



**Submissions on the Special Investigations Unit to the
Attorney General,
The Honourable David Young
Made by the Police Association of Ontario
September 17, 2001**

History

The Police Association of Ontario (PAO) represents 13,000 front-line police personnel and provides representation, resource and support for 65 municipal police associations. Our membership is comprised of police and civilian members of municipal police forces.

The PAO has historically been actively involved in discussing issues surrounding civilian oversight. We were full participants in the consultation process by Justice Adams and endorsed his recommendations as a package. Historically, our membership has supported the concept of civilian oversight. We believe that the current legislative framework is acceptable but the rules must be followed and there must be a two way level of accountability.

We have continued to meet with the Special Investigations Unit whenever the opportunity arose. We sat on the SIU Consultative Committee until it ceased to meet. In the fall of last year we met with the Director and met again in April of this year. As you know we have also met with both yourself and previous Attorney Generals regarding the Special Investigations Unit.

We believe that there are a number of steps that need to be taken to better serve the community and the police. We would like to take this opportunity to outline them.

Credibility of the Current Director

Our membership has no confidence in the credibility of the current Director, Peter Tinsley. Many of the examples that we raise in this document reflect on the Director. However there are several other instances that we would like to elaborate on.

The Director stressed the need for open and frank discussions at our last meeting in April that involved our Administrator and Chair, and the Director and key members of his staff. During the meeting there was some discussion of the criminal charges laid against Thunder Bay Constable Shane Baker. Constable Baker had been charged and the charges were dismissed at the preliminary hearing due to a lack of evidence. The Director failed to tell us that the decision was

being appealed and that the process was underway and that Constable Baker would be served notice in less than twenty-four hours.

Our organization has requested a complete copy of all of the SIU's operating policies and procedures. We raised this issue with you at our last meeting. Since then we have received a partial list of them. We have yet to receive a complete list and cannot understand the reluctance to share this information.

The Police Association of Ontario issued a press release on August 23 that called for the resignation of the Director. The media advised us that the Director sent out his own release later in the day. This release was very misleading.

The release is copied in this document. The handwriting on the bottom of the release belongs to a reporter who faxed it to us. Numerous reporters questioned us on the contents. The release criticizes the PAO for failing to meet with the SIU. We would like to point out the following:

- The release criticizes our President for failing to attend a meeting with the Director on April 12. The release fails to state that the PAO sent two of their three top executive officers to the meeting in the Administrator and Chair. Mr. Baltin was in fact only the acting President at the time. Mr. Baltin had taken over from Bruce Miller who had stepped down to take over the Administrator's position. Mr. Miller had been the elected President and had previously met with the Director.
- The release states that the PAO withdrew an invitation for the Director to attend their AGM. The Director was invited to attend the PAO AGM and sit on a panel with a PAO and OACP representative. The OACP representative (Chief Glen Stannard) was unable to attend and the Director was notified of this. Conversations were held with the Director and it was mutually agreed upon to postpone the panel.
- The PAO was contacted by Mr. Jim Chapman, the SIU investigative supervisor on the day of the PAO media release. Mr. Chapman asked if the PAO Administrator and/or President would address the SIU investigators at an October conference. We accepted the invitation.

We were extremely disappointed that the Director, in a position of public trust, would issue such a misleading press release. We no longer can have any confidence that we will be treated fairly.

Accountability and Dispute Resolution

Accountability for the Unit is a priority concern for our members. We strongly believe that a Code of Conduct, similar to that contained in the Police Services Act, should be established for members of the Unit.

The PAO also strongly urges the establishment of a clear-cut process for dispute resolution. When problems arise it is in everyone's best interests to resolve them as quickly as possible.

The dispute resolution process should be available for specific issues that may arise. Accountability has to be a two way street. The PAO supports the current legislative framework. We, as with any other stakeholder group, could suggest changes in certain areas but are prepared to work within the current framework. Having said that, an avenue must exist to deal with perceived abuses in certain areas.

The Thunder Bay prosecution of Constable Shane Baker is a case in point. Constable Baker was charged criminally as the result of a criminal pursuit. The matter was dismissed at a preliminary hearing as the facts were not made out. This decision was appealed unsuccessfully. The Thunder Bay Police Association was very concerned as to how the investigation and prosecution was handled. The officer was put through a great deal of stress. The defence cost in the area of \$150,000 and that cost will ultimately be passed on to the taxpayer.

Concerns involving the matter were forwarded to the previous Attorney General who promised to look at the matter. The change in Ministers derailed that process which is understandably very frustrating to the Thunder Bay Association and their members.

We have also raised an incident that occurred in Waterloo. A police dog bit a citizen in a park. The dog was searching the park and unfortunately a citizen was accidentally bitten. The SIU invoked its mandate and designated and interviewed officers. The Waterloo Regional Police Association claims that officer designations were changed over twenty times. The SIU has admitted that they changed the designations six times. We are at a loss to explain how this could have happened in an incident such as this.

We believe that we have identified areas in this document that deal with such issues as questionable decisions, investigations and matters outside of the scope of the mandate. There must be a mechanism to address these apparent abuses.

Scope of Mandate

The whole question of the SIU's mandate continues to be a great concern to our members. We see too many investigations where the SIU has invoked their mandate where they had no justification to do so.

There is no shortage of oversight with venues such as OCCPS, public complaints, internal affairs and coroner's juries. The SIU are consistently trying to expand their area of control. This leads to very expensive investigations, due to the fact that the SIU's mandate involves criminal investigations, as extensive legal intervention is required. These substantial costs are ultimately passed on to the taxpayer.

One example occurred on December 13th when the North Bay Police Service was notified that the Special Investigations Unit was invoking its mandate under the Police Services Act in regards to an incident that had occurred on May 21st. Following that, two North Bay officers were advised that they were being designated as subject officers.

An individual had been arrested and had suffered a fractured rib and orbital bone prior to his involvement with police. There was no allegation that the injuries had been caused by police and the complaint was that the arrested party had not received medical attention for 53 minutes.

The PAO was contacted by the North Bay Police Association and made it clear to the Special Investigations Unit that this was a breach of their mandate and that they had no business being involved. Their Investigative Supervisor admitted that their investigation was a "bit of a stretch".

Section 113 (5) of the Police Services Act limits the SIU to "investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers."

This was clearly not the case. The North Bay Police Service was subsequently advised on December 19th that the investigation was being terminated. However, in the interim resources had been wasted and two officers had undergone the needless stress of a criminal investigation.

In February of this year there was a domestic disturbance and Waterloo Regional Police were called. Upon arriving an officer saw an individual exit a shed and the officer said, "Show me your hands". The individual went back in the shed and shot himself. The SIU deemed this to be a custody death. There are numerous examples of the SIU stretching the definition of custody to invoke their mandate.

The SIU has also started a system called "Incident Review". The SIU now goes into a jurisdiction and conducts a preliminary review to see if an investigation is warranted. We believe that this is out of the scope of both the legislation and Adams. We requested a copy of their policy on this system but have yet to be provided with one (although we were advised in April that one existed). This system was started without consultation and should be stopped immediately.

On February 1 of this year a Sault Ste. Marie officer saw a vehicle being operated in an erratic manner and attempted to stop it. The vehicle continued at a normal rate of speed. The driver of the vehicle was suffering a medical emergency and was involved in a fatal crash.

The SIU invoked their mandate. They deemed this to be an "Incident Review" and designated the officer as a "witness officer". This clearly falls outside of their legislated role.

The legislative Charter protection and duty to cooperate applies to police officers. The SIU has gone outside of the legislation by trying to apply it to civilian members. This clearly is outside of the bounds of the legislative framework. The rules are there and we expect the SIU to follow them.

Competence of Investigators

Numerous examples of incompetent investigations continue to haunt the Unit. Incidents of drunken investigators and unattended firearms have been well publicized. As recently as July 20,

2001, a Coroner's Jury investigating the death of Robert Carpenter was critical of the SIU's handling of evidence.

Recently we received a report from lead detective, Keith Myers, who investigated a shooting in Chatham-Kent. It speaks to an apparent lack of cooperation on the part of the SIU and is symptomatic of the problems that exist. The report is self-explanatory and we would urge you to review it.

We agree that improvements have been made in this area over the years but they have not gone far enough.

Definition of Serious Injury

Much of the discussion surrounding the Unit has revolved around the definition of serious injury. The SIU's mandate is largely dependent upon the definition. The wording of the current definition that was developed by Justice Osler could be made clearer.

Section 113 (5) of the Police Services Act limits the SIU to "investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers."

Mr. Justice Osler published the following definition:

"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.

We would suggest the following:

1. Serious injury would be defined as: One which is likely to interfere with the health or comfort of the person and is more than merely transient or trifling in nature; and serious injury shall initially be presumed when the person is admitted to hospital, suffers a fracture of a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or suffers loss of vision or hearing.
2. The words "admitted to hospital" should envisage more than a brief examination of the person at a hospital or the provision of superficial medical care.
3. It must be made clear that the mandate of the SIU does not include off duty conduct of police officers.

4. Unlike the present wording, it must also be made clear that not all allegations of sexual assault fall within the mandate of the SIU, specifically allegations of the most superficial or minor nature do not.

5. Finally the SIU must not be allowed to unduly delay in deciding on its involvement. Any such decision must be made as soon as practicable and in any event within not more than a specified number of hours of the incident coming to the attention of the SIU.

Conclusions

We appreciate the opportunity to express our views. We have raised a number of issues that we believe need to be addressed. We strongly believe that our recommendations are in the best interests of both the police personnel and the community that they serve.

1. The Director of the Special Investigations Unit should resign. We are very disappointed that a person in a position of public trust and neutrality would put out such a misleading media release.

2. A dispute resolution process should be established involving consultation with other police stakeholder groups.

3. The Director and his or her staff should be subject to a Code of Conduct.

4. That the SIU investigators be required to be trained to the level of police officer investigators.

5. The legislation and mandate must be followed.

Thank you for your interest in this matter. Please do not hesitate to contact us with any questions. We look forward to resolving these issues.

Bob Baltin

President