

October 20, 2015

---

## Police and Adjuster Statements – Admissible or Not?



By [Tessa Gregson](#) and [Sharon Stefanyk](#)

**The Alberta Court of Appeal in the recent case of *R. v. Porter*, [2015 ABCA 279](#), has concluded that neither a statement made to the police pursuant to the *Traffic Safety Act* section 71, nor a statement provided to an insurance adjuster is admissible in a police investigation or criminal proceedings.**

In June 2012, Mr. Green pulled over to aid another motorist with a tire on Anthony Henday Drive in Edmonton. While standing on the side of the road discussing the situation, Mr. Green was struck and killed by a passing car. The passing vehicle did not pull over and instead fled the scene.

The following morning, the accused, Porter, contacted a lawyer regarding his involvement in an accident. At that point, the lawyer advised Porter that he had an obligation to make a collision statement to the police under the *Traffic Safety Act* (the *TSA*) and an obligation to provide a statement to his insurance company. Porter and his lawyer later attended the police station to provide an accident report (the "TSA Statement") at which point Porter was also arrested and interviewed.

Following the interview, the police swore an Information to Obtain (an ITO) for a warrant to seize Porter's car. This ITO was based on information provided in the TSA statement and with the warrant, the police seized Porter's vehicle and found incriminating evidence.

Subsequent to the TSA Statement, Porter provided a written report of the accident to his insurer (TD). In early August 2012, TD opened a fatality file after it learned that the collision caused Mr. Green's death. The independent adjuster in charge of the file informed Porter that an additional statement was a condition of his insurance policy, without which he may be denied coverage. The adjuster also provided Porter with several assurances that the statement would only be given to TD and the police would not receive it without a court order. Porter then provided a written statement for the file which did not mention a fatality.

The police learned of the insurance statements and obtained production orders to access the statements

based on, *inter alia*, information provided in the TSA Statement.

The Alberta Court of Appeal considered whether the TSA Statement and insurance statements may be used by the police in an investigation and/or admissible at trial against an accused.

Ultimately, the Court of Appeal upheld the trial judge's decision that both statements were compelled statements and therefore inadmissible at trial and unavailable for police use in investigations.

Following the Supreme Court of Canada in *R v. White*, the Court of Appeal found that statutorily compelled statements are inadmissible in a criminal proceeding, regardless of the purpose to which it is used. The principle of fundamental justice contained in section 7 of the *Canadian Charter of Rights and Freedoms* protects a person against self-incrimination. This principle relates to all information contained in compelled statements thereby rendering the information inadmissible.

In the context of the TSA Statement, section 71 of the *TSA* obliges a driver involved in an accident to report the accident to peace officer. This statutory compulsion paired with Porter's "honest and reasonably held belief that he was required to make the report under the *TSA*" rendered the statement inadmissible for any purpose. Thus, the police were not authorized to use the information in the TSA Statement for any purpose, including gathering more information through the search warrant and production order.

Similarly, the Court of Appeal highlighted that section 556 of the *Insurance Act* places an obligation on the insured to "promptly give to the insurer written notice, with all available particulars, of any accident involving loss of damage to persons or property...". Applying the contextual analysis set in *R v. White*, the Court concluded that the context of a criminal investigation of the insured brought the insurance statements under the protection against self-incrimination. This, combined with an insured's mandatory obligation to provide written notice, rendered the insurance statements inadmissible for any purposes.

If you have any questions, please do not hesitate to contact either [Tessa Gregson](#) (780-423-3003 ext. 7285) or [Sharon Stefanyk](#) (780-423-7684).

#### SHARE THIS ARTICLE



---

#### CALGARY

400 - 604 1 ST SW  
Calgary AB T2P 1M7  
403-260-8500

#### EDMONTON

2000 - 10235 101 ST  
NW  
Edmonton AB T5J 3G1  
780-423-3003

#### YELLOWKNIFE

601 - 4920 52 ST  
Yellowknife NT X1A 3T1  
867-920-4542

This email was created and delivered using [Mailout](#)