

ARTICLE

# “YOU’RE NOT A REAL COP!” EXAMINING THE POWERS AND LIMITATIONS OF CAMPUS SECURITY IN PUBLIC CANADIAN UNIVERSITIES.

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## ABSTRACT

Campus security is an integral part of life on university campuses, but what they can or cannot do remains a mystery to the general public. Given their quasi police-like status on university campuses, this uncertainty is particularly concerning. This article seeks to provide some clarity on the role of campus security on university campuses by collecting publicly available information on campus security at public Canadian universities and synthesizing the data with relevant jurisprudence and legislation. Based on this analysis, this article concludes that there is a lack of judicial clarity on the powers and limitations of campus security and contends that expanding Charter applicability to public Canadian universities provides the most fulsome solution to protecting the Charter rights of university community members.

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## INTRODUCTION

Campus security are found at every public university in Canada. As their name implies, campus security are generally responsible for policing and protecting university property. Beyond these basic responsibilities, the powers and limitations of campus security vary depending on the university. Current scholarship in this area is primarily focused on private policing,<sup>1</sup> resulting in a deficit of literature specifically focused on campus security and its unique position situated between public and private policing. Thus, it is understandable that the public is mostly unfamiliar with the distinct roles and responsibilities of campus security and the impact campus security can have on their activities on university campuses.

This article seeks to fill this gap in the scholarship and to provide some clarity surrounding the role of campus security on university campuses. It aims to answer three questions: What are the powers and limitations of campus security? How have the courts dealt with the exercise of campus security powers? And what should be done to address any legal issues and inconsistencies that arise? Based on the answers to these questions, this article will ultimately conclude that expanding *Charter*<sup>2</sup> applicability to public Canadian universities provides the most fulsome solution to protecting the *Charter* rights of university community members by addressing the lack of judicial clarity on the powers and limitations of campus security.

To answer the first question, this article draws on information gleaned from campus security webpages, university documents, journal articles, and relevant legislation and jurisprudence. Based on this information, two categories of campus security emerge, campus security and special constables,<sup>3</sup> each with their own unique set of police-like powers and limitations. Private campus security have greater restrictions on their powers, but their actions as private individuals generally are not subject to *Charter* scrutiny. Special constables are granted a certain set of police powers, but actions taken using such powers are subject to *Charter* scrutiny. They are also afforded the discretion to choose to enforce either private or public sanctions.

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- 1 See generally George S Rigakos & David R Greener, "Bubbles of Governance: Private Police and the Law in Canada" (2000) 15:1 Can JL & Soc'y 145 (WL Can); Tanya Scharbach, "Private Law Enforcement – Dodging the Charter" (1995) 1 Appeal 42; Ruth Montgomery & Curt Taylor Griffiths, "The Use of Private Security Services for Policing" (2016), online (pdf): *Public Safety Canada* <[www.publicsafety.gc.ca/perma.cc/EGT4-H363](http://www.publicsafety.gc.ca/perma.cc/EGT4-H363)>; Scott Burbidge, "The Governance Deficit: Reflections on the Future of Public and Private Policing in Canada" (2005) 47:1 Can J of Criminology and Criminal Justice 63 (QL Can).
  - 2 *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to The Canada Act 1982 (UK), 1982, c 11 [*Charter*].
  - 3 For ease of reference, this article will use the term "special constables" to refer to security personnel employed by universities whose appointments give them the powers of a peace officer under the various provincial police acts.

In answering the second question, this article tracks six decisions that explore the powers and limitations of campus security: *R v Fitch*;<sup>4</sup> *R v Mraz (M.)*;<sup>5</sup> *R v Scott*;<sup>6</sup> *R v Whatcott*;<sup>7</sup> *R v Adams*;<sup>8</sup> and *Jackson v University of Western Ontario*.<sup>9</sup> These decisions highlight the lack of judicial clarity (and in particular, recent judicial clarity) in defining campus security's powers and limitations, particularly when compared to police powers, which results in uncertainty and a lack of uniformity in how the law is applied to campus security. These uncertainties raise the issues of potential *Charter* circumvention, unfettered discretion in choosing to apply public or private laws, and public uncertainty about what (if any) *Charter* protections they are afforded when interacting with campus security. The impact of these issues are significant because they disproportionately affect marginalized and racialized peoples in negative ways.

To answer the third question, this article explores two potential solutions in resolving the issues and inconsistencies it has identified. Taking a more holistic approach in interpreting state agency, a pre-requisite of *Charter* applicability, would prevent campus security from potentially circumventing the *Charter* when performing investigations. Expanding *Charter* applicability to public universities more generally would subject campus security to the same level of *Charter* scrutiny as police officers. Both solutions protect the privacy rights of community members, but the latter has more fulsome *Charter* protection while providing ultimate clarity in dealing with campus security by bringing all actions taken by campus security under *Charter* scrutiny.

## I. DEFINING CAMPUS SECURITY

A review of campus security descriptions at public universities in Canada<sup>10</sup> reveals several commonalities. Public universities were chosen as the focus of this article due to uncertainty surrounding potential *Charter* applicability, so campus security in private Canadian universities and Canadian colleges are excluded from this analysis.<sup>11</sup> Based on a review of their webpages, campus security at these institutions generally fall into two distinct categories:

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- 4 1994 CanLII 761 at paras 1, 2, 5 (BCCA), 1994 CarswellBC 1003 (WL Can) [*Fitch*].
  - 5 2000 CanLII 29685 (SKPC), 2000 CarswellSask 741 (WL Can) [*Mraz*] (the accused was ultimately found not guilty at trial but an appeal by the Crown was successful and the Court ordered a new trial). See also *R v Mraz (M)*, 2001 CarswellSask 13 (WL Can), 48 WCB (2d) 406; *R v Mraz (M)*, 2001 SKQB 296.
  - 6 2004 CanLII 2558 (ONSC), [2004] OJ No 3000 (QL) (the trial decision was unavailable for viewing on CanLII, Westlaw Canada, and Lexis Advance Quicklaw) [*Scott*].
  - 7 2012 ABQB 231 [*Whatcott*].
  - 8 2015 SKQB 78 [*Adams*].
  - 9 2003 CanLII 28232 (ONSCSM), [2003] OJ No 3832 (QL) at para 8 [*Jackson*].
  - 10 See Appendix A for a comprehensive list of public universities reviewed for this article. Public universities in Quebec have been excluded from this article because Quebec's *Charter of Human Rights and Freedoms*, CQLR c C-12 also applies to non-governmental entities and thus creates a unique set of jurisprudence that has no comparison in other Canadian jurisdictions.
  - 11 Private universities do not receive public funding and have less government oversight compared to public universities, making it less likely for private universities to be considered government actors or exercising a governmental function.

private campus security and special constables. Though most universities employ only one category of campus security, there are four universities that hire both private campus security and special constables.<sup>12</sup>

Four further exceptions do not neatly fall within the two categories of campus security. Lakehead University empowers its private campus security to act as city bylaw enforcement officers in its parking lots,<sup>13</sup> but they cannot enforce the *Criminal Code*.<sup>14</sup> The University of Victoria hires special duty police officers to patrol university residences as needed.<sup>15</sup> At the University of Ontario Institute of Technology, police officers also patrol campus property.<sup>16</sup> The University RCMP is unique amongst local police detachments discussed in this article because most of their jurisdiction and work involves incidents on the University of British Columbia's ("UBC") Vancouver campus property; however, they mostly respond to incidents and do not typically patrol UBC's academic campus.<sup>17</sup> UBC's Vancouver campus employs private campus security to patrol its academic campus and have a very close working relationship with the University RCMP. Though the University RCMP does not have the authority to enforce university policies and procedures, they work jointly with UBC's campus security on issues such as bike thefts.<sup>18</sup>

Subsequent sections start with a general overview of private security and special constables, followed by analysis of the data gleaned from campus security's webpages and highlighting noticeable trends. Last, it will set out the powers and limitations of both categories of campus security.

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12 Brock University, University of Alberta, University of Western Ontario, and University of Toronto: see Appendix A.

13 Lakehead University, "About Us" (last visited 28 January 2023), online: *Lakehead University Security* <lakeheadu.ca/faculty-and-staff/departments/services/security/tb/about-us> [perma.cc/FW66-REDQ].

14 RSC 1985, c C-46 [*Criminal Code*]. See generally *R v Laramée*, 1972 CanLII 1365 (NWTTC), 1972 CarswellNWT 12 (NWT Mag Ct); *R v Wright*, 1973 CanLII 858 (SK QB), 1973 CarswellSask 104 (Sask Dist Ct).

15 See generally *R v ES*, 2016 BCPC 270; "Mass Gatherings at UVic" (2 November 2021), online: *Saanich Police* <saanichpolice.ca/2021/11/02/mass-gatherings-at-uvic/> [perma.cc/46HK-HLV5]. In January 2023, Campus Security Services at the University of Victoria informed me that there is no written agreement between it and local police, but that it has a long standing partnership with local police detachments (i.e. Saanich and Oak Bay Police departments).

16 "Security monitoring and equipment" (last visited 28 January 2023), online: *Ontario Tech University* <ontariotechu.ca/campus-services/safety-security/services/security-monitoring-and-equipment.php> [perma.cc/6JTM-FUUQ].

17 Interview of Ali Mojdehi, Associate Director of UBC Campus Security Services (18 March 2022) (approximately 60-percent of the University RCMP's work involves incidents on UBC's academic campus) [Mojdehi]. The University Endowment Lands have Provincial Crown Land status, thus sitting outside of jurisdiction of the Vancouver Police Department: see Ida Chong, "University Endowment Lands Official Community Plan" (14 October 2005), online (pdf): *University Endowment Lands* <universityendowmentlands.gov.bc.ca> [perma.cc/MX36-L8PN]; People, Community & International Committee, "UBC Vancouver Annual Campus Security Report 2021" (2021), online (pdf): *University of British Columbia* <bog3.sites.olt.ubc.ca> [perma.cc/2FM5-8LUC] [UBC 2021 Annual Report].

18 Mojdehi, *supra* note 17.

## A. Private Campus Security

Most private campus security forces are directly employed by the university, although there are several universities that outsource their campus security to external security companies.<sup>19</sup> Private campus security is governed by provincial legislation that are responsible for the oversight, licensing, and compliance of security guard licensees.<sup>20</sup> Government accountability is mandated by legislation<sup>21</sup> and training for licensed private security guards is regulated in most provinces.<sup>22</sup> Some provincial legislation also regulate the ability to carry handcuffs and batons.<sup>23</sup> An overwhelming majority of Canada's public universities employ private campus security.<sup>24</sup> Public universities in Ontario that employ private campus security tend to be smaller in geographic size and/or campus population.<sup>25</sup> In British Columbia and Ontario, external security companies are often employed to handle campus security at the smaller universities<sup>26</sup> or the smaller and/or secondary campuses of larger universities.<sup>27</sup>

### i. Powers

Private campus security forces are empowered to enforce university policies and procedures. Though the powers and duties granted by their respective universities vary, common duties listed on their webpages include: patrolling; responding to incidents and if required, subsequent investigations; managing building access; maintaining a lost and found; providing emergency first aid; and parking administration.<sup>28</sup> Additionally, private campus security are engaged in proactive community assistance duties and initiatives.<sup>29</sup> A number of private campus security forces also offer violence prevention and safety training to community members.<sup>30</sup>

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- 19 See Appendix A for a list of universities that hire external security companies to act as its campus security.
- 20 Campus security webpages often list that their personnel are licensed under the provincial private security acts: see e.g. Mount Royal University, "Our services" (last visited 28 January 2023), online: *Complaints Process* <[mtroyal.ca/SafetyRiskDepartment/CampusSafety/PoliciesProcedures](http://mtroyal.ca/SafetyRiskDepartment/CampusSafety/PoliciesProcedures)> [perma.cc/2TVA-QX7F].
- 21 Montgomery & Griffiths, *supra* note 1 at 49 (legislation may mandate the agency responsible for private security to conduct full audits of policies and procedures or conduct site visits to locations where a security guard is working).
- 22 *Ibid* at 51 (the exceptions are Nova Scotia, New Brunswick, and Prince Edward Island ("PEI")).
- 23 *Ibid* at 52.
- 24 80 percent, or 44 of the 55 public universities listed in Appendix A. This statistic includes every public university in British Columbia, Alberta, Manitoba, Nova Scotia, Newfoundland and Labrador ("Newfoundland"), and the Yukon.
- 25 "Student Populations" (last modified August 2022), online: *Ontario Council of University Libraries* <[ocul.on.ca/populations](http://ocul.on.ca/populations)> [perma.cc/R7HF-JSXA].
- 26 See e.g. Toronto Metropolitan University, "GardaWorld Security Positions" (last visited 28 January 2023), online: *Community Safety and Security* <[torontomu.ca/community-safety-security/contact/gardaworld-security-positions](http://torontomu.ca/community-safety-security/contact/gardaworld-security-positions)> [perma.cc/LZ4Q-SWVC].
- 27 See e.g. "Safety and Security" (last visited 28 January 2023), online: *Capilano University* <[capilanou.ca/student-life/support-wellness/safety-security](http://capilanou.ca/student-life/support-wellness/safety-security)> [perma.cc/5MBK-GNGT] (Capilano University's secondary campus on the Sunshine Coast contracts external security companies to handle campus security).
- 28 See Appendix B for a more detailed listing of such duties and responsibilities.
- 29 Examples include safewalk programs, managing the emergency phones on campus, student engagement events and presentations, and conducting safety risk assessments. See Appendix B for a more comprehensive list.
- 30 See Appendix B for a more comprehensive list.

As agents of the landowner, private campus security also enforce the university's private property rights, usually through provincial trespass acts. Nova Scotia prohibits a person from engaging in "disorderly behaviour" on private property,<sup>31</sup> and, along with three other provinces, also prohibits a person from engaging in "prohibited activity" or "activity prohibited by notice".<sup>32</sup> As no existing definitions of "prohibited activity" nor "activity prohibited by notice" were found,<sup>33</sup> private campus security in Nova Scotia are theoretically afforded ample discretion in deciding what constitutes trespassing. In contrast, New Brunswick exempts persons who are "engaged in a peaceful public demonstration, or doing anything in connection with a lockout or strike that the person is permitted by law to do" from being found trespassing.<sup>34</sup> Alberta, Ontario, and Newfoundland allow either the owner or their authorized representative to arrest trespassers without a warrant, though the trespasser must then be delivered to either a peace officer or provincial court judge.<sup>35</sup> Ontario requires that the trespasser be delivered to a police officer and only permits police officers to arrest without a warrant if the trespasser is off the premises.<sup>36</sup> Four other provinces and the Yukon<sup>37</sup> only permit peace officers to arrest without a warrant, while the trespass acts of Manitoba and New Brunswick do not empower anyone to arrest without a warrant.<sup>38</sup>

Section 494 of the *Criminal Code* permits private campus security to make a lawful arrest as a private individual or agent of a property owner. Under section 494(1)(a), any private individual can arrest a person they find committing an indictable offence if they see the essential elements of the offence.<sup>39</sup> Under section 494(1)(b), any private individual can arrest a person that is freshly escaping from someone who can lawfully arrest them. Section 494(2) allows an agent of the owner or lawful possessor of the property to arrest a person found committing an offence on or in relation to that property. Unlike the provisions under section 494(1), private campus security can make an arrest under section 494(2) if the person is committing either a summary or indictable offence. Most notably, this section would give private campus security the power to arrest persons found committing summary

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31 *Protection of Property Act*, RSNS 1989, c 363, s 7(b) [*NS Trespass Act*].

32 *Ibid*, s 3(1)(f); *Trespass Act*, RSBC 2018, c 3, s 2(1)(c) [*BC Trespass Act*]; *The Trespass to Property Act*, SS 2009, c T-20.2, s 3(1)(b) [*SK Trespass Act*]; *Trespass to Property Act*, RSO 1990, c T.21, s 2(a)(ii) [*ON Trespass Act*].

33 Rigakos & Greener, *supra* note 1 at 157, n 55. I also reviewed post-2000 cases citing the sections of the trespass acts (i.e. British Columbia, Saskatchewan, Ontario, and Nova Scotia) dealing with prohibited activities, and only *R v Davani*, 2017 ONSC 2326 at para 15 provided some insight ("loitering on the premises was not an activity prohibited by notice").

34 *Trespass Act*, RSNB 2012, c 117, s 4 [*NB Trespass Act*].

35 *Trespass to Premises Act*, RSA 2000, c T-7, s 5(1)-(2) [*AB Trespass Act*]; *ON Trespass Act*, *supra* note 32, s 9(1)-(2); *Petty Trespass Act*, RSNL 1990, c P-11, s 4 [*NL Trespass Act*].

36 *ON Trespass Act*, *supra* note 32, ss 9(2), 10.

37 *BC Trespass Act*, *supra* note 32, s 7; *SK Trespass Act*, *supra* note 32, s 12; *NS Trespass Act*, *supra* note 31, s 6(1); *School Trespass Act*, RSY 2002, c 199, s 4.

38 *The Trespass Act*, CCSM c T156; *NB Trespass Act*, *supra* note 34.

39 *R v Gonzalez*, [1996] OJ No 761 (QL) (On Ct J (Prov Div)).

offences such as unlawful assembly<sup>40</sup> and causing a disturbance.<sup>41</sup> Private security guards are also entitled to search the person that they lawfully arrested, though the entitlement seems to flow from a concern for the arrestor's safety (i.e., looking for weapons) rather than to preserve evidence.<sup>42</sup>

## ii. Limitations

Private campus security forces, as private individuals, are subjected to certain limitations to their enforcement powers. First, their jurisdiction is limited to university property.<sup>43</sup> Second, private security legislation in most jurisdictions<sup>44</sup> specifically prohibits all private campus security from carrying or using weapons prohibited by the *Criminal Code* unless specifically authorized.<sup>45</sup> Private campus security cannot use batons in Saskatchewan and Nova Scotia unless specifically authorized,<sup>46</sup> while Alberta prohibits the use of batons that are longer than 26 inches.<sup>47</sup> In Ontario, private campus security are prohibited from using cable or strip ties as restraints.<sup>48</sup> Last, two other important consequences serve as limitations to the powers of campus security: restrictions placed upon them by the *Charter*, and the threat of a civil suit by the complainant for false imprisonment and/or wrongful arrest.

### a. The Charter

There are two considerations when assessing whether private campus security forces are bound by the *Charter*. First, whether private security guards, in all contexts, have the same constitutional limits as police officers. Second, whether working at a public university results in differences between the limitations of private campus security and security guards generally.

Under section 32, the *Charter* only applies to government actors or entities.<sup>49</sup> Subsequent court decisions expanded the application of this section to include non-government actors that are: essentially controlled by the government, exercising statutory powers delegated to

40 *Criminal Code*, *supra* note 14, s 63(1)–(2).

41 *Ibid*, s 175(1). With university campuses often being adjacent to or otherwise near a public place, this subsection could apply to activities within university campuses.

42 *R v Lerke*, 1986 ABCA 15 at paras 35–36, 39 (CanLII), [1986] AJ No 27 (QL) [*Lerke*]. For further discussion about a private individual's power to search incident to arrest, see Part I(A)(2)(i).

43 As agents of the landowner, private campus security can only enforce the university's property rights while on university property.

44 The exceptions are New Brunswick, Newfoundland, and the Yukon. The Northwest Territories and Nunavut were not included because they do not have universities listed under Appendix A.

45 *Security Services Act*, SBC 2007, c 30, s 26 (British Columbia); *Security Services and Investigators Act*, SA 2008, c S-4.7, s 34(1) (Alberta); *Private Investigators and Security Guards Regulations*, 2000, RRS c P-26.01 Reg 1, s 16 [*SK PISG Reg*]; *Equipment*, O Reg 366/07, s 1 [*ON Eq Reg*] (Ontario allows licensees to carry firearms if they are authorized to carry one under s 20 the *Firearms Act*, SC 1995, c 39); *Private Investigators and Private Guards Regulations*, NS Reg 180/2005, s 13(2) (Nova Scotia); *Private Investigators and Security Guards Act Regulations*, PEI Reg EC256/88, s 20(1) [*NS PISGA Reg*].

46 *SK PISG Reg*, *supra* note 45, s 16(3); *NS PISGA Reg*, *supra* note 45, s 12(5).

47 *Security Services and Investigators Regulation*, Alta Reg 52/2010, s 9(1)(a).

48 *ON Eq Reg*, *supra* note 45, s 4.

49 *Charter*, *supra* note 2, s 32(1).



them by the government, or implementing government objectives.<sup>50</sup> If the entity is found to be “government”, then all of its actions will be subject to the *Charter*.<sup>51</sup> Private security guards are not considered to be under the control of the government because they are either acting as private individuals or agents of property owners. This is clearly articulated in both jurisprudence and the *Criminal Code*.<sup>52</sup>

Nonetheless, the *Charter* applies to private security guards under certain circumstances, as activities performed by a non-government entity that are considered governmental in nature (but only those activities) are subject to the *Charter*.<sup>53</sup> First, arrests by private security guards under section 494 of the *Criminal Code* or provincial trespass acts may be subjected to the *Charter* because such arrests can be seen as an exercise of governmental function.<sup>54</sup> Under such circumstances, a private security guard is also bound by section 8 of the *Charter* because their entitlement to search incident to arrest flows from this governmental function.<sup>55</sup> Use of excessive force during such an arrest would be infringing upon the arrestee’s section 7 *Charter* rights.<sup>56</sup> Second, a private security guard is bound by the *Charter* if they are acting as an agent of the state. Three factors are relevant to finding state agency: the character of employment and nature of the duties of the alleged agent; whether there is a nexus between their conduct or status and the state; and the purpose of the contact with the detainee.<sup>57</sup> Jurisprudence surrounding state agency has nonetheless been contradictory. In *Paglialunga*, the court refused to exclude evidence after finding that a civilian employee working at a police force was not an agent of the state, despite his police-like uniform. The court came to this decision because the civilian employee’s actions would have occurred without police

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50 *McKinney v University of Guelph*, 1990 CanLII 60 (SCC), [1990] 3 SCR 229 [*McKinney*]; *Eldridge v British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 SCR 624.

51 *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31 at para 16 [GVTA].

52 *Dendekker v F W Woolworth Co*, 1975 CanLII 233 at para 16 (ABQB), 1975 CarswellAlta 17 (WL Can) (“[s]ecurity officers employed to guard against thefts of merchandise have no higher rights of arrest than those conferred on citizens generally”), cited with approval most recently in *Chopra v T Eaton Co Ltd*, 1999 ABQB 201 at para 108; *Criminal Code*, *supra* note 14, s 2 (private security guards are not listed under the definition of a peace officer).

53 GVTA, *supra* note 51 at para 16.

54 *Lerke*, *supra* note 42 at para 23. Appellate authority post-*R v Buhay*, 2003 SCC 30 [*Buhay*] has been split on this issue. The Alberta Court of Appeal affirmed *Lerke* in *R v Dell*, 2005 ABCA 246, stating at paras 17–18 that *Buhay* did not expressly overrule *Lerke* and noted that *Buhay* at para 77 explicitly declined to address whether a private individual’s arrest could be construed as state action for purposes of the *Charter*. However, the courts of appeal in Ontario, British Columbia, and Nova Scotia have held that arrests by private individuals are not subject to the *Charter* (*R v NS*, 2004 CanLII 59977 (ONCA), [2004] OJ No 290; *R v J(AM)*, 1999 BCCA 366; *R v Skeir*, 2005 NSCA 86). Mudding the waters are lower court decisions from these jurisdictions that cite *Lerke* with approval (e.g. *Moinzadeh v Loblaw’s Inc*, 2021 BCSC 793 at para 7; *R v Brissonnet*, 2006 ONCJ 31 at para 16), as well as the Federal Court in *Société des Acadiens et Acadiennes du Nouveau-Brunswick v Canada*, 2005 FC 1172 at para 41.

55 *Lerke*, *supra* note 42 at para 39.

56 *R v Wilson*, 1994 CanLII 689 (BCSC), [1994] BCJ No 586 at paras 35–36.

57 *R v Paglialunga*, [1995] OJ No 512 (QL), 1995 CarswellOnt 7206 (WL Can) at para 29 (Ont Prov Div) [*Paglialunga*].

intervention or encouragement.<sup>58</sup> Despite sharing similar facts, *R v Brandt* found that a park patroller was a state agent because they were “clothed with the authority of a police officer”.<sup>59</sup>

There are a few exceptions to the above scenarios. First, though an arrest by a private security guard may fall within the parameters of section 10(b) of the *Charter*, courts have been more lenient on right to counsel warnings by private individuals and have not excluded evidence whereas they may have done so if the arrest or detention was performed by a police officer.<sup>60</sup> Second, the *Charter* does not apply in situations where private security guards detain or perform a search not incident to arrest on another private individual because both types of conduct are not considered governmental functions.<sup>61</sup> Last, evidence obtained by private security guards are free from *Charter* scrutiny if the search was not prompted or encouraged by police officers or other branches of government.<sup>62</sup> Thus, any evidence obtained in these scenarios cannot be excluded under section 24(2) of the *Charter*.

Under the existing jurisprudence and legislation, private campus security share the same limitations as non-campus private security. To date, there has yet to be a court which finds that universities are government actors or under sufficient governmental control (and thereby subsuming all of its activities under *Charter* scrutiny). Thus, whether the *Charter* applies to private campus security acting as agents for their employer university remains dependant on whether the activity they are carrying out would be considered governmental in nature. Alberta’s Court of Appeal recently held that the *Charter* applied to universities in the context of suppressing students’ speech on campus,<sup>63</sup> but this decision is inconsistent with jurisprudence of appellate courts in other jurisdictions.<sup>64</sup> The same train of analysis is therefore required to determine whether the actions of private campus security will be bound by the *Charter*.

#### b. False Imprisonment and Wrongful Arrest

If private campus security wrongfully arrest an individual under section 494 of the *Criminal Code*, then they may be the subject of a claim of false imprisonment. To establish a *prima facie* case of false imprisonment, the claimant must prove that they were detained. As with section 9 jurisprudence, detention under false imprisonment can be physical and/ or psychological in nature. Because of their “authority status”, private campus security who

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58 *Ibid.*

59 1991 CarswellAlta 684 (WL Can) at paras 9–10 (Alta PC), [1991] AJ No 116 (QL).

60 *R v Voege*, 1997 CanLII 12357 (ONSC), 1997 CarswellOnt 4671 (WL Can) (breach was made in good faith); *R v Miskuski*, [1993] APWLD (Alta QB), 1993 CarswellAlta 922 (WL Can) (evidence was not excluded because the breach was a “technical breach”).

61 *R v Shafie*, 1989 CanLII 261 at 11–12 (ONCA), 1989 CarswellOnt 71 (WL Can); *R v JC*, [1994] BCJ No 1861 (QL) at para 15 (BCSC) (detention); *R v Swanarchuk*, [1990] MJ No 686 (MBQB) (search and seizure).

62 Rigakos & Greener, *supra* note 1, at 182–183.

63 *UAlberta Pro-Life v Governors of the University of Alberta*, 2020 ABCA 1 [*UAlberta*] (the University of Alberta did not apply for leave to appeal the Court of Appeal’s decision to the Supreme Court of Canada).

64 *Lobo v Carleton University*, 2012 ONCA 498; *Yashcheshen v University of Saskatchewan*, 2018 SKQB 57 (this was an appeal from the Provincial Court of Saskatchewan); *BC Civil Liberties Association v University of Victoria*, 2016 BCCA 162.

do not clearly indicate that an individual is not required to go with them to avoid an arrest will have psychologically detained that individual.<sup>65</sup> Psychological detention also includes agreeing to go with the security guard to avoid public humiliation or embarrassment.<sup>66</sup> Once detention is established, the onus then shifts to the security guard to justify the imprisonment. Unlike police officers,<sup>67</sup> private individuals cannot use the defence of “reasonable and probable grounds”<sup>68</sup> if they exceed their lawful authority in making a private arrest by arresting someone who did not commit an indictable offence.<sup>69</sup> Private campus security can justify arresting the wrong person if an offence was actually committed and there was reasonable grounds to believe that this person was guilty of a crime.<sup>70</sup>

## B. Special Constables

Through provincial legislation, special constables receive the powers of a peace officer to the extent and for the specific purpose set out in their appointment. In Alberta, only authorized employers are permitted to engage the services of a peace officer.<sup>71</sup> Ontario does not have this requirement;<sup>72</sup> rather, a memorandum of understanding (“MOU”) between the university and the local police detachment governs the special constables and sets out the details of the appointment.<sup>73</sup> Oversight of special constables is typically the university’s responsibility, though some legislation allows for government oversight in certain situations.<sup>74</sup> The appointment may also set out whether the special constables are accountable to the local

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65 *Kovacs v Ontario Jockey Club*, 1995 CanLII 7397 at paras 49–50 (ONSC), 1995 CarswellOnt 1231 (WL Can) [Kovacs].

66 *Jeeves (Guardian of) v Swanson*, 1995 CanLII 520 (BCSC) at para 20, [1995] BCJ No 1211 (QL).

67 *Criminal Code*, *supra* note 14, s 495(1)(a).

68 *Ibid*, s 25(1)(a).

69 *Kovacs*, *supra* note 65 at paras 70–71. This view is not shared by courts in all jurisdictions, and the issue has not been brought before a court of appeal in any jurisdiction. Though it appears to be based on the criticized approach to defining “finds committing” in the narrow ruling in *The Queen v Biron*, 1975 CanLII 13 (SCC), [1976] 2 SCR 56, until an appellate court finds otherwise, *Kovacs* remains persuasive. For a discussion of the evolution of the relevant case law, see generally *Mann v Canadian Tire Corporation Limited*, 2016 ONSC 4926 at 29–38 (though the discussion is centred on shopkeepers’ privilege, it is equally applicable to security guards).

70 *Kovacs*, *supra* note 65 at para 74.

71 *Peace Officer Act*, SA 2006, c P-3.5, s 5(1) [AB POA].

72 *Police Services Act*, RSO 1990, c P.15, s 53 [ON PSA] (it is set to be replaced with the *Community Safety and Policing Act*, 2019, SO 2019, c 1, Sch 1 [CSPA], though as of writing, the CSPA has not come to force yet).

73 The two MOUs I was able to obtain (i.e. Carleton University and University of Toronto) are similarly formatted and worded, which might indicate that special constables at Ontario universities share many of the same powers and limitations: see Memorandum from The Ottawa Police Board and Carleton University (25 April 2016), regarding the appointment of Carleton University campus safety officers as special constables [Carleton MOU]; Agreement Between The Municipality of Metropolitan Toronto Police Services Board and The Governing Council of the University of Toronto (11 January 1998), regarding the appointment of University of Toronto campus safety officers as special constables [UT MOU].

74 *AB POA*, *supra* note 71, s 17(1) (the Director can investigate if they find that employer’s investigation is not satisfactory); *Police Act*, 1990, SS 1990-91, c P-15.01, s 80 (whether the government can investigate complaints against special constables depends on what is set out in the appointment).

police detachment.<sup>75</sup> Special constables also work closely with local police, and some university special constables forces may also be required to report back to local police as part of their appointment.<sup>76</sup> PEI requires special constables to be in compliance with the police's Code of Professional Conduct and Discipline and take in-service training courses.<sup>77</sup> Approximately 21-percent of public universities employ special constables, most of which are in Ontario.<sup>78</sup> Public universities that employ special constables tend to be larger in geographic size and/or campus population<sup>79</sup> or are one of the only public universities in the province.<sup>80</sup>

i. Powers

The powers of special constables depend on their appointment as peace officers under the various provincial legislation. Special constables in all but one of the universities have the authority to enforce and lay charges under either all or parts of the *Criminal Code* and various provincial offence acts.<sup>81</sup> Three university special constable forces explicitly state that they can only enforce certain *Criminal Code* offences,<sup>82</sup> while six explicitly state that they are granted the authority to enforce provincial trespass acts.<sup>83</sup> Special constables at three universities<sup>84</sup> have the authority to enforce the *Controlled Drugs and Substances Act*.<sup>85</sup> Six university special constable forces have the authority to enforce municipal by-laws.<sup>86</sup> Under the *Criminal Code*, special constables, with certain limitations, can arrest anyone without a warrant: who has committed an indictable offence or who they reasonably believe has committed or is about to commit an indictable offence; who is found committing a criminal offence; or where they

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75 See e.g. Brock University Campus Security Services, "Campus Security Services Annual Report 2020-21" (2021) at 8, online (pdf): *Brock University* <brocku.ca> [perma.cc/LY26-WC6Y] [*Brock Annual Report*].

76 See e.g. Carleton MOU, *supra* note 73.

77 *Police Act*, RSPEI 1988, c P-11.1, s 46(14)–(15).

78 12 of 55 universities in Appendix A. The University of Alberta, University of Western Ontario, and Brock University employ both special constables and private campus security.

79 See e.g. "About U of T" (last visited 28 January 2023), online: *University of Toronto* <utoronto.ca/about-u-of-t> [perma.cc/7RHP-NBBY] (total enrolment of 95,055 with 22,803 faculty and staff members).

80 For example, the University of Prince Edward Island ("UPEI") is the only public university in the province.

81 The University of Alberta's special constables are only authorized to arrest a person if they find that person committing a criminal offence within university jurisdiction: see "Special Duty Services" (last visited 28 January 2023), online: *University of Alberta Protective Services* <ualberta.ca/protective-services/services/special-duty-services.html> [perma.cc/VN7T-XUB9].

82 See Appendix C (University of Saskatchewan, Carleton University, and UPEI). At UPEI, the local police detachment leads any *Controlled Drugs and Substances Act*, SC 1996, c 19 investigations on university campus property with assistance from UPEI's special constables: see "Security Division" (last visited 2 February 2023), online: *University of Prince Edward Island* <upeii.ca/office-vice-president-ad-ministration-and-finance/security> [perma.cc/6A55-89AR].

83 See Appendix C (University of Alberta, Brock University, University of Guelph, Carleton University, University of Western Ontario, and McMaster University).

84 See Appendix C (University of Guelph, Carleton University, and McMaster University).

85 SC 1996, c 19 [CDSA].

86 Appendix C (these universities are all in Ontario: Brock University, University of Guelph, University of Toronto, University of Waterloo, Wilfrid Laurier University, and McMaster University).

reasonably believe that a warrant of arrest is in force within the territorial jurisdiction where the person is found.<sup>87</sup> Subject to the terms of their appointment, special constables may also execute arrest warrants.<sup>88</sup>

Special constables are also empowered to enforce university policies and share many of the same duties as private campus security. Because of this dual role, special constables are implied to have the discretion to sanction under university policies rather than laying criminal or regulatory charges.<sup>89</sup> This discretion is not afforded to private campus security or non-campus police officers and greatly expands the powers of special constables beyond traditional police powers. The implications of this discretion will be explored in Part III.

## ii. Limitations

Special constables have limitations placed upon them from numerous sources. The *Charter* applies to special constables when they are enforcing the *Criminal Code* and provincial acts as peace officers. Thus, their interactions with the public are constrained in the same manner as police officers.<sup>90</sup> Special constables are also limited by the details set out in their appointments, such as limiting their jurisdiction to the area within the boundaries of their university's campus(es) and the type of offences they can enforce.<sup>91</sup> Because they are limited in what they can enforce, special constables work closely with local police, and may be required to report serious crimes to the local police detachment.<sup>92</sup> Additionally, none of the universities examined in this article appear to allow their special constables to carry firearms. Job postings for special constables at three universities do not require firearms training or licenses, nor do they make any mention of firearms generally.<sup>93</sup> As of 2021, special constables in Ontario do not carry guns.<sup>94</sup>

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87 *Criminal Code*, *supra* note 14, s 495(1).

88 *Ibid*, s 514(2). For example, see Carleton MOU, *supra* note 73 at Schedule B, s 2.

89 This discretion is explicitly referenced in the University of Waterloo Police Service's 2020 annual report: "University of Waterloo Police Service 2020 Annual Report" (last visited 28 January 2023) at 5, online (pdf): *UW Police* <uwaterloo.ca> [perma.cc/5JRS-AB2X].

90 *Adams*, *supra* note 8 at para 17 (Justice B Scherman upheld the trial judge's decision and found that the University of Saskatchewan peace officer's actions did not violate the accused's *Charter* rights).

91 See e.g. Carleton MOU, *supra* note 73, Schedule B, ss 2–3.

92 See e.g. London Police Services Board, "LPSB Public Agenda" (21 October 2021) at 5, online (pdf): *London Police* <londonpolice.ca> [perma.cc/P2E9-W3FJ].

93 University of Alberta, University of Saskatchewan, and UPEI: see "Peace Officer" (last visited 28 January 2023), online: *UAPS Recruiting* <sites.google.com/uAlberta.ca/uapsrecruiting/peace-officer?authuser=0> [perma.cc/9TG6-WQCH] [UofA Special Constable Posting]; "Security Police Officer (1 Position) - Security Division - Department of Facilities Management \*Reposted\*" (last visited 28 January 2023), online: *University of Prince Edward Island* <www.upei.ca/hr/competition/177e21r2> [perma.cc/X7RN-SYGY]; "University of Saskatchewan Protective Services Recruitment Information" (last visited 28 January 2023), online (pdf): *University of Saskatchewan* <usask.ca> [perma.cc/4DEF-LUUU] [US Special Constable Posting].

94 Katie Cook, "Are you the real police?" "No. We're the campus police." *An examination of the way Ontario special constables govern risk on post-secondary campuses* (PhD Dissertation, University of Waterloo, 2021) [unpublished] [hdl.handle.net/10012/17105] at 115.

## II. CAMPUS SECURITY AND THE JUDICIAL SYSTEM

Much of the jurisprudence involving universities surrounds appeals from the university's internal review processes, where campus security is usually only mentioned in passing. As such, a case study approach was adopted to explore how Canadian courts (outside of Quebec) have applied the legislation and related jurisprudence discussed in the previous sections to campus security. Cases were selected based on whether there was a substantive discussion about the powers and limitations of campus security. Only six cases matched these criteria: five dealt with criminal or regulatory offences, and the other decision was a civil action against the university.<sup>95</sup>

### A. *R v Fitch*

In this 1994 British Columbia Court of Appeal decision, a University of Victoria student appealed a set of convictions for possession of stolen property, citing that the trial judge had erred by refusing his motion to exclude evidence under section 24(2) of the *Charter*. A private campus security officer entered into the student's room to see if it had been abandoned after the student fell into arrears for his rent. The security officer discovered that not only was it not abandoned but that there was stolen property in that room. That security officer then left the room and called his supervisor, who conducted a second search and found further stolen property. The police were called, and after entering the room and being shown the stolen property, left and obtained a warrant.<sup>96</sup>

Justice Donald, writing for an unanimous court, held that the private campus security officers were not state agents, and therefore did not violate the student's section 8 *Charter* rights.<sup>97</sup> The initial search was not an exercise in governmental function because it was a private search for university purposes and was not a criminal investigation.<sup>98</sup> The second search by the supervisor was in violation of university policy but was still a private search (despite effectively becoming a criminal investigation) because the police were not involved.<sup>99</sup> Private campus security did exercise a governmental function during the second search because they acted on their own and not under "a specific request from the police or pursuant to a standing arrangement between them regarding such matters".<sup>100</sup> The warrant could have been obtained based on the first search, so the police did not have the security officers do what they could not.<sup>101</sup> Justice Donald also left open the possibility of binding private campus security to the *Charter* if the university itself is a state agent.<sup>102</sup>

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95 *Ville de Québec c Sadiku*, 2020 QCCM 65, [2020] JQ no 3052 also falls under these criteria, but as the article excludes analysis of campus security in Quebec, it is not included in this section.

96 *Fitch*, *supra* note 4 at para 6.

97 *Ibid* at para 12.

98 *Ibid* at para 13.

99 *Ibid* at para 14.

100 *Ibid* at para 15.

101 *Ibid*. If the second search was conducted by police officers, it would have violated the student's section 8 *Charter* rights. Thus, if the police had to rely on this search to obtain the warrant, then the implication is that the police would be skirting the *Charter* by having private campus security conduct the search instead.

102 *Ibid* at para 16.

## B. *R v Mraz (M.)*

This 2000 Provincial Court of Saskatchewan decision addressed whether a University of Saskatchewan special constable infringed upon the accused's *Charter* rights.<sup>103</sup> The special constable approached a vehicle parked at a location on campus well-known for where individuals would illegally consume alcohol.<sup>104</sup> When the accused produced his driver's license upon request, the special constable saw open cases of beer and the smell of marijuana.<sup>105</sup> Based on these observations, the special constable obtained the accused's consent to search his vehicle and proceeded to conduct a search for more alcohol.<sup>106</sup> Though the special constable now suspected that there might be other drugs in the vehicle, she continued to search for alcohol.<sup>107</sup> It was during this search that she found marijuana, a banned substance under the *CDSA*.<sup>108</sup> Judge Kolenick held that the search at issue was within the lawful authority of the special constable, and that it did not violate the accused's sections 8 and 9 *Charter* rights.<sup>109</sup> Though the special constable's powers did not include the power to enforce the *CDSA*, she had the authority to enforce the *Alcohol and Gaming Regulation Act*.<sup>110</sup> This authority, in conjunction with the common law right of a peace officer to detain and conduct a search, permitted her to lawfully conduct the search at issue.<sup>111</sup>

## C. *R v Scott*

In 2004, the Ontario Superior Court of Justice dealt with the question of whether a Brock University special constable had exceeded his authority in questioning the accused during a traffic stop on university property. Under section 33(2) of Ontario's *Highway Traffic Act*,<sup>112</sup> only a police officer is authorized to ask a driver to give reasonable identification of themselves if the driver does not surrender their license. At trial, the special constable testified that he had the "same authority as a police officer on [Brock University's] campus".<sup>113</sup> Based on this uncontradicted testimony, it was open for the trial judge to find that the special constable was a police officer for Brock University purposes and therefore had the authority to make the request for reasonable identification. It was further stated that the special constable was

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103 *Mraz*, *supra* note 5.

104 *Ibid* at para 4.

105 *Ibid* at paras 5–6.

106 *Ibid* at para 7.

107 *Ibid* at para 8. The special constable had the option to contact the Saskatoon Police and hand over the investigation to them: see "Protective Services" (last visited 28 January 2023), online: *University of Saskatchewan* <usask.ca/protectiveservices/> [perma.cc/X9NH-DJL2] (Protective Services works closely with the Saskatoon Police Services) [USask Protective Services].

108 *Ibid* at para 9 (Marijuana was a banned substance at the time of this incident); *CDSA*, *supra* note 85.

109 *Mraz*, *supra* note 5 at paras 32–33.

110 *SS* 1997, c A-18.01; *Mraz*, *supra* note 5 at paras 10–11.

111 *Mraz*, *supra* note 5 at paras 29–30.

112 *RSO* 1990, c H.8.

113 *Scott*, *supra* note 6 at para 3. Note that section 100 of the *Community Safety and Policing Act, 2019*, *SO* 2019, c 1, Sch 1 will not allow special constables to be called nor hold themselves out to be "police officers" anymore. As of January 2023, this legislation has not come into force.

“a police officer, in all respects, concerning conduct on the Brock University campus”.<sup>114</sup> Justice Quinn further held that the rationale for randomly stopping vehicles, with no evidence to the contrary, is equally applicable to both university property and public highways because unlicensed drivers are dangerous wherever they drive. He also agreed with the trial judge that the special constable did not randomly stop the accused because the stop was for the purpose of inspecting the vehicle’s university parking permit.<sup>115</sup>

#### D. *R v Whatcott*

In a 2012 Queen’s Bench of Alberta decision, Justice Jeffrey held that the University of Calgary unjustifiably infringed the accused’s section 2(b) *Charter* rights when its private campus security arrested him under the *AB Trespass Act*.<sup>116</sup> In response to a complaint that the accused was handing out anti-abortion pamphlets, a private campus security officer sought out and stopped the accused. Upon hearing the accused’s name, the security officer learned that the accused had previously been banned from returning to the campus under the *AB Trespass Act*.<sup>117</sup> Rather than removing the accused for violating university policy,<sup>118</sup> the accused was handcuffed and placed in a holding cell until the Calgary Police arrived to charge him with an offence under *AB Trespass Act*.<sup>119</sup> In using provincial trespass legislation to respond to this complaint, Justice Jeffrey held that the University of Calgary and its private campus security were carrying out a governmental function<sup>120</sup> and were thus state agents bound by the *Charter*. Justice Jeffrey then upheld the trial judge’s finding that the effect of enforcing the trespass legislation in this manner effectively stopped the accused from expressing his views, thus infringing on his section 2(b) *Charter* rights.<sup>121</sup>

#### E. *R v Adams*

This 2015 Queen’s Bench for Saskatchewan decision discussed whether two University of Saskatchewan special constables arbitrarily detained the accused at a traffic stop while on campus property.<sup>122</sup> One of the special constables stopped the accused’s vehicle and asked for her license and registration. The accused refused the request and started rolling up her window. It was at this point that the special constable suspected she may be intoxicated and made an Alcohol Screening Device demand. When the accused still refused to cooperate, the special constable informed her that she was being arrested for obstruction of justice. The accused was eventually forcibly removed from her vehicle and arrested. At this time,

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114 *Ibid* at paras 15–16.

115 *Ibid* at paras 20–21.

116 *AB Trespass Act*, *supra* note 35.

117 *Ibid*.

118 “Use of University Facilities for Non-Academic Purposes Policy” (2010) at s 5, online (pdf): *University of Calgary* <[ucalgary.ca](http://ucalgary.ca)> [perma.cc/A8LS-CU7Z] (the private security officer has the power to “direct, limit or terminate [spontaneous demonstrations]”).

119 *Whatcott*, *supra* note 7 at para 1; *AB Trespass Act*, *supra* note 35.

120 *Whatcott*, *supra* note 7 at para 31.

121 *Ibid* at para 42.

122 *Adams*, *supra* note 8.



the other special constable advised the accused of her *Charter* rights and asked if she wanted to call a lawyer. Saskatoon Police were eventually involved, but they were not present and nor did they take part in this initial exchange.<sup>123</sup> Justice Scherman upheld the trial judge's findings that the special constable had reasonable grounds to believe that the accused's ability to drive a vehicle was impaired, that his Alcohol Screening Device demand was made on a reasonable suspicion, and that the arrest for obstruction was lawful.<sup>124</sup> Justice Sherman also held that this interaction was a lawful detention. Ultimately, Justice Scherman upheld the trial judge's decision and found that none of the accused's *Charter* rights were infringed during the entirety of this exchange.<sup>125</sup>

#### F. *Jackson v University of Western Ontario*

In this 2003 small claims action in the Ontario Superior Court of Justice, a former student at the University of Western Ontario had been prohibited from entering campus property under the *ON Trespass Act*<sup>126</sup> except to visit the law library.<sup>127</sup> On the day of the subject incident, the former student nevertheless entered campus property and was ticketed by a university special constable for violating the *ON Trespass Act*.<sup>128</sup> The special constable then drove the former student to a bus stop and waited with the former student until the bus arrived.<sup>129</sup> The former student sued the University of Western Ontario, alleging false arrest, false imprisonment, and malicious prosecution.<sup>130</sup> Deputy Judge Searle held that the *Charter* applied to the special constable's police-like activities, as it would be "absurd" if police employed by the government were subjected to the *Charter* but those employed by a university carrying out similar activities were not.<sup>131</sup> The student's *Charter* rights were found to be infringed, but Deputy Judge Searle held that the provisions of the *ON Trespass Act*<sup>132</sup> were reasonable limits on the *Charter*.<sup>133</sup>

### III. IMPLICATIONS

This section will summarize the notable observations gleaned from the laws, policies and procedures, and jurisprudence discussed in Parts II and III. It will then explore the implications of these observations. Finally, it will highlight some of the issues and inconsistencies in how the law deals with campus security.

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123 *Ibid* at para 4.

124 *Ibid* at paras 8–10.

125 *Ibid* at paras 16–17.

126 *Supra* note 32.

127 *Jackson*, *supra* note 9 at para 8.

128 *Supra* note 32. As a peace officer and a person authorized by the occupier of the premises, the special constable has the legal authority to enforce the *ON Trespass Act*: *Jackson*, *supra* note 9 at para 32.

129 *Jackson*, *supra* note 9 at paras 11–13.

130 *Ibid* at para 1.

131 *Ibid* at para 25.

132 *Supra* note 32.

133 *Jackson*, *supra* note 9 at para 34.

First, jurisprudence on the powers and limitations of campus security is not settled law. As of January 2023, the Supreme Court of Canada has yet to address this issue, and the decisions discussed in Part II have either never been cited or have not been cited in decisions that involve campus security. *Fitch*<sup>134</sup> was most recently cited with approval in *R v Elite Farm Services Ltd.*, which states that private individuals engaged in an investigation are not state agents,<sup>135</sup> but did not apply this principle to campus security. Similarly, both *Whatcott* and *Mraz* have been cited but not by decisions involving campus security. The three remaining decisions<sup>136</sup> have yet to be cited. Because the law in this area has yet to be settled, it remains somewhat uncertain as to how the courts will handle the actions of campus security. The common law powers of campus security and judicial interpretation of their statutory powers and limitations are essential in setting public expectations on how to handle interactions with campus security. With such a limited catalogue of lower court decisions, however, there remains some level of uncertainty if an individual's situation is not analogous to one of the six decisions in Part II. Human rights jurisprudence is similarly unhelpful due to a lack of tribunal decisions containing a substantive discussion about this topic at both the provincial and federal level.<sup>137</sup> Without judicial consensus regarding campus security's exercise of power, individuals interacting with campus security will remain uncertain as to how the courts may interpret such interactions and whether their *Charter* rights have been potentially engaged.

These decisions may also be inapplicable to present circumstances. Campus security have experienced tremendous change in their roles, duties, and training since *Fitch* was decided in 1994. Previously, campus security were primarily staffed with older men with little to no law enforcement training and mostly responsible for performing security functions.<sup>138</sup> A 1997 study of an in-house campus security force revealed that private campus security were not required to have formal pre-assignment training, while the special constables training program was a nine-week course at a provincial police college.<sup>139</sup> In contrast, campus security are now more familiar with law enforcement work and are hired for their knowledge and experience that approaches the requirements expected of police recruits.<sup>140</sup> For example, job postings for campus security either require or have a preference for applicants with post-secondary education and/or prior policing experience.<sup>141</sup> Special constables at the University

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134 *Supra* note 4.

135 2021 BCSC 2061 at paras 46, 48.

136 *Scott, supra* note 6; *Jackson, supra* note 9; *Adams, supra* note 8.

137 Only two human rights tribunal decisions discussed the actions of campus security, but they lacked a substantive discussion regarding the campus security officer's powers and limitation: see *Park v University of Ontario Institute of Technology*, 2017 HRTO 580; *Lawson v McMaster University*, 2020 HRTO 627.

138 K Cook, *supra* note 94 at 43–44.

139 Ian Gomme & Anthony Micucci, "Loose Connections: Crime and Policing on the University Campus" (1997) 27:1 *The Can J of Higher Education* 41 at 51.

140 K Cook, *supra* note 94 at 44.

141 The University of Saskatchewan requires applicants to have a college diploma or certification in criminal justice or criminology, though a combination of education and experience may be considered: see US Special Constable Posting, *supra* note 93; whereas the University of Alberta noted a preference for those with a post-secondary education and prior experience in policing: see UofA Special Constable Posting, *supra* note 93.

of Western Ontario must be trained and recertified annually in provincially-mandated “Use of Force” training,<sup>142</sup> while private campus security in most provinces must complete provincially-mandated training and examinations to apply for a security license.<sup>143</sup> Public perceptions of campus security have also evolved and impacted how individuals now interact with campus security, as the negative experiences of marginalized people have with campus security are thrust into the mainstream consciousness.<sup>144</sup> Without court decisions set in the current socio-political atmosphere, previous jurisprudence in this area cannot be regarded as anything but persuasive.

Second, none of the decisions discussed in Part II found that the university itself was a government actor, with two decisions being completely silent on this issue.<sup>145</sup> The two decisions involving private campus security focused on the issue of state agency to determine whether the *Charter* was applicable,<sup>146</sup> while any discussion of state agency was absent in the decisions involving special constables.<sup>147</sup> Instead, the focus in those decisions moved directly to whether there was a *Charter* infringement, as special constables are considered peace officers (and therefore state agents) pursuant to the terms of their appointment. It appears, as with most jurisprudence on freedom of expression at universities,<sup>148</sup> that the courts remain hesitant to apply the *Charter* to universities despite *Fitch* leaving open this possibility as a method to protect students’ privacy rights almost 30 years ago. Interestingly, *Fitch* also held that if universities were bound by the *Charter*, private campus security would be limited by the *Charter* in the same manner as police officers.<sup>149</sup>

This hesitancy shows that the courts do not differentiate between private campus security and security guards working for private companies. As noted in Part I(A)(2)(i), the actions of both private security guards and private campus security undergo the same analysis to determine *Charter* applicability. This view ignores the significantly different environments that private security guards<sup>150</sup> and campus security operate in, particularly considering *McKinney*<sup>151</sup> was

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142 Western University, “About Us” (last visited 28 January 2023), online: *Campus Safety and Emergency Services Western Special Constable Service* <uwo.ca/campusafety/about/index.html> [perma.cc/HD6Y-A7KR] [UWO Campus Safety].

143 Montgomery & Griffiths, *supra* note 1 at 51 (Nova Scotia, New Brunswick, and Prince Edward Island do not regulate training in its private security legislation).

144 These experiences will be further explored in a later paragraph in this section.

145 Mraz, *supra* note 5; Adams, *supra* note 8.

146 *Fitch*, *supra* note 4; *Whatcott*, *supra* note 7.

147 *Scott*, *supra* note 6; *Jackson*, *supra* note 9; *Mraz*, *supra* note 5; *Adams*, *supra* note 8.

148 Kenneth Wm Thornicroft, “Rethinking McKinney: To What Extent Should Universities Be Charter-Free Zones?” (2020) 29:1 Education LJ 79 at 90; Franco Silletta, “Revisiting Charter Application to Universities” (2015) 20 Appeal at 79; Dwight Newman, “Application of the Charter to Universities’ Limitation of Expression” (2015) 45 RDUS 133 at 135 (WL Can). *UAlberta*, *supra* note 63 remains the outlier but has been cited in passing in *Longueépée v University of Waterloo*, 2020 ONCA 830 at para 99.

149 *Fitch*, *supra* note 4 at para 16.

150 With the exception of hospital security; like campus security, hospital security work in institutions that were not found to be governmental entities (*Stoffman v Vancouver General Hospital*, 1990 CanLII 62 (SCC), [1990] 3 SCR 483) but inherently contain some governmental aspects. Hospital security also contain a mix of private security and special constables.

151 *McKinney*, *supra* note 50.

decided over 30 years ago. First, the duties and responsibilities of private campus security are more expansive than those of non-university private security. Specifically, private campus security are tasked with upholding and ensuring compliance with university policies and procedures while also enforcing the university's property rights. These policies and procedures have no direct equivalent in the non-university private security sphere, as it allows private campus security to impose a wider variety of sanctions on staff and students such as loss of certain privileges and monetary fines. In contrast, restricting access to the property is often the only realistic sanction non-campus private security can take, as the public tends to be more transient in these spaces when compared to university campuses. Second, the jurisdiction of private campus security is more akin to a public space than typical private property. University campuses, especially those in smaller cities and towns, often serve not only students and staff but the general public. For example, university gyms and libraries are often open to community members, universities do not restrict access to its squares and grounds to only students and staff, and public demonstrations and protests by community members are permitted on university property.<sup>152</sup> Private campus security are interacting with individuals in a context more akin to police than private security guards on wholly private property. Therefore, campus security's interactions with the public should not be viewed in the same manner as private security guards under the law.

Third, likely in recognition of campus security working in an environment that is not wholly private, the courts in *Scott* and *Jackson* appear to consider universities to be quasi-municipal entities.<sup>153</sup> *Scott* rejected distinguishing between university property and public highways under the *Highway Traffic Act*. Though Justice Quinn did not explicitly equate university property with public highways,<sup>154</sup> the recognition that there are shared safety concerns surrounding unlicensed drivers indicates that vehicle roads on university property ought to be regulated in the same manner. *Jackson* more explicitly makes the comparison between universities and municipalities. Deputy Judge Searle highlighted that the university has a substantial amount of property, has a community of tens of thousands of people, and employs special constables who are organized and engaged in activities as a police force,<sup>155</sup> all of which is common to most public universities and could also describe a municipality. Highlighting the absurdity of having police employed by a municipality being subjected to the *Charter* but not those employed by a university<sup>156</sup> further drives home this comparison. There are universities that have also recognized this comparison and actively embrace it. Simon Fraser University contributed to, and is a stakeholder in, the UniverCity, a sustainable community built adjacent to its main campus,<sup>157</sup> and the Endowment Lands surround and include UBC's

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152 Universities acting as quasi-municipal entities will be discussed in the next paragraph.

153 *Scott*, *supra* note 6; *Jackson*, *supra* note 9.

154 *Scott*, *supra* note 6 at paras 20–21.

155 *Jackson*, *supra* note 9 at para 24.

156 *Ibid* at para 25.

157 SFU Community Trust, "About Us" (last visited 28 January 2023), online: *UniverCity* <[university.ca/about-us](http://university.ca/about-us)> [perma.cc/PD5Y-WJXU].

Vancouver campus. Both have their own zoning bylaws,<sup>158</sup> and UniverCity lists food services on university campuses as dining options in their community.<sup>159</sup> With both the courts and universities recognizing the similarities between university campuses and municipalities, it may be reasonable to consider campus security as a university campus' *de facto* police force. This view is one shared by some courts in the next observation.

Fourth, both decisions involving special constables from Ontario universities noted that special constables are essentially police officers for the universities,<sup>160</sup> while this observation is absent from the two decisions involving special constables from the University of Saskatchewan. *Jackson* explicitly calls them “university police” and states that they are “police employed by [the University of Western Ontario]”.<sup>161</sup> This is in contrast to *Adams*, where University of Saskatchewan special constables contacted the Saskatoon Police for assistance,<sup>162</sup> and *Mraz*, where the court explicitly states that special constables of the same university do not have the authority as police officers.<sup>163</sup> Unlike *Adams*, the special constable in *Mraz* lacked the authority to search for illegal substances under the *CDSA* but had the authority to search for alcohol under a provincial act.<sup>164</sup> This complication resulted in additional analysis to determine whether the special constable had the lawful authority to engage in a search that eventually revealed marijuana. The difference between the two types of special constables may be attributed to the types of legislation that they are able to enforce. Special constables from Ontario universities are typically empowered to enforce a greater number of offences compared to their University of Saskatchewan counterparts,<sup>165</sup> bringing them closer to essentially having police powers while on university property.

If campus security function as a university's police force, then not subjecting the actions of private campus security to the *Charter* becomes more problematic. Though private campus security are categorically different from special constables, community members may view all types of campus security as having the powers and limitations of full police officers and interact with them in the same manner. In their efforts for legitimacy, private campus security

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158 SFU Community Trust, “Zoning Bylaws” (last visited 28 January 2023), online: *UniverCity* <[university.ca/planningdevelopment/zoning-bylaws](http://university.ca/planningdevelopment/zoning-bylaws)> [perma.cc/J48N-BCDX]; University Endowment Lands, revised by-law, *Land Use, Building and Community Administration Bylaw* (9 Jul 1999).

159 SFU Community Trust, “Dine on Campus” (last visited 23 January 2023), online: *UniverCity* <[university.ca/retail-services/dine-on-campus](http://university.ca/retail-services/dine-on-campus)> [perma.cc/RW6N-3QKW].

160 *Scott*, *supra* note 6; *Jackson*, *supra* note 9,

161 *Jackson*, *supra* note 9 at para 24. UWO Campus Safety, *supra* note 142 states that “Western Special Constables have many of the same powers and authority on campus as London Police have for the entire Province of Ontario”.

162 *Adams*, *supra* note 8 at para 4.

163 *Mraz*, *supra* note 5 at para 10.

164 *Ibid* at para 16.

165 For example, Brock University special constables are empowered to enforce the assault and theft provisions in the *Criminal Code*: see Brock Annual Report, *supra* note 75 at 8; while special constables at the University of Saskatchewan only have the authority to enforce the impaired driving provisions in the *Criminal Code*: see USask Protective Services, *supra* note 107. See Appendix C for a selected list of statutes enforced by various university special constable forces.

have reinforced this assumption by stating that they receive the “same type of training” as police officers.<sup>166</sup> This misconception will then result in the *de facto* expansion of the powers of campus security beyond their actual authority. It may also cause confusion as to how campus security are limited by the *Charter*, as the implications from the *Fitch* decision demonstrates in the next observation.

Fifth, *Fitch*<sup>167</sup> exposed a potential loophole for private campus security to skirt the *Charter* while engaging in the search and seizure of evidence later used in a criminal proceeding. If one applies *Fitch* more broadly, all evidence found in searches conducted by private campus security would be admissible, as long as there were no specific requests by police or a general expectation from the police that they are engaging in criminal investigations. As such, even if the actions of the private campus security guard would not have been *Charter*-compliant if they were a police officer, the evidence obtained from that search would still be admissible if it is later used in a criminal proceeding. This scenario is particularly troubling when considering that most campus security forces explicitly state on their webpages that they have a close working relationship with local police but do not appear to have any formal arrangements or agreements in place about that relationship.<sup>168</sup> Previous literature (albeit limited) has highlighted contradictory jurisprudence on this issue,<sup>169</sup> but only *Fitch* deals specifically with campus security and therefore would be more applicable to future cases.

Sixth, based on the nature of their responsibilities, the powers afforded to special constables are greatly expanded when compared to private campus security and police officers. As special constables can enforce both criminal and regulatory laws and university policies, they have the discretion to sanction under public or “private laws”. This discretion is not afforded to police officers or private campus security: police officers can only enforce the *Criminal Code* and other federal laws, provincial laws, and municipal laws while on university campuses; and private campus security can only enforce university policies. Universities do not appear to regulate this discretion,<sup>170</sup> so it is likely that these decisions are made solely by special constables.

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166 Kevin Walby, Blair Wilkinson & Randy K. Lippert, “Legitimacy, professionalisation and expertise in public sector corporate security” (2016) 26:1 Policing & Soc’y 38 at 48.

167 *Supra* note 4.

168 Based on publicly available information, UBC’s Okanagan campus appears to be the exception: see Santa J. Ono, “Update on UBC’s Evolving Relationship with the RCMP” (last visited 28 January 2023), online (blog): *The University of British Columbia* <president.ubc.ca/blog/2020/12/14/rcmp\_relationship> [perma.cc/HWU9-FVYY] (UBC’s Okanagan campus has a memorandum of understanding with the Okanagan RCMP, though this memorandum is not publicly available). UBC’s Vancouver campus is in the final stages of establishing a memorandum of understanding between campus security and University RCMP, but there is no publicly available information about the exact contents of the memorandum: UBC 2021 Annual Report, *supra* note 17.

169 Scharbach, *supra* note 1; Rigakos & Greener, *supra* note 1 at 179–182.

170 University policies regarding misconduct and sanctions often do not specify whether private or public sanctions are to be taken, especially for “low-level” transgressions. Of the two MOUs that were made available to me, both did not discuss whether to sanction under private university policies or public laws under certain circumstances: see Carleton MOU, *supra* note 73; UT MOU, *supra* note 73. The webpages listed in Appendix B are similarly unhelpful.

Giving special constables this level of discretion is troubling because it can be dangerous to marginalized and racialized community members. Both police and private security have been found to over-police marginalized and racialized communities.<sup>171</sup> Special constables, who fall somewhere between police and private security and often are, or are governed by, former police officers, are also not immune to these tendencies.<sup>172</sup> Black students at Carleton University have spoken out about being racially profiled by the university's special constables, while a student at the University of Toronto was handcuffed by special constables when she tried to seek out mental health treatment.<sup>173</sup> As such, this discretion could result in individuals from these communities not receiving the benefit of the doubt and being charged with a criminal or regulatory offence, rather than being sanctioned under university policy. This concern was realized in a 2010 incident involving special constables at McMaster University. Special constables were accused of racially profiling Kevin Daly, a Black police officer, at a traffic stop and subsequently banning him from the campus "in perpetuity" for allegedly running a stop sign.<sup>174</sup> Rather than issuing a McMaster University ticket for running a stop sign, the McMaster special constable force instead escalated the incident by running Mr. Daley's plates through Hamilton Police and lodging a complaint to his supervisor that resulted in a misconduct investigation.<sup>175</sup>

Last, *Mraz* raises the question of how special constables should deal with offences that they lack the authority to enforce. In *Mraz*, this issue was resolved because the court found that the special constable could legally search under legislation they had authority to enforce.<sup>176</sup>

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171 *R v Le*, 2019 SCC 34 at paras 89–97 (the Supreme Court of Canada reviewed reports on the social context of the relationship between racialized individuals and the police, and concluded that racialized and low-income communities were disproportionately policed); Montgomery & Griffiths, *supra* note 1 at 20 (unhoused and under-housed residents of Vancouver's Downtown Eastside were more likely to have negative encounters with private security, and one-third of the residents had four or more interactions with private security per month).

172 See e.g. Bobby Hristova, "McMaster student union governing body passes motion calling for De Caire's firing" (16 June 2020), online: *CBC News* <[cbc.ca/news/canada/hamilton/decaire-students-unions-1.5612947](http://cbc.ca/news/canada/hamilton/decaire-students-unions-1.5612947)> [perma.cc/X8JS-MJTU] (McMaster University's former head of security was previously a Hamilton Police chief and was criticized for his support of carding and street checks while in this previous role).

173 Temur Durrani, "Black Carleton students speak out about racial profiling" (7 March 2019), online: *The Charlatan* <[charlatan.ca/2019/03/black-carleton-students-speak-out-about-racial-profiling](http://charlatan.ca/2019/03/black-carleton-students-speak-out-about-racial-profiling)> [perma.cc/DA4X-F7AF]; Angelina King, "How a student seeking mental-health treatment got handcuffed by U of T police" (13 November 2019), online: *CBC News* <[cbc.ca/news/canada/toronto/u-of-t-student-handcuffed-while-seeking-mental-health-treatment-1.5357296](http://cbc.ca/news/canada/toronto/u-of-t-student-handcuffed-while-seeking-mental-health-treatment-1.5357296)> [perma.cc/QHA2-47N4]. For more instances of over-policing by the University of Toronto's special constables, see also Candice Zhang, "Policing at the University of Toronto: What you should know about Campus Police policies, misconduct, and advocacy for change" (18 August 2020), online: *The Strand* <[thestrand.ca/policing-at-the-university-of-toronto](http://thestrand.ca/policing-at-the-university-of-toronto)> [perma.cc/KXK8-2CN2].

174 Bobby Hristova, "Former Toronto police officer says he was racially profiled by McMaster security" (10 July 2020), online: *CBC News* <[cbc.ca/news/canada/hamilton/toronto-police-officer-racial-profiling-mcmaster-university-hamilton-1.5643651](http://cbc.ca/news/canada/hamilton/toronto-police-officer-racial-profiling-mcmaster-university-hamilton-1.5643651)> [perma.cc/Q7TU-ZHKY].

175 *Ibid*; "Parking Cost Schedules" (last visited 28 January 2023), online: *McMaster University* <[parking.mcmaster.ca](http://parking.mcmaster.ca)> [perma.cc/NWZ7-C7PD] (failure to obey a regulatory sign is a \$30 fine).

176 *Mraz*, *supra* note 5 at paras 10–11, 29–30.

However, if that special constable conducted the search to find marijuana under the *CDSA*,<sup>177</sup> legislation they lacked the authority to enforce, then the search would not be an exercise of governmental function.

This line of reasoning implies that a special constable would be treated as a private individual in situations where they lack legal authority to enforce a particular offence and therefore raises a few concerns. There are no prior court decisions that directly and substantively address this issue, and applying decisions regarding the conduct of private individuals on special constables is problematic. For example, it would be illogical to give special constables the same level of leniency afforded to private individuals for inadequately giving right to counsel warnings for offences they cannot enforce but hold them to the same standard as police officers when they are enforcing offences under their authority.<sup>178</sup>

It is also unclear as to whether special constables conducting a private search that is effectively a criminal investigation would still escape *Charter* scrutiny.<sup>179</sup> If special constables are required to report all criminal investigations to their local police detachment in accordance with their appointment,<sup>180</sup> it remains to be seen whether the courts will consider this requirement to be either prompting or encouragement by police officers or other branches of government. There would be an expectation from the police that special constables are engaging in criminal investigations, but it is not clear if this principle from *Fitch* would still apply to special constables conducting private searches.<sup>181</sup> Last, the impact of this judicial uncertainty will contribute to public confusion. In addition to the lack of information and education about the role of campus security,<sup>182</sup> university community members also lack judicial direction on what protections they have when interacting with campus security.

#### IV. RECOMMENDATIONS

This section provides some recommendations and possible solutions to the issues and inconsistencies brought up in Part III. This article will argue that closing the “state agency loophole” highlighted in *Fitch* and having the *Charter* apply to universities are two potential solutions in addressing the above issues. It also provides potential avenues for implementing these recommendations.

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177 *Supra* note 85 (At the time, marijuana was a banned substance under the *CDSA*).

178 For further discussion of right to counsel warnings by private individuals, see the text accompanying note 60.

179 As was the case in *Fitch*, *supra* note 4 at para 14.

180 See e.g. Carleton MOU, *supra* note 73 at ss 61–62.

181 *Supra* note 4.

182 K Cook, *supra* note 94 at 74–76; Dana J Campbell-Stevens, “Executive Summary of the Report to: University of British Columbia RE: Campus Security External Review” (15 April 2021) at 16, online (pdf): *The University of British Columbia* <ubc.ca> [perma.cc/UXN9-G9ME].



## A. Closing the “state agency loophole” in private investigations

Closing the “state agency loophole” in private investigations by taking a more holistic analysis of various factors in searches by campus security will better safeguard the privacy rights of community members while on university campuses. In *Fitch*, state agency was only established if the search was prompted by a specific request from the police or pursuant to a standing arrangement between private campus security and the police regarding such matters.<sup>183</sup> As discussed in Part III, this narrow interpretation of state agency creates a loophole that is ripe for abuse by local police who work closely with campus security.

In contrast, the more contextual approach taken by the Alberta Court of Queen’s Bench in *R v Meyers*<sup>184</sup> in interpreting state agency makes it more difficult for police and campus security to abuse this loophole while conducting searches. *Meyers* considered both the purpose of the private search and the level of police involvement when determining whether there was state agency. If the purpose of the search was to gather evidence with a view to lay criminal charges, then the search was in furtherance of a governmental function. The level of police involvement required was simple collusion, rather than a specific or active request.<sup>185</sup>

This interpretation more adequately addresses the context that campus security operates in, specifically with respect to their closer relationship with local police when compared to private security forces in other settings. It would also close the loophole that would allow private campus security to assist the police in evading the *Charter* by not involving police until the evidence had been collected. Additionally, this interpretation would also help avoid confusion in scenarios where special constables initiated searches as private individuals (e.g. conducting searches with respect to violations of university policy) but find evidence of a criminal or regulatory offence they are authorized to enforce. In this scenario, are the special constables acting as state agents? By taking the approach in *Meyers*, these special constables would clearly be acting as state agents and the individual being searched will be protected under section 8 of the *Charter*.

There are a few possible approaches to closing the state agency loophole. The first approach would involve applying the *Meyers* interpretation of state agency to campus security. First, one could wait for the Supreme Court of Canada to affirm *Meyers* and/or overrule *Fitch*’s interpretation of state agency in private investigations.<sup>186</sup> This approach would be unpredictable, as it would be contingent on waiting for a case involving private searches performed by campus security to be heard at trial and then appealed at least once. The second approach is to require that campus security and police departments have more formalized agreements about their

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183 *Supra* note 4 at paras 12–14.

184 1987 CanLII 3419 (AB QB), 1987 CarswellAlta 104 (WL Can) (this decision did not involve campus security, so *Fitch* is still more analogous in situations with campus security) [*Meyers*].

185 *Ibid* at paras 28–29.

186 Rigakos & Greener, *supra* note 1 at 182 (“The ‘purpose of the search’ test does not have the support of Courts of Appeal that the ‘at the instigation of law enforcement’ test does”). *R v Chang*, 2003 ABCA 293 is the only Court of Appeal decision that cited *Meyers*, *supra* note 184 with respect to its interpretation of state agency, but was distinguished from *Meyers* based on its different factual matrix.

relationship. Such arrangements would state that there is a standing agreement between the two parties that campus security will conduct criminal investigations on behalf of or with the police;<sup>187</sup> however, this requirement may result in campus security forces taking the opposite approach (i.e., by promptly and explicitly stating that they will not engage in any criminal investigations). This may create the unintended consequence of increased police presence on university property, either by prompting the police to more actively patrol campuses or by campus security calling the police more frequently to investigate potential crimes.

## B. Applying the *Charter* to public universities

Having the *Charter* apply to public universities, whether as a government actor or through campus security exercising a governmental function, is a broader solution than merely closing the loophole exposed in *Fitch*. As stated in *Fitch*, the actions of campus security would be bound by the *Charter* if the university itself is a government actor for the purposes of section 32 of the *Charter*,<sup>188</sup> which creates the effect of subjecting campus security to the same level of scrutiny as the police. This will ensure that the privacy rights of university community members are protected while also clearly defining the limitations of the powers of campus security.

Bringing universities under *Charter* scrutiny would also result in protections for university community members in criminal proceedings that include interactions with campus security. For example, it could prevent special constables from over-policing racialized and marginalized communities. Currently, special constables have the discretion to charge individuals from these communities with criminal and/or regulatory offences rather than under university policies or by conducting “private investigations” for offences they do not have the authority to enforce. If the *Charter* applies to universities, this discretion will also be subjected to *Charter* scrutiny. Further, applying the *Charter* to universities may also protect racialized and marginalized individuals from being “over-policed” by university policies because even actions taken by campus security while enforcing university policies would need to be *Charter*-compliant.

### i. Universities ought to be considered government actors

The first approach is to find that universities are government actors generally subject to the *Charter*. This approach, admittedly, would upset a line of settled precedent that cite *McKinney* for the proposition that universities are not government actors;<sup>189</sup> however, this issue is not as settled as these later decisions would suggest. In *McKinney*, Justice LaForest,

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187 These types of arrangements are already formalized or are in the process of being formalized at UBC: see UBC 2021 Annual Report, *supra* note 17 (UBC's Vancouver campus is in the final stages of establishing a memorandum of understanding between campus security and University RCMP) and text accompanying note 169 (regarding UBC's Okanagan campus).

188 *Supra* note 4 at para 16.

189 I will note that the recent decision of *Zaki v University of Manitoba*, 2021 MBQB 178 at paras 152–153 contemplated finding universities to be government actors. Justice Champagne noted that “Manitoba legislation mandates a high-ranking government official be a member of the [university's] Senate”, which may allow government influence and control over the university. However, this issue was not raised and was left unaddressed.

writing for a narrow majority, noted that the four Ontario universities involved in its case were “not part of government given the manner in which they are *presently* organized and governed.”<sup>190</sup> This leaves open the possibility that universities are considered government actors under different circumstances. Justice LaForest also found that universities were not under sufficient government control, despite government funding and regulation, because their independent governing bodies are wholly autonomous.<sup>191</sup> This may have been the case in 1990 for those four Ontario universities, but as Kenneth Wm. Thornicroft, professor of law and employment relations, points out, “Canadian universities have experienced a sea change during the past three decades”, with “university autonomy [having been] decidedly eroded in recent years”.<sup>192</sup>

There is ample evidence that the universities listed in Appendix A would be considered government actors, as they fall within sufficient governmental control. Though the percentage of overall government funding has decreased since 1990,<sup>193</sup> government funding remains one of the largest sources of revenue for universities.<sup>194</sup> More importantly, government funding has increasingly come with strings attached with the effect of controlling universities by exerting influence over their decision-making. In the years following *McKinney*, both provincial and federal governments have provided funding for post-secondary education and research, with either a priority or the vast majority of the funding going towards particular fields.<sup>195</sup> Recently, Ontario and Alberta have taken the next step and explicitly tied funding for universities to “performance outcomes” based on metrics set by their provincial governments,<sup>196</sup> with New Brunswick and Manitoba considering following suit.<sup>197</sup> The government also treats universities as government actors by subjecting them to judicial review. In his article on *Charter* applicability to university campuses regarding on-campus expressions, Hayden Cook notes that, with recent developments in administrative law, “the

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190 *McKinney*, *supra* note 50 at 275 [emphasis added].

191 *Ibid* at 272–273.

192 Thornicroft, *supra* note 148 at 91.

193 Janet Davidson, “Where do Canada’s post-secondary dollars go?” (16 March 2015), online: *CBC News* <cbc.ca/news/canada/where-do-canada-s-post-secondary-dollars-go-1.2994476> [perma.cc/4EJC-23BU].

194 Statistics Canada, *Financial information of universities for the 2018/2019 school year and projected impact of COVID-19 for 2020/2021*, Catalogue No 11-001-X (Ottawa: Statistics Canada, 2020).

195 Hayden Cook, “Charter Applicability to Universities and the Regulation of On-Campus Expression” (2021) 58:4 *Alberta L Rev* 957 at 960–961.

196 Mike Crawley, “How the Ford government will decide on university, college funding” (6 May 2019), online: *CBC News* <cbc.ca/news/canada/toronto/ontario-doug-ford-university-college-postsecondary-grants-1.5121844> [perma.cc/JNH3-3R4N]; Emma Graney, “UCP prepares to roll out Ford-flavoured post-secondary changes in Alberta” (6 May 2019), online: *Edmonton Journal* <edmontonjournal.com/news/politics/ucp-prepares-to-roll-out-ford-flavoured-post-secondary-changes-in-alberta> [perma.cc/9375-NJZJ].

197 “New Brunswick MLAs ponder performance-based funding for universities” (7 February 2020), online: *CBC News* <cbc.ca/news/canada/new-brunswick/cbc-nb-political-panel-podcast-universityfunding-1.5455391> [perma.cc/RM8P-Z73Z]; Ian Froese, “Manitoba looks to Tennessee model in efforts to tailor postsecondary education to labour market” (22 Oct 2020), online: *CBC News* <cbc.ca/news/canada/manitoba/manitoba-tennessee-model-higher-learning-performance-based-wfpcbc-1.5768684> [perma.cc/N8PF-TPUT].

argument that the *Charter* should not apply to the university because it is merely a “public decisionmaker” appears to hold less water today than it did when *McKinney* was decided.<sup>198</sup> Universities are also regulated and overseen by provincial government ministries, who have increasingly mandated more reporting and “accountability” from universities.<sup>199</sup> With this level of governmental control, the justification in *McKinney* to exclude universities from *Charter* scrutiny may no longer be applicable,<sup>200</sup> as the autonomy of public universities has decreased significantly since 1990.

Opponents of bringing universities under *Charter* scrutiny are primarily concerned with *Charter* applicability restricting the universities’ academic freedom and institutional independence;<sup>201</sup> however, *Charter* applicability would not hinder, but instead may even facilitate academic freedom. In resolving this concern, Dwight Newman suggests by drawing upon American jurisprudence that section 2(b) of the *Charter* could be extended to academic freedom.<sup>202</sup> Justice Paperny in *Pridgen v University of Calgary* also found no apparent reason as to why academic freedom and section 2(b) cannot “comfortably co-exist”,<sup>203</sup> and *UAlberta* recently affirmed this view, finding that section 2(b) did not threaten the university’s independence.<sup>204</sup> Additionally, given that universities are bound by provincial human rights laws and are already obliged to respect “*Charter* values”, only an incremental step is needed to have the *Charter* itself apply to universities. Any residual concerns could be addressed under section 1 of the *Charter*, where universities would be given the opportunity to justify their rights-infringing actions as appropriate limitations on fundamental freedoms. In this regard, Krupa Kotecha suggests that courts can apply their deferential approach to applying the *Charter* to administrative bodies when assessing the actions of universities.<sup>205</sup> This is the approach approved of, and ultimately taken, by Alberta’s Court of Appeal in *UAlberta*.<sup>206</sup>

## ii. The actions of campus security are sufficiently governmental in nature

The second approach to *Charter* applicability involves finding that campus security’s actions are an exercise of governmental function, either through exercising delegated statutory authority or engaging in specific activities of universities to further a governmental objective. Though the Supreme Court of Canada has yet to revisit this issue since *McKinney* (and its companion cases), appellate courts have addressed it numerous times since then and are split in their approaches to determining whether the *Charter* applies to the actions of universities (and by extension, campus security). Alberta and Saskatchewan courts have taken a more purposive and holistic approach, where courts look at a university’s actions and its broader

198 H Cook, *supra* note 195 at 962.

199 Silletta, *supra* note 148 at paras 40–41; Thornicroft, *supra* note 148 at 91–93.

200 *Supra* note 50 at 233.

201 Silletta, *supra* note 148 at paras 55–56; Newman, *supra* note 148 at 148–156.

202 Newman, *supra* note 148 at 149–150.

203 2012 ABCA 139 at para 117 [*Pridgen*].

204 *UAlberta*, *supra* note 63 at para 148.

205 Krupa M Kotecha, “Charter Application in the University Context: An Inquiry of Necessity” (2016) 26:1 Educ & LJ 21 at 51 (Kotecha looks at decisions from Alberta, British Columbia, and Ontario).

206 *UAlberta*, *supra* note 63 at paras 148, 160.

policy and social objectives. As Hayden Cook notes in the context of free expression, “[a] more functional approach to the inquiry would consider not whether the provision of spaces for free expression was *itself* a governmental objective, but whether it was a *necessary prerequisite* to achieving a governmental objective”.<sup>207</sup> In contrast, courts in British Columbia and Ontario have taken a narrower, formalistic approach, which only looks at a university’s governing structures and statutory schemes.<sup>208</sup>

Krupa Kotecha suggests that courts ought to adopt the more purposive approach, particularly in determining a specific governmental policy or objective; the formalistic approach rests on narrow, and arguably incorrect, constructions of prior decisions and does not consider the modern realities of universities.<sup>209</sup> In looking at decisions made by universities in the abstract (or purely through a legislative lens), one ignores how governments can affect university policies or decisions beyond legislating. The more purposive approach sees recent support in *UAlberta*, where Alberta’s Court of Appeal highlighted (and seemingly adopted this suggestion implicitly) that the formalistic approach was a “pinched and technical reading” of section 32 of the *Charter*.<sup>210</sup> *UAlberta* expands on the purposive approach in going beyond the legislative context of universities and looking to its historical context.<sup>211</sup> This context forms part of the five overlapping reasons of why Justice Watson found that the *Charter* applied to universities in the context of the suppression of students’ speech on campus.<sup>212</sup>

In adopting the more purposive approach, the actions of campus security appear to be governmental in nature. The *Charter* applies to non-government actors exercising statutory authority, which is particularly relevant when that power has a coercive element not given to private individuals.<sup>213</sup> In *Pridgen*, Justice Paperny held that a university’s disciplinary functions were an exercise of statutory authority.<sup>214</sup> In taking a more holistic approach to viewing disciplinary functions, it follows that investigations and searches conducted by campus security are also an exercise of statutory authority. Such investigations form part of a university’s disciplinary function—to consider otherwise would be an illogically narrow interpretation of what discipline involves. Though university-sanctioned discipline is often directed at students, community members generally are also subject to disciplinary sanctions

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207 H Cook, *supra* note 195 at 966 [emphasis in original].

208 *Ibid* at 31, 38 (Kotecha looks at decisions from Alberta, British Columbia, and Ontario). In Saskatchewan, *R v Whatcott*, 2014 SKPC 215 also applied the more purposive and holistic approach in applying the *Charter* to the university’s actions that involved the exercise of statutorily-based powers of compulsion. *Charter* applicability to universities was also the subject of *Yashcheshen v University of Saskatchewan*, 2019 SKCA 67, leave for appeal dismissed 2020 CanLII 97854 (SCC), but the appellant failed to make any submissions on the connection between the university’s actions and any implementation of a specific government policy or program, so the Court of Appeal did not explore this any further: at paras 24–25.

209 Kotecha, *supra* note 205.

210 *UAlberta*, *supra* note 63 at paras 144, 148.

211 *Ibid* at paras 109–117.

212 *Ibid* at para 148.

213 *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 35–36.

214 *Pridgen*, *supra* note 203 at para 105.

from universities.<sup>215</sup> Thus, such actions involving non-student community members is also an exercise of statutory authority. As mentioned in previous sections of this article, actions stemming from the use of provincial legislation, municipal bylaws, and/or section 494 of the *Criminal Code* engages the power of the state, so such actions are also subject to the *Charter*.

The actions of campus security when they enforce university policy and procedures are also furthering a governmental objective. *UAlberta* held that universities regulating their students' free expression on campus is an exercise of governmental function because it involves furthering a governmental objective.<sup>216</sup> Enforcing the regulation of free expression on campus is often the responsibility of campus security. Given this likely intersection between free expression issues and campus policing, *UAlberta* arguably applies to the actions of campus security. Additionally, by finding in part that the university grounds are physically designed to ensure that students can learn, debate, and share ideas in a community space,<sup>217</sup> *UAlberta* also ought to apply to the actions generally taken by campus security to enforce university policies and procedures. Such enforcement actions can be prohibitive to a student's learning in a community space. For example, campus security exercising police-like powers, such as random searches, towards racialized and marginalized students may dissuade such students from spending time on campus to learn and share ideas with others. In more serious cases, it may even dissuade such students from attending university.

## CONCLUSION

In examining the powers and limitations of campus security, there are clear issues and inconsistencies resulting from judicial interpretation of campus security's exercise of their powers. This lack of clarity and consistency has left university community members unsure if the *Charter* applies to their interactions with campus security. Either of the two recommendations could assist in resolving these issues and inconsistencies by bringing either some or all of the actions of campus security under *Charter* scrutiny. Future research that provides empirical evidence of the frequency and types of powers most often exercised by campus security would provide a more fulsome picture of the impact campus security have on university community members. In the meantime, universities should provide more information to its community members about their rights when interacting with campus security.<sup>218</sup>

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215 For example, the University of Victoria allows community members to borrow books from its library, but they are also subject to fines for late returns: University of Victoria Libraries, "Borrowing and loans" (last visited 24 January 2023), online: *University of Victoria* <[uvic.ca/library/use/borrow/borrowing/index.php](http://uvic.ca/library/use/borrow/borrowing/index.php)> [perma.cc/3N53-LF56].

216 *UAlberta*, *supra* note 63 at para 148.

217 *Ibid.*

218 Only the University of Windsor has provided any plain-language guidance: see Campus Community Police, "Dealing With Campus Community Police" (last visited 30 January 2023), online: *University of Windsor* <[uwindsor.ca/campuspolice/300/dealing-campus-community-police](http://uwindsor.ca/campuspolice/300/dealing-campus-community-police)> [perma.cc/A85G-WYF2].

**APPENDIX A.**

**LIST OF PUBLIC UNIVERSITIES EXAMINED IN THIS ARTICLE**

<b>Province / Territory</b>	<b>University Name</b>	<b>Type of Campus Security Employed</b>
<b>British Columbia</b>	Capilano University	Private – mix of in-house and outsourced
	Emily Carr University	Private – outsourced
	Kwantlen University	Private – in-house
	Royal Roads University	Private – in-house
	Simon Fraser University	Private – mix of in-house and outsourced
	Thompson Rivers University	Private – outsourced
	University of the Fraser Valley	Private – outsourced
	University of British Columbia	Private – in-house
	University of Northern British Columbia	Private – in-house
	University of Victoria	Private – in-house
	Vancouver Island University	Private – outsourced
<b>Alberta<sup>219</sup></b>	MacEwan University	Private – in-house
	Mount Royal University	Private – in-house
	University of Alberta	Special constables
	University of Calgary	Private – in-house
	University of Lethbridge	Private – in-house
<b>Saskatchewan</b>	University of Regina	Private – in-house
	University of Saskatchewan	Special constables
<b>Manitoba</b>	Brandon University	Private – in-house
	University of Manitoba	Private – in-house
	University of Winnipeg	Private – in-house

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219 Excluded from this list are: Athabasca University (it is an online university with no physical campus), and Alberta University of the Arts (as of January 2023, the website for its campus security is offline).

<b>Ontario</b>	Algoma University	Private – in-house
	Brock University	Private and special constables
	Carleton University	Special constables
	Lakehead University	Private – in-house
	Laurentian University	Private – in-house
	McMaster University	Special constables
	Nipissing University	Private – in-house
	OCAD University	Private – in-house
	Queen’s University	Private – in-house
	Toronto Metropolitan University	Private – outsourced
	Trent University	Private – in-house
	University of Guelph	Special constables
	University of Ontario Institute of Technology	Private – in-house
	University of Ottawa	Private – in-house
	University of Toronto	Private and special constables
	University of Waterloo	Special constables (private for certain buildings)
	University of Western Ontario	Special constables
	University of Windsor	Special constables
	Wilfred Laurier University	Special constables
	York University	Private – in-house
<b>New Brunswick</b>	Mount Allison University	Private – in-house
	Université de Moncton	Private – in-house
	University of New Brunswick	Private – in-house
<b>Nova Scotia<sup>220</sup></b>	Acadia University	Private – in-house
	Cape Breton University	Private – in-house
	Dalhousie University	Private – in-house
	Mount Saint Vincent University	Private – in-house
	Nova Scotia College of Art & Design	Private – in-house
	St. Francis Xavier University	Private – in-house
	Saint Mary’s University	Private – in-house
<b>Prince Edward Island</b>	University of Prince Edward Island	Special constables
<b>Newfoundland and Labrador</b>	Memorial University of Newfoundland	Private – in-house
<b>Yukon</b>	Yukon University	Private – in-house

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220 Université Sainte-Anne was excluded due to lack of information on its website regarding campus security.



## APPENDIX B.

### ROLES AND RESPONSIBILITIES OF CAMPUS SECURITY <sup>221</sup>

#### A. Private Campus Security

University Name	Roles and Responsibilities	Source
<b>Acadia University</b>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Campus and residence patrol</li> <li>• Event security</li> <li>• Lost and found</li> <li>• Alarm and 911 monitoring</li> <li>• Building access</li> <li>• Medical shuttle service</li> <li>• Emergency response</li> <li>• Parking administration</li> </ul>	<www2.acadiau.ca/safety-security/services.html> [perma.cc/CQ4G-Z652]
<b>Algoma University</b>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Video surveillance</li> <li>• Dealing with reports of injury and/or hazards</li> </ul>	<algomau.ca/students/campus-safety> [perma.cc/W3GS-TXAB]
<b>Brandon University</b>	<ul style="list-style-type: none"> <li>• Emergency phone monitoring</li> <li>• Responding to incident and hazard reports</li> <li>• Emergency response</li> </ul>	<www.brandonu.ca/safety/> [perma.cc/3GYP-N4BB]
<b>Brock University (mix of private campus security and special constables)</b>	<ul style="list-style-type: none"> <li>• Responding to crimes and disturbances</li> <li>• Enforce university statutes</li> <li>• Provide assistance to victims of crime</li> </ul>	<brocku.ca/campus-security/about-us/> [perma.cc/8TUN-47US]; <https://brocku.ca/campus-security/wp-content/uploads/sites/80/2020-21-CSS-Annual-Report.pdf> [perma.cc/2E97-Y5LC]

<sup>221</sup> Information listed here is based on publicly available information on the provided webpages and is likely incomplete.

<p><b>Cape Breton University</b></p>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Lone worker program</li> <li>• Emergency response</li> <li>• Incident response</li> <li>• Campus patrol</li> <li>• Building access</li> <li>• Parking administration</li> <li>• Lost and found</li> </ul>	<p>&lt;<a href="http://www.cbu.ca/current-students/safety-security-%20respect/campus-security/">www.cbu.ca/current-students/safety-security-%20respect/campus-security/</a>&gt; [perma.cc/E2CM-KJ8N]</p>
<p><b>Capilano University</b></p>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Incident response</li> <li>• First aid</li> <li>• Building and property inspection</li> <li>• First aid</li> <li>• Crime prevention programs</li> <li>• Lost and found</li> <li>• Access control</li> <li>• Wildlife management</li> <li>• Responding to missing persons and auto crime reports</li> </ul>	<p>&lt;<a href="http://www.capilano.ca/student-services/community/safety--security/">www.capilano.ca/student-services/community/safety--security/</a>&gt; [perma.cc/VQ2H-6AN8]</p>
<p><b>Dalhousie University</b></p>	<ul style="list-style-type: none"> <li>• Lost and found</li> <li>• Parking administration</li> <li>• Incident response</li> <li>• Building access</li> </ul>	<p>&lt;<a href="http://www.dal.ca/dept/facilities/services/security-services.html">www.dal.ca/dept/facilities/services/security-services.html</a>&gt; [perma.cc/P5A3-MG3C]</p>
<p><b>Emily Carr University</b></p>	<ul style="list-style-type: none"> <li>• First aid</li> <li>• Security patrols</li> <li>• Building access</li> <li>• Safewalk program</li> <li>• Monitor fire and security systems</li> <li>• Investigate thefts and suspicious activity</li> <li>• Emergency phone monitoring</li> <li>• Responding to incident reports</li> </ul>	<p>&lt;<a href="http://www.ecuad.ca/on-campus/safety-security/">www.ecuad.ca/on-campus/safety-security/</a>&gt; [perma.cc/24WF-EBNA]</p>

<p><b>Kwantlen University</b></p>	<ul style="list-style-type: none"> <li>• Lost and found</li> <li>• Safewalk program</li> <li>• Lone worker program</li> <li>• Incident response</li> </ul>	<p>&lt;www.kpu.ca/security&gt; [perma.cc/2UVM-YSYA]</p>
<p><b>Lakehead University</b></p>	<ul style="list-style-type: none"> <li>• Parking administration</li> <li>• Locker rentals</li> <li>• Lost and found</li> <li>• Campus patrol</li> <li>• Respond to security and emergency calls</li> <li>• City of Thunder Bay By-Law enforcement officers</li> <li>• Enforce university’s property rights</li> <li>• Monitors video surveillance and emergency phones</li> <li>• Fire prevention and suppression equipment inspection service</li> </ul>	<p>&lt;www.lakeheadu.ca/faculty-and-staff/departments/services/security/tb&gt; [perma.cc/XM8A-D9TJ]</p>
<p><b>Laurentian University</b></p>	<ul style="list-style-type: none"> <li>• Monitor emergency telephones</li> <li>• Video surveillance</li> <li>• First aid</li> <li>• Safewalk and work alone programs</li> </ul>	<p>&lt;laurentian.ca/support/campus-safety&gt; [perma.cc/C284-FMRR]</p>
<p><b>MacEwan University</b></p>	<ul style="list-style-type: none"> <li>• Lost and found</li> <li>• Emergency response</li> <li>• Responding to reports of crime</li> <li>• Emergency phone monitoring</li> </ul>	<p>&lt;www.macewan.ca/safe-at-macewan/&gt; [perma.cc/W2AS-HSX8]</p>
<p><b>Memorial University of Newfoundland</b></p>	<ul style="list-style-type: none"> <li>• Video surveillance</li> <li>• Vehicle and foot patrol of campus</li> <li>• Building access</li> <li>• Responding to crimes</li> <li>• Alarm monitoring</li> <li>• Event security</li> <li>• Emergency phone monitoring</li> <li>• Parking administration</li> <li>• Safewalk program</li> <li>• Enforcement of university policies and procedures</li> <li>• Provide investigative support to local law enforcement when required</li> </ul>	<p>&lt;mun.ca/cep/&gt; [perma.cc/L3ZF-PSE9]</p>

<p><b>Mount Allison University</b></p>	<ul style="list-style-type: none"> <li>• Incident response</li> <li>• Emergency phone monitoring</li> </ul>	<p>&lt;<a href="http://mta.ca/current-students/safety-and-security">mta.ca/current-students/safety-and-security</a>&gt; [perma.cc/FB4K-BUDV]</p>
<p><b>Mount Royal University</b></p>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Accident and incident response</li> <li>• First aid</li> <li>• Campus patrol</li> <li>• Responding to alarms</li> <li>• Student and community engagement</li> <li>• Video surveillance</li> <li>• Assess reports of infrastructure issues</li> <li>• Building access</li> <li>• Emergency response</li> </ul>	<p>&lt;<a href="http://www.mtroyal.ca/SafetyRiskDepartment/CampusSafety/index.htm">www.mtroyal.ca/SafetyRiskDepartment/CampusSafety/index.htm</a>&gt; [perma.cc/3FHE-Q5LZ]</p>
<p><b>Mount Saint Vincent University</b></p>	<ul style="list-style-type: none"> <li>• Emergency response</li> <li>• Incident response</li> <li>• Emergency phone monitoring</li> <li>• Shuttle service for community members with medical or safety/security concerns</li> <li>• Parking administration</li> <li>• Violence prevention training</li> </ul>	<p>&lt;<a href="http://www.msvu.ca/campus-life/campus-services/safety-security-at-msvu/">www.msvu.ca/campus-life/campus-services/safety-security-at-msvu/</a>&gt; [perma.cc/PNV6-ENU4]</p>
<p><b>Nipissing University</b></p>	<ul style="list-style-type: none"> <li>• Assistance with reporting and documenting any incident/accidents on-site</li> <li>• Emergency phones and emergency buttons</li> <li>• Surveillance cameras</li> <li>• First-Aid and AED</li> <li>• Parking lot safety</li> <li>• Safewalk Program</li> </ul>	<p>&lt;<a href="http://www.nipissingu.ca/departments/human-resources/health-safety/campus-safety/security">www.nipissingu.ca/departments/human-resources/health-safety/campus-safety/security</a>&gt; [perma.cc/JTQ6-66CY]</p>
<p><b>Nova Scotia College of Art &amp; Design</b></p>	<ul style="list-style-type: none"> <li>• Incident response</li> </ul>	<p>&lt;<a href="http://navigator.nscad.ca/wordpress/home/services/security/">navigator.nscad.ca/wordpress/home/services/security/</a>&gt; [perma.cc/2GMV-HLRC]</p>

<p><b>OCAD University</b></p>	<ul style="list-style-type: none"> <li>• Enforcing university policies and procedures</li> <li>• Enforcing the university's property rights</li> <li>• Offers crime prevention programs</li> <li>• Campus patrol</li> <li>• Emergency response</li> <li>• Access control of buildings</li> <li>• Responding to reports of crime</li> <li>• Report writing and investigations</li> <li>• Lost and found</li> <li>• Safewalk program</li> </ul>	<p>&lt;<a href="http://www.ocadu.ca/services/safety">www.ocadu.ca/services/safety</a>&gt; [perma.cc/69GL-M86B]</p>
<p><b>Queen's University</b></p>	<ul style="list-style-type: none"> <li>• Missing persons and wellness or status checks</li> <li>• Monitoring emergency, assistance, and pay phones</li> <li>• Bike patrols</li> <li>• Contract security for events</li> <li>• Safety inspections and providing recommendations to specific buildings or areas on campus</li> <li>• Self-defence courses</li> <li>• Operates lost and found</li> <li>• Safewalk and lone worker programs</li> <li>• Enforcing university policies and procedures</li> <li>• Providing first aid</li> </ul>	<p>&lt;<a href="http://www.queensu.ca/risk/security/services">www.queensu.ca/risk/security/services</a>&gt; [perma.cc/44H7-DTTW]</p>

<p><b>Royal Roads University</b></p>	<ul style="list-style-type: none"> <li>• Providing first aid</li> <li>• Emergency response</li> <li>• Emergency phone monitoring</li> <li>• Safewalk program</li> <li>• Lost and found</li> <li>• Security patrol</li> <li>• Check-in services for on-campus accommodation (after hours or when the Welcome Desk is closed)</li> <li>• Building access and lockup</li> <li>• Video surveillance</li> <li>• Safety education programs</li> <li>• Site and building integrity</li> <li>• Parking and traffic administration and enforcement</li> </ul>	<p>&lt;<a href="http://www.royalroads.ca/campus/campus-security">www.royalroads.ca/campus/campus-security</a>&gt; [perma.cc/3LNR-WZLS]</p>
<p><b>Saint Mary's University</b></p>	<ul style="list-style-type: none"> <li>• Incident response</li> <li>• First aid assistance</li> <li>• Lost and found</li> <li>• Alarm monitoring</li> <li>• Parking administration</li> <li>• Safewalk program</li> <li>• Lone worker/student program</li> <li>• Special event security</li> </ul>	<p>&lt;<a href="http://www.smu.ca/student-life/university-security.html">www.smu.ca/student-life/university-security.html</a>&gt; [perma.cc/6Y6F-3J3D]</p>
<p><b>Simon Fraser University</b></p>	<ul style="list-style-type: none"> <li>• Safety training programs</li> <li>• Responding to reports of crime and/or hazards</li> <li>• Traffic safety monitoring</li> <li>• Building access</li> <li>• Safewalk program</li> <li>• First aid</li> <li>• Lost and found</li> <li>• Risk assessment</li> <li>• Emergency response</li> <li>• Incident command</li> <li>• Enforcing university policies and procedures</li> </ul>	<p>&lt;<a href="http://www.sfu.ca/srs/campus-safety-security.html">www.sfu.ca/srs/campus-safety-security.html</a>&gt; [perma.cc/5VLH-LC6K]; &lt;<a href="http://www.sfu.ca/content/dam/sfu/srs/campus-security-safety/about/2020.12.03%20%20CPS%20mandate%20document.pdf">www.sfu.ca/content/dam/sfu/srs/campus-security-safety/about/2020.12.03%20%20CPS%20mandate%20document.pdf</a>&gt; [perma.cc/K34N-XAW8]</p>

<b>St. Francis Xavier University</b>	<ul style="list-style-type: none"> <li>• Vehicle and foot patrols</li> <li>• Incident response</li> <li>• Emergency response</li> <li>• Residence keys/key card management</li> <li>• Parking administration</li> <li>• Emergency phone monitoring</li> <li>• Alarm monitoring</li> </ul>	<a href="http://www.mystfx.ca/security/about-safety-security">www.mystfx.ca/security/about-safety-security</a> [perma.cc/9T86-J4TM]
<b>Thompson Rivers University</b>	<ul style="list-style-type: none"> <li>• Campus patrol</li> <li>• Incident response</li> <li>• Lost and found</li> <li>• Safewalk program</li> <li>• Building access</li> <li>• First aid</li> <li>• Event security</li> <li>• Offers safety programs</li> </ul>	<a href="http://www.tru.ca/risk-management-services/security.html">www.tru.ca/risk-management-services/security.html</a> [perma.cc/HD6J-E7AC]
<b>Toronto Metropolitan University</b>	<ul style="list-style-type: none"> <li>• Enforcing university policies and procedures</li> <li>• Enforcing the university's property rights</li> <li>• Offers crime prevention programs</li> <li>• Emergency response program</li> <li>• Risk management and event risk assessments</li> <li>• Investigations</li> <li>• Foot and bike patrols</li> <li>• Safewalk program</li> <li>• Emergency response</li> <li>• Medical assistance</li> <li>• Planning, installing and managing security system infrastructure on campus</li> <li>• Event security</li> </ul>	<a href="http://www.torontomu.ca/community-safety-security/">www.torontomu.ca/community-safety-security/</a> [perma.cc/9BYD-HHV5]
<b>Trent University</b>	<ul style="list-style-type: none"> <li>• Offers crime prevention programs</li> <li>• Emergency response</li> <li>• Responding to reports of crime</li> <li>• Campus patrol</li> <li>• Security awareness training</li> <li>• Safewalk program</li> </ul>	<a href="http://www.trentu.ca/security/welcome">www.trentu.ca/security/welcome</a> [perma.cc/B77K-5M2L]

<p><b>Université de Moncton</b></p>	<ul style="list-style-type: none"> <li>• Campus patrol</li> <li>• Enforcing university policies and procedures</li> <li>• Enforcing the university's property rights</li> <li>• Parking administration</li> <li>• Emergency phone monitoring</li> <li>• Traffic management</li> <li>• Developing and updating emergency response plans</li> </ul>	<p>&lt;<a href="http://www.umoncton.ca/umcm-secureite/">www.umoncton.ca/umcm-secureite/</a>&gt; [perma.cc/T7ZM-U7HJ]</p>
<p><b>University of British Columbia</b></p>	<ul style="list-style-type: none"> <li>• First aid</li> <li>• Safewalk and blue phones program</li> <li>• Lost and found</li> <li>• Building access</li> <li>• Community watch</li> <li>• Responding to security requests</li> <li>• Site security assessment</li> <li>• Video surveillance</li> <li>• Foot and bike patrols</li> </ul>	<p>&lt;<a href="http://security.ubc.ca/home/our-services/">security.ubc.ca/home/our-services/</a>&gt; [perma.cc/V298-6773]</p>
<p><b>University of Calgary</b></p>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Bike patrols</li> <li>• Lost and found</li> <li>• Responding to incident reports</li> <li>• Enforcing university policy</li> <li>• Offers safety programs to the public</li> <li>• Emergency response</li> <li>• Video surveillance</li> <li>• Emergency phones monitoring</li> </ul>	<p>&lt;<a href="http://www.ucalgary.ca/risk/campus-security">www.ucalgary.ca/risk/campus-security</a>&gt; [perma.cc/YAJ3-LH87]</p>



<p><b>University of Lethbridge</b></p>	<ul style="list-style-type: none"> <li>• Video surveillance</li> <li>• Safewalk program</li> <li>• Lone worker program</li> <li>• First aid</li> <li>• Emergency phones monitoring</li> <li>• Lost and found</li> <li>• Building access</li> <li>• Responding to medical emergencies</li> <li>• Workplace inspections</li> <li>• Incident investigations</li> <li>• Providing training on matters relating to environment, health, and safety</li> </ul>	<p>&lt;<a href="http://www.ulethbridge.ca/campus-safety/request-service">www.ulethbridge.ca/campus-safety/request-service</a>&gt; [perma.cc/T8VP-9AB5]; &lt;<a href="http://www.ulethbridge.ca/policy/resources/environment-health-and-safety-policy">www.ulethbridge.ca/policy/resources/environment-health-and-safety-policy</a>&gt; [perma.cc/TUW6-UYZ8]</p>
<p><b>University of Manitoba</b></p>	<ul style="list-style-type: none"> <li>• Emergency phones monitoring</li> <li>• Lost and found</li> <li>• Video surveillance</li> <li>• Bike patrols</li> <li>• Campus safety programs</li> <li>• Building access</li> </ul>	<p>&lt;<a href="http://umanitoba.ca/security/">umanitoba.ca/security/</a>&gt; [perma.cc/2VLC-DJPW]</p>
<p><b>University of New Brunswick</b></p>	<ul style="list-style-type: none"> <li>• Incident response</li> <li>• Attend medical calls</li> <li>• Campus patrol</li> <li>• Enforce traffic regulations</li> <li>• Offer security-related presentations</li> <li>• Event security</li> <li>• Emergency response</li> </ul>	<p>&lt;<a href="http://www.unb.ca/fredericton/security/about/index.html">www.unb.ca/fredericton/security/about/index.html</a>&gt; [perma.cc/4AMY-CF9C]; &lt;<a href="http://www.unb.ca/saintjohn/security/">www.unb.ca/saintjohn/security/</a>&gt; [perma.cc/8D3Z-9WS6]</p>
<p><b>University of Northern British Columbia</b></p>	<ul style="list-style-type: none"> <li>• Safewalk program</li> <li>• Lost and found</li> <li>• Video surveillance</li> <li>• First aid</li> <li>• Building access</li> <li>• Emergency response</li> <li>• Security patrols</li> <li>• Emergency phones monitoring</li> </ul>	<p>&lt;<a href="http://www2.unbc.ca/security/">www2.unbc.ca/security/</a>&gt; [perma.cc/B8P8-SCPL]</p>

<p><b>University of Ontario Institute of Technology</b></p>	<ul style="list-style-type: none"> <li>• Accident/Injury response</li> <li>• Safewalk program</li> <li>• Emergency phone monitoring</li> <li>• Incident reporting</li> <li>• Lost and found</li> <li>• Residence security</li> <li>• Security monitoring</li> <li>• Work Alone program</li> <li>• Campus patrol</li> </ul>	<p>&lt;<a href="http://ontariotechu.ca/campus-services/safety-security/services/index.php">ontariotechu.ca/campus-services/safety-security/services/index.php</a>&gt; [perma.cc/7TCQ-Q2XV]</p>
<p><b>University of Ottawa</b></p>	<ul style="list-style-type: none"> <li>• Offers crime prevention programs</li> <li>• Self-defence courses</li> <li>• Operates lost and found</li> <li>• Foot patrol and Safewalk programs</li> <li>• Enforcing university policies and procedures</li> <li>• Enforcing the university's property rights</li> </ul>	<p>&lt;<a href="http://www.uottawa.ca/about-us/administration-services/protection">www.uottawa.ca/about-us/administration-services/protection</a>&gt; [perma.cc/KMK6-2A37]</p>
<p><b>University of Regina</b></p>	<ul style="list-style-type: none"> <li>• Campus patrol</li> <li>• Incident response</li> <li>• Safewalk program</li> <li>• Lone worker program</li> <li>• Campus crime investigation</li> <li>• Public safety programs</li> <li>• Risk reduction assessments</li> </ul>	<p>&lt;<a href="http://www.uregina.ca/fm/campus-security/about-us/index.html">www.uregina.ca/fm/campus-security/about-us/index.html</a>&gt; [perma.cc/YB6R-UVLL]</p>
<p><b>University of the Fraser Valley</b></p>	<ul style="list-style-type: none"> <li>• Responding to reports of incidents and/or hazards</li> <li>• Lone worker program</li> <li>• Building access</li> <li>• Safewalk program</li> <li>• Lost and found</li> <li>• Developing personal safety plan</li> <li>• Additional security for incidents and special circumstances</li> <li>• Event support</li> </ul>	<p>&lt;<a href="http://www.ufv.ca/safety-and-security/security/">www.ufv.ca/safety-and-security/security/</a>&gt; [perma.cc/3B4A-HKTP]</p>

<p><b>University of Toronto</b></p> <p>(mix of private campus security and special constables)</p>	<ul style="list-style-type: none"> <li>• Vehicle, bike, and vehicle patrol</li> <li>• Incident response</li> <li>• Emergency response</li> <li>• Investigation work for the university</li> <li>• Event security</li> <li>• Safety reviews</li> <li>• Lone worker program</li> <li>• Emergency phone monitoring</li> <li>• Safewalk program</li> </ul>	<p>&lt;<a href="http://www.campusafety.utoronto.ca/">www.campusafety.utoronto.ca/</a>&gt; [perma.cc/J7V8-4VGE]</p>
<p><b>University of Victoria</b></p>	<ul style="list-style-type: none"> <li>• Enforcing university policies and procedures</li> <li>• Enforcing the university's property rights</li> <li>• First aid</li> <li>• Safewalk program</li> <li>• Lost and found</li> <li>• Bike locker rental management</li> <li>• Emergency phones management</li> </ul>	<p>&lt;<a href="http://www.uvic.ca/security/">www.uvic.ca/security/</a>&gt; [perma.cc/NW2H-8FLJ]</p>
<p><b>University of Winnipeg</b></p>	<ul style="list-style-type: none"> <li>• Safewalk and Saferide programs</li> <li>• Lost and found</li> <li>• Emergency phone monitoring</li> <li>• Building access</li> <li>• Incident response</li> </ul>	<p>&lt;<a href="http://www.uwinnipeg.ca/security/">www.uwinnipeg.ca/security/</a>&gt; [perma.cc/V55G-SN8C]</p>
<p><b>Vancouver Island University</b></p>	<ul style="list-style-type: none"> <li>• Responding to incident reports</li> <li>• Additional security requests</li> </ul>	<p>&lt;<a href="http://fas.viu.ca/security/">fas.viu.ca/security</a>&gt; [perma.cc/V6Z6-2K9S]</p>
<p><b>York University</b></p>	<ul style="list-style-type: none"> <li>• Campus patrols, including undergraduate residences patrol</li> <li>• Emergency vehicles escort</li> <li>• First aid</li> <li>• Video surveillance</li> <li>• Investigations and threat assessment</li> <li>• Creating safety plans</li> </ul>	<p>&lt;<a href="http://www.yorku.ca/safety/security-services/">www.yorku.ca/safety/security-services/</a>&gt; [perma.cc/9L3V-944V]</p>
<p><b>Yukon University</b></p>	<ul style="list-style-type: none"> <li>• Incident response and report</li> <li>• Safewalk program</li> <li>• Assisting with dead car battery</li> <li>• Building access</li> <li>• Lost and found</li> <li>• Emergency response</li> </ul>	<p>&lt;<a href="http://www.yukonu.ca/current-students/campus-safety/">www.yukonu.ca/current-students/campus-safety/</a>&gt; [perma.cc/7B6L-C8EJ]</p>

**B. Special Constables** <sup>222</sup>

<p><b>Brock University</b> (mix of private campus security and special constables)</p>	<ul style="list-style-type: none"> <li>• Responding to crimes and disturbances</li> <li>• Enforce university statutes</li> <li>• Provide assistance to victims of crime</li> </ul>	<p>&lt;brocku.ca/campus-security/about-us/&gt; [perma.cc/N3KU-HUSS]; &lt;brocku.ca/campus-security/wp-content/uploads/sites/80/2020-21-CSS-Annual-Report.pdf&gt; [perma.cc/ED3S-FWUE]</p>
<p><b>Carleton University</b></p>	<ul style="list-style-type: none"> <li>• Campus patrol</li> <li>• Incident response and follow-up</li> <li>• Emergency response</li> <li>• Carrying out investigations</li> <li>• Emergency phone monitoring</li> <li>• Alarm monitoring</li> <li>• Video surveillance</li> <li>• Community engagement for crime prevent programs</li> <li>• Enforcing university policies and regulations</li> <li>• Traffic and parking enforcement</li> </ul>	<p>&lt;carleton.ca/patrol/&gt; [perma.cc/ENZ5-ZWFF]</p>
<p><b>McMaster University</b></p>	<ul style="list-style-type: none"> <li>• Campus patrol</li> <li>• Conduct safety/security reviews</li> <li>• Traffic enforcements</li> <li>• Video surveillance</li> <li>• Lost and found</li> <li>• Provide medical assistance and transportation</li> <li>• Provide crime prevention programs</li> <li>• Respond to and investigate all offences and emergencies on university property</li> </ul>	<p>&lt;security.mcmaster.ca/about/what-we-do/&gt; [perma.cc/MDG7-QXGH]</p>

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<sup>222</sup> Offences enforced by special constables are listed under Appendix C for greater clarity and will not be included here.

<b>University of Alberta</b>	<ul style="list-style-type: none"> <li>• Campus patrol</li> <li>• Incident response</li> <li>• Complaint investigation</li> <li>• Accident response</li> <li>• Traffic safety enforcement</li> <li>• Public education services</li> <li>• Alarm response</li> <li>• Special Duty Services</li> <li>• Community liaison</li> <li>• Controlled goods program</li> <li>• Security survey audits</li> <li>• Enforce university policies and procedures</li> </ul>	<p>&lt;<a href="http://www.ualberta.ca/protective-services/index.html">www.ualberta.ca/protective-services/index.html</a>&gt; [perma.cc/V366-7LV5]</p>
<b>University of Guelph</b>	<ul style="list-style-type: none"> <li>• Enforce university policies and procedures</li> <li>• Emergency response</li> <li>• Video surveillance</li> <li>• Alarm monitoring</li> <li>• Emergency phone monitoring</li> <li>• Building access</li> <li>• Lost and found</li> </ul>	<p>&lt;<a href="http://cso.uoguelph.ca/about-us">cso.uoguelph.ca/about-us</a>&gt; [perma.cc/8GM7-9CTF]; &lt;<a href="http://cso.uoguelph.ca/system/files/Annual%20Report%202019.pdf">cso.uoguelph.ca/system/files/Annual%20Report%202019.pdf</a>&gt; [perma.cc/UNE9-TZST]</p>
<b>University of Prince Edward Island</b>	<ul style="list-style-type: none"> <li>• Vehicle, bike, and foot patrol</li> <li>• Incident response</li> <li>• Enforce university policies and procedures</li> </ul>	<p>&lt;<a href="http://www.upei.ca/office-vice-president-administration-and-finance/security">www.upei.ca/office-vice-president-administration-and-finance/security</a>&gt; [perma.cc/W8VY-MJWM]; &lt;<a href="http://www.upei.ca/hr/competition/177e21r2">www.upei.ca/hr/competition/177e21r2</a>&gt; [perma.cc/QL6K-XJD6]</p>
<b>University of Saskatchewan</b>	<ul style="list-style-type: none"> <li>• Vehicle, bike, and foot patrol</li> <li>• Incident response</li> <li>• Lost and found</li> <li>• Safewalk program</li> <li>• Parking administration</li> <li>• Emergency response</li> <li>• Enforce university policies and procedures</li> </ul>	<p>&lt;<a href="http://www.usask.ca/protectiveservices/">www.usask.ca/protectiveservices/</a>&gt; [perma.cc/VX6C-ZAYK]</p>

<p><b>University of Toronto</b></p> <p><b>(mix of private campus security and special constables)</b></p>	<ul style="list-style-type: none"> <li>• Vehicle, bike, and foot patrol</li> <li>• Incident response</li> <li>• Emergency response</li> <li>• Investigation work for the university</li> <li>• Event security</li> <li>• Safety reviews</li> <li>• Lone worker program</li> <li>• Emergency phone monitoring</li> <li>• Safewalk program</li> <li>• Enforce university policies and procedures</li> </ul>	<p>&lt;<a href="http://www.campusafety.utoronto.ca/">www.campusafety.utoronto.ca/</a>&gt; [perma.cc/C4NV-UPS4]</p>
<p><b>University of Waterloo</b></p>	<ul style="list-style-type: none"> <li>• Community engagement</li> <li>• Conducting investigations</li> <li>• Event security</li> <li>• Incident response</li> <li>• Emergency response</li> <li>• Campus patrol</li> <li>• Video surveillance</li> <li>• Emergency phone monitoring</li> <li>• Parking and traffic enforcement</li> <li>• Enforcing university policies and procedures</li> </ul>	<p>&lt;<a href="http://uwaterloo.ca/special-constable-service/about">uwaterloo.ca/special-constable-service/about</a>&gt; [perma.cc/Y7PX-H6P4]</p>
<p><b>University of Western Ontario</b></p>	<ul style="list-style-type: none"> <li>• Lost and found</li> <li>• Building access</li> <li>• Safewalk program</li> <li>• Lone worker program</li> <li>• Vehicle, bike and foot patrol</li> <li>• Emergency phone monitoring</li> <li>• Conducting safety and security audits</li> <li>• Conducting criminal, regulatory, and breach of student code of conduct investigations</li> <li>• Enforcing university policies and procedures</li> <li>• Offering safety protection programs</li> <li>• Video surveillance</li> </ul>	<p>&lt;<a href="http://uwo.ca/campusafety/index.html">uwo.ca/campusafety/index.html</a>&gt; [perma.cc/34RY-QAN3]</p>

<p><b>University of Windsor</b></p>	<ul style="list-style-type: none"> <li>• Emergency phone monitoring</li> <li>• Campus patrol</li> <li>• Event security</li> <li>• Building access</li> <li>• Incident response</li> <li>• Emergency response</li> <li>• Enforcing university policies and procedures</li> <li>• Providing safety plans to university community members</li> </ul>	<p>&lt;lawlibrary.uwindsor.ca/Presto/content/Detail.aspx?ctID=OTdhY2QzODgtNjhlYi00ZWY0LTg2OTUtNmU5NjEzY2JkMWYx&amp;rID=METE0&amp;qrs=RmFsc2U=&amp;q=KFVuaXZlcnNpdHlfb2ZfV2luZHNvcjI9DZW50cmFsX1BvbGJjaWVzLkFsbFRleHQ6KGNhbXB1cyBwb2xpY2UpKQ==&amp;ph=VHJ1ZQ==&amp;bckToL=VHJ1ZQ==&amp;rrtc%20=VHJ1ZQ==&gt; [perma.cc/2C54-4DED]</p>
<p><b>Wilfred Laurier University</b></p>	<ul style="list-style-type: none"> <li>• Enforcing university policies and procedures</li> <li>• Vehicle, bike and foot patrol</li> <li>• Emergency phone monitoring</li> <li>• Video surveillance</li> <li>• Emergency response</li> <li>• Incident response</li> </ul>	<p>&lt;www.wlu.ca/about/discover-laurier/special-constable-service/index.html&gt; [perma.cc/GSG5-5FYT]</p>

## APPENDIX C.

### SELECTED STATUTES ENFORCED BY SPECIAL CONSTABLES BY UNIVERSITY

<p><b><i>Criminal Code (limited)</i></b></p> <ul style="list-style-type: none"> <li>• University of Alberta (only when they find someone committing an offence)</li> <li>• University of Saskatchewan (impaired driving provisions)</li> <li>• Brock University</li> <li>• University of Guelph</li> <li>• University of Toronto</li> <li>• Carleton University</li> <li>• University of Western Ontario</li> <li>• University of Waterloo</li> <li>• University of Windsor</li> <li>• Wilfred Laurier University</li> <li>• McMaster University</li> <li>• University of Prince Edward Island (limited)</li> </ul>	<p><b><i>Controlled Drugs and Substances Act</i></b></p> <ul style="list-style-type: none"> <li>• University of Guelph</li> <li>• Carleton University</li> <li>• McMaster University</li> </ul>
<p><b>Provincial trespass acts</b></p> <ul style="list-style-type: none"> <li>• University of Alberta</li> <li>• Brock University</li> <li>• University of Guelph</li> <li>• Carleton University</li> <li>• University of Western Ontario</li> <li>• McMaster University</li> </ul>	<p><b>Municipal bylaws</b></p> <ul style="list-style-type: none"> <li>• Brock University</li> <li>• University of Guelph</li> <li>• University of Toronto</li> <li>• Waterloo</li> <li>• Wilfred Laurier</li> <li>• McMaster University</li> </ul>