In Keegstra, Chief Justice Dickson wrote:

The connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen

from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons.

Libman v. Quebec (Attorney General), [1997] 3 S.C.R. 569 at para. 29, 1997 CanLII 326; *R. v. Keegstra*, [1990] 3 S.C.R. 697 at 763–764, 1990 CanLII 24

85. The Supreme Court of Canada “favour[s] a very broad interpretation of freedom of expression in order to extend the guarantee under the Canadian *Charter* to as many expressive activities as possible”. To prove a limitation of their s. 2(b) rights, a claimant need only show:

- a. an expressive activity, meaning one that attempts to convey meaning; and
- b. that the purpose or effect of the government legislation is to restrict that form of expression.

Libman at paras. 30–31

86. The Supreme Court of Canada has explicitly stated that casting a vote is a form of expression that is protected under section 2(b) of the *Charter*. And political expression, of which voting is one means, is the “single most important and protected type of expression” under s. 2(b).

Siemens v. Manitoba (Attorney General), 2003 SCC 3 at para. 41;
Hansman v. Neufeld, 2023 SCC 14 at para. 91

87. In this case, the Minister specifically represented to Surrey Voters that the choice of policing model was the City’s to make. The City’s choice of POJ was a defining issue in the October 2022 election. The Surrey Voters expressed their choice of POJ for their community by voting in the October 2022 election. City Council proceeded to implement their democratic mandate by passing resolutions to keep the RCMP as the POJ.

88. Sections 7 and 8 of the PAA, however, have squelched the Surrey Voter’s expression of their democratic will by purporting to nullify City Council’s valid resolutions that implemented that expressed democratic will —after the Minister had represented that Surrey Voters could exercise a choice, and little more than a year after Surrey had conducted a municipal election on that basis. The PAA has effectively interfered with expression at the core of the last municipal election. The Province, having represented that the choice belonged to Surrey Voters, retroactively has deprived their expression of meaning.

The Infringement is not Demonstrably Justified in a Free and Democratic Society

89. The Province’s breach of s. 2(b) cannot be saved by s. 1 of the *Charter*, as it is not a reasonable limitation that can be demonstrably justified in a free and democratic society.

Therefore, s. 7 of the PAA is unconstitutional and must be declared to be of no force and effect.

Charter at ss. 1, 2(b); Constitution Act of 1982 at s. 52(1)

90. The onus of proving the s. 1 justification rests with the government.

R. v. Oakes, [1986] 1 S.C.R. 103, 1986 CanLII 46

91. The legislation ordering that the City transition to the SPS, without cogent evidence of any public safety benefit, cannot be justified in the light of the Minister's specific representations, and the Province's elimination the Surrey Voters' expression.

The City has Public Interest Standing

92. The City raises serious justiciable issues regarding the constitutionality of legislation passed by the Province that targets the City. The City is not a mere busybody and it has a genuine interest in asserting the rights of Surrey Voters. The proposed litigation is a reasonable and effective means to bring the issues to the court. The City is a sophisticated litigant advancing a claim in the public interest which will have significant impacts on the democratic rights of British Columbians. As such, the City has public interest standing to bring the Charter claim.

British Columbia (Attorney General) v. Council of
Canadians with Disabilities, 2022 SCC 27

A Declaration is Warranted

68.93. MunicipalitiesMunicipal-provincial relations should be based on mutual respect for each other's authority. In keeping with this principle, municipalities must not be assigned responsibilities unless the resources are provided to fulfill the responsibilities, and they need to be consulted on proposed changes to their jurisdiction.

Community Charter, S.B.C. 2003, c. 26 at ss. 2(2)(a)-(c)

69.94. The Minister's purported decisionJuly Decision and the PAA purport to override the City's decision taken pursuant to the City's authority under s. 3 of the Police Act, and to assign to the City the responsibility to transition the City's POJ from the RCMP to SPS, has. Both of the actions by the Province have created a significant, unaddressed funding shortfall over ten yearsfor the City. This is despite the Minister's assurances that his decision would not pass any costs on to the residents of Surrey. Assigning a responsibility to a municipality without providing the resources required to fulfill the responsibility is contrary to s. 2(2)(b) of the Community Charter.

Community Charter, S.B.C. 2003, c. 26 at s. 2(2)(b)

~~70.95.~~ Pursuant to s. 15 of the *Police Act*, the City bears the costs of generally maintaining law and order by: adequately staffing and equipping the police force, paying for specialized services, and properly providing for the care of detained persons. The City continues to do so and, in furtherance of these duties, the City has chosen to retain the RCMP as its POJ.

Police Act at s. 15

96. Section 2 of the *Police Act* does not empower the Minister to impose further costs on the City beyond what has been allocated to the City by the legislature under the *Police Act*. Even as amended, there are no applicable provisions in the *Police Act* or the *PAA* that avail to resolve the question of financial responsibility when the Province imposes a budgetary shortfall on a municipality by purporting to usurp the municipality's policing choice and replace it with the Province's own, all the more where the Province's decision comes at significantly greater cost to the municipality and offers no corresponding benefits in terms of the quality of policing services.

~~71.97.~~ The only mechanism within the *Police Act* for the Minister to assign costs of policing directly to a municipality is set out in s. 17 of the *Police Act* and entails several pre-conditions not met here: (i) if the municipality has failed generally to maintain law and order, (ii) the director of police services has notified it of the failure, (iii) the municipality failed to correct the failure, and (iv) due to the non-compliance, the Minister had to take steps to provide policing in the municipality. None of these steps occurred in this case.

Police Act at s. 17

98. The Province has never exercised its powers under s. 17 to provide notice to the City that it is in non-compliance with its duties under s. 15 of the *Police Act*.

99. Funding for a municipal police board is negotiated between the board and the municipal council pursuant to s. 27 of the *Police Act*. The municipal police board prepares and submits a provisional budget to the municipal council for approval. The municipal police board must not make expenditures not authorized by the municipal council. The Director, as part of their operational superintending duties, can consider disagreements between a council and a police board on whether to include particular items in the policing budget. As with the Minister's powers under s. 17, the Director's powers under s. 27 must be read consistently with the statutory context. Nothing in s. 27, the duties of the Director, or the *Police Act*, allows the Director to broaden the scope of a municipality's funding responsibilities or require a municipality to fund a transition to a new POJ.

Police Act at s. 27; Vavilov at para. 117

100. In any event, no decision of the Director or the Minister under ss. 17 or 27 can conflict with or have the effect of interfering with the ability of the City to meet its statutory duties under s. 15 of the *Police Act*.

101. Both the July Decision and the PAA purport to impose a significant responsibility on the City. There is no authority in the Police Act, including the recent amendments, or the PAA that overrides s. 2(2) of the Community Charter, and allows the Minister or the Province to impose additional policing responsibilities on the City without providing the requisite funding. To the contrary, municipal consultation is needed for changes to matters within municipal authority. Failing to do so offends the principle that the Province respect municipal authority.

Community Charter at ss. 2(2)(a)–(c)

~~72.~~102. _____ A declaration is discretionary relief well suited to the present jurisdictional impasse.

[25] Declaratory relief is a discretionary remedy that “may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought”: In addition, a declaration must have practical utility, in that it will settle a “live controversy” between the parties or clarify the rights of the parties, at least to some extent

Interfor Corporation v. Mackenzie Sawmill Ltd., 2022 BCCA 228 at para. 25

~~73.~~103. _____ Those circumstances are present here. The declaration as to jurisdictional boundaries involves a question of law and is the “normal stuff of judicial determination.” The declaration would clarify the parties’ respective legal rights, settle a live controversy between them, and guide future relations on the subject.

Sierra Club of British Columbia Foundation v British Columbia (Minister of Environment and Climate Change Strategy), 2023 BCSC 74, para. 44

David Suzuki Foundation v. Canada (Fisheries and Oceans), 2010 FC 1233, para. 68, aff’d (except in one respect) 2012 FCA 40 (“the public interest will be served by providing judicial guidance on the nature and scope of the [Minister’s] duty”)

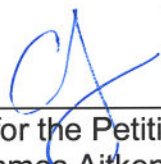
Part 4: MATERIALS TO BE RELIED ON

74.104. _____ The City intends to rely upon the following materials:

- a. Affidavit #1 of Terry Waterhouse made October 12, 2023;
- b. Affidavit #1 of Kristy Wong made October 13, 2023; and
- c. Affidavit #2 of Kristy Wong made November 20, 2023 and
- e.d. such further and other materials as counsel may advise and this Honourable Court may permit.

The petitioner estimates that the hearing of the petition will take **35 days**.

Date: ~~October~~ November 13 2023



Counsel for the Petitioner
Dennis James Aitken LLP
Craig Dennis, K.C./Owen James



Counsel for the Petitioner
Hunter Litigation Chambers
Brian Duong/Devin Eeg

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Petition

with the following variations and additional terms:

Date:

Signature of Judge Master