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Oversight UNSEEN

*Investigation into the
Special Investigations Unit's
operational effectiveness and
credibility*



A flashlight is positioned in the upper left corner, casting a bright, circular glow onto a white document. The document is placed on a textured, light-colored surface, possibly a table or desk. The background is dark and textured, with a series of circular holes visible on the left side, suggesting a binder or folder. The overall scene is dimly lit, with the flashlight providing the primary source of light.

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Ombudsman Report

Investigation into the Special Investigations Unit's operational effectiveness and credibility

“Oversight Unseen”

André Marin
Ombudsman of Ontario
September 2008

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Executive Summary

- 1 Canada received considerable unfavourable international attention last fall when millions witnessed the graphic video images of the last terrifying moments in the life of Robert Dziekanski. After a long and delayed international flight from his native Poland, Mr. Dziekanski arrived at Vancouver Airport, only to spend hours wandering hopelessly, unable to communicate or to obtain the assistance he needed to exit and meet up with his mother. As Mr. Dziekanski became increasingly confused and agitated, RCMP officers arrived and, within minutes, stunned him with a Taser. He was then restrained, and died shortly thereafter. In the aftermath of this tragedy, public accusations were made of coverup and police using excessive force. People demanded assurance that the truth surrounding his ill-fated encounter with police would be revealed, and many voiced distrust of any investigation that would involve police investigating police.
- 2 To Ontario's great credit, incidents in this province involving serious injury and death of civilians resulting from police contact are not investigated by police officials, but by the Special Investigations Unit (SIU), a civilian criminal investigative agency. Created in 1990, the SIU's existence is a testament to the strength of democratic principles in this province, and the value our government has placed on reinforcing public confidence in policing.
- 3 Unfortunately, over the past two years, several serious concerns have been raised by individuals, families, lawyers and community advocates who complained to my Office about the credibility and effectiveness of the SIU.
- 4 As previous independent reviews have documented, the SIU's early history was marked by successive governments failing to provide it with adequate resources, and by police officials aggressively resisting its oversight. While its resources have increased over time, and regulatory requirements now more clearly define police obligations, my investigation found that the Special Investigations Unit continues to struggle to assert its authority, maintain its balance against powerful police interests, and carry out its mandate effectively.
- 5 The SIU is still very much a fledgling organization. It does not have its own constituting legislation, its mandate lacks clarity, it is administratively and technically challenged and it is dependent on the Ministry of the Attorney General.
- 6 In turn, the Ministry of the Attorney General has relied on the SIU to soothe police and community sensibilities and to ward off controversy. But in doing so, it

has also overstepped the bounds of independent governance. The Director's performance is subjectively evaluated and rewarded, compromising the SIU's structural integrity and independence. Its credibility as an independent investigative agency is further undermined by the predominant presence and continuing police links of former police officials within the SIU. It is so steeped in police culture that it has, at times, even tolerated the blatant display of police insignia and police affiliation.

- 7 In addition to lacking the necessary statutory authority to act decisively when police officials fail to comply with regulatory requirements, the SIU often ignores the tools it does have, such as public censure, and adopts an impotent stance in the face of police challenge. Delays in police providing notice of incidents, in disclosing notes, and in submitting to interviews are endemic. Rather than vigorously inquiring into and documenting delays and other evidence of police resistance, the SIU deals with issues of police non-co-operation as isolated incidents. It ignores systemic implications and attempts to solve individual problems through a conciliatory approach.
- 8 The SIU has not only become complacent about ensuring that police officials follow the rules, it has bought into the fallacious argument that SIU investigations aren't like other criminal cases, and that it is acceptable to treat police witnesses differently from civilians. Police interviews are rarely held within the regulatory time frames, and are all too often postponed – for weeks, sometimes even months. The SIU will not inconvenience officers or police forces by interviewing officers off duty. When it encounters overt resistance from police officials, the SIU pursues a low-key diplomatic approach that flies under the public radar. If disagreement cannot be resolved, the SIU more often than not simply accepts defeat.
- 9 The SIU also fails to respond to incidents with rigour and urgency – at times inexplicably overlooking the closest investigators, and following routines that result in precious investigative minutes, sometimes hours, being lost. It has become mired in its own internal events, and introspective focus.
- 10 The SIU's system of oversight is out of balance. It must not only ensure accountability of police conduct, but be perceived by the public as doing so. At present, the public is expected to trust that the SIU conducts thorough and objective investigations and accept that its decisions are well founded when it decides, for example, not to charge officers. But much remains hidden from public view, including Director's reports and significant policy issues. In order to properly serve the function it was created to fulfill, greater transparency is required with respect to the SIU's investigative outcomes, as well as those of the

police disciplinary system triggered by SIU investigations.

- 11 In theory, the SIU is a fundamental pillar of accountability in Ontario. However, the reality is that the SIU is capable of much more than it is achieving at present. It is incumbent on government to provide the agencies it creates with the means to fully accomplish their mandates. The citizens of Ontario are entitled to a Special Investigations Unit with the necessary resources and tools to be the best that it can be. With that in mind, I have made 46 recommendations in this report, addressed at improving the system. The first 25 recommendations focus on the SIU itself. I believe that there is much that the SIU can do on its own to enhance and inject more rigour into its investigative practices, and its response to challenges to its authority. I have also made recommendations to address the issues created by a lingering police culture within the SIU, and to achieve greater transparency.
- 12 I have made six recommendations to the Ministry to address concerns about its failure to provide the SIU with the supports it needs, as well as the necessary distance to enable the SIU to properly function as an independent agency.
- 13 Finally, I have made 15 recommendations to the government of Ontario, because I believe the system for police oversight requires additional structural support that can only be provided through legislative amendment. It is time for the SIU to be accorded the respect and stature it deserves through its own constituting legislation. This is the next natural step in the evolution of the SIU. It is a necessary adaptation, in order to secure public confidence in the SIU, and in turn, foster public trust in policing in this province.

Investigative Process

- 14 On June 7, 2007, I launched a systemic investigation into the Special Investigations Unit's (SIU) operational effectiveness and credibility. The investigation was prompted by complaints received from affected individuals, family members, lawyers, and community groups who raised concerns about the SIU's independence and objectivity, as well as the thoroughness of its investigations. Concerns were also raised about the lack of information provided to the involved parties. We received dozens of additional complaints from members of the public following the announcement of the investigation.
- 15 Our investigation focused on the period subsequent to February 2003, since that was the last time an external review of the SIU was conducted.

- 16** The Special Ombudsman Response Team (SORT) carried out the investigation. A team of six investigators and one Early Resolution Officer conducted the field investigation, assisted by Senior Counsel. Two additional investigators assisted with the document review.
- 17** SORT investigators conducted more than 100 interviews, 83 of them in person. These included most of the current SIU staff, former SIU staff, senior officials with the Ministry of the Attorney General, complainants, community groups, experts, consultants, representatives from the policing community (including the Commissioner of the OPP and the chiefs of police from the Peterborough Lakefield Community Police Service, Thunder Bay Police Service, Toronto Police Service, and York Regional Police Service), police association counsel, the president of the Thunder Bay police association, a former Deputy Director of the SIU and a former Director. Also interviewed were officials from the Canadian Police College, the Ontario Police College, and the Chief Superintendent and Deputy Criminal Operations Officer, E Division of the RCMP, as well as University of Toronto criminologist and associate professor Scot Wortley. All face-to-face interviews and some of those conducted by telephone were recorded digitally, resulting in more than 200 hours of recorded material.
- 18** Investigators also contacted several agencies such as the Independent Police Complaints Commission in the United Kingdom, the Office of the Police Ombudsman of Northern Ireland, and the Commission for Public Complaints against the RCMP to identify “best practices” used by police oversight organizations.
- 19** This investigation proved to be SORT’s most extensive to date. The team initially obtained and reviewed 25 banker’s boxes of materials from the SIU and two from the Ministry of the Attorney General. In October 2007, the SIU made an unsolicited formal written submission to our Office and forwarded an additional 11 banker’s boxes full of documents. A detailed review of 21 SIU investigative case files was conducted, including 10 that were provided by the SIU in support of its submission. In total, the investigation examined tens of thousands of pages of material as well as interview tapes and related videos and DVDs.
- 20** The SIU’s initial reaction to our investigation was defensive. It issued a press release in which it praised its own “excellent investigative standards” and promoted itself as “a world leader in civilian oversight of police.” These words of puffery, however, were soon discarded as the investigation progressed. By October 2007, the SIU acknowledged in its written submission to us that it was unwise for any organization to brag that it was “state of the art” or a “world

leader.”

- 21 Overall, we received excellent co-operation throughout the investigation from the SIU and the Ministry of the Attorney General.

The Balancing Act: Birth of the SIU

- 22 In carrying out their critical law enforcement role, the police have the authority to use force, including deadly force, when necessary.¹ While in many cases, police use of force may be above reproach, police officers are uniquely vulnerable to allegations of abuse of power. They are also human. They make mistakes, and at times, may break the laws they have sworn to uphold, and on occasion, they may even commit violent crimes against those it is their duty to serve and protect.
- 23 For over a century in Ontario, when someone was seriously injured or killed in an incident involving police, it was essentially left to the police to investigate themselves. While the police are experts at investigating crime, this situation was obviously not ideal from the perspective of impartiality. With the advent of the civil rights movement in the 1960s, citizens increasingly began to challenge police actions and demand that authorities be held accountable for their conduct.
- 24 It has been said that “the worst enemy of effective policing is the absence of public confidence.”² Public trust in the ability of the police to function lawfully is therefore essential. Over the last three decades, Ontario’s legislators and public policy makers have struggled to ensure that police are not unduly fettered in carrying out their responsibilities, while at the same time holding them sufficiently accountable to the communities they serve.
- 25 Between 1974 and 1980, a total of six reviews were conducted relating to police oversight in Ontario.³ In 1981, a pilot project involving civilian review of

¹ *Criminal Code*, R.S.C. 1985, c. C-46, s. 25; *Equipment and Use of Force*, R.R.O. 1990, Reg. 926, s. 9.

² Ontario, Legislative Assembly, “Report of the Race Relations and Policing Task Force” by Ontario Task Force on Race Relations and Policing in *Sessional Papers*, No. 354 (1989) at 23 [*Report of the Race Relations and Policing Task Force, 1989*].

³ Arthur Maloney, Q.C., Metropolitan Toronto Board of Commissioners of Police, *The Metropolitan Toronto review of citizen-police complaint procedure* (Toronto: 1975); Ontario, Royal Commission into Metropolitan Toronto Police Practices, *Report of the Royal Commission into Metropolitan Toronto Police Practices* by Donald R. Morand (Toronto: Queen’s Printer, 1976); Walter G. Pitman, Task Force on Human Relations, *Now is Not Too Late* (Toronto: Municipality of Metropolitan Toronto, 1977); Gerald Emmett Carter, *Report to the civic authorities of Metropolitan Toronto and its citizens* (Toronto: Office of the Cardinal, 1979); Ontario, Legislative Assembly, “Policing in Ontario for the eighties: perceptions and

complaints against Toronto Police Service officers was established. By 1984, civilian oversight of public complaints became a permanent fixture of Toronto policing. In 1988, two fatal shootings of black men by police galvanized the black community and led to the creation of the Race Relations and Policing Task Force.⁴ In 1989, that Task Force made 57 recommendations for reform, including that an independent investigative team composed of police and civilians be established to investigate police shootings and determine whether charges should be laid. The Task Force report was followed in 1990 by the introduction of a province-wide system for public complaints about police, as well as the creation of the Special Investigations Unit – an independent civilian agency responsible for investigating the circumstances of serious injuries and deaths of civilians in contact with police.⁵

Formative Years: Six More Degrees of Recommendation

26 In 1990, Ontario became and has remained the only province in Canada to have an independent civilian oversight body responsible for carrying out criminal investigations involving police. However, the system of police oversight in this province, including the Special Investigations Unit, has continued to attract controversy and calls for reform. Over the next 12 years, another half-dozen reviews of the system were conducted:

1) The Lewis Report

27 After a May 1992 riot involving police on Yonge Street in Toronto in which race was seen to be a factor, Stephen Lewis was appointed as an advisor on race relations to then Premier Bob Rae. Mr. Lewis' June 1992 report recommended policing reforms, including some directly relating to the SIU.⁶ He was particularly concerned about the SIU's credibility, and he recommended that it should be accountable to the Attorney General, who is responsible for the provincial justice system rather than the Solicitor General, who was responsible

reflections: report" by Ontario Task Force on the Racial and Ethnic Implications of Police Hiring, Training, Promotion and Career Development in *Sessional Papers*, No. 314/214 (1980) (Chair: Reva Gerstein); Ontario, Task Force on the Use of Firearms by Police Officers, *Report of the Task Force on the Use of Firearms by Police Officers* by John F. Greenwood (Toronto: Ministry of the Solicitor General, 1980).

⁴ Lester Donaldson, 44, was killed on August 9, 1988 in Toronto, and Michael Wade Lawson, 17, was killed on December 8, 1988 in Peel Region.

⁵ *Police Services Act*, R.S.O. 1990, c. P.15 [*Police Services Act*].

⁶ Ontario, Legislative Assembly, "Racism in Ontario: report to the Premier by Stephen Lewis" by Ontario, Office of the Premier in *Sessional Papers*, No. 352/073 (1992).

for police. He also recommended that the SIU receive adequate funding to ensure total independence in the conduct of investigations. In September 1992, the Attorney General took on responsibility for the SIU, but the funding issue remained outstanding.⁷

2) Task Force on Race Relations and Policing

28 In the wake of the Lewis report, the government also reconstituted the Task Force on Race Relations and Policing to inquire into and report on the progress in implementation of its recommendations.⁸ In its 1992 report, the Task Force cautioned that if the SIU's resources remained inadequate, its critical function would suffer and be subject to severe public criticism.

3) Commission on Systemic Racism in the Ontario Criminal Justice System

29 This commission was created in late 1991 after four black Ontarians were shot by police officers within a 50-day period.⁹ The commission issued its report in 1995, observing that the creation of the SIU had done nothing to improve police accountability in the use of force. It noted that since 1978, on-duty police officers had shot at least 16 black people in Ontario, 10 of them fatally.¹⁰ It lamented that the SIU's structure and performance had fallen short of satisfying the need for independent and effective investigations.¹¹ It cited inadequate funding, lack of police co-operation and the refusal of individual officers to be interviewed as the fundamental problems affecting the Unit's performance. Among the Commission's recommendations were legislative and regulatory amendments to ensure police co-operation.

4) The McLeod Report

30 In 1996, with a new government in power under Premier Mike Harris, Roderick McLeod was appointed to conduct yet another review of police oversight and the

⁷ Ontario, *Consultation report of the Honourable George W. Adams, Q.C. to the Attorney General and Solicitor General concerning police cooperation with the Special Investigations Unit* (Toronto: Ministry of the Attorney General, 1998) at 10 [*1998 Consultation report by the Honourable George W. Adams, Q.C.*].

⁸ Ontario, *The report of the Race Relations and Policing Task Force* (Toronto: The Task Force, 1992) [*Report of the Race Relations and Policing Task Force, 1992*].

⁹ Ontario, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer, 1995) at 379 [*Report of the Commission on Systemic Racism*].

¹⁰ *Ibid.* at 377.

¹¹ *Ibid.* at 381.

system for public complaints about police.¹² Among its recommendations, the McLeod report called for regulatory requirements to be established for police co-operation with the SIU.¹³ The public complaint system was significantly overhauled in 1997.¹⁴ However, despite repeated recommendations for reform, no changes were made to address the chronic concerns regarding the SIU's performance and police co-operation. That same year, eight civilians died as a result of gunshot wounds inflicted by police, five of them in the Toronto area. This series of police shootings once again highlighted problems in police co-operation with the SIU.¹⁵

5) Adams Report I

- 31** In September 1997, as a result of increased pressure to solve the perennial SIU problem, the Attorney and Solicitor Generals appointed former Superior Court Justice George Adams to consult with community and police organizations on ways to improve the relationship between the SIU and the police. The areas of concern identified were the timely notification of incidents to the SIU by the police, control of incident scenes pending the SIU investigators' arrival, and timely co-operation of police officers involved in the incidents.
- 32** Mr. Adams' mandate was not to conduct extensive research and recommend systemic changes based on best practices. Rather, in the highly charged environment of police oversight, he was tasked with exploring the potential for consensus among the police and community stakeholders. He made 25 recommendations in his consultation report in May 1998. Key among them was that the SIU should be resourced in a manner commensurate with its important mandate. Like others before him, he also called for a detailed regulatory framework for SIU investigations.¹⁶
- 33** In response, the government enacted a regulation incorporating many of Mr. Adams' recommendations, and setting out the conduct and duties of police officers involved in SIU investigations.¹⁷ A complementary regulation made a

¹² Ontario, *A report and recommendations on amendments to the Police Services Act respecting civilian oversight of police* (Toronto: Miller Thomson, 1996).

¹³ *Ibid.* at 26-27.

¹⁴ Bill 105, *Police Services Amendment Act, 1997*, 1st Sess., 36th Leg., Ontario, 1997 (assented to 26 June 1997) S.O. 1997, C.8, among other provisions, abolished the Police Complaints Commission and boards of inquiry.

¹⁵ *1998 Consultation report by the Honourable George W. Adams, Q.C.*, *supra* note 7 at 19.

¹⁶ *Ibid.* at 55.

¹⁷ *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, O. Reg. 673/98.

failure to comply with the regulatory requirements a misconduct offence under the *Police Services Act*.¹⁸ The SIU also received long-awaited additional funding, its budget virtually doubling to \$5.3 million.

6) Adams Report II

- 34** In August 2002, the Attorney General once again appointed Mr. Adams to conduct a consultative review aimed at evaluating the implementation of the 1999 SIU reforms. This report, issued in February 2003,¹⁹ found that increased public funding and the regulatory changes had been successful in building police and community confidence in the SIU and in providing an effective regime for SIU investigations.²⁰ While acknowledging that the stakeholders continued to have concerns, Mr. Adams declared that “none of the concerns raised ... during this review constitute the type of systemic failure existing at the time of the original facilitation.”²¹
- 35** Having been the Director of the Special Investigations Unit from September 1996 to June 1998, I have more than a passing familiarity with the challenges that faced those investigating police conduct during the time covered by the first Adams report. The SIU then was not only poorly resourced but faced aggressive resistance from the police community. In one instance, a police officer who had been charged during my tenure sued the SIU. The judge dismissed the case in 2001, and remarked in his decision:

There appeared to be, on the part of certain of the police witnesses and certain police associations, an almost Pavlovian reaction against a civilian agency investigating the conduct of police officers in carrying out their duties and against the idea that such an agency could conduct an investigation which would be fair to police officers.²²

¹⁸ O. Reg. 123/98.

¹⁹ Ontario, *Review report on the Special Investigations Unit reforms prepared for the Attorney General of Ontario by the Honourable George W. Adams, Q.C.* (Toronto: Ministry of the Attorney General, 2003) [2003 Review report by the Honourable George W. Adams, Q.C.].

²⁰ *Ibid.* at 12.

²¹ *Ibid.* at 74.

²² *Wiche v. Ontario*, [2001] O.J. No. 1850 at para. 61 (Ont. Sup. Ct).

The SIU Today

- 36** Although the Special Investigations Unit’s financial circumstances have improved over time, and both senior SIU and police officials now consistently say they are engaged in a respectful and good working relationship, our investigation revealed that many of the problems identified with police co-operation over a decade ago continue to persist, although they may not be as overt. The lack of palpable tension between the SIU and police services in Ontario is not necessarily indicative of a healthy state. In fact, I am concerned that it may be more reflective of an ingrained culture of complacency than a signal that conflicts have been resolved.
- 37** While the sense of crisis that existed in earlier decades appears to have faded, there is still an undercurrent of public unease regarding SIU oversight. Civilians continue to be injured in relatively large numbers at the hands of police. From 2003 to 2006, there were 51 shootings of civilians by police in this province, 22 of them fatal.²³ There is as much need today as ever to ensure that such serious incidents involving police are independently and thoroughly investigated. While public outcry may not be as loud as it once was, the same questions regarding independence, impartiality and credibility are being raised. The voices asking the questions have perhaps been conditioned, after more than a dozen systemic reviews, to a lack of effective response.
- 38** Part of this may be due to the fact that officially, Ontario governments have been hesitant to commit to the SIU model through legislation. With this in mind, it is useful to review the legislative context in which the SIU operates.

Section 113 of the *Police Services Act*

- 39** The SIU’s sole constituting authority is a single skeletal section buried within the *Police Services Act* as a legislative afterthought. Section 113 provides that “there shall be a special investigations unit” consisting of a Director, who is appointed by Cabinet, as well as investigators appointed under the *Public Service Act*. The SIU is part of the Ministry of the Attorney General.
- 40** In order to promote the SIU’s independence, the Act prohibits police officers or former police officers from assuming the position of Director. In addition, no serving police officer can be appointed as an SIU investigator, and investigators

²³ Special Investigations Unit, “What We Do – Stats”, online: Special Investigations Unit <<http://www.siu.on.ca/charts.html>> (last accessed: 17 July 2008).

are prevented from participating in any investigation that relates to members of a police force that once employed them.

- 41** The Director’s mandate is expressed succinctly. He (or she) must, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. He may also conduct investigations on his own initiative. If the Director is of the opinion that there are reasonable grounds to do so, he “shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution.” The Director is required to report the results of investigations to the Attorney General.
- 42** Section 113 also addresses the responsibility of police officials in responding to SIU investigations. It provides that:

Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations. (s. 113 (9)).

- 43** As noted earlier, the degree of police co-operation required in connection with SIU investigations has been a source of contention virtually since its inception. In an attempt to provide some clarity around the duty to “co-operate,” regulations were enacted on January 1, 1999.

Defining “Co-operation”

- 44** Under Ontario Regulation 673/98,²⁴ chiefs of police are required to notify the SIU **immediately** of an incident that may reasonably be considered to fall within its investigative mandate. They are also required to ensure that incident scenes are secure pending the SIU taking charge of a scene and – “to the extent that it is practicable” – to segregate all officers involved in the incident from one another until after the SIU has completed its interviews. Chiefs of police may appoint senior officers to act in their place.
- 45** The regulations make it clear that the SIU is the lead investigator, and has priority over any police force.²⁵ They also address the responsibilities of individual police officers.²⁶ Officers involved in an incident are prohibited from communicating

²⁴ *Supra* note 17, s. 3.

²⁵ *Ibid.*, s. 5.

²⁶ *Supra* note 17.

with other involved officers until the SIU has completed its interviews. Officers who are involved in an incident but are not considered to have caused the death or serious injury are considered “**witness officers.**” They are required to complete full notes of the incident and provide them to the chief of police **within 24 hours** after the SIU has requested them. The chief, in turn, is required to provide the witness officers’ notes to the SIU **no later than 24 hours** after they are requested. However, the SIU Director does have the discretion to allow the chief an opportunity to provide copies of the notes beyond the 24-hour time frame.

- 46** Witness officers are also required to submit to an interview by the SIU “**immediately**” upon request and **no later than 24 hours** after the request “where there are appropriate grounds for delay.” Interview requests must be made in person. Interviews must be recorded and the witness officer provided with the record of the interview as soon as possible. Interviews cannot be recorded by audiotape or videotape without the officer’s consent. The Director of the SIU may relieve chiefs of their obligation to comply with the provisions of the regulation if, in the Director’s opinion, compliance is impossible for reasons beyond the chief’s or officer’s control.
- 47** “**Subject officers,**” who are considered to have caused the death or serious injury under investigation, are required to complete full notes of the incident, but they are not required to provide them to the SIU or to submit to an SIU interview. The SIU is required to notify the chief of police or his or her designate whether an involved officer is considered to be a subject officer or witness officer. In the rare event that a witness officer’s designation changes to that of subject officer, any evidence obtained from that officer must be returned.
- 48** In 1995, the Commission on Systemic Racism in the Ontario Criminal Justice System recommended that subject officers should be required to co-operate with the SIU.²⁷ Community advocates have continued to press for subject officers to be compellable in SIU investigations.²⁸ It has been suggested that given their special authority to use coercive force, police officers should not be entitled to remain silent during an SIU investigation concerning their conduct while performing their official duties. To date, this position has not been accepted.

²⁷ *Report of the Commission on Systemic Racism, supra* note 9 at 382-383.

²⁸ See *1998 Consultation report by the Honourable George W Adams, Q.C., supra* note 7 at 22-23; *2003 Review report by the Honourable George W. Adams, Q.C., supra* note 19 at 18. See also, In the Matter of The Ipperwash Inquiry, *Public Inquiries Act*, R.S.O. 1990, c. P.41 (Recommendations of the African Canadian Legal Clinic, Participant) [*ACLC Recommendations to the Ipperwash Inquiry*], which can also be found in Scot Wortley, “Police Use of Force in Ontario: An examination of data from the Special Investigations Unit - Final Report” (Toronto: Centre of Criminology at University of Toronto, 2006) at 72 [*Wortley Report*].

Even if subject officers were statutorily compelled to provide statements to the SIU, it is almost certain, given the right to be free from self-incrimination under the Canadian *Charter of Rights and Freedoms*, that such statements would be considered inadmissible in any criminal prosecution against them.

- 49** According to the regulations, regardless of whether a police officer is designated as a subject or witness officer, he or she is entitled to consult with legal counsel or a police association representative and to have them present during SIU interviews.²⁹ Allowance is made for the Director of the SIU to dispense with this entitlement in the case of witness officers if it “would cause an unreasonable delay in the investigation.”
- 50** The regulations also address publicity surrounding SIU investigations.³⁰ A police force may disclose the fact that the SIU has been notified of an incident and is conducting an investigation, but neither it nor its members may disclose other information while the investigation is pending. Similarly, the SIU is prohibited during the course of an investigation from making any public statement unless it is aimed at preserving the investigation’s integrity.³¹
- 51** In recognition of the fact that a subject officer’s conduct may represent misconduct, if not criminality, and that incidents may also underscore other problems with police administration, the regulations require that the chief of police conduct a parallel investigation into an incident being investigated by the SIU, for the purpose of reviewing the force’s internal policies. For such administrative investigations, the same concerns regarding self-incrimination do not apply, and all members of the police force – including “subject officers” – are required to co-operate fully with their chief’s investigation. Subject officers’ notes and statements are compellable in this process. The chief is required to report to the local police services board on the outcome of the investigation within 30 days after being notified that the SIU has reported the results of its investigation to the Attorney General. The police services board is entitled to make the chief’s report available to the public. The Commissioner of the Ontario Provincial Police is similarly required to investigate and report within 30 days in such cases, and authorized to make that report available to the public.
- 52** In order to address issues of lack of co-operation with SIU investigations, Ontario Regulation 123/98 specifically states that a failure to comply with the regulatory

²⁹ *Supra* note 17, s. 7.

³⁰ *Ibid.*, s. 12.

³¹ *Ibid.*, s. 13.

requirements concerning an SIU investigation constitutes misconduct under the *Police Services Act*.

- 53** Individual police services and the Ontario Civilian Commission on Police Services – an independent agency of the Ministry of Community Safety and Correctional Services – consider discipline and complaint issues through a process of administrative investigation and adjudication. The *Police Services Act* establishes the public complaints process, which will be replaced when the new *Independent Police Review Act, 2007* comes into force.³²
- 54** While the Act and the regulations set out how SIU investigations are supposed to work in theory, in practice, there remains considerable uncertainty and inconsistency regarding their application. Before considering this in detail, it is necessary to consider the organization of the SIU and the basic process it follows in investigating complaints.

How the SIU Works

- 55** For the past several years, the SIU has operated with an annual budget of around \$5.5 million. It investigates about 200 incidents each year involving serious injury or death.³³ In 2006, the SIU investigated 226 incidents and laid two criminal charges. The Ontario Provincial Police and the Toronto Police Service each account for about one-third of the SIU's cases, with the remainder attributable to various municipal forces throughout the province.
- 56** The Director manages the SIU with the assistance of an Executive Officer and various other managerial and administrative staff. Investigations are carried out by 12 full-time investigators working out of the SIU's office in Mississauga, and 30 part-time investigators, who are located across the province and deployed on an "as needed" basis. Three investigative supervisors (two individuals share one of these positions) oversee the investigative staff. The SIU also has its own in-house Forensic Identification Section, led by two full-time forensic identification supervisors and staffed by 10 part-time forensic identification technicians. They

³² *Independent Police Review Act, 2007*, S.O. 2007, c. 5.

³³ In 2003, there were 186 calls to the Unit, with 119 resulting in full responses. In 2004-05, there were 137 calls regarding incidents, with 95 resulting in full responses, and in 2005-06, 189 calls with 94 responses: See Ontario, Ministry of the Attorney General Special Investigations Unit, Fleet Management Review Final Report (September 2006) at 12. We have been advised that the workload of the Unit has increased significantly over the last fiscal year.

- are responsible for protecting, collecting and preserving physical evidence, and some evidence analysis.
- 57** Full-time investigators work on a shift basis, covering the period from 7 a.m. to 8 p.m. Outside of these hours, police contact the SIU through a pager number, which is handled by an on-call supervisor. We were told that in the past, one full-time investigator was designated to stand by to respond to calls after hours. However, recently, as a result of increased workload, a second investigator was added to provide after-hours support on weekends. There are also four “as-needed” investigators on call around the province at any given time.
- 58** When a police service calls the SIU, it is up to the investigative supervisor dealing with the call to determine whether the incident falls within the SIU’s mandate and to assess the resources required to respond. When the supervisor decides that a response is necessary, an investigative team is dispatched including a lead investigator – usually one of the full-time investigators – who co-ordinates the investigation with the supervisor. “As-needed” investigators are deployed, along with forensic identification staff, if there is physical evidence to be collected.
- 59** Once on scene, investigators collect evidence and interview civilians and witness officers. The SIU provides an assurance of confidentiality to witnesses that the information they provide will generally remain confidential unless they consent to production to a third party, or it is otherwise required to be disclosed by law. Despite the fact that witness officers are compellable, they are still provided with this assurance by SIU investigators.
- 60** In addition to physical evidence, the SIU reviews and considers documents from a variety of sources including police Communications Assisted Dispatch communications transcripts, communications tapes/printouts, and expert opinions. Physical evidence may also be submitted to the Centre of Forensic Sciences of Ontario, which conducts more sophisticated tests such as DNA and ballistics analysis.
- 61** SIU investigators are also normally responsible for notifying families of incidents resulting in death. The present Director, James Cornish, created the position of Affected Persons Co-ordinator in April 2006, to address a gap in services identified in the Adams report in 2003. The Affected Persons Co-ordinator’s role is to intervene in appropriate cases, including where families are dealing with loss of a loved one, to provide referral to social services and counselling.
- 62** The SIU also implemented a First Nations Liaison program to improve delivery of services in cases involving aboriginal persons. A full-time First Nations

investigator delivers the program, assisted by an “as-needed” investigator.

- 63** At the conclusion of an investigation, the Director may lay criminal charges, or issue a report to the Attorney General concluding that there was no criminal culpability on the part of police.
- 64** At its simplest, the SIU process involves police notification, SIU response, investigation, reporting – and, in some cases, the laying of criminal charges. However, beginning with notification, the process is complicated by nuances in interpretation, and countervailing interests.

Defining “Serious Injury”

- 65** Despite the fact that the SIU’s jurisdiction is triggered by police incidents in which serious injury or death of a civilian has occurred, the key term “serious injury” is not defined by the legislation. This has led to confusion and numerous disputes over whether or not incidents fall within the SIU’s mandate.
- 66** There is no definition of “serious injury” in the *Police Service Act*. Mr. Justice John Osler, the first Director of the SIU, developed a working definition in 1991, in consultation with the Ontario Association of Chiefs of Police. This definition is still in use by the SIU today:

“Serious injuries” shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault.

“Serious injury” shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the Unit should be notified so that it can monitor the situation and decide on the extent of its involvement.

- 67** In the past, as Mr. Adams reported, police officials sought to constrict the SIU’s jurisdiction by creating their own definitions of “serious injury,” while

- community groups sought to expand the definition to include psychological harm.³⁴ The SIU's own interpretation of the phrase has varied over time.
- 68** At one point, the SIU considered broken noses to be serious injuries. This is no longer the case. Some SIU investigative staff told our investigators the "serious injury" threshold was constantly changing. They reported one case where the SIU's mandate was not invoked one week, but it was the next, for two similar injuries involving the same police officer.
- 69** Some police officials we interviewed also referred to what they perceived as the SIU's contradictory practices in interpreting "serious injury." One noted that fractured ribs are sometimes investigated, and at other times they aren't, without explanation. We were also told of a case where the loss of a dozen teeth was not considered to be serious, which surprised the senior police official dealing with the case.
- 70** In fact, the SIU's working definition of "serious injury" leaves out a great deal. For instance, police shootings do not necessarily result in an SIU investigation. In one case of a gunshot through the shoulder that resulted in tissue damage, we were told that the SIU did not investigate, since it was merely a "flesh wound." Some SIU staff expressed concern over the restrictive interpretation of their mandate. To illustrate this, an SIU investigative staff member described a case where a person was "beaten black and blue." Despite the fact that the nature of the injuries raised significant questions regarding police conduct, the incident wasn't considered to be within the SIU's mandate.
- 71** In a February 23, 2007 memorandum closing a case as falling outside of the SIU's jurisdiction, Director Cornish expressed reservations regarding the definition of "serious injury." The incident occurred when parents, witnessing their son being arrested for breach of probation, had approached police. An officer pushed the mother away when she tried to grab her son's arm, and she fell to the ground. This prompted the father to speak aggressively to the officer. The officer told the father to show his hands, and he did so by placing them on the trunk of the cruiser. The officer then grabbed the father by the front of his coat and struck him with his elbow three times, before taking him to the ground, where he hit him with his fist on the left side of his face. The father was then arrested for obstruction.

³⁴ See *2003 Review report by the Honourable George W. Adams, Q.C.*, *supra* note 19 at 19; In the Matter of The Ipperwash Inquiry, *Public Inquiries Act*, R.S.O. 1990, c. P.41 (Written Submissions of the African Canadian Legal Clinic, Participant at para. 28(ii)(b)). Both the Ontario Association of Chiefs of Police and the Police Association of Ontario developed their own narrower definitions of "serious injury" at one point. The African Canadian Legal Clinic recommended to the Ipperwash Inquiry that the definition should be broadly interpreted to include psychological harm.

This experience set off an unfortunate chain of events for the injured man. Although he was initially only treated for cuts and abrasions to the head, he later suffered personality and physical changes. The incident also appeared to be the catalyst for the breakup of his marriage, the loss of his business and his home.

72 In his memorandum on the case, the Director commented:

The complaint I hear – and that others before me have heard – is that I am meek, protective of the police, wrong-headed etc. The community groups complain that if the SIU does not investigate there is no one to turn to. I point out that there is still recourse to the chief of the police service in question or to Ontario’s Civilian Commission on Police Services. This rarely is seen as a satisfactory response.

The fact of the matter is that given the historical application of the Osler definition [of “serious injury”], any attempt by a Director to assume jurisdiction over this type of injury would be seen as an attempt to expand the mandate of the SIU. If any Director were of a mind to start exercising jurisdiction over what might be termed as significant soft tissue injury or injuries occasioning psychological harm, then that Director would be well advised to first seek that a clear definition of the term “serious injury” be included either in the *Police Services Act* or its regulations.

73 It is quite possible that the phrase “serious injury” was left undefined to leave it open to flexible and broad interpretation. The Osler definition is a helpful guide and a convenience, but it does not have the force of law. The limitations of the current definition of “serious injury” are in part self-imposed, and reflect the SIU’s reluctance to apply the mandate beyond what has been grudgingly accepted in police circles.

74 Some community groups have suggested that the term “serious injury” be expressly defined in the *Police Services Act*.³⁵ The SIU has also raised the issue with the Ministry of the Attorney General. In addition, the SIU’s Director’s Resource Committee, a group composed of senior SIU managers and community representatives, made this suggestion in a November 2006 submission to the Standing Committee on Justice Policy, while it was considering the *Independent Police Review Act, 2007*.

75 Ministry of the Attorney General officials, who have always stressed the importance of consensus in the area of criminal investigation of police conduct,

³⁵ See e.g. *ACLC Recommendations to the Ipperwash Inquiry*, *supra* note 28 at para. 2(b).

advised us that it would be difficult to obtain agreement regarding the proper scope of the definition of “serious injury.” In November 2005, Ministry counsel prepared an internal briefing note in response to an “action plan” developed by the SIU, which contained a number of recommended reforms. The briefing note did not support defining the term “serious injury,” indicating that it would be “controversial.”

- 76** Failure to address this issue has contributed to ongoing uncertainty and inconsistency in police notification of the SIU, as well as in the SIU’s response to incidents. Given the SIU’s origins, and the history of police resistance it has encountered, it seems reasonable for its mandate to be clearly set out legislatively. In doing so, the government should also consider including cases where an individual is shot, (regardless of the severity of the injury), significant psychological injuries and severe soft tissue damage within the scope of the definition of “serious injury.” It is true that the government is unlikely to obtain “consensus” on the definition, but the absence of consensus should not justify inaction.
- 77** Accordingly, to address the uncertainty regarding the SIU’s mandate, I am recommending that:

The Special Investigations Unit’s mandate should be clearly outlined in its constituting legislation. (Recommendation 33)

The Special Investigations Unit’s constituting legislation should include a definition of serious injury that encompasses significant psychological injury, all gunshot wounds and serious soft-tissue injuries. (Recommendation 34)

[NOTE: A full list of recommendations begins on page 109 of this report.]

Delay Factor #1: Police Notification

- 78** In order for the SIU to effectively investigate an incident of serious injury or death involving police, it has to know about it. Delayed notification of incidents has posed a chronic problem for the SIU. When Mr. Adams reviewed the situation in 1998, he said:

It is not practical for a police service to attempt to determine the SIU’s jurisdiction in a strict legal sense before notification is effected because of the inherent uncertainty of many incidents. The issue of notification must

be treated more like that of calling an ambulance – when in doubt, call.³⁶

- 79** The law is now quite clear: Chiefs of police are required to notify the SIU **immediately** of any incident that may reasonably be considered to fall within its mandate. Given the speed and facility of modern communication, one could reasonably expect notification of the SIU to take place in most cases within a matter of minutes. Under the circumstances, it is hard to explain why notification was still a problem in numerous cases we reviewed. Police services often failed to notify the SIU entirely, or did so well after an incident had occurred. Late notification leads to late response, which in turn can lead to critical evidence being lost. Officers may have gone off shift, civilian witnesses may have vanished, evidence may have washed away and the SIU may have to rely on the very force it is investigating not only to guard but also to gather evidence.
- 80** In February 2003, Mr. Adams reported that based on his consultations, the situation was much improved and that issues such as delayed notification no longer presented a serious systemic concern for the SIU.³⁷ But our review of actual SIU cases suggests that this observation did not reflect the true state of affairs, even in February 2003. This is not surprising, given that the Adams review was focused on consultation and consensus, and was not intended to represent an in-depth review of the SIU’s investigative experience.
- 81** On February 16, 2003, a young man claimed to have been beaten while in police custody.³⁸ It took police 42 hours after they learned that he had been diagnosed with a ruptured kidney and fractured vertebrae to contact the SIU. In the meantime, the police had already begun an internal investigation and interviewed the complainant and eight other civilian witnesses. At the time, the Director of the SIU expressed concern about the police conduct, which he suggested was typical of the service’s approach to notification of the SIU. He stated in a report:

This apparent breach is just another example of what has become a clear pattern of neglect on the part of this service in relation to their reporting obligations under [regulation] 673/98. What is more, the delayed reporting clearly undermined the SIU investigation: The scene had by that time been contaminated, as had, arguably, the police witnesses, none of whom were made subject to the segregation and non-communication provisions of the regulation.

³⁶ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 56-57.

³⁷ 2003 Review report by the Honourable George W. Adams, Q.C., *supra* note 19 at 27-28 and 74.

³⁸ Because individual police forces are not the focus of this report, I have chosen not to identify them in many cases, except where it is key to the context, or the incidents are already well-known to the public.

- 82** Other police services have also followed practices that have at times served to delay notification of the SIU. Recently, the Toronto Police Service acted proactively to notify the SIU in advance of a major police operation, which it anticipated might lead to incidents within the SIU’s mandate. However, for many years, the Toronto Police Service insisted on first considering whether an incident raised the prospect of any possible criminality before it would consider contacting the SIU. In 2005, this “screening” issue was finally resolved, with the service acknowledging that it was the SIU that was entitled to assess criminality associated with an incident.
- 83** During our investigation, senior managers at the SIU, including the Director and the Executive Officer, downplayed the impact of late or non-notification, suggesting that the situation had improved immensely in recent years. However, evidence from the SIU’s investigative staff tells a different story. Notes from an Annual Investigator Meeting of September 20, 2004 identified late and non-notification as one of the main sources of discontent within the SIU, and many investigative staff members confirmed during our interviews that late notification continues to be a significant challenge to the effectiveness and efficiency of SIU investigations. Indeed, the SIU has continued to raise notification issues in its education and outreach initiatives. In a June 13, 2006 presentation to Legal Aid Ontario, the SIU noted that failure to report incidents and late reporting were an ongoing problem, and on May 30, 2007, the SIU held a workshop with the Ontario Association of Chiefs of Police where concerns about notification were addressed. At that time, the SIU noted that delays caused by police services waiting to confirm the nature of injuries continued to compromise its investigations.
- 84** In its written submission to our Office of October 2007, the SIU offered a number of explanations for police notification delays:
- In most cases, the late or non-notification issues have been explained by the liaison officer as resulting from a breakdown of communication within their own unit, a mistake made by someone, a lack of familiarity with the mandate of the SIU on the part of those who first responded to the incident, a lack of information regarding the existence of an injury before the release of the complainant from police custody and, occasionally, by a failure in the SIU’s own communications system.
- 85** The SIU’s Executive Officer indicated that notification delays and failures are generally not deliberate, but the result of police misunderstanding of the legislation and the scope of “serious injury.” However, many SIU investigators we interviewed took a more cynical view, suggesting that often delays allow

officers to get their stories straight, and “all their ducks in a row.”

- 86** Information regarding incident times and notification is recorded manually on the SIU’s intake forms. These forms are not reviewed systematically or assessed with respect to issues of late notification, and we found several forms where no incident time was even recorded. There is also no general requirement that SIU staff seek reasons for a late notification. If notification issues come to the attention of the Director, they might be pursued, but many cases of delayed reporting simply remain unrecorded and unexplained. A state of ennui pervades the SIU when it comes to information gathering about the investigative process itself. In case after case of what appeared to be late notification, we were told by the Director and the Executive Officer that one couldn’t assess whether a delayed notification was reasonable or not without knowing the surrounding circumstances. However, this ultimately became a circular rationalization for delays, since no one routinely asks about or records the reasons for late reporting of incidents.
- 87** Our investigators reviewed 64 intake forms related to shooting incidents from 2003 to mid-June 2007. We discovered 23 cases – almost one-third – where it took an hour or more after the reported incident time for police to notify the SIU. In one case, it took police three hours and 43 minutes to contact the SIU. In 2006 and 2007, the Peel Regional Police service – which we were told typically reports late because it insists on having the chief personally notify the SIU – delayed more than 90 minutes in notifying the SIU in three of the four cases it reported. This is in marked contrast to the standard police practice for serious incidents, such as homicides, that fall outside the SIU’s mandate. In such cases, police services do not squander precious response time by methodically alerting officials up the chain of command. Rather, detectives are immediately notified and dispatched to the scene, as the circumstances demand.
- 88** The SIU experience is also quite different from that of the Police Ombudsman of Northern Ireland, which has gained an international reputation for its oversight of police. The former Ombudsman advised us that police officials are well aware of the requirement to call the Ombudsman, and that the expectation is that even low-level police officials will contact the Ombudsman within minutes when the office’s mandate is invoked. The Ombudsman’s *Guidance Notes for Police* emphasize that it is important that notification not be delayed while any other action is taken.
- 89** Recently, the Special Investigations Unit analysed 28 incidents from 2006 involving the Toronto Police Service. The frequency and length of notification delays was quite shocking. In only two cases did the Toronto Police Service take

less than an hour to notify the SIU. In seven cases, notification took 3-6 hours. In five, it took between 9-14 hours, and in two it took 17 hours. In three cases, notification delays did not involve hours but days – one delay was just over 24 hours, another was a day and a half, and finally, in one case it took Toronto Police 14 days to notify the SIU.

- 90** The SIU also highlighted a number of cases involving late notification by various police services in 2007. Some delays were a matter of hours, others 2-12 days, and in the case of a sexual assault allegation, the SIU was not notified for about a month and a half.

Call Waiting: Notification on Hold

- 91** The SIU's *Checklist for Police Services* advises that the SIU should be called "when serious injury is suspected but not yet confirmed." However, there have been numerous cases where it is clear an individual has been injured, but police wait to assess the degree of injury before calling the SIU – and critical investigative opportunities are lost. A senior police official suggested to our investigators that this is usually attributable to police waiting for a medical assessment regarding the extent of injuries. For example:
- March 14, 2006: A motorist in a serious collision involving the Ontario Provincial Police was taken to hospital after suffering seizures at the scene. She had a significant closed head injury and had to be placed in a drug-induced coma. She also suffered a broken breastbone and clavicle and bruised lungs. Despite the evident severity of her condition, the OPP delayed notifying the SIU for four hours.
 - December 2006: An incident occurring at 2:30 p.m. wasn't reported to the SIU until more than four and a half hours later, when the severity of the injuries was confirmed. By that time, the police had processed the scene, night had fallen, and the SIU were delayed in locating witnesses.
 - May 13, 2007: An SUV went through a stop sign and was struck by a municipal police cruiser. The SUV rolled over and the driver was pinned in the vehicle. Once she was extricated, she was immediately taken to hospital. However, the SIU wasn't notified for more than eight hours – the police service's explanation was that the injuries did not initially appear serious.

- 92** Some SIU investigators identified the Ontario Provincial Police as particularly

slow in notifications because of its bureaucratic structure. Calls must go up through the OPP's chain of command before the SIU is notified, and this can take hours. A senior SIU staff member told us it is a good day when the OPP notify the SIU within an hour, and that in the past, delays of 2-3 hours had been the norm.

Call Confusion

- 93** We found several cases where confusion clearly existed within OPP ranks regarding the scope of the SIU's mandate, and the definition of "serious injury". These cases illustrate what can happen when officers are unfamiliar with the extent of the SIU's authority:
- In 2006, it took the OPP more than three months to notify the SIU about an incident in which a man's right eye socket was fractured. The delay compromised an important piece of evidence – the testimony of the man's spouse. It was later discovered that OPP officials had followed police orders which suggested that notification of the SIU was only necessary if a civilian was "admitted" to hospital. The OPP policy³⁹ was finally revised in June 2007 to clarify that hospital admission was not a prerequisite to contacting the SIU. Considering the volume of incidents arising from OPP encounters with civilians, the error in its police orders is particularly troubling. So too is the fact that it was not discovered until recently.
 - In another case, the OPP failed to notify the SIU of a sexual assault complaint. As a result of an error in the electronic version of OPP policy, police officials mistakenly relied on an old document that directed that it wasn't necessary to contact the SIU if an allegation involved "touching only." The SIU learned of the incident almost two years after the fact. This error was also fixed in June 2007.
 - OPP officers also failed to notify the SIU for three and a half years about a sexual assault allegation made by an officer's spouse. The OPP indicated that its revised notification procedures of June 2007 would assist in ensuring accurate and timely notifications to the SIU in such cases.

³⁹ Ontario Provincial Police, "Duties and Responsibilities of Regional Duty Officers Relating to SIU Investigations" (*Reference Guide*) revised 21 June 2007.

Delaying the Inevitable

- 94** While uncertainty with respect to the extent of injuries and the scope of the SIU's mandate might explain some situations of delay in notification, there are many cases where notification should be a no-brainer, and yet it is inexplicably delayed, sometimes substantially. The following are some of the more disturbing cases that came to our attention:

A Question of Custody

- 95** *Shortly after midnight on August 23, 2003, a distraught mother saw her mentally disturbed 15-year-old son take 80 or 90 Seoquel pills, a prescribed anti-psychotic drug. The last time he had overdosed, police had assisted in having him hospitalized, so she again turned to them for assistance. A call came through 911 reporting that the youth had assaulted his mother, taken an overdose, and left home. Halton Regional Police responded, located the boy, and arrested him around 1 a.m.*
- 96** *His mother's relief at her boy being found was soon replaced by panic as she pleaded for the officers to take her son to the hospital, and they refused. The police did not view the matter as a medical emergency. They believed the boy's claim that he had only consumed a few pills and had spit the rest out. They decided to take him to the local police detachment and hold him on a breach of recognizance. It was their understanding that as a result of prior criminal proceedings, he was not to be in contact with his mother.*
- 97** *The boy's lawyer then called to straighten things out and encouraged police to take him to hospital. She explained that the charge they were holding him on was invalid, as the boy had returned home to live and was no longer prohibited from contact with his mother. Despite this information, the police continued to hold the boy in custody.*
- 98** *Around 3:30 a.m., his mother attended at the police station with his medication. When she saw the state her son was in, she became extremely distressed. He was drooling and his eyes were vacant. The officers on duty told her he would be released to her custody, but when she returned with her car to pick him up, he had been taken to hospital in a police cruiser. He was admitted at 4:40 a.m. At 7 a.m. he began having seizures; by 1:25 p.m. he was pronounced dead of a drug overdose.*

- 99** *The SIU were called at 4:12 p.m. – almost 12 hours after the boy was taken to hospital, nine hours after his condition was clearly critical and almost three hours after he had died. It took police officials 10 hours after the youth had been removed to hospital to secure the area around the cell where he had been held. By the time the SIU arrived, the witness officers were off duty, and the SIU had trouble locating the youth’s body, which had not been properly secured. The SIU investigators involved in this case expressed significant concern about the late notification, and its impact on forensic processing. However, the police service maintained that the boy was not actually in their custody when he went into distress. An inquest into the case was called, but subsequently cancelled.*

Painfully Obvious

- 100** *On June 2, 2007, a horrific multi-vehicle collision occurred in the early morning hours at Finch and Islington Avenues in Toronto. Two Toronto police vehicles had been pursuing a stolen car; the car failed to stop at a red light, and hurtled into a taxi, which ricocheted into another taxi. The results were catastrophic. Two teenage girls in one of the taxis were thrown from the vehicle. A 16-year-old girl lay dead, transected in the roadway. Her 17-year-old best friend lay nearby with what would prove to be fatal injuries. The driver of the stolen vehicle, a 15-year-old boy also sustained massive trauma and later died.*
- 101** *Given the carnage at the scene and the involvement of police before the accident, it was clear this was a case for the SIU. Police called for emergency assistance at 2:26 a.m., but they did not notify the SIU for another 74 minutes. The delay in notification resulted in a delay in the SIU identifying the victims, which in turn led to delay in notifying the next of kin. Commencement of the investigation was also delayed.*
- 102** *In his November 13, 2007 report on the incident, Director Cornish made note of the delay, “despite the fact that the severity of the injuries was immediately obvious to all officers that immediately attended the scene.”*
- 103** *We reviewed a number of other similar stories. In April 2007, a suspect was shot in the arm. There was plenty of blood, a bullet hole, a smoking gun – but it still took more than five hours for the police to get around to notifying the SIU. And on June 30, 2007, at 1:20 a.m., a police cruiser rear-ended a vehicle, injuring its three occupants, including a three-month old infant. The SIU wasn’t notified until*

the next day at 10:35 a.m., more than 33 hours later.

- 104** Calling the SIU in such obvious cases should be automatic – a reflex action whenever a serious incident occurs involving police officers. The fact that this does not occur is alarming.

Third-Party Notification

- 105** It is equally disconcerting to discover the number of cases where it is not the police who notify the SIU, but third parties. Out of 856 incidents occurring from 2003 to June 2007, there were 76 cases where the SIU learned about the matter from affected individuals and their relatives, advocates, Crown attorneys, coroners and the media – rather than the police force involved. A few examples:
- In December 2003, the brother of a psychiatric patient contacted the SIU eight days after his brother had suffered facial lacerations and a fracture of his left clavicle while being restrained by police. Although staff at the hospital had been critical of what they had considered to be excessive use of force employed by an officer, the police had not bothered to notify the SIU.
 - In December 2004, a lawyer contacted the SIU to complain that his client had suffered a collapsed lung while in police custody. The injured man required surgery, yet the police failed to notify the SIU.
 - On March 23, 2005, around 4 p.m., a journalist contacted the SIU to inquire whether it was aware of an OPP press release detailing a disturbance on March 20, in which a young man had been arrested and subsequently admitted to hospital with a fractured skull.
 - On April 22, 2005, several media outlets informed the SIU about a collision involving police just before noon. The SIU contacted the police service, and almost an hour later police called back to confirm that one of its vans had been involved in an accident with a civilian. The civilian suffered three broken ribs and a collapsed lung. Director Cornish's June 1, 2005 report on the incident suggests that police officials did not report the incident because they didn't consider it one that could give rise to criminal charges.
 - In January 2007, a lawyer for a man who accused police of excessive force leading to a broken orbital bone notified the SIU of the incident – it was not reported by the police involved.

- On July 7, 2008, the SIU learned about an incident two years after the fact, through the local media. In dismissing criminal charges on June 26, 2008, a judge reportedly found that two young male accused had been physically abused by police during their arrest on June 7, 2006. One of the men had apparently suffered a fractured rib, a perforated eardrum and bruising around his eye. Evidently, during the two years it took for the case to get through the courts, the police failed to fulfill their duty to notify the SIU.
- 106** The information we gathered through our review of SIU records corroborates the anecdotal information we obtained from SIU investigators regarding the continuing problem of late notification. It is clear that there have been a number of instances where notification of the SIU was improperly delayed, sometimes inexplicably. It is difficult to draw definitive conclusions as to why late reporting is so prevalent, due in large measure to the SIU's failure to routinely seek, record, and analyse reasons for it. It is critical that the SIU rigorously request and assess police explanations for delayed notification.
- 107** Accordingly, to ensure that the SIU adopts more proactive practices with respect to identifying and recording instances of police failure to notify the it promptly of incidents within its mandate, I am making the following recommendation:

The Special Investigations Unit should require its staff to routinely seek, record reasons for, and notify management of, police failure to promptly and fully comply with legislative and regulatory requirements regarding notification of incidents engaging its mandate. (Recommendation 1)

Delay Factor #2: SIU Response

- 108** When notification of an incident is delayed, every other step in the investigative process is also affected, particularly the SIU's ability to mobilize a response.
- 109** In the world of criminal investigations, response time is critical. In the words of OPP Commissioner Julian Fantino: "It's really important to hit the scene quickly, take that immediate charge, make an assessment of what the priorities are.... Evidence very often evaporates, witnesses walk away, stories change... scenes change..." The faster and more intense the response, the better the chances of gathering quality evidence – which can disappear and degenerate as quickly as it is created.
- 110** The same investigative principle applies to investigation of police shootings and

incidents of serious injury involving civilians. In British Columbia, Royal Canadian Mounted Police internal investigations into such occurrences commence within minutes. The Police Ombudsman of Northern Ireland, with a staff of over 100, a budget of \$17 million and some 60 investigators, has achieved world acclaim for its approach to police oversight.⁴⁰ The Police Ombudsman describes “the period immediately after an incident when the potential for gathering evidence is at its greatest” as the “golden hour.”⁴¹

- 111** Unfortunately, in many cases involving the SIU, the “golden hour” has often come and gone well before the SIU is even aware that an incident within its mandate has occurred. Delayed arrival does little to instill confidence in SIU investigations.
- 112** In its early days, as Mr. Adams reported, the SIU’s limited resources restricted its ability to respond to incidents quickly and effectively. In 1998, when he first reviewed the SIU, it had just three full-time investigators, 18 part-time investigators disbursed throughout the province, one full-time forensic investigator and three part-time forensic investigators. Given these meagre resources, it was hampered in responding quickly, and could only send 1-3 investigators out at a time.
- 113** The SIU’s resources have since increased, as has its ability to respond. However, our investigation found that there are still a number of factors that often prevent the SIU from deploying its investigative staff as efficiently and effectively as the situation requires.
- 114** One of the performance measures that the SIU has developed to assess itself is an average response time to an incident of one hour in the Greater Toronto Area, and 1.5 hours in the rest of the province. But a review of the SIU’s statistics from fiscal years 2003-2004 to 2005-2006 suggests that the SIU does not meet this self-imposed standard in a significant number of cases.⁴²

⁴⁰ This information comes from an interview with the former Ombudsman in September 2007.

⁴¹ Office of the Police Ombudsman for Northern Ireland, *The Police Complaints System in Northern Ireland* (Belfast, Ireland) at 14, online: Police Ombudsman for Northern Ireland <[http://www.policeombudsman.org//Publicationsuploads/Complaints%20 System.pdf](http://www.policeombudsman.org//Publicationsuploads/Complaints%20System.pdf)> (last accessed: 27 June 2008).

⁴² In 2003-2004, for instance, while in the Central region the average response time was 1.23 hours, it was 2.09 hours in the West, 1.54 hours in the East, and 5.57 hours in the North. In its 2004-05 Annual Report, the SIU touted the fact that in 54% of its cases, the SIU arrived on scene in just over an hour on average. However, this meant that in 46% of the cases arrival took over an hour. That year, the average response time in the Central region was 1.13 hours. It was significantly higher in other areas of the province, including the East at 2.31 hours and the North at 5.22. In 2005-2006, the SIU began reporting

115 Given the time-sensitivity of evidence, the ideal investigative response to an incident should be to deploy as many resources as are needed to get the job done, as quickly as possible. As the former Ombudsman of Northern Ireland told us, too much response is better than too little, and “you can never upgrade the initial response; you can always downgrade.” The SIU has adopted this approach in principle. Its operational orders say:

In all cases involving death or serious injury, as many SIU personnel as may be required will be deployed at the earliest possible juncture ... This “blitz” or “front-end loaded” approach is one used by most police agencies in Ontario.⁴³

116 However, complainants and many of the SIU investigative staff interviewed for our investigation indicated that the SIU is not doing everything within its means to ensure a full and fast response. Among the key problems are geographical limitations, a cumbersome system of staggered call-outs of staff, the fact that SIU investigators are often stuck in traffic because their vehicles don’t have “emergency” designation, and restrictions on overtime.

Getting There

117 It is apparent that there are geographic limitations on the SIU’s ability to mobilize a response. Given the size of this province, the SIU faces practical challenges in reaching remote locations. It can take the better part of a day for investigators and forensic staff to arrive at an incident scene in Northern Ontario:

- In 2003, it took SIU investigators about 20 hours to reach an incident scene in Kenora.
- On November 16, 2006, the SIU was notified at 12:25 a.m. of an alleged sexual assault on a teenage girl in Thunder Bay. The SIU supervisor on duty tried unsuccessfully for an hour and 45 minutes to deploy staff. At 7 a.m., another supervisor began contacting investigators, and a lead investigator was finally assigned. At 10 a.m. it was discovered that the

response time and numbers by case type. It also separated the City of Toronto from the Central region for the purpose of statistical reporting. That year, it took longer for the SIU to respond in every location but the North, where its average response time decreased to 3.44 hours. In Toronto, where one would expect a relatively rapid response, the SIU reported an average response time of 1.27 hours.

⁴³ Special Investigations Unit, “The Investigative Process & Appendix - General Guidelines” (*Operations Order 002*) revised 4 Jan 2005 at 1 of Appendix [*SIU Operations Order 002*].

girl was aboriginal, so the First Nations Liaison was contacted. He didn't arrive on the scene until 9 p.m. – and the complainant wasn't interviewed until the next day.

Assembling the Team

- 118** SIU policy requires that full-time investigators who are on standby must respond immediately to a page and be en route within a half hour. Those on call must respond and be en route within 1-2 hours.⁴⁴ We were told that supervisors use one phone to page investigators as well as to receive return calls. One supervisor told us that under the circumstances, there was no point in paging more than one or two investigators at a time. Another supervisor explained that he would try someone else if a page went unanswered for more than five minutes. We learned that SIU supervisors typically call an investigator and then wait a period of time for a response before attempting to contact someone else.
- 119** In reviewing SIU intake sheets, we found the process of calling out investigators could take considerable time. Rather than the SIU investigative staff “blitzing” an incident scene en masse, the staggered method of calling out investigators results in their arriving at intervals.
- 120** It appears that considerable prime investigative time is often needlessly lost as a result of the SIU's splintered method of dispatching investigative staff. While the SIU policy pays lip service to the “front-end loading” approach, in practice its response is at times embarrassingly sluggish. Some “as-needed” investigators pointed out to us that, unlike their full-time counterparts, they are not issued BlackBerries or portable GPS units. Many have suggested that as a result of this equipment disparity, they are inhibited in their ability to respond to a call and arrive at a scene quickly.
- 121** While equipment considerations may well come into play, it is clear that what is required first and foremost is for the SIU to embrace a greater sense of urgency when it comes to calling out investigative staff. As many staff as necessary should be contacted as soon as possible to ensure a fast and full response. This is simply not happening at present.

⁴⁴ Special Investigations Unit, “Stand-By and On-Call Responsibilities” (*Administrative Order 009*) issued 12 June 2002.

- 122** Another call-out practice that negatively affects the SIU’s ability to provide a swift and concentrated investigative response involves not so much how investigators are called out, but **who** is being called out.
- 123** Typically, only one full-time investigator is called out, usually one who is on call. The role of this investigator is normally to act as a lead. We were told this was not always the case; in the past, more than one investigator was commonly dispatched. Although there may be more full-time investigators who are closer to the vicinity of an incident than “as-needed” or part-time staff, they will not be called out once a full-time investigator has been assigned.
- 124** The following cases illustrate a number of serious problems we identified with the SIU’s response:

O’Brien Christopher-Reid

- 125** *Around noon on Sunday June 13, 2004, the Toronto Police Service was told that a shirtless man with a large knife was in Edwards Gardens park near Lawrence and Don Mills. Three officers responded. According to the officers, when they attempted to arrest the man, he refused to put down his knife and lunged at an officer. In response, all three officers discharged their guns. Eight shots later, one officer was left with a superficial leg wound, and O’Brien Christopher-Reid, a 26-year-old black man suffering from mental illness, lay dying with four bullet wounds. The SIU was notified of the incident in under an hour. But it then took the SIU supervisor over an hour to contact all of the investigative staff to be dispatched.*
- 126** *A review of SIU records for the Christopher-Reid case indicates a pattern of paging and then waiting for investigators to call back. In the end, the SIU dispatched investigators from as far away as Peterborough and Niagara Falls. The first investigator arrived from Guelph at 3 p.m., almost two hours after official notification had been received. It is quite possible that valuable time was lost as the supervisor waited for return calls from investigators regarding their availability. An investigator in Oshawa, who was actually closer to the scene than the others, was the last to be called, almost an hour after the SIU received notice of the incident.*

Frank Greda

- 127** *At 4:20 p.m. on June 27, 2005, the SIU was notified of a horrific case in London, Ontario, involving the stabbing murder of two children and their mother by Frank Greda, who then shot himself after exchanging fire with the police. The SIU investigative team was paged at various intervals. It took an hour and a half to call out seven investigators. The last investigator was called out almost three hours after the SIU received notice of the incident. The first arrived three hours after the initial call to the SIU and about five hours after the incident. The last investigator to be called didn't arrive until more than six hours after the call to the SIU, eight hours after the incident had occurred.*

James Maltar

- 128** *On September 18, 2005, 45-year-old James Maltar was arrested at 10:33 p.m. for failing to identify himself to police after being stopped for driving a car without licence plates. Less than 30 minutes later, he was shot dead at the OPP Port Credit detachment, after a physical struggle with two officers. The SIU was not notified of the incident for another hour.*
- 129** *The SIU process of calling out investigators took place over a period of two hours. In the end, eight SIU investigators, including forensic staff, were dispatched in a staggered fashion. The first investigator arrived on scene at 1:15 a.m. Three other investigators made it to the scene within two hours. However, the remaining four investigators arrived between 2 a.m. and 4 a.m., two to four hours after the call had first come into the SIU, and up to five hours after Mr. Maltar had been shot.*

Jeffrey Reodica

- 130** *On May 20, 2004, an argument arose between two groups of youths on the basketball court of a Scarborough school. One of the youths was injured. The next day, several teens returned to the scene and a fight broke out. Police were called and two undercover officers responded. The officers ordered one of the teens, Jeffrey Reodica, 17, to drop a rock he was carrying. He obeyed this command, but continued to walk away when they ordered him to stop.*
- 131** *The officers approached him, a struggle ensued, and he was pushed to the ground. They attempted to handcuff him, but he broke free and pushed himself*

- up. As he did, he struck at one of the officers with his left hand. The officer, believing that he had been cut with a knife, fired his gun three times – striking the teen in the side, above the right hip and in the back. He was taken to Sunnybrook Hospital, where he died three days later.*
- 132** *The incident occurred at 4:10 p.m. on the Friday before the Victoria Day long-weekend. At 5:08 p.m., almost an hour later, the Toronto Police Service notified the SIU of the incident. Using its staggered call-out approach, it took the SIU until 6:30 p.m. to contact and dispatch investigative staff. The SIU deployed 10 investigators, but consistent with its usual practice, only one full-time investigator was assigned. An “as-needed” forensic investigator was the first to arrive at the scene at 6:25 p.m., followed by the full-time lead investigator a few minutes later. Another “as-needed” investigator arrived at Sunnybrook Hospital at 6:55p.m., and three more by 7:20 p.m. Four more “as-needed” investigators arrived to assist between 8 and 10:55 p.m., the last arriving five hours after the initial police notification.*
- 133** *Although two full-time investigators in the Toronto area were available that evening, they were not contacted. Instead, “as-needed” staff were called from as far away as Huntsville, Kingston, and Peterborough. This directly affected the efficiency of the investigation. Initially, the lead investigator was forced to start conducting interviews on his own, instead of with a partner.*
- 134** *In the aftermath of the shooting, the police had detained a number of 12-16-year-olds at the station for questioning. As a result of the inadequate SIU coverage, some of the youths were held for more than eight hours – up to 2 a.m. – alone and tired while their parents were kept in the dark about their whereabouts.*
- 135** *SIU investigators acknowledged to us that this long and uncertain wait affected the statements given by the youths. One teen’s father subsequently called an investigator and explained that his son had not told the SIU everything. After sitting anxiously for five hours in a cold room, when the SIU arrived to interview him, all the boy wanted was to get it over with and go home. He was eventually re-interviewed four days after the incident.*

Duane Christian

- 136** *In the early hours of June 20, 2006, two police officers in a cruiser discovered a stolen van being driven along Lawrence Avenue in Toronto. They followed the van to an apartment building, where it parked in a cul-de-sac in the rear. When the two officers approached the vehicle, the driver revved the engine and drove*

towards the female officer. Fearing for her safety, her partner shot the driver through the passenger window. The van crashed into a tree, and the driver, Duane Christian, a 15-year-old black youth, was later pronounced dead at the scene.

- 137** *The incident occurred at 4:55 a.m. Shortly after, seven Toronto Police Service officers attended the scene and 14 officers began to canvass the surrounding area for witnesses. Despite this being the very kind of incident that had inspired the creation of the SIU (a police shooting of a young black man), the SIU wasn't contacted until 6:10 a.m. – an hour and 15 minutes later.*
- 138** *It took 50 minutes from the time of notification for the SIU's first investigator to arrive on the scene, and the lead SIU investigator didn't arrive for another hour and 10 minutes. At that point, the SIU still had to process the scene, canvass nearby apartment buildings and notify next of kin – and there were four witnesses being held at the police station, waiting to be interviewed. Time should have been considered of the essence, but the SIU response was substantially delayed. Investigators and forensic identification technicians were called in from hundreds of kilometres away – Cornwall, Harrowsmith, Kingston, Ottawa and Stittsville. The canvass of apartment buildings didn't start until five hours after the shooting and continued for several days.*
- 139** *Meanwhile, unbeknownst to the SIU investigators at the time, one of the witnesses at the police station happened to be Duane's mother, who feared that it was her son who lay dead on the pavement. It was not until much later that she received official notification of his death.*
- 140** *At the coroner's inquest into Jeffrey Reodica's death, the jury recommended that in future, parents of youths detained for questioning should be notified as soon as practicable. As a result, the SIU instituted a new directive effective December 18, 2006, requiring SIU investigators to attempt to contact parents of children under 18, and to obtain supervisory approval before interviewing them without parental notice. Unfortunately, the incident did not lead to any awareness on the part of the SIU that its call-out practices were contributing to its delayed and inadequate response. While the SIU's policy requires that investigators respond quickly to firearms incidents – as they may result in death and invariably attract a great deal*

of media attention – the reality is that the SIU’s process for mobilizing a response even in these critical cases is inherently flawed.⁴⁵

141 As for the Duane Christian case, while it is not clear to what extent the SIU’s call-out practices contributed to this unfortunate situation, clearly the quicker and more intense the SIU’s response, the less potential there is for delay in victim identification and notification of next of kin. Moreover, the SIU response in that case does not compare favourably when one considers the Toronto Police Service’s reaction to the same incident – 21 officers on the scene within minutes. It also pales in comparison to the resources mobilized by the Police Ombudsman of Northern Ireland, which can send out up to 35 investigators in the immediate aftermath of a fatal shooting.

Stuck in Traffic

142 It is inconsistent with the principle of independent investigation for the SIU to arrive at an incident scene well after police investigators, as happened in the Christian case, or in the case of many Toronto incidents, after a Police Association lawyer has already made an appearance. Some SIU investigators we interviewed expressed embarrassment at arriving at scenes hours after an incident had occurred. They noted that sometimes roads are closed and witnesses are left waiting for prolonged periods for the SIU to attend.

143 On May 4, 2004, at about 3:20 p.m., officers from the Toronto Police Service Drug Squad attempted a high-risk takedown of a drug dealer at Rexdale Boulevard and Islington Avenue. As the suspect attempted to escape, he tried to strike an officer with his car. The officer fired his gun at the driver, and was hit by the car. The suspect continued to drive away until he collided with another civilian vehicle. The suspect suffered a bullet wound in one arm, and the civilian driver was also injured.

144 The SIU was notified of the incident at 4:25 p.m. By that time it was rush hour, and the Highway 401 exits to Islington Avenue had been closed. Several civilians sat waiting in their cars for the SIU to arrive. An SIU supervisor dispatched nine investigative staff to the scene. As might have been obvious, their arrival was delayed by the traffic situation. A full-time investigator assigned to the case called the supervisor and asked that two other full-time investigators who lived closer to the incident (Oakville and Etobicoke), be called. This request was

⁴⁵ Special Investigations Unit, “Firearms Related Investigations” (*Operations Order 005*) revised 29 Nov 2001.

refused. The first of the nine investigators dispatched arrived at 5:30 p.m., more than two hours after the incident, and the rest, who were travelling from Burlington, Hamilton, Oshawa, Orangeville, Cambridge and Peterborough, were even later.

- 145** In the past, the SIU was unsuccessful when it attempted to persuade the Ministry of Transportation to grant its vehicles emergency status under the *Highway Traffic Act*. SIU officials say this is a factor in investigators' delayed arrivals – they can't speed to incident scenes. SIU investigators are carrying out criminal investigations. It is not only an embarrassment when investigators are delayed by traffic congestion, but critical investigative time is wasted as a result. SIU investigators should enjoy the same ability as police to arrive at the scenes of major criminal incidents as expeditiously as possible. While providing SIU vehicles with emergency status would likely require additional resources, as well as training, the cost of this initiative must be weighed against the benefits inherent in enabling the SIU to arrive at incident scenes as swiftly as possible.

Overtime is Money

- 146** Many of the SIU investigators we interviewed suggested that the practice of not calling out full-time investigative staff or the closest staff in relation to an incident stemmed from management's desire to avoid incurring overtime costs, particularly on weekends.
- 147** In 2003, the SIU, as part of a general government directive, was asked to come up with financial savings. One initiative was to introduce an afternoon shift. Another measure introduced was to limit overtime to after-hours call-outs only.⁴⁶ Overtime was no longer approved for routine administrative matters, such as completing witness interviews, attending court or post-mortems. This work was to be assigned to "as-needed" investigators. At the time this change was proposed, the SIU warned that it could affect its response to incidents.
- 148** A number of "as-needed" investigators told us that they routinely had to confirm that they were not in an overtime position before they would be dispatched to an incident. Some investigators also expressed concern about continuity in investigations, noting that "as-needed" investigators have sometimes been parachuted in mid-investigation, simply because another investigator, who is more familiar with the case, has logged too many hours. They said they were often told

⁴⁶ Ministry of the Attorney General, Special Investigations Unit, *2004-05 Results-based Plan* (March 2004) at 10.

to stop working before they incurred overtime. One lead investigator was chastised for failing to send an investigator home in such circumstances. In another case, witness officers were available for interview at 9 p.m., more than a week after the incident. The SIU investigator called his supervisor at 3:07 p.m. seeking permission to do the interviews that evening, but approval for overtime was denied – apparently for no reason other than the expense. The witness officer interviews were consequently delayed for another 15 days. Even in the Reodica case (page 36), where resources were stretched quite thin, one of the investigators was told to go home due to accumulation of overtime.

- 149** In 2004-2005 and 2005-2006, the Unit’s overtime costs dropped dramatically, a pattern which substantiates anecdotal evidence that the SIU has manipulated interviews and other tasks to avoid incurring overtime.
- 150** SIU managers admitted to us that overtime was a factor considered when dispatching investigators, but they categorically denied that it was an overriding consideration. The Executive Officer emphasized that “the response is more important than the overtime,” but he also acknowledged that it was extremely rare to call out more than one full-time investigator to an incident.
- 151** From 2003 to 2004, there was a significant reduction in the number of recorded calls to the SIU. This led to considerable speculation by investigative staff that supervisors were attempting to contain costs by responding to fewer notification calls, and limiting the SIU response based on overtime considerations. The Executive Officer conducted an inquiry and determined these rumours were unfounded. However, our investigation found several incidents where the SIU did choose to delay its response.

Deliberate Delays

- 152** It does not enhance the credibility of the SIU when a police service takes the initiative to call, and the SIU does not dispatch staff to conduct independent fact-finding. In accordance with the SIU’s operational orders, supervisors are to confirm the reported facts, which may require dispatching an investigator.⁴⁷ SIU supervisors have the discretion to delay their response where police notification is late, the scene has been released or lost potential evidential value, and there is a need to minimize the cost of maintaining an unnecessary police presence.⁴⁸

⁴⁷ *SIU Operations Order 002, supra* note 43 at 3.

⁴⁸ *Ibid.*

153 We learned of a number of cases in which SIU supervisors did not obtain sufficient facts to determine that the case required the Unit’s involvement, and were content to simply monitor situations without intervening:

- On March 6, 2005, a father kidnapped his four-year-old daughter, and while police stood nearby, he dropped the girl over a Highway 401 overpass, causing her severe injuries, before he jumped to his death. The Toronto Police Service called the SIU twice that day regarding the incident, but at the time police believed the officers at the scene had been some distance away. The SIU did not inquire further. The next day, Toronto Police called again, noting that an officer had spoken with the suicidal man by telephone around the time of his fatal leap, and that officers on the bridge had been moving towards him, apparently trying to distract him while other officers moved in closer. The SIU report to the Attorney General on the incident suggested that it was only when this information was revealed that it became clear the incident came within the SIU’s mandate. However, we were told that it wasn’t until the Coroner’s Office called, concerned that the SIU had not attended at the post-mortem, that the SIU finally dispatched investigators. By then, there was no scene to attend, the 401 had reopened, and the police officers had gone home. The SIU had to rely on the Toronto Police Service photo evidence from the incident, and could not conduct an independent forensic investigation.
- On April 4, 2005, a man claimed to have been beaten at a police station. He went to hospital and by 9:22 p.m. he was diagnosed with a fractured shoulder and ribs. Police then brought him back to the station, and notified the SIU of the incident at 10:20 p.m. Despite the fact that the complainant was at the station available for interview, the SIU did not respond until the following day. The police decided to interview the complainant on their own before his release at 4 a.m. on April 6, 2005. Toronto Police again notified the SIU about the case around noon the next day. It ultimately took until April 15, 2005 for SIU investigators to locate and interview the complainant. Director Cornish was critical of the SIU’s delay in the case, as well as the fact that the Toronto Police Service had interviewed the complainant.
- On Sunday April 24, 2005, a man’s orbital bone was fractured while he was being arrested for domestic assault and assaulting an officer. After the hospital confirmed the fracture, it took the Toronto Police Service two hours to notify the SIU, which in turn did not assign staff to the case until the next morning at 7 a.m. – a delay of nearly 10 hours. It then took the SIU investigators more than five hours to respond. By then, the involved officers were off duty, the incident scene had not been held, and evidence items had been removed. The injured man had been released and had discussed the

incident with other civilian witnesses, including his girlfriend. There was no explanation in the SIU file for the delay.

- 154** When the police contact the SIU, particularly in the case of a death, the SIU should adopt a cautious and proactive approach and assume the matter is within its jurisdiction, at least until it independently verifies otherwise. In the spring of 2005, Director Cornish issued a memo addressing “serious injury” and call-out practices, partly in an attempt to quell internal “rumours and inferences” surrounding SIU practices. He discussed the Osler definition of serious injury, and emphasized that the guiding principle for SIU deployment was independence. He indicated that if supervisors are unsure whether an injury is “serious,” they should seek to verify the nature of the injury through independent sources.
- 155** However, we found evidence that well after Director Cornish issued his instructions regarding call-out practices, supervisors improperly delayed deployment. In the March 14, 2006 case where it took the police four hours to notify the SIU about the injured motorist who was put into a drug-induced coma (page 26), the SIU waited two more hours – until police contacted it again – before dispatching investigators. By that time, the driver’s condition had deteriorated, the Ontario Provincial Police had already conducted a collision investigation, and the scene had been released. We were also told that in a Waterloo case in August 2006, where a mentally ill individual was injured and hospitalized after breaking into a house, the SIU supervisor told the police force to call back if the person died.

Hafeez Mohammed

- 156** *Just before midnight on May 23, 2006, Mr. Mohammed was injured during an arrest for impaired driving. He claimed that he was kicked, punched and choked by the arresting officers from the Durham Regional Police Service. Mr. Mohammed was seen at the hospital on May 24, 2006 and then released back into police custody. The police called the SIU the next day at 4:20 p.m., but suggested that Mr. Mohammed’s swollen eye did not meet the “serious injury” threshold. The SIU supervisor asked police to notify them if there was any change.*
- 157** *Five days later, on May 29, 2006 at 2:30 p.m., police informed the SIU that Mr. Mohammed had been taken to St. Michael’s Hospital to be treated for an unknown injury. The SIU later learned that Mr. Mohammed was suffering from a fracture to his left maxillary and orbital bone in his face. Photographs taken at the time show his face to be dramatically swollen and bruised.*

- 158** This case illustrates that an injury may be more serious than is initially apparent, even to medical practitioners. Given this reality, the SIU should exercise a very cautious approach and seek out additional facts independently whenever possible. Failure to do so may result in the loss of valuable evidence. The SIU should only delay response to incidents in limited circumstances, and when in doubt, it should always respond to police notification.

Taking the Weekend Off

- 159** In many of the cases we reviewed, the SIU's response appears to have been delayed because the incidents occurred on weekends. A review of the callouts on long weekends in 2006 suggests that an immediate response by the SIU is more likely in the case of a death rather than a serious injury. In two custody death cases, one on Easter Monday and the other on Canada Day, investigators were dispatched without delay. However, a custody injury notification on Sunday, July 2 wasn't responded to until the following Tuesday, and another notification on Sunday, August 6, wasn't dealt with until Tuesday, August 8. A custody injury on Boxing Day wasn't investigated until eight days later.
- 160** One investigator told us there had been an improvement since we commenced our investigation. He advised that in the past, supervisors might simply monitor a situation where someone was taken to hospital with unspecified injuries, but now they were more likely to dispatch investigators right away. Some investigative staff also told us that since the onset of our investigation, management appeared to be less concerned about overtime issues when assigning cases. Director Cornish also advised us that guidelines were being developed to provide clarity for the supervisors and "for outside consumption" regarding deployment.

Lack of Resources

- 161** In most cases, we found the SIU's investigative coverage to be adequate once staff were deployed. However, some SIU investigators provided anecdotal evidence suggesting that sufficient resources were not always available:
- In a Northern Ontario case, rather than send a forensic identification technician to document the state of a cell where a person's arm was broken in custody, the SIU told the investigator to use a "disposable camera" or rely on

the OPP to take pictures.

- An investigator filling out a case review in 2004 criticized the fact that only two investigators had attended an incident scene.
- In a 2005 case, an investigator noted a lack of investigative staff because “as-needed” investigators were otherwise engaged.

162 The use of SIU vehicles has also been a source of considerable internal controversy. Up until August 2007, the Director, Executive Officer, full-time investigators and supervisors were issued vehicles. A vehicle audit was conducted by the Ministry of Finance in September 2006 at the SIU’s request. Response time was not analysed as part of the audit. While recognizing that rapid response by the SIU is required and that access to a fully equipped vehicle at all times is critical for the SIU’s investigative operations, the audit found that the instances when full-time investigators were called out who were off duty and not on call or standby had greatly decreased – to the point where not one had been called out in these circumstances in the 2005-2006 fiscal year. Ultimately, the audit determined there was no longer a legitimate business need for staff to be issued their own vehicles.

163 Today, only investigative and supervisory staff who are on call are entitled to have an SIU vehicle for use outside working hours. This means that if a full-time investigator who is not on call is dispatched, he or she must travel to the office, pick up a vehicle and then respond to the incident. The Executive Officer advised us that this change in practice has not affected response times. This is not surprising, since the current practice is to assign only one full-time investigator to a case, and that investigator is typically the one on call.

164 Director Cornish suggested that the only way to increase the SIU’s capacity to respond to incidents was to have additional “as-needed” investigators distributed more broadly throughout the province. While increased resources would undoubtedly help, it is apparent that there are means within the SIU’s own control that could lead to improved responsiveness. Unless the SIU is prepared to call in full-time and “as-needed” investigators in the vicinity of an incident regardless of whether they are on call or in an overtime position, response time will continue to be affected.

165 In my view, in order to effectively fulfill its mandate, the SIU must commit all necessary resources to respond to incidents without delay. This will also mean revisiting the motor vehicle policy. There is clearly a legitimate business need to ensure that SIU investigative staff have the means to attend at incident scenes as

quickly as possible. The Ministry of Finance audit findings were based on a change in the SIU's call-out practices in recent years that ran counter to this need and to investigative best practices in general. What the SIU appears to have lost sight of is that the sufficiency and timeliness of its response should be paramount. Of course the SIU must ensure funds are not wasted on unnecessary expenses, but full and timely response to incidents is central to its ability to do its job. Rather than limit its response to fit a restrictive budget, it should request the resources required to fully comply with its mandate – and the Ministry of the Attorney General should support such efforts.

166 Accordingly, to ensure more effective response by the SIU to incidents engaging its mandate, I am recommending that:

The Special Investigations Unit should ensure that it responds to incidents as quickly as possible through continuous – as opposed to intermittent – call-out of investigative and forensic staff. (Recommendation 4)

The Special Investigations Unit should only delay responding to incidents in exceptional circumstances, and only after facts have been independently verified. When in doubt, the Unit should respond to police notification. (Recommendation 5)

The Special Investigations Unit should ensure that the closest investigators in the vicinity of an incident are contacted without consideration to whether they are full- or part-time investigators or in a position to incur overtime. (Recommendation 6)

The Special Investigations Unit should revisit its motor vehicle policy coincident with the change in deployment practices recommended above. (Recommendation 7)

If the Special Investigations Unit requires further resources in order to implement my recommendations, it should make the appropriate request to the Ministry of the Attorney General. (Recommendation 24)

The Ministry of the Attorney General should ensure that the Special Investigations Unit has the resources necessary to effectively and efficiently carry out its mandate of conducting criminal investigations of serious injuries and deaths of civilians involving police. (Recommendation 27)

The Government of Ontario should consider granting the Special Investigation Unit's vehicles emergency status under the *Highway Traffic Act*.

(Recommendation 45)

The Quality of Evidence: From Scene Security to Interviews

- 167** Once the SIU has been notified of an incident and begun its response, it must ensure that the scene is protected and that relevant evidence is collected.
- 168** We were advised that police forces generally observe the requirements for securing a scene pending the arrival of the SIU. However, one SIU official told us that in his experience, scenes are often not properly protected. He recalled one case where a police lawyer walked under the yellow tape marking the perimeter of a scene, and another where a media photographer was allowed within the perimeter to take pictures of a car involved in an incident. The SIU took issue with a police service's failure to secure a scene in September 2005, and in January 2007, when police cars involved in an accident were improperly moved.
- 169** Occasionally, the integrity of a scene is compromised not by the police but by SIU investigators themselves. In an internal communication in October 2004, the SIU cautioned its investigators about unprofessional conduct after learning of a case where an investigator had a cup of coffee with him at the scene, kicked a piece of evidence and attempted to replace it without alerting anyone.⁴⁹
- 170** Notwithstanding some isolated cases, we did not find evidence of widespread problems with security of SIU scenes. Regrettably, that cannot be said of the SIU's handling of interviews – particularly of witness and subject officers.

Delayed Witness Officer Interviews

- 171** Like physical evidence, the evidence of witnesses to an incident can also deteriorate over time. It has been observed that:
- ... investigative teams must be able to locate and interview people quickly to lock individuals into statements to provide the maximum indicia of

⁴⁹ Special Investigations Unit, "Disturbing Potential Evidence" (*Routine Communications - Policy Direction Order #2004-22*) issued 22 Oct 2004.

credibility and reliability; locate and preserve valuable evidence; and obtain and document the most accurate observations and accounts...⁵⁰

- 172** In both his reviews, Mr. Adams recognized that delay in interviewing police witnesses was a serious problem for the SIU. He commented on a number of factors contributing to delays at that time, including police officials not providing information necessary to designate witness and subject officers, officers being released from duty on stress leave, and the unavailability of legal representation for witness officers. While he suggested in February 2003 that these impediments could be overcome by an “immediate and committed effort” on the part of chiefs of police and the SIU,⁵¹ our investigation found that the problem of delayed witness officer interviews has persisted to this day, and continues to compromise the integrity of the SIU’s investigative process.
- 173** It is a basic principle of criminal investigation that witness information should be obtained as soon as possible.⁵² Commissioner Fantino emphasized that it was “absolutely critical” to identify and interview key witnesses right away. As time passes, stories tend to change and memories fade. He stressed that even a brief initial interview, followed up if necessary by a further interview after other evidence is obtained, was crucial. An OPP Deputy Commissioner echoed these comments, noting the importance of interviewing witnesses promptly to avoid memory loss and the influences of others on witness recollection.
- 174** However, police officials readily acknowledged that this was often not the case in SIU investigations. It was suggested that this was due to a number of factors, such as officers “lawyering up,” police association involvement, and officer “trauma.” Police defence counsel told us that officers are often too distraught in the aftermath of an incident to provide coherent testimony. Commissioner Fantino suggested that it was improper for police professionals to be lumped in with common criminals, and that the SIU should be engaged in a neutral fact-finding exercise, as opposed to a criminal investigation. He and other police officials noted that SIU investigations did not necessarily involve the same urgency as major criminal cases with respect to interviewing police witnesses. What is particularly disturbing is that many SIU investigators apparently share this view.

⁵⁰ John B. Edwards, “Homicide Investigative Strategies” The FBI Law Enforcement Bulletin (January 2005), online: Federal Bureau of Investigation <<http://www.fbi.gov/publications/leb/2005/jan2005/jan2005.htm>> (last accessed: 17 July 2008).

⁵¹ 2003 Review report by the Honourable George W. Adams, Q.C., *supra* note 19 at 53.

⁵² U.S. Department of Justice, Office of Justice Programs, *Eyewitness Evidence: A Guide for Law Enforcement* (Research Report) (Washington, DC: National Institute of Justice, 1999) at 21.

- 175 The regulations clearly require witness officers to submit to interviews **immediately** upon request and, where there are appropriate grounds for delay, **no later than 24 hours** after receiving a request from the SIU.⁵³ Despite this, the SIU’s Executive Officer confirmed that most officer interviews take place more than 24 hours after the SIU’s request. The SIU’s operational orders instruct investigators to interview the witness officer “when suitable for the investigator,”⁵⁴ but its policies do not emphasize the importance of interviewing witnesses as soon as possible, and in fact, this principle is not embraced with any consistency or clarity.
- 176 Many of the SIU investigative staff we interviewed told us that it is often preferable to interview the complainant first and review other relevant evidence before interviewing witness officers. Some placed more significance on officer notes, and told us that witness officer interviews could be delayed for several days without consequence. One investigator suggested officers’ memories actually improve over time. Another said immediate interviews would be premature, and yet another characterized holding witness officers until the SIU arrived as “archaic” and interviewing them right away as “bad practice.” It was suggested that police witnesses were easier to locate and keep track of than civilian witnesses, so civilians were generally interviewed first. On the other hand, we also heard from investigators who stressed the importance of interviewing officers immediately when their memories are intact, untainted and more acute.
- 177 While there might be circumstances justifying occasional delays in interviewing witness officers, leaving interview timing completely up to the discretion of individual investigators is at odds with a principled approach to the investigation of major criminal incidents. But the SIU’s lack of uniform standards for interviewing witness officers is no accident. The current Director has chosen, in his words, to “let the investigators investigate, the supervisors supervise and the Executive Officer oversee.” Both Director Cornish and the Executive Officer offered justifications as to why investigators might choose to delay interviews, similar to those we heard from some investigators. The SIU elaborated on this in its October 2007 submission to our Office, as follows:

... regarding the timing of witness officer interviews, it should be noted that some SIU investigators prefer to not interview some or all witness officers early in the investigation in the particular circumstances of certain cases. This is so for a variety of reasons, but typically these investigators

⁵³ *Supra* note 18, s. 8.

⁵⁴ *SIU Operations Order 002*, *supra* note 43 at 23 of Appendix.

wish to have a better idea of the incident than they would ordinarily have early in the investigation before talking with the witness officers. They obtain this insight into the nature of the incident by speaking with the liaison officer, reviewing the identification work done at the scene and/or speaking to civilian witnesses who were either involved in or observed some part of the incident.

- 178** By the same token, the Director and the Executive Officer also generally accepted the premise that interviews should take place as soon as possible. This somewhat contradictory approach proved baffling at times. While the Executive Officer initially defended the practice of delaying witness officer interviews in order to obtain evidence from other sources first, he later strongly endorsed the practice of compelling witness officers to co-operate with interviews “immediately.” He proposed that with effort on the SIU’s part, interviews could take place within three to four hours, provided the SIU’s resources were increased, the requirement was legislated and there were penalties for non-compliance.

Police vs. Civilians: Double Standard?

- 179** Common sense suggests that the same principles that apply generally to interviews in major criminal cases should apply to SIU investigations. While some in the policing field might like it to be otherwise, SIU investigations are clearly criminal investigations. Other jurisdictions routinely accept early interview of involved officers as the standard. The New York City Complaints Review Board requires officers to be interviewed as soon as possible, and if necessary, re-interviewed as new evidence is obtained and reviewed. According to the Chief Superintendent and Deputy Criminal Operations Officer of the RCMP’s E Division in British Columbia, internal investigators typically interview RCMP officers involved in a shooting incident within 12 hours as part of their criminal investigations. The Chair of the Commission for Public Complaints Against the RCMP confirmed that the earlier a statement is made, the weightier and more credible it will be.
- 180** The Police Assessment Resource Center, a non-profit organization in the U.S., strongly supports immediate interviews of police officers involved in shootings and incidents resulting in serious injury. In an August 2003 report, it said:

Among experienced police officers, it is beyond dispute that witnesses should be interviewed as soon as possible. Best practice likewise dictates that officers involved in a shooting or in-custody death incident be

interviewed no later than several hours after the incident. Contemporaneous interviews enhance the integrity of the process by reducing the likelihood that the officers' account of events will be deliberately contaminated (e.g., by efforts to "get officers' stories straight") or accidentally contaminated (i.e., where an officer's memory of the incident is subconsciously affected by what he or she hears from others.)⁵⁵

- 181** The Center rejects the suggestion that interviews should be delayed because they are traumatic for the officers involved, and stresses that police should be treated the same as civilian witnesses:

Police officers should be treated in the same fashion as similarly-traumatized civilians, such as those who have been the victims of violent crime. As a general rule, Homicide investigators interview civilians involved in, or witnessing, a shooting or in-custody death incident as soon as possible. Regardless of their emotional state. Often, these civilians are taken from the scene of an incident to ... headquarters and persuaded to stay – often for many hours – until Homicide has an opportunity to fully interview them.

Second, there is no empirical support for the view that interviewing a witness within hours of a high-stress event necessarily produces unreliable testimony. ...

The third problem with delaying interviews is that it increases the possibility of officer collusion or inadvertent contamination of witness memory. Once the involved officers leave the crime scene, there is no one to prevent them from "getting their stories straight." In addition, an officer's recollection may be tainted, subconsciously or otherwise, by something read or heard during the waiting period.⁵⁶

- 182** While post-traumatic stress was often cited by SIU staff as an excuse for not interviewing police witnesses immediately, a different standard clearly applies to SIU interviews of civilian witnesses:

⁵⁵ Police Assessment Resource Center, "The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths" (Los Angeles, CA: PARC, 2003), online: Police Assessment Resource Center <http://parc.info/client_files/Portland/First%20Report/1%20-%20Officer-Involved%20Shootings%20and%20In-Custody%20Deaths.pdf> (last accessed: 17 July 2008) at 56 [*PARC Report, August 2003*].

⁵⁶ *Ibid.* at 56-58.

- On June 1, 2004, a woman was confined at gunpoint and later chased through downtown Toronto by her gun-wielding boyfriend, Filip Cancar. When confronted by police, the man put the gun to his head and shot himself at about 4 a.m. As traumatic as this clearly was for the woman, that did not stop the SIU from interviewing her at 8:36 a.m. at the police station, where she had been held after being up all night and witnessing her boyfriend's violent death. But the witness officers involved in the incident were not interviewed until the next evening.
- SIU staff told us of another case where police shot a man who pulled a gun on them. Two police officers and two paramedics witnessed the event. The paramedics stayed at the scene and provided statements to the SIU, but the officers were allowed to go home.
- In the Frank Greda multiple murder-suicide in London on June 27, 2005 (page 36), police interviewed the surviving nine-year-old girl, who had just witnessed the fatal attack on her mother, the same day of that traumatic event. The SIU didn't interview the witness officers until the evening of the next day.

183 The inequity in witness treatment also extends to the provision of interview notes. In accordance with the regulations, officers are given a copy of their statement to the SIU.⁵⁷ Civilian witnesses are not generally offered this courtesy. Their statements are only released if they think to request them, and if it “would not jeopardize the integrity of the SIU investigation.”⁵⁸

184 In order for the SIU to sustain public confidence in keeping with its own motto, “One Law,” it must ensure that its investigative process is consistent with the best practices in criminal investigation. Civilians and police officers should receive equal treatment. This includes providing civilians with the same opportunity as police witnesses to obtain a copy of their statements, subject to any legitimate concerns about interfering with the integrity of the investigation.

185 The SIU's failure to require its investigators to interview witness officers at the earliest available opportunity displays a disappointing lack of rigour on its part. I suspect that the inconsistency and leniency of this practice also serves to encourage police resistance and disrespect. A senior Crown prosecutor with extensive experience in prosecuting SIU cases observed to us that the police are

⁵⁷ *Supra* note 18, s. 8(3).

⁵⁸ Special Investigations Unit, "Recorded Interviews" (*Operations Policy 027*) revised 23 Mar 2006 at 4-5 [*SIU Operations Policy 027*].

often more effective and direct in obtaining evidence from their own members than the SIU is, because they don't tend to get "jerked around by ... silly reasons or silly delays."

Scaling the "Blue Wall"

186 Given the opportunity, many police officers will seek to put off compliance with SIU demands or attempt to resist them altogether. This may be due to concerns that they might be implicated as a subject officers or fear that their statements might be used against them in disciplinary proceedings. Or it might be attributed to what SIU counsel dubbed "the Blue Wall of Silence" in a 2007 court proceeding – a phenomenon described as follows:

“...the confluence of certain aspects of police culture and peer pressure found in segments of the police community, which deters some officers from co-operating or being seen to co-operate with an investigation of a fellow police officer for fear of being ostracized by their peers.”⁵⁹

187 The SIU provides assurances of confidentiality to witness officers, undertaking not to disclose their testimony except where legally required. However, it is not surprising that many police officials still do not treat requests for SIU interviews with urgency or comply with them readily. We were told that it can take SIU investigators considerable time to actually designate witness and subject officers. Then, once an SIU investigator does request an interview, a number of excuses are routinely accepted for delays even though many SIU investigators, as well as the Executive Officer, told us they recognize that these may very well be tactical in nature.

188 For example, the SIU will not interview witness officers who go on stress leave after an incident. While in some cases officers may be too traumatized to speak immediately with SIU investigators, the fact that they are not fit for active duty doesn't necessarily mean that they cannot meet with the SIU. We were told that the SIU also accommodates police shift scheduling, meaning witness interviews may be delayed up to six days, awaiting an officer's return to work. We were told that this practice reflects concern that police forces would incur overtime costs if the SIU insisted on interviewing their members on their days off.

⁵⁹ *R. v. Scully*, [2007] O.J. No. 2017 (Ont. Ct. J.) (Evidence, Affidavit of Joseph Martino sworn April 27, 2006, at para. 18).

- 189** While officers in some jurisdictions routinely meet with the SIU without legal representatives, prolonged delays often arise in other areas while police association lawyers try to fit the SIU into their schedules. This is despite the fact that the regulations provide the SIU Director with the express regulatory authority to require that an officer be interviewed in the absence of counsel, if there would otherwise be an unreasonable delay.⁶⁰ Director Cornish confirmed that he has never exercised the regulatory override in this situation, nor was he aware of it ever having been exercised.
- 190** We found evidence of substantial delay in carrying out witness officer interviews in a number of cases that we reviewed. For example:

Jason Steacy

- 191** *On November 4, 2005, 20-year-old Jason Steacy was shot dead by police officers investigating a report that he had stabbed another resident of a trailer park. The officers entered Mr. Steacy's trailer and one of the officers fired, apparently mistaking a computer mouse in Mr. Steacy's hand for a gun.*
- 192** *Three of 10 OPP officers on the scene were designated by the SIU within four hours of the shooting. The remaining seven were designated two days later. However, the actual interviews did not begin until six days after the incident and did not conclude until 69 days later.*
- 193** *SIU management recognized that these delays were unacceptable. On May 15, 2006, SIU counsel e-mailed the Director about his concerns. He raised these again in an e-mail in December 2006, noting:*
- ... none of the witness officers appear to have been interviewed in a timely fashion. ... In my view, the delay could have jeopardized the integrity of their recollections of the incident, particularly in respect of [the officer who witnessed the shooting], who admitted to having listened to the communications tape of the incident as an aid in constructing his notes.*
- 194** *Some of the factors leading to delay in interviewing the key witness officer included his being on sick leave, as well as his lawyer's reluctance to agree to an interview. A notation in the lead investigator's notebook sums up the problem as follows: "Spoke to [the Executive Officer]. He can do nothing to speed up interviews. [Police Services] Act has no teeth."*

⁶⁰ *Supra* note 18, s. 7(2).

- 195** We also found similar issues in other cases cited previously in this report, as follows:
- **James Maltar (page 36):** It took the SIU more than a week to interview the witness officers and civilian witnesses. One subject officer was later re-designated and interviewed after six months.
 - **Jeffrey Reodica (page 36):** The SIU interviewed three witness officers in the hours after the shooting, but the key witness officer wasn't interviewed until two days later. Both the witness and subject officers were at the hospital where the boy was, as was an SIU investigator, but they went home without any attempt by the SIU to contact them.
 - **Duane Christian (page 37):** The key witness officer was not interviewed until six days after the incident. The other six witness officers were interviewed between 17 and 24 days after the incident.
- 196** Many SIU investigators expressed frustration to us over the SIU's apparent impotence in the face of police resistance. Rather than attempting to scale the "blue wall," the SIU has adapted its practices and tried to go around it. Some investigators even said they have given up trying to compel compliance with the 24-hour standard for interviews. Remarkably, this defeatist attitude is shared by the Executive Officer, who characterized the *Police Services Act* and regulations as "very, very weak."
- 197** But while the Act and its accompanying regulations may have their weaknesses, at least part of the problem appears to stem from the SIU's own complacency. It has been too willing to accept excuses for delays and its own self-image of powerlessness. Director Cornish acknowledged that he did not know how many officer interviews take place beyond the 24-hour standard.
- 198** In the SIU analysis of 28 Toronto Police Service incidents in 2006 (see page 25), delays in officer interviews were even worse than the delays in notification of the SIU. Only a handful of cases came anywhere close to approaching the regulatory standard for interviews. In only one case were witness officers interviewed on the same day of an incident. In four cases, interviews took place within three days. However, the majority of the cases involved delays of not simply days, but of weeks and even months. In six cases, witness officer interviews weren't completed until more than a month after the incident. And in two cases, interviews did not take place for over a month after the incident and were not

completed until two months later. Two witness officers involved in an incident on November 15, 2006 were not interviewed until February 24, 2007. In one case, it took the SIU four months to interview a witness officer, and in another, interviews of six witness officers began five months after the incident and ended over six months later.

- 199** Following the review of these cases, the SIU discussed the situation with Toronto Police Chief Bill Blair and the police service's SIU liaison, and both agencies committed to improve their efforts to have witness officers interviewed sooner. The Toronto Police Association also recognized this trend and indicated it was seeking to add to its roster of counsel so as not to delay witness officer interviews. The SIU also advised its staff through internal communications in November 2006 and April 2007 about the commitments that had been made regarding scheduling interviews. In April 2007, the SIU also stressed the importance of designating officers as witness or subject officers as soon as possible. (The SIU's Executive Officer told us that after this discussion, the first case of a delayed Toronto witness officer interview they encountered was due to an SIU investigator's own scheduling conflicts, not resistance on the part of the police force.)
- 200** The pattern of delay found by the SIU in its review of the Toronto cases demonstrates the effect of its rampant lack of rigour in ensuring compliance with the regulatory requirements. Why should police services respect the regulatory standards when they are routinely overlooked by the SIU administration? It seems incredible that this situation festered for a year before it was detected, analysed and brought to the attention of the offending force. This failure to vigorously enforce the regulatory requirements was cited as one of the frequent sources of discontent by the SIU investigative staff that we interviewed.
- 201** Stronger regulatory incentives for compliance might well assist the SIU in encouraging police co-operation, but I believe that there is still much that the SIU can do to achieve improvements even without resort to legislative change. The first step is for the SIU to undergo a culture shift. It needs to gain greater confidence in its own authority. It should start from the premise that the onus is on police services and individual officers to demonstrate why a delay is appropriate. It should insist on immediate interviews as the standard, and routinely request reasons for any period of delay. Officer interviews should only take place beyond 24 hours in extreme circumstances – for instance, in the case of documented medical incapacity. Delayed interviews should require express approval of SIU management. When appropriate, the Director should use his authority to have witness officers interviewed without a lawyer present, if the lawyer's unavailability threatens to lead to unreasonable delay. The SIU must

systemically question delays, record reasons given to justify them, and pursue circumstances where delays appear unjustified.

202 It must also dispense with the sacrosanct notion that officers cannot be interviewed when they are off on stress leave or off duty – unless satisfactory evidence is provided confirming that it would be hazardous to an officer’s health. In appropriate circumstances, the SIU should attend at officer’s homes, hospitals or other locations to ensure timely interviews. The fact that officers might incur overtime should never be a justification for delaying interviews. If the SIU has insufficient resources to carry out all necessary interviews, then it should formally request additional resources from the Ministry.

203 Accordingly, to improve the timeliness and integrity of the SIU’s process for interviewing witnesses, I am making the following recommendations:

The Special Investigations Unit should require its investigative staff to routinely seek, record reasons for, and notify management of police failure to promptly and fully comply with legislative and regulatory requirements relating to witness officer interviews. (Recommendation 1)

The Special Investigations Unit should require, as a standard, that witness officers be interviewed immediately after a request for interview. Interview delays beyond 24 hours should only be permitted in extreme circumstances, such as substantiated medical incapacity, which should be documented. Delayed interviews should require approval of a supervisor or above. (Recommendation 13)

Witness officer interviews should take place regardless of whether an officer is on or off duty. Special Investigations Unit investigators should attend at officer’s homes, hospitals or other locations, in order to ensure timely interviews. (Recommendation 14)

The Special Investigations Unit should not delay interviews of witness officers on medical leave unless satisfactory evidence is provided confirming that it would be hazardous to an officer’s health to proceed. (Recommendation 15)

The Director of the Special Investigations Unit should exercise the authority to suspend an officer’s entitlement to legal representation at an interview, if the interview would otherwise be unreasonably delayed beyond 24 hours. (Recommendation 16)

The Special Investigations Unit should accord civilian witnesses the same courtesy as police witnesses of receiving a copy of their statements subject to any legitimate concerns about interfering with the integrity of the investigation. (Recommendation 18)

Segregation and Witness Notes

204 *Police Services Act* regulations require that officers involved in an incident be separated from one another. This reflects standard investigative procedure and helps ensure their testimony and written notes – which must also be provided quickly – are not affected by any outside influences. The SIU operational orders require that if witnesses have not been segregated, the investigator is to reconstruct each of their actions and find out whether they have spoken to anyone else about the incident prior to the interview. It is noted that:

THE OBJECT OF THIS IS TO PROTECT THE WITNESS FROM ANY SUBSEQUENT ALLEGATION THAT HIS OR HER EVIDENCE HAS BEEN CONTAMINATED BY EXPOSURE TO THIRD PARTIES.⁶¹

205 Most SIU investigators we spoke to said police officers are generally segregated. The problem, as one investigator identified it, is that there is no guarantee that they will always be truthful when asked whether they have spoken to one another. Given that witness officers are usually permitted to leave, and routinely are not interviewed by the SIU for a matter of days, the chances of contamination of their testimony is substantially increased.

206 The SIU instructs its investigators to ensure that involved officers are segregated and to record the circumstances of that segregation.⁶² It should go further, however, and ensure that in each case, it records details of who was segregated, how they were segregated, the length of segregation, whether witness officers discussed the incident with anyone other than legal counsel and the content of any such discussion.

207 A number of SIU investigators told us officers routinely make their notes after consulting with counsel. Another concern identified by Mr. Adams, which continues to apply today, is that at times the same legal counsel will represent all officers involved in an incident – sometimes not only witness officers but subject officers as well. While police associations follow this practice in an effort to

⁶¹ *SIU Operations Order 002*, *supra* note 43 at 17 of Appendix.

⁶² *SIU Operations Order 002*, *supra* note 43 at 7.

reduce costs, as Mr. Adams noted, “this commendable sensitivity cannot defeat the legal requirement of segregating officers.”⁶³ This practice raises ethical issues, particularly in light of the officers’ duty not to communicate with other involved officers until the SIU interviews have concluded. While recognizing that legal representation can be costly to police associations, and to services that have committed to pay their members’ legal costs, I believe that the utmost care should be taken to foster the integrity of the investigative process. This includes avoiding any potential for witness information to be tainted or tailored, intentionally or otherwise. The practice of the same lawyer representing various officers involved in an incident should be prohibited.

- 208** The SIU has reminded its investigators to fully canvass the circumstances surrounding the making of notes by witness officers to ensure that there has been no improper influence.⁶⁴ However, we learned that it is not uncommon for notes to appear days after they have been requested, and often not until the officer attends for an interview. There have been instances where notes have arrived with improper redactions. An August 23, 2005 Director’s report noted that pre-edited statements had been provided and that unedited copies should be requested. The SIU warned its investigators about this practice in June 2006, after it learned that an officer had removed several relevant comments made by a subject officer from the notes she gave to the SIU.⁶⁵ The SIU should ensure that it inquires into and records information relating to the preparation of police notes, such as when and how they were prepared, whether any aids to preparation were used, whether the officer discussed information concerning the incident, whether the notes were edited, and if so, why.
- 209** In September 2004, the SIU identified a case where evidence suggested officers at the scene of a collision had breached the regulations by discussing what they would say about a police cruiser’s emergency lights being on. In another case, concerns were raised when an officer listened to a communications tape as an aid in constructing his notes. The SIU has had to warn police services on a number of occasions regarding the standard police practice of holding “debriefings” after an incident. In the context of an SIU investigation, these represent a breach of the obligation to segregate witnesses and of non-communication pending completion of SIU interviews.

⁶³ 2003 Review report by the Honourable George W. Adams, Q.C., *supra* note 19 at 45.

⁶⁴ Special Investigations Unit, *Investigators’ Meeting Summary*, 3 Aug 2005; see also Special Investigations Unit, “Witness Statements – Notes” (*Routine Communications - Policy Direction Order #2006-10*) issued 18 May 2006.

⁶⁵ Special Investigations Unit, “Witness Officer Notes” (*Routine Communications - Policy Direction Order #2006-11*) issued 1 June 2006.

- 210** Another issue that can potentially compromise SIU investigations is the attendance of police officers at autopsies. In its submissions to the Standing Committee on Justice Policy in November 2006, the Director's Resource Committee suggested that to avoid potential leakage of confidential information, SIU investigators should be officially recognized as having the authority to assist the Coroner, thereby obviating the need for police to attend at post-mortems. Our investigation found that while this issue may still come up from time to time, the SIU and the Coroner's Office have worked to ensure that conflicts of this nature have been reduced.
- 211** It is worth noting that by aggressively ensuring that interviews take place as soon as possible, and that all circumstances surrounding segregation and note-taking are fully documented, the SIU would greatly enhance the credibility of both its own investigations and the evidence obtained from witness officers. Reasons for late disclosure of notes should be routinely requested, recorded and questioned to encourage more regular compliance. The SIU should not accept conduct that does not conform to statutory obligations except in exceptional and clearly justifiable situations.
- 212** In order to strengthen the integrity and rigour of the SIU's investigative process, I am recommending:

The Special Investigations Unit should require its staff to routinely seek, record reasons for, and notify management of, police failure to promptly and fully comply with legislative and regulatory requirements relating to segregation and requests for police notes. (Recommendation 1)

The Special Investigations Unit should ensure that its investigative staff inquire into and record relevant circumstances surrounding police witness segregation and note-taking. (Recommendation 2)

There should be a legislative prohibition against legal counsel representing police officers involved in the same incident under investigation by the Special Investigations Unit to ensure the integrity of its investigations is maintained. (Recommendation 42)

Delayed Subject Officer Interviews

- 213** While subject officers are not compelled to speak with the SIU, many do agree to be interviewed. Of course, the earlier the opportunity for interview, the greater potential there is to obtain an accurate account. Unfortunately, the SIU does not

stress the importance of asking subject officers as soon as possible whether they are willing to testify. This is not surprising, given its practices relating to witness officers.

- 214** In the Duane Christian case (page 37), despite his willingness to co-operate with the SIU, the subject officer was never interviewed. The SIU advised that this was very unusual, and that this omission occurred during a period when a Deputy Director was heading the unit for a brief period while Director Cornish was temporarily absent. While this may have been an anomaly, it left a very poor impression on the youth's family, and no doubt on the police officials involved.
- 215** While recognizing the right of subject officers to decline an interview, the SIU should still ensure that they are asked immediately whether they would be willing to be interviewed. If the officer answers in the affirmative, the interview should take place immediately or at the earliest opportunity. Quite disturbingly, one "as-needed" investigator we spoke to expressed the belief that it was improper to speak with subject officers at the outset of an investigation, even if the officer voluntarily initiates contact. The investigator recalled telling an officer at an incident scene: "No, no, no. You can't talk to me. Go back to your car." To the contrary, nothing prevents the SIU from immediately approaching subject officers to request an interview. This would also give investigators a chance to observe the subject officers' state of mind and physical condition, as well as to request any relevant physical evidence in their possession.
- 216** Accordingly, in order to ensure that opportunities for subject officer interviews are vigorously pursued, I am recommending that:

The Special Investigations Unit should require its investigators to immediately contact subject officers and determine if they are willing to be interviewed. Interviews of subject officers should take place as soon as possible. (Recommendation 17)

The OPP Anomaly

- 217** Before leaving the question of interviews, it is useful to discuss a legislative anachronism that persists in hampering the thoroughness of the SIU's investigations. Unlike civilian members of municipal police forces, civilian members of the Ontario Provincial Police are not considered "members" of the force under the *Police Services Act* definitions, leaving them exempt from the requirement to co-operate with SIU investigations.

- 218 Mr. Adams identified this anomaly in 1998.⁶⁶ The SIU also called for legislative change in its 2005 “action plan” to remedy this gap. In addition, the SIU Director’s Resource Committee included this proposal in its submission to the Legislative Standing Committee in November 2006, when it was considering the *Independent Police Review Act*. While the Ministry may not have any serious objection to this change, it has failed to take any action to remedy the problem.⁶⁷
- 219 In its written submission to our Office, the SIU indicated that this issue “is more than theoretical.” It gave the example of a case in Trenton, where it was unable to secure co-operation of civilian members who likely had evidence to offer as to how an injury occurred. Director Cornish has drawn this issue to the attention of the Attorney General in his reports, as well as to successive Commissioners of the OPP. He has also attempted to elicit the co-operation of the Ontario Provincial Police Association. Clearly, there is no justification for the gap in the law to continue. It is in the public interest for all members of Ontario police services, whether officers or civilian, to co-operate with the SIU. The solution to this situation is legislative in nature, and does not lie with the SIU, but rather with government.
- 220 Accordingly, I am recommending that:
- Civilian members of the Ontario Provincial Police should be subject to the requirement to co-operate with Special Investigations Unit investigations. (Recommendation 43)**

All Bark, No Bite: SIU Perceptions and Reality

- 221 During our investigation, SIU investigators and managers often expressed aggravation over their inability to compel police to co-operate. We heard repeatedly from SIU staff and members of the public alike that the SIU was essentially “toothless.” This is consistent with feedback the SIU received from its own investigators at an annual meeting in September 2004.
- 222 When one considers the volume of SIU cases in which police co-operation issues still arise, the absence of an effective method for dealing with police resistance is particularly troubling. In a study of more than 1,000 use-of-force cases

⁶⁶ 2003 Review report by the Honourable George W. Adams, Q.C., *supra* note 19 at 48.

⁶⁷ In a November 4, 2005, Ministry of the Attorney General internal Briefing Note (see *infra* note 70), this change was recommended, noting there was “no reason in principle not to make the amendment.”

investigated by the SIU between January 1, 2000 and June 6, 2006, about 10% of the cases involved some lack of police co-operation.⁶⁸

- 223** The 1998 Adams report recommended that in order to ensure enforcement of regulatory requirements, the SIU should be formally accorded the status of a “complainant” under the public complaints process.⁶⁹ The SIU also supported this in its 2005 “action plan.” While a subsequent Ministry briefing note agreed that an amendment clarifying the SIU’s authority to use the complaints process would not be controversial, the government has never pursued it.⁷⁰ When the *Independent Police Review Act, 2006* was being considered, the Director’s Resource Committee suggested that the Act be amended to expressly confer complainant status on the SIU, but this proposal was not adopted. The African Canadian Legal Clinic went further in its submissions to the Ipperwash Inquiry in August 2006, suggesting that the SIU should have the authority to bring a misconduct charge through the police discipline process against police who don’t co-operate.
- 224** In its written submission to our Office, the SIU adopted a somewhat ambiguous position on this issue. It suggested that in 2003, Mr. Adams commended resolving difficulties through dialogue, and that its current practice reflects this approach. It stated a preference for more conciliatory methods of dispute resolution over an “inherently contentious” and “unpredictable” formal process, but nevertheless agreed that it would benefit from complainant status under the public complaint system: “While complaints should remain an option of last resort, Mr. Adams’ recommendation remains as relevant today as when it was made.”

Walking Softly Without a Stick

- 225** The SIU has raised specific concerns regarding the conduct of individual officers or police practice with their respective police chiefs and the Commissioner of the OPP. These include such issues as failure to notify the SIU of an incident and/or to secure scenes; improper disclosure of autopsy information and attendance of police at post-mortems; provision of false or misleading information; improper communication amongst officers and with witnesses; inappropriate media leaks, and even obstruction of an SIU investigation. The Executive Officer and Director

⁶⁸ *Wortley Report*, *supra* note 28 at 52.

⁶⁹ *1998 Consultation report by the Honourable George W. Adams, Q.C.*, *supra* note 7 at 61.

⁷⁰ Ministry of the Attorney General, “Legal and Operational Reforms to the Special Investigations Unit” (*Briefing Note*) 4 Nov 2005.

have met with police officials and on occasion put their concerns in writing. In its written submission to our Office, the SIU promoted this informal approach, and suggested that when it has adopted a more formal stance, “the process has met with mixed results.”

- 226** One of the complaints made to my Office was that the SIU had failed to effectively follow up with police services that consistently neglect to provide timely notice of incidents. The SIU responded that when notification delays come to the Director’s attention, he typically requests that the Executive Officer inquire further. If necessary, the Director will also raise his concerns directly with senior police officials. Remarkably, it was only in the wake of my investigation, and in an effort to provide evidence of this practice, that the Executive Officer was directed to keep a written record of these discussions with police officials.
- 227** The SIU’s informal efforts often result in police committing to take corrective action, and in some cases, they advise Director Cornish of the outcome of their parallel internal investigations, and any resulting discipline. For example, one officer who delayed reporting an incident had a note placed on his personnel file. In another case, an officer was disciplined for late notification and breach of duty to segregate witnesses. In February 2007, Director Cornish determined that an officer had deliberately misled the SIU, failing to mention the use of a Taser during an incident. The police service later informed the SIU that the officer had been reassigned and charged under the *Police Services Act*.
- 228** Unfortunately, the SIU is not always aware of how its concerns have been addressed. It has no formal method for tracking whether disciplinary proceedings have taken place, and the results of internal police investigations and hearings are not generally publicly disclosed. In its written submission to our Office, the SIU supported the idea of police services making their reports available to the public, as Mr. Adams had suggested in his 2003 report – or at least making them available to the SIU and the new Independent Police Review Director.
- 229** In cases involving serious injury and death of civilians, the public interest in knowing whether improper action has taken place extends beyond the issue of whether or not criminal charges should be laid against police. The regulations also provide for disclosure of the results flowing from internal police investigations, which accompany SIU investigations.⁷¹ It makes sense for the outcome of administrative proceedings connected with SIU investigations to be made public. This would serve the dual purpose of providing the SIU with

⁷¹ *Supra* note 18, s. 11.

information that might well be useful in the conduct of its investigations, as well as enhancing the public transparency of the police oversight process.

230 Accordingly, I am recommending that:

**The internal police investigative reports related to Special Investigations Unit investigations and any action taken as result should be made public.
(Recommendation 44)**

Technically Handcuffed

- 231** While the SIU denies that there are any systemic problems at present relating to police co-operation, this may, in part, reflect the fact that its limited technological capacity prevents it from gaining an accurate view of the bigger picture. It has no real sense of the number of instances of late notification or delayed interviews, or the reasons given for such non-compliance.
- 232** Community members of the Director’s Resource Committee have at times suggested that the SIU keep track of notification issues and monitor police services to assess their performance in complying with their duty to co-operate. Unlike most of the police forces it oversees, the SIU does not have a computerized case management system, making systemic monitoring and analysis virtually impossible. The SIU’s antiquated technology also hampers its investigative ability. There is no easy way to cross-reference cases to determine if particular police officers or services display a pattern of conduct that might be relevant in an investigation.
- 233** The SIU tried some years ago to employ the Powercase software used by police and other investigative agencies, but the system was abandoned because it was too resource-intensive. The SIU is dependent on government servers, which also limits its technical flexibility.
- 234** When the SIU compiles statistical information, it must do so manually. Our review of SIU intake forms revealed that in many cases data such as incident dates were missing, further complicating this task.
- 235** The issue of a new case management system has been discussed at the SIU over the past year. It is imperative that the SIU be provided with the technical support required to competently carry out its mandate.

236 Accordingly, I am recommending that:

The Ministry of the Attorney should ensure that the Special Investigations Unit has adequate computer technology available to allow it to monitor trends and cross-reference cases in order to increase the efficiency and effectiveness of the Unit's investigations. (Recommendation 26)

Agreeing to Disagree

237 The SIU's mantra of consensus, co-operation and conciliation is firmly instilled in its management culture. Sometimes this approach is successful in situations of conflict with police. For instance, Director Cornish noted in an April 23, 2007 report that a police service had erroneously refused to provide the SIU with GPS data for a police cruiser involved in an incident because police believed the data to be unreliable. The police finally agreed to turn over this type of evidence regardless of their own view of its reliability. However, we found the SIU is only prepared to go so far in exerting its authority. The more aggressive a police force is, the more likely the SIU will retreat to a state of stalemate.

238 When the SIU's diplomatic efforts fail, it tends to fall back on the adage that in some cases it must simply "agree to disagree." This has led to inconsistency in the effectiveness of oversight throughout the province. We were told some police forces routinely give the SIU access to personnel and training records, but others resist. Many police services refuse to give the SIU photographs of officers for identification purposes, arguing that these are "employee records." We were told of one case where a service refused to provide information about an officer's conduct record. The SIU was forced to obtain a search warrant, which ultimately revealed that the officer had been charged three times previously for sexually assaulting prisoners. Director Cornish told us it is rare for the SIU to be given access to disciplinary records, and that requesting such documents is like a "shot in the dark."

239 In his February 2003 report, Mr. Adams had observed that some police services had taken an overly technical view of which documents had to be provided to the SIU. In its 2002-2003 Annual Report, the SIU indicated that the interpretation of what constitutes subject officer "notes," "notebook entries" and "reports" – all of which are protected from disclosure to the SIU – was a source of ongoing debate. Unfortunately, the uncertainty in this area has continued unabated. We were told that some police officials try to insulate evidence from disclosure by arguing that it forms part of a subject officer's notes. SIU counsel said that while the SIU

believes information related to subject officers from such sources as mobile data terminals, e-mails, text messages, and even dashboard cameras or videos, should be provided to the SIU upon request, this view was not shared by all police officials.

- 240** In July 2005, Director Cornish attempted to obtain disclosure of a key witness statement relating to police attendance at a domestic disturbance in Thunder Bay which left a man with a collapsed lung. The witness statement happened to be contained in a subject officer's notebook, and the police chief objected to releasing it, maintaining that disclosure of a subject officer's "notes" was prohibited under the regulations. The local police services board also supported this position. In his July 12, 2005 report, Director Cornish said he was "left frustrated" by the police service's position, which he felt was "has the potential to undermine civilian oversight of police." He also drew negative inferences from the conduct of other officers present at the scene, who had coincidentally neglected to take notes. He commented:

Objectively speaking, an observer could reasonably conclude that the officers deliberately refrained from making notes so that the SIU would not get them. The officers could counter that they did not know that this was an SIU case until [the injured individual's] injuries became known a day or two later. Still, the conclusion could justifiably be expressed. These officers had a duty to make notes and the only ones who did were the subject officers, and the statement of the civilian complainant on a domestic incident was buried in one of their notebooks. The fact that it is included there does not change its character, but the [Thunder Bay Police Service] sanctioned the position of the subject officers ... and the chief, thus, in my view, not co-operating with the SIU. ...

In my view, this cannot continue and it could well be that if it happens again, legal action will be necessary because this approach to an investigation is wrong in law and contrary to the spirit of the civilian oversight of policing.

- 241** Despite Director Cornish's indication in his report that he had seriously considered bringing a complaint under the public complaint system about the service's conduct, in the end he chose not to follow this route. The matter remained unresolved, and out of public view.

Policy Problem: The York Dispute

- 242** It is valuable for the SIU to know about police policies and general orders which might assist in explaining the conduct of officers in a given incident. The SIU routinely asks for these documents in the course of its investigations. It is common for police services to provide copies of their policies to the SIU, and in fact, the OPP regularly gives it the latest version of all of its policies on computer disc.
- 243** By contrast, York Regional Police Service has long maintained that its policies and procedures are covered by public interest privilege, and that disclosing them to the SIU could jeopardize officer safety and the effectiveness of investigative techniques. In 2006, the SIU made concerted but ultimately unsuccessful attempts to change this. The service refused to provide the requested information, and Director Cornish did not press the issue in a case involving an accidental shooting, choosing instead to close the case without the evidence. However, he was encouraged based on discussions with York Chief Armand La Barge that the service would be more amenable to the SIU's requests in future.
- 244** On July 31, 2006, the chief wrote to Director Cornish, setting out draft guidelines governing requests for disclosure of police policies or procedures. He indicated the service's co-operation would depend on the SIU's requests being specific, relevant, and explained by an SIU supervisor or the Executive Officer upon request. The SIU also would have to ensure confidentiality of the information and discuss alternative methods of disclosure if the Chief felt that police safety could be at risk. On September 11, 2006, Director Cornish wrote back expressing pleasure that the organizations had been able to resolve the matter to their mutual satisfaction.
- 245** The propriety of an independent investigative organization such as the SIU entering into such a protocol is highly questionable. We were told during our investigation that the SIU was still engaged in a "battle" with the York Regional Police Service over access to its policies. This issue was canvassed with Chief La Barge as well as SIU officials, and our understanding was that it remained unresolved. However, in responding to my preliminary investigative report, the SIU noted that in November 2007, the issue had been resolved and it was able to obtain police policy from the Service, once the matter had been brought to Chief La Barge's attention. Given the SIU's willingness to capitulate, it is not surprising that it experienced resistance in this area for so long. It is difficult to conceive of a situation in which standard police policies would invoke the principle of public interest immunity. Providing such policies to the SIU should

be standard practice.

- 246** While the *Police Services Act* describes the duty of police services to co-operate with the SIU in broad terms, in practice police services have sought to narrow its application. It would help if the legislation governing SIU investigations specifically set out what must be disclosed as part of the obligation to produce witness officer notes, as well as the scope of protection for subject officer notes – clarifying that it does not extend to records of witness statements and other such evidence. The legislation should also expressly require that police services provide relevant personnel information and documents, such as training and disciplinary records and staff photos, as well as police policy documents that might assist the SIU when assessing police conduct.
- 247** Accordingly, in order to further clarify the substance of the police duty to co-operate, I am recommending that:

The legislative requirement that police co-operate with the Special Investigations Unit should include a specific definition of police notes, and an obligation on police to disclose relevant personnel records, and police policies. (Recommendation 35)

Sounding the Alarm

- 248** Typically, Director Cornish’s concerns about police conduct and practices have been buried in his reports to the Attorney General or discussed in informal conversations with police officials. Although the SIU occasionally flags issues for the Ministry of the Attorney General, these issues generally remain hidden.
- 249** In the fall of 2006, the Ministry took an interest in cases of late notification identified by the SIU. It was particularly concerned after Director Cornish reported an exchange he had had with criminal defence lawyer Julian Falconer about this very issue at a conference. A media report on the event quoted the Director’s response to Mr. Falconer’s comments:

There is a problem with the lack of a clear legislative remedy for a breach [of the police duty to inform the SIU]... It leaves us in limbo. We can get into a disagreement with the police agency – and I’m not adverse to doing this – but I don’t think that we’d win.

- 250** This prompted the Ministry to undertake a six-month review of SIU cases to see if there was a pattern of late reporting. A Ministry briefing note said although there

had been “some significant recent failures on the part of the police to notify the SIU,” the failure did not appear to be endemic. The Ministry has continued to flag cases internally where delay in notification is apparent. However, it has not considered this to be a crisis area and has been satisfied that the Director could sort out any issues with individual police services.

251 While the Ministry may be of the view that the police failure to notify the SIU in a timely manner is not a burning issue, its opinion may be based on a superficial understanding of the issue, since the SIU does not systematically investigate, document or follow up on notification delays. The Ministry is generally only aware of a notification issue where the SIU has specifically reported it. The true extent of the problems with police co-operation remains largely undocumented.

252 As far as broader policy issues are concerned, the Ministry has not considered any subjects raised to date by the SIU as justifying its involvement. For example:

- In December 2004, Mr. Cornish flagged a long-standing concern with the Toronto Police Service’s use of Glock firearms with polygonal rifling, which prevents bullets from being matched to a specific handgun. The Ministry has not addressed this issue.
- While the SIU has repeatedly brought the issue of subject officers’ notes to the Ministry’s attention and called for regulatory amendment clearly defining their scope, the Ministry has avoided tackling what it has considered to be a controversial issue⁷².
- In May 2006, Director Cornish raised concerns about whether police Taser training included information on the manufacturer’s warning about prolonged use, after the device was used for 17 seconds on a psychiatric patient, leading to cardiac arrest. Despite considerable controversy concerning the use of Tasers and its increased use by police, the Ministry did not consider contacting the Ministry of Community Safety and Correctional Services to address this issue further.
- In September 2006, Director Cornish reported that Ottawa Emergency Medical Services had flatly refused to speak to the SIU, and that he found this to be very troubling. Despite meetings between the SIU and Ottawa EMS officials, this failure to co-operate could not be resolved. Ministry officials discussed the problem with the SIU, and although discussions with the

⁷² *Supra* note 70.

Ministry of Health and Long-Term Care and the Ministry of Community Safety and Correctional Services were contemplated, it took no further steps, and the problem has persisted.

- 253** The SIU and the Ministry entered into a Memorandum of Understanding in October 2006 that indicates one of the roles of the Attorney General is to bring “policy and systemic issues raised in SIU reports or raised otherwise by the SIU to the attention of the Ministry of Community Safety and Correctional Services and/or to the attention of other parts of government, as deemed appropriate.” The Deputy Attorney General has a similar responsibility regarding the Deputy Minister at the Ministry of Community Safety and Correctional Services. While the Ministry has made commitments on paper, it must be prepared to break with its tradition of inaction in order to fulfill its role as contemplated by the agreement. So far, the signs are not encouraging.
- 254** The SIU is well placed to act as a bellwether for policing practices in this province. Given its conservative approach and natural avoidance of controversial matters, when the SIU does signal areas of concern, its warnings should not be summarily dismissed by the Ministry. Ministry officials emphasized to us that generally it was the SIU Director’s responsibility to resolve issues relating to police resistance. The Ministry cannot afford to remain on the sidelines when it comes to police oversight. It must accept that as the organization that the SIU reports through, it shares an obligation to identify and actively attempt to resolve any issues that threaten the effective and efficient functioning of the SIU as well as the credibility and integrity of policing in this province.
- 255** Accordingly, I am recommending that:

The Ministry of the Attorney General should bring issues of concern regarding police practices or issues affecting investigations identified by the Special Investigations Unit to the attention of the Ministry of Community Safety and Correctional Services and other Ministries as appropriate, and actively pursue resolution of such issues. (Recommendation 30)

Below the Radar

- 256** Beyond the strict confines of its mandate, the SIU has identified poor police practices in a number of circumstances which fall short of attracting criminal consequences. For instance, it has taken issue with officers dealing with prisoners outside of the view of booking-room cameras, failing to properly monitor a

suicidal prisoner, improperly using a Taser on a prisoner confined in a police cruiser, engaging in poor record-keeping, and breaching police standing orders. Director Cornish has advised police chiefs in writing of his personal observations regarding such incidents on several occasions.

- 257** We reviewed several of letters sent by the Director to various police chiefs, raising concern about the conduct of officers. Typically, the Director would suggest that the chief in question might want to meet and discuss the matter with him informally. Sometimes vague allusions were made to issues; sometimes the letter is just a polite request for a meeting.
- 258** While it is exploring ways to be more transparent, the SIU has been hesitant to draw public attention to its informal recommendations to police forces, noting that this might be opposed by police officials who see the reform of police practices as their domain, and lead to public perception that the SIU's mandate is broader than it is. The Chair of the Commission for Public Complaints Against the RCMP does not share the SIU's reticence about publicizing concerns regarding wider matters of police conduct. He stated that he highlights matters in his annual reports that are not within his strict mandate:

I have a residual public responsibility to bring these things into the public domain if I'm serious about them and generate sufficient pressure to occasionally change the behaviour. That's what it's all about.

- 259** While there might be some occasions when discretion is warranted in dealing with sensitive issues, particularly those that are outside the scope of the SIU's mandate, the SIU's tendency to deal with issues behind the scenes also extends to matters clearly within its authority. The SIU is practically pathological in its avoidance of public controversy and consistently opts for the path of least resistance.

A New Set of Teeth

- 260** The SIU's authority to require police officials to comply with its lawful requests should be reinforced through legislative sanctions. It should be able to bring issues of police non-compliance, whether on the part of individual officers, or on behalf of the force as a whole, directly to the Ontario Civilian Commission on Police Services for a hearing on whether discipline is appropriate. I recognize that this would result in the regular police disciplinary process, which relies on the respective police chief or the Commissioner of the OPP taking action, being

bypassed. However, I believe that such a course is appropriate if the SIU clearly believes that the requirements relating to its investigations have been breached.

- 261** At present, the Commission considers appeals in disciplinary cases brought by complainants or the involved officer. It has the authority to confirm, vary, revoke or substitute its own decision concerning appropriate discipline. In the case of matters referred by the SIU, the Commission should hear and decide discipline issues at first instance. Affected officers would be entitled to exercise their right to appeal a Commission decision to the courts as well. This would also serve to eliminate any residual concerns about potential bias of police management from the discipline equation, since police services would not be involved in discipline decisions in cases brought to the Commission by the SIU.
- 262** In addition to remedies available through the administrative process, failure to co-operate in SIU investigations should be an offence under the legislation governing the SIU, punishable by fine and/or imprisonment. This would provide a powerful incentive to encourage police co-operation, and send a strong and unambiguous message to the police community that failure to comply with the SIU is illegal.

Going public

- 263** Legislative solutions aside, however, there is still much the SIU could be doing now to assert itself in the face of police resistance. In its written submission to our Office, the SIU sought to justify Director Cornish's deliberately low media profile, saying this was supported by the Adams reports. However, nowhere in those reports is the SIU discouraged from speaking publicly about a police service resisting its lawful demands or otherwise failing to co-operate. Mr. Adams recommended that during an investigation, public statements should be aimed at preserving the integrity of the investigation, and the regulations incorporate this concept.⁷³ Bringing public attention to the fact that an investigation is being hampered by a lack of police co-operation is consistent with preserving the investigation's integrity – indeed, at times, it may be the only way to maintain it. The SIU can also bring matters to the public's attention after an investigation is completed, to encourage co-operation in future.
- 264** Moreover, because the SIU does not publicize contentious issues, it loses the leverage of moral suasion that accompanies public scrutiny of unco-operative conduct. Consequently, there is less incentive for positive and enduring change in

⁷³ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 64.

police practices. By concealing the true conditions under which the SIU operates, it loses the momentum of positive public pressure that has historically proven to be a necessary catalyst for reform in the area of police oversight. The Police Ombudsman of Northern Ireland recognizes the value of publicity and follows a practice of publicizing instances of police failure to co-operate with its processes.

- 265** The SIU appears content to continue quietly raising concerns with the Ministry and police officials outside of the public spotlight, and conceding defeat when its attempts at asserting its authority are rejected. The Ministry, in turn, holds itself aloof and seems content to let the SIU Director deal with disputes on a case-by-case basis. It is clear that something must be done to dispel the SIU's image as a toothless tiger and muzzled watchdog if it is to earn the respect of police officials as well as the public at large.
- 266** The SIU does not require a regulatory amendment to become more assertive. What is necessary is an attitude adjustment. Routinely leaving issues of conflict in a state of limbo is not an effective or efficient strategy. If a determinative legal interpretation is required to settle a long-standing dispute, the SIU should not be afraid to apply to the courts for assistance.
- 267** As noted earlier, the Ministry also needs to become more engaged when it is clear that the SIU has hit a wall. The Ministry should take steps to promote regulatory changes that will assist the SIU in carrying out its mission. It should also be prepared to engage in dialogue at a senior level with other ministries and organizations, where its influence may be of assistance when policy or systemic concerns have been identified.
- 268** In order to reinforce the integrity of the SIU's investigative process, and to promote improvement in policing in this province, I am recommending that:

The Special Investigations Unit should make public significant concerns regarding policing practices and trends such as those relating to the use of Tasers and custodial practices, which it identifies during the course of its investigations. (Recommendation 22)

The Special Investigations Unit should ensure that all police delays or other failures in complying with legislative and regulatory requirements are properly analyzed and that rigorous action is taken to ensure compliance including publicizing incidents of non-compliance, and application to the courts for determinative settlement of disputed interpretation. (Recommendation 3)

The Director of the Special Investigations Unit should have the discretion to refer incidents of police breach of legislative and regulatory requirements relating to co-operation with the Unit's investigations directly to the Ontario Civilian Commission on Police Services for consideration under the discipline process. (Recommendation 37)

Police failure to co-operate with or obstruction of the Special Investigations Unit should be made an offence punishable by fine and/or imprisonment consistent with similar provincial offences. (Recommendation 38)

SIU Investigations and Aftermath

269 The International Association of Chiefs of Police (IACP) has observed that in investigations involving police officers:

[A] law enforcement agency's reputation within the community and the credibility of its personnel are ... largely dependent upon the degree of professionalism and impartiality that the agency can bring to such investigations. Superficial or cursory investigations of officer-involved shootings in general and particularly in instances where citizens are wounded or killed can have a devastating impact on the professional integrity and credibility of an entire law enforcement agency.⁷⁴

270 It is in the interest of the police community, the general public and the SIU for SIU investigations to be as competent and comprehensive as possible. The SIU Operations Orders contain detailed information relating to the investigative process. Many police officials told us that in contrast to earlier decades, SIU investigations are highly professional and well conducted. In fact, on June 8, 2007, two days after we commenced our investigation of the SIU, the Ontario Association of Chiefs of Police issued a press release, stating:

We maintain our confidence in the SIU's ability to carry out their responsibilities in a fair, independent, and professional manner,....

⁷⁴ International Association of Chiefs of Police National Law Enforcement Policy Center, *Investigation of Officer-Involved Shootings: Concepts and Issues Paper* (Alexandria, VA: IACP National Law Enforcement Policy Center, 1999), online: National Criminal Justice Reference Service <<http://www.ncjrs.gov/pdffiles1/nij/181408.pdf>> (last accessed: 17 July 2008).

We consider the SIU a competent, independent investigative body that investigates cases in a timely and effective way.....

Under its current leadership, the SIU has taken steps to enhance the quality of their investigations by enlisting qualified investigators and developing the necessary infrastructure to investigate serious incidents [P]olice services across Ontario ... have gained confidence in the ability of the organization to carry out complete, thorough and independent investigations both for the citizens of Ontario and the police officers that serve on their behalf.

- 271** The Director of Justice Prosecutions told us that SIU briefs, which he reviews in the course of his duties, are extremely thorough, and approached the “gold standard” of the Toronto Police Service’s homicide division. A number of former police officers now working as investigators with the SIU told us SIU investigations are more meticulous than those carried out by their former forces. Within the Unit, Director Cornish has a reputation for ensuring the adequacy of investigative files. We found a number of cases where Director Cornish or other senior staff had referred files back for further investigation or clarification. Some investigators indicated that the Unit has become even more diligent in its investigations since the announcement of my investigation.

Thoroughness of Investigations

- 272** Our investigation did reveal some issues of concern in this area – for instance, we found a number of investigators who were unfamiliar with the requirement to prepare investigative plans. Some of the files we reviewed did not contain investigative plans, although they appeared to be called for by the operational orders.⁷⁵ Some investigators were also unaware that the SIU had the authority to lay criminal charges even if it was determined that there had not been a “serious injury” in an incident – they did not understand that in a case of an allegation of sexual assault, for example, even if a sexual assault charge was not laid, an officer could be charged with breach of trust.⁷⁶ Misconceptions like these could ultimately affect the collection and assessment of evidence.

⁷⁵ According to *SIU Operations Order 002*, *supra* note 43, in serious and complex situations, an investigative plan is to be developed.

⁷⁶ Director Cornish has indicated that it has long been the practice of the Director of the SIU to lay criminal charges that do not entail the notion of actual injury. Examples are charges of assault simpliciter and breach of trust. He noted “this practice is consistent with the wording of the *PSA* and has been explicitly

- 273** In 2001, the SIU began surveying police services, asking for comments on select SIU investigations. In 2005, one such review pointed out that the SIU had failed to search the deceased's vehicle at the scene and had overlooked alcohol, ammunition and a suicide note. In investigating the deaths of three men, including 19-year-old Nicholas Vanderboom, on October 2, 2005, the SIU failed to interview two potential witnesses. This omission became apparent during the course of disciplinary proceedings involving two officers accused of leaving the scene of the fatal accident. We also learned of several instances when SIU staff neglected to interview paramedics and firefighters in attendance at incident scenes, but we were advised that SIU management now encourages investigators to interview such witnesses.
- 274** There were a number of deficiencies in the SIU's investigation of the fatal shooting of Jason Steacy on November 4, 2005 (page 54). The scene was released before the SIU located a shell casing, and the OPP entered the scene with a Coroner's warrant and seized evidence. The SIU conducted its own internal review of the case and determined that an important piece of evidence – the computer mouse that had been mistaken by the officers for a gun – was never photographed or sent for forensic examination. The review found the OPP's own investigation had been more thorough. After the investigation had concluded, the SIU also counseled an investigator who had demonstrated a lack of objectivity and "tunnel vision" in his view of the case, and identified another who had asked a police witness leading questions.
- 275** In the Duane Christian case (page 37), the deceased youth's mother criticized the SIU for failing to follow up on her evidence that she had seen a male and female youth in handcuffs at the scene. After the Director's decision was issued on October 2006, additional interviews were eventually conducted in an attempt to substantiate this evidence.
- 276** The Jeffrey Reodica case (page 36) highlighted a number of shortcomings in the SIU's investigation: It had failed to test a knife found at the scene for DNA despite conflicting evidence about whether it had been in the teen's possession, and it hadn't included the knife in an array of similar weapons when showing it to witnesses for identification.⁷⁷

approved by Justice Adams in his reviews of the SIU." See Special Investigations Unit, "Serious Injury and Call-Out-Practices" (*Memo*) (undated) at 3.

⁷⁷ Special Investigations Unit, "Policy, Procedures and Equipment Committee Meeting" (*Minutes of Meeting*) 4 Dec 2006.

- 277** In a February 28, 2007 Director’s report on another case, it was noted that the identification team had missed various critical pieces of evidence, including a suicide note. Forensic investigators involved in the case were counselled for their lack of diligence in processing the scene.
- 278** We found other cases where issues arose concerning evidence collection and testing. In one case, a teenager alleged that a police officer had used a flashlight to hit him over the head. Although the SIU obtained the flashlight from the officer, it did not initially send the object for forensic testing. In another case, an officer’s baton and clothing were not seized, although it was alleged that the baton had been used to beat someone during an arrest.
- 279** SIU investigators have also had the misfortune of losing valuable evidence and SIU property which was not properly secured. In 2004, 16 cassette tapes of civilian witness interviews in the Cancar and Reodica cases were stolen from the back seat of a car.

Sexual Assault, Drugs and Alcohol

- 280** The SIU’s operational orders provide that in cases of sexual assault allegations against a police officer, only investigators with specialized sexual assault investigation training are to have any direct contact with the complainant.⁷⁸ However, not all investigators working on sexual assault cases have had more than cursory training in sexual assaults. In one case involving an aboriginal teen complainant, the First Nations Liaison officer took the lead in interviewing her, according to SIU practice, despite the fact that he had not had intensive sexual assault training at the Ontario Police College. This 17-year-old girl was interviewed in the presence of three male investigators, only one of whom had had extensive training. Given the sensitivity of sexual assault investigations, the SIU should attempt to ensure that only those with specialized training be involved in interviewing alleged victims of sexual assault, and it should ensure that its First Nations Liaisons is suitably trained. The investigation appears to otherwise have been conducted in a thorough and timely manner.
- 281** In some jurisdictions, police officers involved in accidents and use-of-force incidents are subject to testing for the presence of alcohol or prohibited drugs.⁷⁹ In

⁷⁸ Special Investigations Unit, “Sexual Assault Investigations” (*Operations Order 006*) revised 30 Oct 2001 at 3.

⁷⁹ According to media reports, State Troopers in Massachusetts can be tested for drugs after accidents and incidents involving use of force. In June 2007, the Commissioner of the New York Police

New Brunswick, a coroner’s jury recently suggested mandatory blood testing of officers, after a young deaf man was hit and killed by a cruiser while walking home. But the SIU does not request voluntary samples from subject officers, except in some cases involving sexual assault allegations. Collecting such evidence could assist the SIU – as well as subject officers who might otherwise have no way of disproving allegations that they were under the influence of drugs or alcohol at the time of an incident.

- 282** While we have found some SIU investigations that were flawed from an evidentiary or procedural perspective, the SIU should not be held up to a standard of perfection in every case. Based on the materials that we reviewed, it appears that in general, when the SIU has uncovered problems with the thoroughness of an investigation or the adequacy of its investigative practices, it has taken corrective action. It informed us it is making changes toward a “more robust system of employee performance evaluation and management.” Addressing problems as they arise is necessary and should be encouraged. However, in addition to adopting a reactive stance to issues of investigative competence, I believe the SIU should be undertaking more proactive measures.

Case Reviews and Feedback

- 283** In his reports, Mr. Adams recommended that the SIU engage in independent peer review of its investigative practices.⁸⁰ At one point, the SIU investigated the possibility of having an outside body review its training standards and practices, but it determined that there was no uniform standard, and no external peer review has ever been conducted.
- 284** Although in its submissions to us, the SIU described its present system of obtaining feedback on its investigations from police services as worthwhile, several SIU staff told us in interviews that it was of limited value. Many major cases are not included in the case review process. The SIU’s own documentation also indicates the surveys generally come back with one-word or vague answers –

Department announced he was recommending mandatory alcohol testing for officers involved in fatal shootings. In late 2007, Chicago began negotiations to introduce mandatory drug and alcohol testing for officers involved in shootings. In 1998, the Australian state of New South Wales introduced legislation requiring police officers directly involved in shootings to be tested for the presence of alcohol or prohibited drugs as the result of recommendations by the State Coroner.

⁸⁰ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 65.

and often they don't come back at all.⁸¹ Many are simply filled with generalized positive comments, such as "There is a comfort in knowing that the SIU investigators appear to be on the same page as our service..." This suggests that the survey might benefit from being redesigned to elicit more substantive responses.

- 285** It is unclear to what extent the SIU actually uses the information obtained through this process, and Director Cornish acknowledged that it could be "mined" better. We got the sense that the mailing of the case review survey has become more of a pro-forma step than a method of gauging investigative quality. The process is also extremely one-sided, as it only canvasses the views of police services, and not anyone else affected by the SIU's investigations, such as complainants or other members of the public.
- 286** Recently, the SIU recognized this and it is now in the process of developing a survey to obtain feedback from complainants. Surveys, if properly administered, assessed and acted on, may be of some assistance in assessing the quality of SIU investigations. However, they do not take the place of an independent "best practices" review by an external reviewer with expertise in the area of criminal investigations. While investigative standards might vary in some respects, this is not a reason to dismiss the value of external review altogether. Comparative analysis would likely assist the SIU in determining whether its practices are up to date and well adapted to its needs, and it could dispel concerns about the thoroughness and effectiveness of its investigations.
- 287** While our investigation has highlighted a number of areas where I believe that the SIU may improve, it might well benefit from peer review to ensure its practices reflect high standards in the investigation of major crimes. Ideally, such a review would be conducted by a civilian oversight agency experienced in the criminal investigation of police – such as, for example, the Police Assessment Resource Center.⁸²

⁸¹ See Special Investigations Unit, "Planning Meeting" (*Minutes of Meeting*) 18 Nov 2004 at 2. Out of 61 reviews sent out between 2003 and mid-2007, roughly 80% were returned.

⁸² The Police Assessment Resource Center has successfully provided assistance to police services in the US and abroad regarding their internal investigative practices. It has been able to identify systemic issues such as delayed interviews, investigator bias, missing evidence and inadequate documentation, which compromised the credibility of police internal investigations, and recommended improvements. See *PARC Report, August 2003*, *supra* note 55, as well as Police Assessment Resource Center, "The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths - First Follow-Up Report" (Los Angeles, CA: PARC, 2005), online: Police Assessment Resource Center <http://parc.info/client_files/Portland/Follow-up/1%20-%202005%20Portland%20Report-Final.pdf> (last accessed: 17 July 2008) [*PARC Follow-Up Report, August 2005*].

288 Accordingly, I am making the following recommendations with respect to the thoroughness of the SIU's current investigative process:

The Special Investigations Unit should ensure that investigators with specialized sexual assault training are deployed to investigate sexual assault incidents, and that the First Nations Liaison receives intensive sexual assault training on a priority basis. (Recommendation 8)

The Special Investigations Unit should subject its practices and policies to peer review to ensure they reflect high standards in investigation of major crimes, including homicides, and seek to adopt best practices suited to its mandate. (Recommendation 19)

Charges and Beyond

289 Once the SIU has concluded an investigation, the Director must decide whether or not charges are warranted. Historically, the charge rate at the SIU has been very low. Typically, only a few charges are laid each year. From its inception in 1990 to October 2007, the SIU had opened and closed 2,771 cases – resulting in a total of 73 charges. Of those, 17 charges were laid since February 2003.

290 Critics have argued that the low charge volume is evidence of incompetence or pro-police bias on the SIU's part, but it is simply not reasonable to judge the SIU based on charge rate alone. The charge rates have been relatively consistent for many years, and independent criminal investigation cannot be reduced to a mere numbers game. It is the quality of investigations, not the quantity of charges, that is the true measure of the SIU's competence. In any event, even when the SIU does lay charges, this does not necessarily mean an officer will be prosecuted or convicted.

291 Many charges laid by the SIU never make it to trial. In 2004, it was noted that of 50 charges that had been laid by the SIU up to April 2001, 14 were never tried – either due to Crown withdrawal or a judicial discharge at the end of the preliminary inquiry.⁸³ Judges and juries appear reluctant to convict police officials,⁸⁴ and the situation is compounded by the fact that the Director of the SIU operates under different rules than Crown prosecutors.

⁸³ Ian D. Scott, "Addressing Police Excessive Use of Force: A Proposal to Amend the Mandate of the Special Investigations Unit" (2004) 49 Crim. L.Q. 349.

⁸⁴ *Ibid.* In his article, Ian Scott notes that the rate of conviction for all SIU charges was about 16%, that no homicide charge had ever led to a finding of guilt by a jury, and that in the first 10 years the

- 292** The Director is required to charge an officer if there are reasonable grounds to believe an offence has been committed.⁸⁵ But it is the Justice Prosecutions Unit of the Ministry of the Attorney General that is responsible for prosecuting justice officials. Justice Prosecution attorneys consider a broader range of factors when deciding whether or not to proceed with a criminal prosecution. It is not simply a question of whether or not an officer's conduct was unlawful. They also must take into account whether prosecution is in the public interest and whether there is a reasonable prospect of conviction.
- 293** The dichotomy created by the different tests applied by the SIU and Crown prosecutors has at times led to instances where the Director charges an officer, only to have the Crown decide not to proceed. This results in charged officers going through the indignity of being arrested, then having the matter dropped with no opportunity to plead their case in court. From the vantage point of police officials, the SIU appears overzealous to have pursued charges in the first place, while families of the civilians involved, as well as the general public, are often left confused, unsatisfied and disillusioned.
- 294** A March 2005 incident involving the OPP illustrates this gap in expectations and outcomes. An officer stopped a motorist for driving erratically. While speaking with the officer, the driver became verbally abusive. The driver resisted arrest and an altercation took place. The two men fell into a ditch and the driver sustained a broken clavicle. The SIU's theory of the case was that although the driver might have been belligerent, he had not threatened the officer, therefore the arrest was unjustified and the officer had technically committed assault. Director Cornish requested an opinion from Justice Prosecutions concerning the case. While agreeing that the initial arrest of the motorist was unlawful, Justice Prosecutions did not consider prosecution of the officer to be in the public interest. It suggested that the scenario would be better addressed through the disciplinary process or as a training issue. SIU officials felt quite strongly that the officer should be charged. They met with Justice Prosecution attorneys to discuss the matter, but failed to reach agreement.
- 295** The SIU had little choice in the circumstances. In accordance with his statutory mandate, the Director was required to lay charges and did so. In turn, the Crown prosecutor, as Justice Prosecutions had warned, withdrew the charges, on the basis that prosecution was not in the public interest. By establishing a mandatory

SIU was in operation, only two charges involving excessive use of force had led to convictions. In fact, over a decade ago, an officer was convicted of manslaughter but the conviction was overturned on appeal, and eventually the officer was acquitted.

⁸⁵ *Police Services Act, supra* note 5, s. 113(7).

reasonable grounds standard, the legislation creates a situation in which many charges laid by the SIU are doomed to failure.

- 296** Given the realities of criminal prosecution, consideration should be given to changing the statutory standard to enable the Director of the SIU to exercise greater discretion regarding whether or not to charge an officer. To guard against allegations that this would lead to the Director being unduly influenced by the opinion of Crown prosecutors, or to improperly shield police officers from criminal consequences, there should be a requirement that the Director publish reasons for not pursuing a charge in circumstances where it would otherwise be justified. It has also been suggested that in cases where it is clear that unlawful conduct has occurred but prosecution is not warranted, the Director should have the ability to directly refer the matter to the Civilian Commission on Police Services to be dealt with in disciplinary proceedings,⁸⁶ which seems sensible.
- 297** At present, the SIU director follows a practice of referring cases where it appears charges might be warranted to Justice Prosecutions for an opinion on the viability of prosecution. He explained that this is a specialized area of criminal expertise and that Justice Prosecutions can provide valuable insights. This is not unreasonable – it is useful for the SIU to know the position the Crown would likely take in the event of a charge, and to be alerted to any evidentiary or legal issues that might have been overlooked. A similar approach is employed by the Independent Police Complaints Commission in the U.K., which routinely consults with Crown prosecutors.
- 298** Many of the SIU investigators we interviewed expressed concern about this. They suggested that the Director had been improperly influenced by the Crown and had applied the wrong test in deciding whether to lay charges. This is apparently not a new complaint at the SIU. In spring 2007, Director Cornish addressed internal rumours that he had failed to lay charges where they had been called for.⁸⁷ However, provided there is no abdication of decision-making authority, consulting with Justice Prosecutions is a practical approach for the SIU to take – as long as it takes place openly and transparently. The onus should be on SIU management to make it clear what its purpose is in referring matters to Justice Prosecutions. This might serve to lay to rest the rumours and innuendo that pervade the Unit.
- 299** In 1995, the Commission on Systemic Racism in the Ontario Criminal Justice System suggested that there be formal public guidelines, developed in

⁸⁶ *Supra* note 83 at 371-372.

⁸⁷ Special Investigations Unit, “Managers’ Meeting Minutes” (*Minutes of Meeting*) 4 Apr 2007.

consultation with various stakeholders, allowing the Director to consult with Crown attorneys about laying charges.⁸⁸ At a minimum, the SIU should be providing more information concerning its communications with Crown prosecutors, and making it clear on what basis advice has been sought. While recognizing that the SIU is entitled to rely on solicitor-client privilege, ideally, where the Director ultimately decides not to proceed with a charge after consultation with Justice Prosecutions, it would be useful if his reports clarified what impact, if any, Justice Prosecutions' advice has had on his decision.

300 In addition, I believe that the Director should make information concerning the practice of consulting Justice Prosecutions publicly available, to ensure that the SIU's decision-making process is as transparent as possible.

301 Accordingly, I am making the following recommendations:

The Director of the Special Investigations Unit should have the discretion to not lay criminal charges on public interest grounds, but should be required to make such decisions and the reasoning behind them public. The Director should have the discretion to refer such cases directly to the Ontario Civilian Commission on Police Services for consideration under the disciplinary process. (Recommendation 36)

The Director of the Special Investigations Unit should make information public concerning the practice of consulting Justice Prosecutions on the viability of prosecution. (Recommendation 23)

What the Public Doesn't Know

302 Transparency is key to maintaining public confidence in civilian oversight of police. However, at present, there is a substantial systemic barrier to informing the public about SIU investigations.

303 During an investigation, the SIU is restricted to making public statements only if they are aimed at preserving the integrity of its investigations. Once an investigation is completed, the Director is required to report the results to the Attorney General. However, the *Police Services Act* is silent regarding public disclosure of the Director's reports.

⁸⁸ *Report of the Commission on Systemic Racism, supra* note 9 at 384.

- 304** In 1989, when the Task Force on Race Relations and Policing first envisioned the concept of an independent investigative body to probe police shootings, public reporting was seen as a necessary component of the process. When Mr. Adams first reviewed the operations of the SIU, he recommended that the Director’s reports – in cases where no charges are laid – be made available to the public. Noting that all parties he had spoken to were interested in this, he observed: “Transparency goes hand in hand with public confidence.”⁸⁹
- 305** In his second report in 2003, Mr. Adams indicated that community groups continued to complain about lack of public access to the SIU Director’s reports. However, he noted that the SIU had adopted the practice of issuing more detailed media releases at the conclusion of non-charge investigations, affected parties were being personally debriefed, and in the case of significant cases, press conferences had been held.
- 306** The SIU’s operational orders provide for contact with affected individuals during its investigations, and for telephone or in-person briefings at their conclusion.⁹⁰ Director Cornish has personally attended such briefings in a number of instances to explain his decision in cases where he has decided not to lay charges. In some cases we reviewed, SIU investigators appeared to have maintained regular communication with the civilians involved in their investigations. In one file, investigators logged more than 200 contacts with a distraught mother whose son had died in police custody. However, it is not the number of contacts but the nature of the information conveyed that is the real issue. While secrecy might be necessary to preserve the integrity of the process pending a Director’s decision, complainants to our Office expressed acute frustration over the SIU’s uncommunicative approach even after investigations were concluded.
- 307** Some complained they were provided with very limited information about the SIU’s investigation and the Director’s conclusions. However, we learned that it is not uncommon for SIU investigators to bring the Director’s reports to meetings with affected individuals and to read them the entire report – editing out any names or information that they consider particularly sensitive. At times, even witness names have been disclosed.

⁸⁹ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 51.

⁹⁰ See *SIU Operations Order 002*, *supra* note 43 at 23 of Appendix; Special Investigations Unit, “Communication and Liaison with Victim-Complainant and/or Next of Kin” (*Operations Order 012*) revised 8 Jun 2000; Special Investigations Unit, “Notification of Directors Decision” (*Operations Order 023*) revised 30 Apr 2001; and Special Investigations Unit, “Attendance of Supervisors at Post-Investigation Meetings with Complainants and/or Affected Persons” (*Routine Communications - Policy Direction Order #2005-06*) issued 24 Mar 2005.

- 308** It does not seem a great leap, then, to suggest that the same information should be available in written form. Individuals who have been upset or traumatized by events are more likely to absorb information if it is provided in writing. This is the approach adopted by the Independent Police Complaints Commission in the U.K., which operates on the working premise that its reports will be made available to complainants. The Commission’s investigators assess the risk of disclosure while compiling information and separately list any materials that may not be disclosed.
- 309** Since the launch of our investigation, the SIU has shown some willingness to move towards greater disclosure to civilians directly affected by its investigations. It is developing a policy for a form of written response to families to be provided at the conclusion of SIU cases.
- 310** It is clearly in the public interest, when the SIU investigates and decides not to charge officers involved in cases of serious injury or death, for the affected individuals and their loved ones to be provided with sufficient information to allow them to understand the reasoning behind the Director’s decisions. In most cases, this would be best accomplished by providing an edited copy of the Director’s report. I suspect that the Unit’s reluctance to disclose information in written form to affected individuals is largely due to fear that the documents would be given to the media. I believe the solution to this is not to restrict information access, but to follow Mr. Adams’ original recommendation and make the reports completely public.
- 311** Police and community stakeholders alike told us they felt the Director’s reports should be available to them. At present, the Director does write to the head of the police force, reporting on his conclusions, but these letters do not contain any detailed discussion of the evidence. From the perspective of the police, access to additional information would assist with administrative investigations and evaluating police practices and policies. The public at large would also benefit, since secrecy only breeds suspicion.
- 312** Although the SIU now issues press releases in about one-third of its cases, and since 2004 it has provided brief case summaries on its websites, these contain only basic facts about the incidents and the Director’s conclusions. This leaves the public to fill in the blanks. There is no explanation of the basis for the Director’s decisions and no analysis. This information gap serves to fuel speculation concerning the competence and integrity of the SIU’s investigations. One SIU investigator we interviewed summed it up this way:

How can you say that we’re transparent and how can you say that we’re

out there to show everybody that the police are accountable when we ... keep everything a secret at the end?

- 313** To date, public and media attempts to obtain reports from the SIU and/or the Ministry of the Attorney General under the *Freedom of Information and Protection of Privacy Act (FIPPA)* have been unsuccessful. Access has been blocked on grounds that the reports were prepared in the course of law enforcement, and disclosure would invade personal privacy. While it could be argued that disclosure of SIU reports might be justified on the basis of a compelling public interest or other exemptions, government officials maintain that confidentiality is necessary. In a June 2006 Ministry briefing note, the present practice was justified by the fact that Director's reports contain personal information, quotes from witnesses who have received assurances of confidentiality, forensic test results, extracts from police documents and the Director's candid assessments. The SIU has also strongly supported keeping its reports confidential, and claimed that mandatory disclosure would undermine its ability to discharge its investigative mandate.
- 314** In its October 2007 submission to us, the SIU emphasized that disclosure of investigative information might jeopardize the fairness of related investigations or proceedings, could have a chilling effect on potential witnesses, and that editing reports to mitigate these consequences would require resources that the SIU doesn't have. It also said redacted reports might still be used to link information to specific individuals, thereby contravening *FIPPA*.
- 315** While the points raised by the Ministry and the SIU in support of confidentiality of Director's reports have merit, I am not convinced that the SIU's reports cannot be crafted to better balance concerns regarding the integrity of the SIU process and personal privacy, and the public interest in ensuring that the process is as accountable and transparent as possible. The public is entitled to more than a brief set of facts and a stark conclusion. The rationale for the Director's decision should also be apparent. This does not necessarily require full recitation of the evidence with reference to witness names, but it requires more than bare-bones disclosure.
- 316** As for the assurances of confidentiality the SIU provides to witness officers, the law requires that they co-operate. If officers fail to comply with their legal obligations, steps should be taken to challenge resistance, not to placate it. Concerns about violations of *FIPPA* can also be addressed, as Mr. Adams suggested, through legislative override.⁹¹ If resources are an issue, this can be

⁹¹ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 63-64.

dealt with through the normal budgetary process, and should not be allowed to stand in the way of increased transparency.

- 317** Public reporting should be a seamless process, flowing from SIU reports through to the conclusion of police administrative investigations and the outcome of internal discipline proceedings. When civilians are seriously injured or killed at the hands of police, it is critical that the results of the consequent criminal and administrative investigations are exposed to public view – to ensure confidence not only in police oversight, but also in policing itself. That was the intent behind the creation of the SIU. At present, the absence of publicly available explanations for the SIU Director’s decisions only helps feed conspiracy theories by critics who believe the SIU favours or is collusion with police.
- 318** The SIU should operate on the presumption that information is to be made available to the public unless its disclosure would create a serious risk of harm. A considerable number of SIU investigators we spoke to suggested that as long as witness names were not disclosed, the Director’s full reports should be released publicly. I am confident that if the Director of the SIU were to be expressly granted discretion to provide more open disclosure, the various interests at stake could be appropriately balanced. My belief is reinforced by the fact that in practice the SIU already provides a substantial amount of information relating to its investigations informally to affected civilians.
- 319** In order to ensure greater transparency and reinforce confidence in the system of civilian oversight of police, I am recommending that:

The Special Investigations Unit be legislatively required to publicly disclose Director’s reports, in cases involving decisions not to charge, subject to the Director’s discretion to withhold information from such reports on the basis that disclosure would involve a serious risk of harm. (Recommendation 39)

Until such time as there is a statutory provision requiring disclosure of Director’s reports, the Special Investigations Unit should provide greater information to police officials, affected individuals and the public about the basis for decisions not to charge officers with criminal offences. (Recommendation 21)

Allegations of Pro-Police Bias

- 320** Critics of the SIU, including some complainants to our Office, charge that the

SIU's reluctance to take decisive action in the face of police resistance is a symptom of an underlying systemic pro-police bias within the Unit. They argue that its integrity and credibility is compromised by the very fact that a significant number of SIU investigators are former police officers. It is important to remember that the SIU had its genesis in public suspicion of police motives. It has been noted that:

It is an open and notorious fact that the Special Investigations Unit was created to allay an ongoing sentiment within the citizenry that the police could not be counted upon to effectively investigate their own.⁹²

- 321** In the minds of many community stakeholders, the continuing presence of a large number of former police officers at the SIU is a disturbing remnant of the past.
- 322** The *Police Services Act* expressly contains provisions directed at mitigating police influence on the SIU. No serving police officers can act as investigators for the SIU, the Director cannot come from a police background, and the SIU investigators are prohibited from “participating” in investigations relating to members of a force that once employed them.⁹³ Even with these precautions, though, the influence of police culture at the SIU is apparent.
- 323** While a bare majority of the SIU's full-time investigators today are from civilian backgrounds (seven out of 12), much of the day-to-day work conducted by the Unit is done by 30 “as-needed” investigators located throughout the province – 24 of whom are former police officers. In addition, nine of the 10 forensic investigative technicians are former officers, as well as all of the supervisors and the Executive Officer. The fact that former police are carrying out the bulk of the work in SIU investigations does not automatically mean such investigations are improperly biased, of course. In fact, during our investigation, we were unable to find any objective evidence that any individual case had been tainted by improper motives. However, the presence of so many former officers in the SIU presents significant challenges to maintaining the perception of independence.
- 324** We found one instance where a former OPP officer participated directly in an OPP-related investigation. He was stationed to watch over the sealed body of an individual shot and killed by a member of a local OPP detachment. When the Executive Officer became aware of this incident, he acknowledged this had been inappropriate.

⁹² *R. v. Scully* (10 May 2006), Toronto (Ont. Ct. J.) (Ruling of Honourable Justice P. Taylor on Application for Production of SIU Documents) at 13.

⁹³ *Police Services Act*, *supra* note 5, ss. 113(3), 113(6).

- 325** The Executive Officer himself is a former member of the Halton Regional Police Service and four of his relatives work for the service now. The Executive Officer told us he has refrained from involvement in cases involving members of his former service where there is a clear conflict of interest. However, he indicated that in other cases involving Halton he is briefed and will at times give direction to investigative staff. In one Halton case we reviewed, the Executive Officer sat in on an April 2004 discussion about whether or not to release police communication transcripts to a subject officer's counsel. The Executive Officer pointed out that his predecessor had followed a similar practice. In the case of investigative supervisors, cases are transferred to someone else if it involves their former force. The same is not true of the Executive Officer, who occupies a single incumbent position.
- 326** The propriety of allowing a senior official to be privy to information and in a position to influence the investigative process in a case involving his former force is highly questionable. Even if a similar practice was followed in the past, it does not make it right. The SIU should immediately consider ways in which to eliminate the Executive Officer's involvement in cases originating from the Halton region.
- 327** The SIU has also had its senior accident reconstructionist conduct peer reviews of all accident reconstruction reports, regardless of whether they involve his former force. Recently, when concerns were raised about this practice, the SIU began looking into the definition of "participating" in the Act with regard to this type of work. In considering this issue, the SIU must keep in mind that any potential for perception of influence should be avoided. The issue is not one of individual but of institutional integrity. Although the SIU might be satisfied that the conduct of individual staff members is beyond reproach, it must ensure that its organizational structure and practices do not give rise to perceptions of bias.

Rank and File: Composition of the SIU

- 328** When the prospect of civilian oversight of police shootings was first debated in Ontario, community advocates stressed the negative optics of police investigating police. It was suggested that while such investigations might be perfectly fair, "there is no way that they could look fair."⁹⁴ While some proposed that to be truly independent the SIU should be composed entirely of civilians, others

⁹⁴ *Report of the Race Relations and Policing Task Force, 1989, supra note 2 at 147, quoting Alan Borovoy, General Counsel for the Canadian Civil Liberties Association.*

suggested that skilled police criminal investigators were necessary to ensure the competence of a police oversight body.⁹⁵

- 329** During our investigation, we heard similar contrasting views expressed. Most police officials we talked to tended to emphasize the need for specialized skills and training that, in their view, could only be gained through police experience – although some conceded that properly trained civilians could become effective investigators. On the whole, community representatives and SIU complainants were suspicious of the SIU’s composition, and they tended to question its ability to conduct investigations impartially.
- 330** In its written submission to us, the SIU went to great lengths to challenge the allegation made by a number of complainants to our Office that its investigations were biased. It pointed out that since February 2003 there have been no court or other proceedings in which claims of bias have been brought against the SIU, and that no court or coroner’s jury has ever expressed concern about its objectivity. This is not altogether surprising. The courts and coroner’s juries are unlikely to comment on something like pro-police bias unless it is specifically raised, and squarely within the mandate of the proceedings. Launching court or tribunal proceedings is also not a recourse practically available to most people – and in any event, it is very difficult to establish “bias” in the legal sense. That being said, it is clear that there are institutional features of the SIU that render its structure vulnerable to allegations of pro-police bias. Since public perception plays a critical role with respect to the credibility of police oversight, such concerns cannot be summarily discounted. As one of the members of the SIU Director’s Resource Committee remarked:

If the process is perceived as being unfair, or if it is perceived as being biased, then that in itself is a problem – even if the perceptions are incorrect.

- 331** Even some of the SIU investigators we interviewed acknowledged that if the general public were aware of the composition of the SIU, it might leave the impression that the relationship between the SIU and the police was too cozy.
- 332** Not only is the SIU investigative staff made up primarily of former police officers, but those officers tend to be white males in their 50s and older, who have retired from policing. All of the SIU investigative managers fit into this category.

⁹⁵ The Canadian Civil Liberties Association for instance, proposed that police shootings be reviewed by a body composed entirely of civilians: see *Report of the Race Relations and Policing Task Force, 1989*, *supra* note 2 at 148.

As one SIU supervisor put it in terms of public relations, “it’s a hard sell when you’ve got the retired police investigating the police.”

- 333** Back in 1989, the Task Force on Race Relations expressed concerns about the largely white male composition of police forces at the time, and the white male dominance of command positions.⁹⁶ It recommended changes in police hiring and promotional processes and the establishment of employment equity programs. While changes in hiring practices in the policing community since that time have led to more diversity at the local policing level, this has not filtered through to the SIU. This is not to say that older, white, male, retired police officers cannot carry out investigations with integrity and impartiality – only that the SIU is precariously close to perpetuating some of the stereotypes that police forces have worked to dispel. The Adams reports recommended that the SIU recruit qualified investigators from more culturally and racially diverse backgrounds.⁹⁷ The SIU has made efforts to recruit more broadly, but it has experienced some practical impediments.

Roadblocks to Diversity

- 334** One factor that has restricted the SIU’s ability to hire outside the traditional police ranks is the classification system it uses for its investigative staff. When the SIU runs competitions for full-time or “as-needed” investigators, the entry-level skills of ex-police-officer applicants are classified at a higher level than those of civilian applicants. It is also apparently difficult to attract civilians to these part-time positions, which tend to appeal to retired police officers seeking extra income. At times, the representation of former officers from a particular region on the SIU staff has been so great that the SIU has had to restrict applications because of the prohibition against officers investigating their former forces. For all of these reasons, the SIU has tried for more than four years to obtain approval through the Ministry for a new investigator classification system.
- 335** At present, there is only one level of investigator, classified based on fire service job specifications. The SIU has lobbied the Ministry for two classes of investigator to be created – one entry-level and the other more senior. This would enable it to recruit more civilians and allow them to develop investigative experience in-house. Such a classification system would also assist the SIU in its attempts to increase the diversity of its workforce. Given the critical importance

⁹⁶ *Report of the Race Relations and Policing Task Force, 1989, supra note 2 at 60, 62-63.*

⁹⁷ *1998 Consultation report by the Honourable George W. Adams, Q.C., supra note 7 at 65.*

- of the SIU's mandate, and the fact that perceptions of its effectiveness ultimately reflect on the confidence of the community in policing in this province, the Ministry should take all necessary steps to help the SIU become more reflective of the community it serves. If the part-time status of the majority of the SIU's investigators is an impediment to hiring civilians, alternatives such as expanding the number of full-time positions should also be considered.
- 336** The Police Ombudsman of Northern Ireland has an investigative staff comprised of 50% civilian investigators and 50% investigators from policing backgrounds. In conjunction with the University of Portsmouth, as part of a deliberate strategy to increase the number of civilian investigators, the Ombudsman has developed an accredited program to train civilians on how to conduct criminal investigations. The program takes two years to complete on a part-time basis. While the SIU has not explored the possibility of a formal training program of this nature, such an initiative might also assist it in reaching its goal of a more diverse workforce.
- 337** Both the SIU's Director and Executive Officer maintained that the SIU should always have some investigative staff with intimate knowledge of police processes and procedures. Ministry officials also expressed the view that the SIU could not investigate potential homicides without having experienced homicide investigators on its team. While police experience no doubt assists the SIU in many respects, I believe it should strive to increase the representation of civilians on its staff using whatever means are available.
- 338** Full-time investigators and supervisors are hired after full competition, but there are still occasions when the SIU recruits "as-needed" investigators and forensic identification staff informally, without an advertised process. This practice should only be used sparingly, where circumstances do not permit a full competitive process from taking place. Hiring without the benefit of an established and transparent process leaves the SIU open to allegations of bias and impropriety both from outside and from within. During our investigation, we heard concerns about the recruitment process, particularly as it existed prior to Director Cornish's administration. It was suggested by some that the preponderance of former police officers hired from Hamilton, Halton and Guelph on the SIU staff reflected a practice of inappropriate preferential hiring, not only slanted towards hiring former police, but of hiring only from SIU managers' former forces. The more open the recruitment process, the less likely that hiring decisions will be subject to challenge or speculation as to their propriety. Using community members and police officials on SIU hiring committees would also assist in enhancing the transparency and accountability of the hiring process.
- 339** The fact that all of the SIU's investigative managers are white male retired police

officers leads to substantial imbalance in the SIU's structure that should be redressed as soon as possible. A number of SIU staff told us they felt this management composition contributed to the perpetuation of police/paramilitary customs at the SIU. The SIU must outgrow this police-based heritage if it is to evolve and achieve its full potential as a civilian oversight body. While Director Cornish has attempted to replace some of the terminology used at the Unit for just this reason, the strong cultural ties binding the SIU to the police community – to the detriment of the public perception of both – go far beyond mere words.

The “Blue Brotherhood”

- 340** The more the SIU looks and acts like a police force, the more likely that it will be perceived to be a police force by the public. Even the SIU's dress code is reminiscent of police requirements.⁹⁸ Uniformity of appearance is stressed, investigators are expected to wear suits or similar apparel, and detailed specifications are provided concerning the acceptable length of hair and facial hair. The SIU investigators are essentially to be dressed and groomed to look like police detectives. It is a strong symbolic link to the police community, and one that is not lost on civilians dealing with the SIU.
- 341** One person who mentioned this issue to us was Tom Walker, whose 41-year-old brother Robert died after police pepper-sprayed and restrained him while he was suffering from a drug overdose. Mr. Walker has used his family's experience with the police and SIU to advocate for reforms. While he has praise for the SIU investigators assigned to his brother's case, he also expressed general concerns about their “cop-like” appearance, and the impressions they leave on civilian witnesses who observe their interaction with police officials.
- 342** A number of former police officers now working as SIU investigators spoke candidly to us about the effect of their appearance and demeanour. One said: “When I walk into a police station... I am a cop walking in.. I don't even have to say anything, they just take a look at you and they know the way you walk, the way you talk...” He also acknowledged: “I'm a cop... even though I'm not a policeman anymore... you can't take the police out of the guy... it just doesn't work that way.”
- 343** Some of these officers stressed that their background assists them in putting police witnesses at ease and gaining their confidence. But by the same token, one

⁹⁸ Special Investigations Unit, “Office Protocol” (*General Order 004*) revised 5 Feb 2002 at 4-5.

can understand the perspective of some civilians who believe such strong bonds with police could influence the SIU investigative process. University of Toronto Associate Professor of Criminology Scot Wortley described this as follows:

There's a popular saying that once a cop, always a cop, ... the 'blue brotherhood' is very strong and ... once you've been a member of that fraternity, you are always a member. I know that there are certain safeguards built into the SIU system ... but it is still a concern... the optics to certain segments of the population that are already cynical and skeptical about the police and already perceive that bias exists are going to look at that situation and say these are police investigating police ... and that they are either consciously or unconsciously going to be biased in favour of the police...

- 344** It is difficult to quantify the potential impact of prior police service on investigative objectivity in SIU cases, but at some level it is bound to have some effect. One SIU investigator described it as follows:

It's what you bring from your work experience, or your life experience, and a lot of them have had very similar experiences. So if you work for 30 years arresting ... the same sort of people and you decide that those sorts of people are a certain way, its hard to get out of that mindset. And if you work for 30 years with certain types of people and you think that they are terrific, it's hard to get into the mindset that once in a while someone can do something that is not ideal or is criminal. ... There are some that are not influenced by pre-set notions, but I would say the majority of them are.

- 345** A number of the SIU investigators we interviewed told us they have heard their ex-police colleagues making pro-police remarks – saying they would “never charge a police officer,” for instance – or stressing their past police experience when dealing with police officials. Some of these investigators are reportedly known to ask police officials leading questions, and even to encourage them not to worry about cases under investigation. We also heard that inappropriate, derogatory terms originating from the police community have entered into the SIU lexicon and are used by some to describe such individuals as female prostitutes (“crack whores”), those with criminal records (“shit rats”) and those from a particular racial and cultural background (“Jamaicans” – in reference to anyone black assumed to have a criminal record). As well, we learned that one “as-needed” SIU investigator continues to be a life member of the Ontario Association of Chiefs of Police.

- 346** Some SIU investigators from policing backgrounds even display their association

with their former colleagues overtly. We were told many of them wear police watches, ties, and “thin blue line” rings. Our investigators observed this first-hand when some SIU investigators arrived at our offices for interviews wearing rings with police insignia. One SIU investigator commented on the effect of this display of police symbols:

... there can be a lack of objectivity because ... it ... is a brotherhood and when you wear your police ring ... the blue ring ... with the blue line on it, you are sending a message [to police officials]... “I think that you are safe, buddy, I’m one of you...”

- 347** Other SIU investigators we interviewed expressed an opposing view, stating that in their experience, it is not pro-police bias that is an issue, but an anti-police animus displayed by a few SIU investigators from civilian backgrounds.
- 348** While without exception the SIU investigative staff professed a strong commitment to their work, and I do not doubt their sincerity, I am concerned that the SIU has tolerated symbolic displays of police solidarity that undermine the principles upon which the Unit was founded. It has diligently conducted cultural sensitivity training for its staff, but it has overlooked some of the more obvious vestiges of police culture that simply should not be tolerated in a civilian police oversight body. The SIU must take firm steps to eradicate the more glaring vestiges of police association amongst its staff, and move the organization more firmly away from the police customs and routines that it tends to exhibit. Unfortunately, such a culture shift may not be possible until the investigative management at the SIU contains some civilian representation.
- 349** Accordingly, I am making the following recommendations addressed at enhancing the Unit’s credibility:

The Special Investigations Unit should ensure that no former police officers, including the Executive Officer, are placed in a position in which they are dealing with cases involving their former force in any capacity.
(Recommendation 9)

The Special Investigations Unit should ensure that none of its investigative staff wear or otherwise display symbols suggesting that they identify with police or demonstrate their former police membership or status.
(Recommendation 10)

The Special Investigations Unit should take immediate steps towards ensuring civilian representation within investigative management.

(Recommendation 11)

The Special Investigations Unit should ensure that it hires investigative staff through open competition and should seek to have police and community representation on hiring panels. (Recommendation 12)

The Ministry of the Attorney General should immediately take steps to ensure that the Special Investigations Unit is provided with a classification system which enables it to recruit more civilian investigative staff. (Recommendation 28)

Too Close For Comfort: SIU and MAG

- 350** Another relationship that has had a significant influence on the SIU’s culture is its connection to government administrators. In order to enhance the SIU’s credibility and structural integrity, responsibility for the SIU was shifted in April 1993 from the Ministry involved with policing in Ontario (then the Solicitor General), to the Ministry of the Attorney General. Mr. Adams considered but did not go so far as recommending that the SIU be given its own constituting statute, and more of an independent identity.⁹⁹ At present, the SIU is relegated to the status of an add-on agency referred to briefly in an Act primarily focused on the provision of police services in the province. It operates with close links to the Ministry of the Attorney General.
- 351** Since the SIU began its operations in September 1990, there have been 13 Directors, many appointed for brief interim periods. Between 1990 and June 7, 1998, only three of 10 SIU Directors had served more than a year. Two served just under two years, and one just over two years. To address this lack of stability and continuity in SIU management, Mr. Adams recommended the Ministry ensure that the tenure and compensation of the SIU Director were commensurate with the responsibilities of “this important office.”¹⁰⁰ By the time the Unit was reviewed again in 2003, the serving Director had been appointed for a five-year term. He left after serving four years, and was followed by a Director who went on to take an appointment as a provincial court justice after a year. Mr. Cornish served as Director on an interim basis for seven months, and then was appointed for a two-and-a-half-year term after an open competition. His term was extended in

⁹⁹ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 54.

¹⁰⁰ *Ibid.* at 67.

November 2006. When his appointment is up in October 2008, he will have served four-and-a-half years as SIU Director.

- 352** The Director’s position is classified as a Crown attorney, and reports to the Deputy Attorney General. Many of the SIU’s Directors have come from the Crown attorney pool at the Ministry of the Attorney General. Some SIU Directors – including Mr. Cornish – have taken the position on a secondment basis, returning to their Crown duties when their appointment has ended. Critics of this practice suggest that continuing to hold the status of Crown attorney might improperly influence an SIU Director’s decisions. On the other hand, the SIU argues that seconded Directors have greater security since they can return to the Ministry regardless of the decisions that they render. Provided adequate institutional safeguards are in place, allowing a Crown attorney to operate as a Director of the SIU on a secondment basis is not necessarily inconsistent with the independent status of the Unit. Although Crown attorneys routinely deal with the police, they are required as a matter of course to exercise independent decision-making authority.
- 353** The Memorandum of Understanding entered into between the Ministry and the SIU in October 2006 was meant in part “to illustrate, recognize and reinforce the independence of the SIU and its Director from the government, and indeed, from any group, agency or organization.” One of its guiding principles is that “the Director’s decisions must be made and be seen by the public to be made independently and impartially.” It specifies that the SIU Director may retain the office of Crown attorney but requires that the Director refrain from exercising any function associated with the office of Crown attorney while acting as Director of the SIU, as well as undertake not to compromise the Director’s statutory responsibility.
- 354** The SIU is well aware of the importance of distancing itself from the Ministry to ensure proper public perceptions. In its own communications, it stresses its independence from the Ministry. Its general orders instruct staff to describe it as an independent entity and not part of the Ministry.¹⁰¹ The SIU has described its connection to the Ministry as follows:

... the relationship between the SIU and the Attorney General involves a sensitive balancing act in which the SIU is left to conduct its criminal investigations free from any political influence or interference, at the same time cognizant of its duty to account for its activities to the Attorney General.

¹⁰¹ *Supra* note 98 at 1-2.

- 355** Nevertheless, it is difficult to ignore the connections between the SIU and the Ministry. It is reliant on the Ministry for administrative and technical assistance and support. It consults with the Ministry on a variety of financial, human resources, internal audit, technological, facilities management, policy and administrative matters, and is dependent on its expertise. For instance, when it wanted to conduct an opinion poll in spring 2005, it sought approval of the Ministry. While Cabinet office reminded the Ministry that the SIU was independent and approval was not required, the SIU scrapped this project when the Deputy Minister's office expressed reservations about it. When two SIU supervisors wished to job-share, they had to await Ministry consent. When the Unit was overwhelmed with its burgeoning workload in the summer of 2007, it borrowed a Ministry counsel to assist with report writing.
- 356** We were told repeatedly by senior SIU and Ministry officials that while the SIU has administrative links to the Ministry, and depends on it for some operational supports, it carries out its investigations independently and the Director's decisions as to whether or not to charge officers are made without any input or interference from the Ministry. However, there is one critical area in which the relationship between the present Director of the SIU and the Ministry of the Attorney General falls short in terms of independence.
- 357** In February 2003, Mr. Adams suggested that the independence of the Director's position was reinforced by the absence of merit pay and associated performance assessment.¹⁰² It is common at senior levels of government for officials to earn a base salary as well as an annual re-earnable lump-sum payment known as "merit pay" or "at-risk pay" based on performance. In the federal government, appointees whose duties and responsibilities require independence are ineligible for performance pay, and this is factored into the base salaries that they earn.¹⁰³ The federal government considers it inappropriate for members of independent organizations to receive financial incentives based on performance.¹⁰⁴ For instance, the Commission for Public Complaints against the RCMP is an independent agency created to ensure that complaints made by the public about the conduct of members of the RCMP are examined fairly and impartially. In

¹⁰² 2003 Review report by the Honourable George W. Adams, Q.C., *supra* note 19 at 72.

¹⁰³ Canada Public Service Agency, "Advisory Committee on Senior Level Retention and Compensation, Fifth Report: August 2002", online: Canada Public Service Agency <http://www.psagency-agencefp.gc.ca/arc/reportsrapports/acslrc-ccmpr-5_e.asp> (last accessed: 17 July 2008).

¹⁰⁴ Government of Canada, "2007-2008 Performance Management Program Guidelines - Heads of Agencies and other Governor in Council (GiC) Appointees", online: Privy Council Office <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=secretariats&sub=spsp-psps&doc=pmp-pgr/hoa-cdo/guide_e.htm> (last accessed: 17 July 2008).

keeping with the Commission's role, the Chair is not entitled to at-risk pay. The courts have recognized that financial incentives can lead to perceptions of executive influence, which should be avoided in the case of independent decision-makers.¹⁰⁵ Independent decision-making does not simply refer to the state of mind of the individual decision-maker, but to the status of the decision-maker in relation to others.

- 358** While the Director of the SIU is not a judge or a chair of an adjudicative tribunal, the position calls for a considerable degree of structural independence from the Ministry of the Attorney General. The Director must maintain a delicate balance between the strong and powerful interests of the law enforcement community and the welfare of community stakeholders. Unfortunately, the independence of the institutional relationship between Director Cornish and the Ministry is no longer reinforced in the manner Mr. Adams had once praised. Under his present arrangement with the Ministry, Mr. Cornish is entitled to merit pay and subject to annual performance assessment.
- 359** Ministry officials acknowledged that it was unusual for an order-in-council appointee heading an independent organization to be performance-managed. They were unaware of any other independent officials remunerated in this manner, and Mr. Cornish is the first Director of the SIU to be evaluated and allocated merit pay. In fact, before he assumed his post, Management Board Secretariat (MBS) staff had advised the Ministry of the Attorney General that as an order-in-council appointee, Mr. Cornish would be required to resign his position of Crown attorney before assuming office. The prospect of him continuing to receive pay for performance while acting as Director of SIU also initially met with some resistance. An internal Ministry e-mail from February 15, 2005 states that MBS lawyers “flipped out” and were “discombobulated” when the issue was raised with them and indicates that someone at the Ministry would “let him know it’s no dice on that front...”
- 360** But evidently the concerns of the lawyers did not hold sway, and it was decided that Mr. Cornish would be entitled to incentive pay. One Ministry official advised that if Mr. Cornish had not received this entitlement, he would have been financially disadvantaged when he returned to his Crown attorney position. The Ministry did not consider the possibility of structuring his salary to take this into account, as is done by the Privy Council of Canada when setting remuneration for its independent agencies. What is even more disturbing is the total absence of any set objective guidelines to ensure that Mr. Cornish's performance was not assessed based on improper considerations.

¹⁰⁵ *R. v. Valente*, [1985] 2 S.C.R. 673 (S.C.C.); *R. v. Généreux*, [1992] 1 S.C.R. 259 (S.C.C.).

361 We were advised that there was no formal performance evaluation document for him, but that the Deputy Attorney General consulted with the two Assistant Deputies having most contact with the SIU. In an October 18, 2006 briefing note recommending re-appointment of Mr. Cornish and extension of his term of office, it was noted that he had received the highest rating possible for senior managers that year. An Assistant Deputy Attorney General consulted in the evaluation process explained that this rating was based on the fact that Mr. Cornish had taken on a number of difficult and long-standing administrative issues at the SIU, namely outreach and relationship building.

362 The next year, in May 2007, the Deputy Attorney General sent out an e-mail seeking the advice of two Assistant Deputies regarding Mr. Cornish's performance. One responded that Mr. Cornish had improved morale and labour relations at the SIU, exceeded his comfort zone through public speaking and outreach to staff, launched efforts to set performance measures, and stuck to his budget. The other official added in an e-mail that Mr. Cornish:

...is consistently prompt in notifying designated Ministry officials of incidents. He also keeps us up to date on developments to further good issues management. James and his staff have worked collaboratively with Ministry legal and policy officials to develop a strategy to fairly and properly manage potential steps to oversee the SIU's activities. Overall another strong year.

363 Based on the sparse documentation concerning the performance management process, it appears that from the Ministry's perspective, the key criteria being used to evaluate the SIU Director were staff morale, keeping within budget and keeping the Ministry informed. However, one Assistant Deputy Attorney General we interviewed, who was consulted in Mr. Cornish's performance evaluation, acknowledged that "if we had thought that he wasn't doing a good job in investigation," he would not have received such a good rating. This suggests that there remains potential for an evaluation to cross the line into considerations of the Director's investigative conduct. And that is precisely one of the dangers of performance evaluation of a head of an independent agency – the boundary between administrative/financial issues and investigative practices and outcomes can too easily become blurred.

364 I do not wish to cast any aspersions on the personal judgment and integrity of Mr. Cornish. The fact that he receives pay for performance may have absolutely no impact on his personal decision-making ability. However, this institutional arrangement has the potential of compromising the SIU's appearance of structural independence. It is not unreasonable for a member of the public considering this

situation to conclude that the Director's decisions regarding SIU operations could be influenced by his relationship with his evaluators.

- 365** A leader of an independent organization such as the SIU must be prepared to be a champion of its mandate. Under the Memorandum of Understanding, the Director must ensure that “an open and healthy dialogue is maintained with representatives of police organizations and the public and with communities interested in policing and accountability of the police.” What if the Director firmly believes it is necessary to challenge a police service publicly about its failure to co-operate, but the Ministry sees any attempt to publicize police resistance as “unhealthy”? Or what if the Director requires additional funds in order to properly carry out investigations and needs to advocate for a budget increase, but the Ministry is cautioning fiscal restraint? If the Director were to proceed to act in these circumstances against the Ministry's interests, he or she might very well face a negative performance evaluation for failing to uphold the Ministry's interests. The Director should never be placed in a position in which his personal interests might be seen as conflicting with the agency's needs.
- 366** The present relationship between the SIU and the Ministry is too close for the comfort and the confidence of the public of Ontario. In order to dispel any suggestion that the Director's conduct might be unduly tempered by a desire to please Ministry masters, it is necessary to eliminate any potential for improper influence. Ideally, the Ministry should seek to avoid the revolving door of directors that characterized the SIU in the past. The Director should be appointed for a minimum term of five years, with remuneration set according to fair and objective standards. The Director's remuneration should not fluctuate based on the application of arbitrary and vague criteria or otherwise be subject to formal performance assessment, but should be established based on an objective standard. The practice of providing merit pay to the SIU Director should cease immediately.
- 367** The SIU today is in a state of identity crisis. It is neither fully operationally independent, nor an integral part of the Ministry of the Attorney General. It is incumbent on the government to give it the legislative infrastructure and resources it requires to be truly independent. In the SIU's 2005 “action plan,” it suggested that it be provided with its own statute to clarify its relationship with the Ministry. A November 2005 Ministry briefing note concurred with this recommendation. In order to address the numerous issues that continue to plague the SIU and restrict its development into a fully mature oversight body, the time has come for the SIU to cut its apron strings and stand alone with the support of its own constituting legislation.

368 Further structural changes are also required to reinforce the SIU’s stability. At present, only the Director can report on cases and decide whether or not charges should be laid. When the Director has been absent for a prolonged period, the government has appointed a Deputy Director to take his place on a temporary basis.¹⁰⁶ For example, for three weeks in the summer of 2006, a temporary Deputy Director was sent from the Ministry. In that time he decided 32 cases, including three involving shooting deaths – in contrast to Director Cornish, who had decided 10 cases during the same time frame the previous year. A number of SIU staff expressed concern that the Deputy was issuing decisions on high-profile cases even though he lacked familiarity with the SIU and had not been part of the normal briefing process. In the Duane Christian case (page 37), the Deputy Director issued a terse two-and-a-half-page decision and closed the file without waiting for the subject officer to be interviewed. In another case involving a shooting death of an individual suffering from mental illness, the case was closed in a one-and-a-half-page decision after a 10-month investigation. Both these situations led to concerns being raised within the SIU and by the families of the deceased. The SIU has suggested that given its increasing caseload and in the interests of continuity, a Deputy Director’s position should be created on a permanent basis. This appears to be a reasonable proposition.

369 Accordingly, I am making the following recommendations addressed at enhancing the independence of the Special Investigations Unit:

The Ministry of the Attorney General should immediately cease its practice of performance-managing the Director of the Special Investigations Unit, and should take steps to ensure that the Director’s compensation is objectively set. (Recommendation 29)

The Special Investigations Unit should be reconstituted under new legislation dealing specifically with its mandate and investigative authority. (Recommendation 32)

There should be legislative provision for the Director of the Special Investigations Unit to be appointed on a five-year renewable term, with compensation established on an objective basis and not dependent on performance. (Recommendation 40)

¹⁰⁶ As there is no provision in the *Police Services Act* for the appointment of a Deputy Director, the appointment was made in the past under subsection 28(o) of the *Interpretation Act*, R.S.O. 1990, c. I.11, which generally authorized the appointment of a deputy. The general power to appoint a deputy can now be found under subsection 77(b) of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F.

There should be legislative provision for the appointment of a Deputy Director of the Special Investigations Unit through order in council. (Recommendation 41)

An Introspective Journey

- 370** Since 2003, the SIU has been plagued by labour-management problems. During his administration, Director Cornish has made quieting the SIU's internal working environment a priority. When he first arrived at the SIU, he made a concerted effort to tackle morale problems, which at the time focused on a grievance relating to the introduction of the afternoon shift as a cost-saving measure. For years, Director Cornish has concentrated on encouraging staff to work together to reflect the values of "trust, respect and communication." As a result of his efforts the SIU established a new motto – "One Law" – and revitalized its "Investigator's Creed," which states such basic principles as the importance of eliminating personal bias, exercising integrity, displaying sensitivity, investigative thoroughness and accountability, respect, co-operation, and doing the right thing.
- 371** The afternoon shift dispute was settled with the assistance of a mediator in October 2006. A joint employer-union committee was also set up as part of that settlement to consider various matters affecting the organization. As part of his effort to "institutionalize open communication," Director Cornish also has informal "coffee meetings" every two weeks, where he, a supervisor or the Executive Officer meets with representatives of the Union.
- 372** In the spring of 2007, Director Cornish launched an initiative called "the balanced scorecard." With financial assistance from the Ministry, the SIU retained a consultant to facilitate this process, which involves development of a shared set of values, a vision and mission, policies, performance measures, learning plans and training. In the fall of 2007, SIU staff worked on finalizing the organization's mission, vision and values. A "gallery of ideas" was also created, identifying nine strategic themes to form the basis for the SIU's objectives, initiatives, measurable targets and eventually action plans.¹⁰⁷ Director Cornish describes the "balanced scorecard" approach as a journey rather than a destination. Theoretically, once it has moved through the different stages of this intensely introspective process, the SIU's external relations and investigative quality will be enhanced. He

¹⁰⁷ The strategic themes developed were: Two-Way Communication; Enhance Transparency; Outreach Communication; Empowerment; Quality, Quantity and Timeliness of Investigations; Creating 'One' Investigative Team; Performance Plans and Appraisals; Learning and Development; and Investigative Process.

emphasized that the SIU is engaged in a collaborative effort. Major decisions regarding policy changes and equipment purchases are made through consultation, continuous dialogue and consensus at the union-management committee, and the SIU's managers are being trained to adjust their style to a more facilitative model. Considerable internal staff training has also focused on individual insights and personal interaction.

373 Despite these dedicated and genuine efforts at eliminating internal strife, however, our investigation heard from many SIU staff that morale problems persist. Several were skeptical of and even bemused by the “balanced scorecard” process, which one staff member referred to as “good, fuzzy, political stuff.” While some staff felt the SIU’s culture was slowly changing for the better, others described its internal dynamics as anywhere from “dysfunctional” to “rotting and crumbling” to “poisonous and unhealthy.” Another staff member suggested that the emphasis on collaborative decision-making had resulted in acute “analysis paralysis,” with no one stepping up to take the lead when required. This is not an uncommon phenomenon when an organization manages by committee.

374 I do not want to sound overly pessimistic or skeptical of the SIU’s attempts at improvement. However, I have too often seen organizations fall into the trap of expending considerable time and resources to arrive at “mission statements” and “critical paths” for decision-making that never result in positive change. As one SIU staff member noted, so far “they are only words on a piece of paper.” In the case of the SIU, its mission is already clearly set out in law. It is required to conduct criminal investigations of incidents of serious injury and death in which police have been involved. It should be ensuring that its staff are trained to investigate, that its policies and practices are directed at doing this effectively and efficiently, and that it monitors its work to assure its quality.

375 The SIU is steeped at the moment in a culture of consensus – and while consensus can be a very good thing, it does not take the place of effective management. What is particularly ironic in the face of all these good intentions is the degree of dissatisfaction that was expressed by many SIU staff regarding management’s failure to deal with the real issues that continue to threaten the Unit’s effectiveness, such as the perceived lack of police co-operation.

376 Accordingly, I am recommending that:

The Special Investigations Unit should refocus its attention from internal collaborative self-analysis towards investigative excellence and ensuring that it takes necessary steps to ensure the co-operation of police services in carrying out its mandate. (Recommendation 20)

The Continuing Evolution of the SIU

- 377** The history of police oversight in Ontario is marked by successive governments reacting reflexively, whenever public controversy erupts. Consequently, government interest in reforming the SIU has tended to be short-lived and incomplete. It took many years and repeated calls for proper funding for the SIU and legislative guidelines for police co-operation before any reform was undertaken. While acknowledging the value of independent criminal investigation of police, governments have sought solutions that reflect a middle ground, and have avoided adopting measures that could be seen as too threatening to the police community. Unfortunately, this approach has not eliminated problems regarding police co-operation, but tended to render them less visible.
- 378** Continuing issues with police resistance are reflective of a system of oversight with too few consequences for non-compliance, and an SIU administration too reluctant to take decisive action. During our investigation, the SIU clung to the passing grade it had received from George Adams in February 2003, and declared there were no longer systemic problems with respect to police co-operation. However, what we found was an organization where it was accepted as routine that notifications of serious incidents as well as police witness interviews would be delayed well beyond the regulatory standard, where disagreements over evidentiary disclosure were left in limbo, and where even its own response to incidents was often slow and less than rigorous. Even more disconcerting, from the display of symbols of police fidelity to the fact that all of its investigative managers and most of its investigative staff are former police officials, was the palpable influence of police culture on the SIU's practices and policies. The SIU was born out of public distrust of police investigating their own. It is critical that the organization move swiftly away from the police ties that continue to hold it back from being a truly **civilian** oversight body.
- 379** In his second report, Mr. Adams emphasized the “importance of the SIU and the need for its continuous improvement.”¹⁰⁸ While some progress has been made over the last decade in resourcing the SIU and implementing regulatory reform, it is clear that further improvement is necessary today to ensure that the public, police and the SIU itself have proper confidence in the system. The SIU is a significant and unique institution in Canadian society. It is an excellent model for criminal investigation of police. But our province should ensure that this

¹⁰⁸ 2003 Review report by the Honourable George W. Adams, Q.C., *supra* note 19 at 75.

“bulwark of democracy,” as Mr. Adams described it,¹⁰⁹ is provided with the legislative structure and the resources it requires to carry out its function effectively and independently. The SIU’s substantial reliance on the Ministry of the Attorney General for administrative and technical support is an impediment to its evolution as an oversight body. The Ministry’s present position of potential influence over the Director, as a result of its performance management practices, conflicts with the Unit’s independent status.

- 380** The SIU was created in the public interest to ensure accountability in policing in this province. However, accountability goes hand-in-hand with openness and transparency. Without knowing the foundation for the Director’s decisions not to charge police officers in cases involving serious injury and death, the public is left to take it on faith that the decisions are reasoned and fair. Affected individuals, the involved officers, police officials and the public are entitled to more. There should be a continuum of transparency in cases involving the SIU, from the Director’s reports to the results of related police internal investigations.
- 381** Ontario’s promise of civilian oversight of police in the context of incidents involving serious injury and death has yet to be fully realized. I have confidence that the established oversight model can still work – and work well. However, the SIU and the Ministry of the Attorney General will have to change their practices, and the government will have to implement legislative reform if the SIU is to achieve its full potential. I believe that government has, at the very least, a moral obligation, to ensure that the institutions it creates are imbued with the structure, resources and tools necessary to fulfill their mandates. The citizens of Ontario are entitled to nothing less.

Opinion

- 382** It is my opinion, in accordance with s. 21(1)(b) and (d) of the *Ombudsman Act* that the Special Investigations Unit’s failure to rigorously encourage compliance with and respond to breaches of regulatory requirements on the part of police officials, to ensure the most effective response to incidents, and to recognize and eradicate practices that undermine its credibility as an independent investigative body is unreasonable and wrong.
- 383** It is also my opinion that the Special Investigations Unit’s practice of not publicly disclosing Director’s reports in cases where no charges are laid is based on a

¹⁰⁹ 1998 Consultation report by the Honourable George W. Adams, Q.C., *supra* note 7 at 62.

practice or rule of law that is unreasonable under s. 21(1)(b) of the *Ombudsman Act*.

- 384** In addition, it is my opinion in accordance with s. 21(1)(b) and (d) of the *Ombudsman Act* that the Ministry of the Attorney General's failure to take steps to ensure that the SIU has necessary regulatory and operational supports to carry out its mandate effectively, and to establish a method of compensation for the Director that reflects the independent status of the SIU, is unreasonable and wrong.

Recommendations

The SIU

Police Non-Compliance with Regulatory Requirements

Recommendation 1

The Special Investigations Unit should require its staff to routinely seek, record reasons for, and notify management of, police failure to promptly and fully comply with legislative and regulatory requirements, including:

- regarding notification of incidents engaging its mandate;
- relating to segregation and requests for police notes; and
- relating to witness officer interviews.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 2

The Special Investigations Unit should ensure that its investigative staff inquire into and record relevant circumstances surrounding police witness segregation and note-taking.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 3

The Special Investigations Unit should ensure that all police delays or other failures in complying with legislative and regulatory requirements are properly analyzed and that rigorous action is taken to ensure compliance including publicizing incidents of non-compliance, and application to the courts for determinative settlement of disputed interpretation.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

SIU Call-Out Practices and Response to Incidents

Recommendation 4

The Special Investigations Unit should ensure that it responds to incidents as quickly as possible through continuous – as opposed to intermittent – call-out of investigative and forensic staff.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 5

The Special Investigations Unit should only delay responding to incidents in exceptional circumstances, and only after facts have been independently verified. When in doubt, the Unit should respond to police notification.

Subsections 21(3)(b), Subsections 21(3)(g) *Ombudsman Act*

Recommendation 6

The Special Investigations Unit should ensure that the closest investigators in the vicinity of an incident are contacted without consideration to whether they are full- or part-time investigators or in a position to incur overtime.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 7

The Special Investigations Unit should revisit its motor vehicle policy coincident with the change in deployment practices recommended above.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 8

The Special Investigations Unit should ensure that investigators with specialized sexual assault training are deployed to investigate sexual assault incidents, and that the First Nations Liaison receives intensive sexual assault training on a priority basis.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Enhancing the Special Investigations Unit's Credibility**Recommendation 9**

The Special Investigations Unit should ensure that no former police officers, including the Executive Officer, are placed in a position in which they are dealing with cases involving their former force in any capacity.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 10

The Special Investigations Unit should ensure that none of its investigative staff wear or otherwise display symbols suggesting that they identify with police or demonstrate their former police membership or status.

Subsection 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 11

The Special Investigations Unit should take immediate steps towards ensuring civilian representation within investigative management.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 12

The Special Investigations Unit should ensure that it hires investigative staff through open competition and should seek to have police and community representation on hiring panels.

Subsection 21(3)(g) *Ombudsman Act*

Witness Interviews**Recommendation 13**

The Special Investigations Unit should require, as a standard, that witness officers be interviewed immediately after a request for interview. Interview delays beyond 24 hours should only be permitted in extreme circumstances, such as substantiated medical incapacity, which should be documented. Delayed interviews should require approval of a supervisor or above.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 14

Witness officer interviews should take place regardless of whether an officer is on or off duty. Special Investigations Unit investigators should attend at officer's homes, hospitals or other locations, in order to ensure timely interviews.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 15

The Special Investigations Unit should not delay interviews of witness officers on medical leave unless satisfactory evidence is provided confirming that it would be hazardous to an officer's health to proceed.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 16

The Director of the Special Investigations Unit should exercise the authority to suspend an officer's entitlement to legal representation at an interview, if the interview would otherwise be unreasonably delayed beyond 24 hours.

Subsections 21(3)(b), 21(3)(g) *Ombudsman Act*

Recommendation 17

The Special Investigations Unit should require its investigators to immediately contact

subject officers and determine if they are willing to be interviewed. Interviews of subject officers should take place as soon as possible.

Subsections 21(3)(g) *Ombudsman Act*

Recommendation 18

The Special Investigations Unit should accord civilian witnesses the same courtesy as police witnesses of receiving a copy of their statements subject to any legitimate concerns about interfering with the integrity of the investigation.

Subsection 21(3)(g) *Ombudsman Act*

Peer Review

Recommendation 19

The Special Investigations Unit should subject its practices and policies to peer review to ensure they reflect high standards in investigation of major crimes, including homicides, and seek to adopt best practices suited to its mandate.

Subsection 21(3)(g) *Ombudsman Act*

Investigative Excellence

Recommendation 20

The Special Investigations Unit should refocus its attention from internal collaborative self-analysis towards investigative excellence and taking the necessary steps to ensure the co-operation of police services in carrying out its mandate.

Subsection 21(3)(g) *Ombudsman Act*

Public Reporting

Recommendation 21

Until such time as there is a statutory provision requiring disclosure of Director's reports, the Special Investigations Unit should provide greater information to police officials, affected individuals and the public about the basis for decisions not to charge officers with criminal offences.

Subsections 21(3)(b), (g) *Ombudsman Act*

Recommendation 22

The SIU should make public significant concerns regarding policing practices and trends such as those relating to the use of Tasers and custodial practices, which it identifies during the course of its investigations.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 23

The Director of the Special Investigations Unit should make information public concerning the practice of consulting Justice Prosecutions on the viability of prosecution.

Subsection 21(3)(g) *Ombudsman Act*

Resources**Recommendation 24**

If the Special Investigations Unit requires further resources in order to implement my recommendations, it should make the appropriate request to the Ministry of the Attorney General.

Subsection 21(3)(g) *Ombudsman Act*

Reporting Back**Recommendation 25**

The Special Investigations Unit should report back to me at six-month intervals regarding the progress it has made in implementing my recommendations, until such time as I am satisfied that adequate steps have been taken to address them.

Subsection 21(3)(g) *Ombudsman Act*

Ministry of the Attorney General**Resourcing of the Special Investigations Unit****Recommendation 26**

The Ministry of the Attorney General should ensure that the Special Investigations Unit has adequate computer technology available to allow it to monitor trends and cross reference cases in order to increase the efficiency and effectiveness of the Unit's investigations.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 27

The Ministry of the Attorney General should ensure that the Special Investigations Unit has the resources necessary to effectively and efficiently carry out its mandate of conducting criminal investigations of serious injuries and deaths of civilians involving police.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 28

The Ministry of the Attorney General should immediately take steps to ensure that the Special Investigations Unit is provided with a classification system which enables it to recruit more civilian investigative staff.

Subsection 21(3)(g) *Ombudsman Act*

Independence of the Special Investigations Unit**Recommendation 29**

The Ministry of the Attorney General should immediately cease its practice of performance-managing the Director of the Special Investigations Unit, and should take steps to ensure that the Director's compensation is objectively set.

Subsection 21(3)(g) *Ombudsman Act*

Issues Identified by the Special Investigations Unit**Recommendation 30**

The Ministry of the Attorney General should bring issues of concern regarding police practices or issues affecting investigations identified by the Special Investigations Unit to the attention of the Ministry of Community Safety and Correctional Services and other Ministries as appropriate, and actively pursue resolution of such issues.

Subsection 21(3)(g) *Ombudsman Act*

Reporting Back**Recommendation 31**

The Ministry of the Attorney General should report back to me at six-month intervals regarding the progress it has made in implementing my recommendations, until such time as I am satisfied that adequate steps have been taken to address them.

Subsection 21(3)(g) *Ombudsman Act*

Government of Ontario**New Legislative Structure****Recommendation 32**

The Special Investigations Unit should be reconstituted under new legislation dealing specifically with its mandate and investigative authority.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 33

The Special Investigations Unit's mandate should be clearly outlined in its constituting legislation.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 34

The Special Investigations Unit's constituting legislation should include a definition of serious injury that encompasses significant psychological injury, all gunshot wounds and serious soft tissue injuries.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 35

The legislative requirement that police co-operate with the Special Investigations Unit should include a specific definition of police notes, and an obligation on police to disclose relevant personnel records, and police policies.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 36

The Director of the Special Investigations Unit should have the discretion to not lay criminal charges on public interest grounds, but should be required to make such decisions and the reasoning behind them public. The Director should have the discretion to refer such cases directly to the Ontario Civilian Commission on Police Services for consideration under the disciplinary process.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 37

The Director of the Special Investigations Unit should have the discretion to refer incidents of police breach of legislative and regulatory requirements relating to co-operation with the Unit's investigations directly to the Ontario Civilian Commission on Police for consideration under the discipline process.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 38

Police failure to co-operate with or obstruction of the Special Investigations Unit should be made an offence punishable by fine or imprisonment consistent with similar provincial offences.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 39

The Special Investigations Unit should be legislatively required to publicly disclose

Director's reports, in cases involving decisions not to charge, subject to the Director's discretion to withhold information on the basis that disclosure would involve a serious risk of harm.

Subsections 21(3)(e), 21(3)(g) *Ombudsman Act*

Recommendation 40

There should be legislative provision for the Director to be appointed on a five-year renewable term, with compensation established on an objective basis and not dependent on performance.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 41

There should be legislative provision for the appointment of a Deputy Director of the Special Investigations Unit through order in council.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 42

There should be a legislative prohibition against legal counsel representing police officers involved in the same incident under investigation by the Special Investigations Unit to ensure that the integrity of its investigations is maintained.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 43

Civilian members of the Ontario Provincial Police should be subject to the requirement to co-operate with Special Investigations Unit investigations.

Subsection 21(3)(g) *Ombudsman Act*

Recommendation 44

The internal police investigative reports related to Special Investigations Unit investigations and any action taken as a result should be made public.

Subsection 21(3)(g) *Ombudsman Act*

Emergency Vehicle Status

Recommendation 45

The Government of Ontario should consider granting the Special Investigation Unit's vehicles emergency status under the *Highway Traffic Act*.

Subsection 21(3)(g) *Ombudsman Act*

Reporting Back

Recommendation 46

The Government of Ontario should report back to me at six-month intervals regarding the progress it has made in implementing my recommendations, until such time as I am satisfied that adequate steps have been taken to address them.

Subsection 21(3)(g) *Ombudsman Act*

Responses

- 385** At the conclusion of my investigation, a preliminary report and recommendations were provided to the SIU, the Ministry of the Attorney General, and the Attorney General for review and comment. At the request of the Ministry, the preliminary report was later provided to the Ministry and the Minister of Community Safety and Correctional Services, to facilitate consultation between the two ministries.
- 386** In his September 2, 2008 response on behalf of the SIU, Mr. Cornish indicated his commitment to a full and careful consideration of each of my recommendations directed at the SIU, and “to concerted action wherever feasible.” He commented:
- I acknowledge that no one can afford to take for granted the public’s confidence in this important institution. All with an interest in the health of civilian oversight must vigilantly work to ensure that the SIU remains a robust and efficacious instrument of police accountability and public trust. Many, throughout the history of the SIU, have contributed to a system of civilian oversight of police that is a model for the rest of Canada and the world. We see your recommendations as a further and constructive step in this process.
- 387** Mr. Cornish agreed that the SIU would take all necessary steps to act on my recommendations, and report back to my Office regarding its progress. He then went on to address a number of specific recommendations.
- 388** He observed that a new case management system was being developed, and committed to take meaningful action to redress apparent failures in police compliance and explore ways of improving SIU response times. **(Recommendations 1-3)** He indicated that the SIU was now supplying all of its investigative staff with BlackBerries, which may include GPS capability. Mr. Cornish also explained that the SIU is working on reforming its call-out method for responding to incidents. However, he suggested that in dispatching staff,

factors such as availability and workload would also have to be considered. **(Recommendations 4-6)** He noted that the SIU would monitor its responsiveness to incidents and modify its vehicle policy if necessary. **(Recommendation 7)** He also explained that the SIU's Training Co-ordinator has already taken steps to address the training concerns I had identified. **(Recommendation 8)** In addition, he said the SIU is finalizing a policy relating to the legislative prohibition concerning SIU staff participating in investigations involving their former force. **(Recommendation 9)**

- 389** Mr. Cornish expressed that he was “particularly disheartened to hear that some SIU investigators have used inappropriate and derogatory language in the course of their investigations.” He suggested that had he been apprised of these instances, “the most forceful response possible would have been forthcoming immediately.” He explained that he had made his expectations about the need for impartiality clear and would reinforce these with his staff. **(Recommendation 10)** In connection with recruitment of more civilian investigators, he noted that the SIU would continue to ask community leaders to help advertise investigative positions, using community newspapers and other means. He also advised that the SIU recently obtained a second classification of investigator position that may attract more investigators from civilian backgrounds. **(Recommendations 11 and 12)**
- 390** Mr. Cornish committed to communicate with police associations to emphasize that lawyers may not unduly delay witness officer interviews due to their schedules, and to remind them that the SIU Director has the discretion to suspend an officer's legal entitlement to representation should the interview be unreasonably delayed. He also undertook to invoke the Director's discretion in appropriate circumstances. **(Recommendation 16)**
- 391** Mr. Cornish noted that the SIU would explore whether it should provide civilian witnesses a copy of their statements as a matter of course and would seek to have an outside body peer review SIU practices and policies. **(Recommendations 18, 19)**
- 392** Mr. Cornish continued to promote the “balanced scorecard” organizational change framework adopted under his administration, attributing a number of successes to its implementation, including development of a new case management system, overhauling the case review process, revisiting investigator assignments, outreach initiatives, changing management culture and practices, implementing new training positions and a new mentorship program. He observed that recently more than 90% of SIU staff had indicated that they were in favor of continuing with the “balanced scorecard” approach. However, he acknowledged that a commitment

to “investigative excellence” must remain the priority at the SIU.
(Recommendations 20)

393 Mr. Cornish also advised that the SIU would continue to explore ways to improve responsiveness and transparency to affected individuals and to the public, such as more frequent and fulsome news releases that include the rationale for the decision, while respecting the limits imposed by privacy legislation and the need to safeguard the efficacy of the investigative process. **(Recommendations 21-23)** He also noted that the Attorney General had recently approved the SIU’s request for funding for a new Mobile Investigative Centre, four new investigative positions (two of which are training positions targeted to investigators with civilian backgrounds), two new administrative staff positions, and an outreach co-ordinator position. **(Recommendation 24)**

394 In his concluding comments, Mr. Cornish remarked:

I wish to thank you and your staff for the important public service you have undertaken in conducting this investigation of the SIU and its practices. I have every confidence that it will result in an even stronger and more vibrant public institution in the years to come.

395 The very fact that an Ombudsman investigation is launched can act as a catalyst for change. After my investigation into the SIU’s operational effectiveness and credibility began – and as it proceeded – it was apparent that the SIU and the Ministry were increasingly motivated to take steps toward improvement. While some preliminary efforts have been made, much remains to be accomplished.

396 The SIU has signalled a willingness to implement my recommendations, however, for the most part; its commitments appear quite superficial and couched in vague and vapid generalities. A new SIU Director will be assuming office on October 16, 2008. It remains to be seen whether the SIU will actively embrace the spirit of my recommendations and effect the extensive changes to its practices, culture and performance that they call for. I will carefully consider the SIU’s periodic updates on the steps it takes to implement my recommendations to ensure that real and lasting improvement is taking place, and that the organization is not simply paying lip service to change and reverting to its old behaviour.

397 The Ministry of the Attorney General’s response to my preliminary report and recommendations, similar to the SIU’s appeared reserved and vaguely non-committal. The Ministry stated that “by moving swiftly to address the concerns noted in your report, we are confident that we will further enhance the performance of and confidence in this important public institution.”

- 398** The Ministry referred to steps already underway to improve the SIU's operations, including the development of a new case management system, an additional allocation of \$700,000 for eight new SIU staff, and the creation of the new entry-level investigator position. **(Recommendations 26-28)** The Ministry undertook to clarify the accountability of the SIU Director and ensure that it is based on clear, objective and measurable criteria that are clearly documented. **(Recommendation 29)** It also committed to bring issues of concern about police practices or other issues affecting SIU investigations identified by the SIU to the attention of relevant ministries. **(Recommendation 30)** In addition, the Ministry indicated that, subject to the approval of the Lieutenant Governor in Council, it would ensure that the SIU Director is appointed to a five-year term. **(Recommendation 40)**
- 399** As far as my recommendations for legislative change, the Ministry stated that it would "immediately begin speaking with Ontarians about these proposals as we identify legislative or other ways to achieve the underlying objectives." **(Recommendations 32 to 45)** The Ministry thanked my Office for its professionalism and dedication in carrying out our review and suggested that it would "strengthen the quality of civilian oversight in Ontario and has been of great service to the people of Ontario."
- 400** While the Ministry's praise is certainly appreciated, it remains to be seen if the steps it has committed to take, including the rather amorphous promise of a dialogue with Ontarians on legislative change, will actually translate into the concrete and necessary improvements that I have recommended. As with the SIU, I will be watching the Ministry's progress, as reported in its updates to me, very closely to ensure that its actions speak louder and with more precision than its words.
- 401** On September 8, 2008, the Ministry of Community Safety and Correctional Services also provided a response to my Preliminary Report. The Ministry committed to work closely with the Ministry of the Attorney General to review my recommendations, especially those directed at police. It noted with respect to the issue of notification that the OPP is committed to making disclosure and to co-operating with the investigative process in as expeditious a manner as possible. However, it noted that the OPP is in a "unique position" because its officers are deployed around the province, including remote communities, and that at times "supervisors must travel great distances to attend and assess the scenes." The Ministry also undertook to work with the Ministry of the Attorney General to address issues of concern about police practices or other issues affecting SIU investigations. In closing, the Ministry remarked, "We appreciate the fine work done by police officers and are committed to ensuring that policing in this

province meets the highest standards.”

- 402** Ontario’s SIU is a critical component of police oversight in this province. It is in the interests of all of its citizens that the SIU has the authority, resources, ability and culture necessary to deliver effective, fair and independent investigative oversight of incidents involving civilian deaths and serious injuries at the hands of police.



André Marin
Ombudsman of Ontario



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