

## SIU, Police Association and Politics Are Creating Black Pots and Kettles

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It was reported in the Toronto Star newspaper last week that the Ontario Law Society dismissed a complaint made by Ontario's Police Association against Mr. Ian Scott, Director of the Ontario Special Investigations Unit (SIU) for "bias against police officers". The SIU is an investigative unit that handles complaints of police wrong-doing in incidents where significant harm has occurred to individuals during police activities. Since Mr. Scott is lawyer the Police Association attempted this approach apparently as a means of resolving problems they have perceived in the Mr. Scott's activities as the SIU's director.

This is not the first time that the SIU and police have butted heads. It can be said that ever since the SIU was created to independently monitor police actions there have been complaints disbursed by both sides, but also by the public, Ontario's Ombudsman and a variety of politicians. It is a thorny issue that has yet to reach a comfortable playing field. From my observations the SIU does not appear to be functioning properly, but then neither are the police in a position to call a kettle black when they too are guilty of frying facts on a black pot.

A special investigation in 2008 by Mr. Andre Marin, Ontario's Ombudsman, entitled "Oversight Unseen" was supposed to expose the problems with the SIU and improvements were to take hold through the following Mr. Marin's recommendations. But I cannot see that anything has changed.

While the SIU was supposed to be comprised of a civilian investigative group, it still remains largely comprised by former police. While transparency was required so the public could independently examine and be assured of the SIU's credibility, none of that transparency has evolved. While police cooperation during SIU investigations was essential, police still remain uncooperative and fail to work with SIU investigators. While SIU independence from the Ontario Attorney General's office was called for, none of that has been demonstrated.

What remains is a continual mud-slinging from separately entrenched camps. It is as if all parties fail to understand the importance of their roles and how important it is that the public have confidence both their police and in the investigators to must correct police wrong-doing.

What I see is that there need to be fundamental changes in the way we approach policing and the SIU's role. At the peak is the primary need by all of us to understand that we are all human, in other words we make mistakes and we should be accepting of that. This sounds like philosophical mumbo-jumbo but it is vitally important. We place our police on an unrealistic pedestal the requires that they not make any mistakes. If a

mistake is made the public want instant blood and vengeance. Yet, when we look at ourselves in a mirror it is not too difficult to see that we ourselves make mistakes constantly...all of us. But we cannot accept that police are just like us. What I see happening is that when police make a mistake they try to hide it because the repercussions are too great. This constant accusation and hiding is detrimental to our society.

There is no doubt in my mind that we need greater transparency. Something that I have stated numerous times in my articles on this website when discussing motor vehicle causation. Greater details of SIU investigations must be made public so that independent persons can evaluate, comment and take actions when the police, SIU or politicians sway into a area of unreasonableness. At present, the SIU simply releases their conclusions. If those conclusions are biased against police the public is not made aware of it. How can we expect our police to function properly when they must constantly expect the possibility that a biased individual is going to twist their actions around? Surely, what they should expect is a fair assessment but that is not always possible because I know how often the justice system simply fails miserably in arriving at justice. The best way to handle this is to expose the facts and let independent persons examine them. This is the best way to resolve injustices.

Instead, what is happening is that police are attempting to hide facts of their activities and the SIU is hiding facts about their activities. And no independent person is able to step in. Ultimately this has to be corrected at the political level but it is becoming clear to me that there is no political will. And there is no political will because the public is not involved enough to demand that changes from their politicians.

An indication of the problems that exist is apparent to me after I read the Toronto Star article of February 22, 2011 entitled "Police Ignore SIU's Probes". In that article there was reference made to a specific case:

*"In one case, after a police officer ran a stop sign and caused a collision that injured a truck driver and killed a fellow officer, the SIU found the police force's actions 'rife' with conduct issues.*

*In a terse letter sent Sept 22, 2009, Scott noted six possible violations of the Police Services Act. Among them: Officers waited four hours before notifying the SIU of the incident; officers required to promptly turn over their notes to the SIU did not do so; The uniform of the dead officer was thrown away before SIU investigators could analyse it; and several officers from the force used the same lawyer; possibly tainting the independence of their accounts."*

The only investigation I can see which resembles these facts is that of the death of Constable Alan Hack, in a collision that occurred on July 6, 2009 at the intersection of Thompson Line and Furnival Road near West Lorne, Ontario. I examined that collision site shortly after the police opened the road and I took detailed photos and observations of the evidence.

I cannot comment on the police actions with respect to the SIU as only these two parties are privy to who acted improperly. But certain conclusions drawn by SIU investigators and officially reported in news media releases cause me to question the professionalism of the SIU's investigations.

First, for context, I present several photos of the accident site. First a photo looking south from the area of impact in the direction that the truck was travelling. The OPP cruiser was travelling from left to right in the photo and it was struck in the right side.



The single dark tire mark heading toward the east ditch was caused by the truck as it left the area of impact. The markings toward the south-west were caused by the OPP cruiser as it slid to final rest. Below is another photo following the path that the truck took toward its final rest position (FRP).



And below is another view but now looking northward from the FRP of the truck.



I estimate that the truck travelled about 120 metres after its impact. Below is a view showing the line of site afforded to the driver of the OPP Cruiser, Constable Lynn Neale just before she entered the intersection. This view is shown from a height of about 165

cm so you can appreciate where the cross road is located.



I would like to show you the same view but this time from the height of Constable Neale's eyes at about 120 cm above the ground. Unfortunately my website server is not allowing upload at this time. But I can say that the view is obscured. Instead, let me proceed with what I was going to write without providing additional photos for the time being.

In concluding their investigation the SIU released a summary of their findings to the media and there they indicated the following:

*"At the point of impact, the police cruiser was travelling at either a slow rate of speed or was stationary. In deciding whether the subject officer engaged in driving that was a marked departure from the level of care that a reasonable person would have exercised in the circumstances, I have taken into consideration the following factors. This collision happened in broad daylight on a straight road. The speed reported from the downloaded black box seized from the tractor-trailer at the point of impact indicated a*

*truck speed of 47 km/h, well below the posted speed limit of 80 km/h. There is no suggestion of alcohol or drugs affecting the driving ability of the subject officer. Further, there does not appear to be anything that would have obstructed the view of the subject officer at the corner of the two roadways. The most reasonable interpretation of this tragic event is that the subject officer never saw the tractor-trailer until the last moment due to her attention being focused on the apprehension of the individual who was attempting to elude the police."*

There are several glaring problems in the SIU's conclusions. Firstly, the physical evidence does not support the conclusion that the tractor-trailer was travelling at the low speed of 47 km/h. Indeed the 120 metres of post-impact travelling during which at last one wheel was fully locked and the remaining wheels were turning up dirt and grass through a large part of the travel distance is inconsistent with that value. For example a speed indication of 47 km/h would mean that the deceleration rate of the truck was below 0.1g over the total travel distance. What sometimes happens is that data from a black box is mis-interpreted and that issue should have been addressed. At a minimum if the investigators were competent then they should have recognized that the physical evidence was not consistent with the recorded data and an explanation should have been included in the SIU investigation that they recognized the inconsistency and they should have provided their explanation. Otherwise, obviously, someone with some knowledge of accident reconstruction would not accept this and this would only lead to questions regarding the SIU's abilities.

Secondly, the physical evidence also does not indicate that the OPP cruiser was travelling very slow or was almost stationary at the time of the crash. The diagonal travel path with a substantial motion in the westward direction should have been an obvious red flag to the investigators. This would have been obvious to anyone with some experience in accident reconstruction. Again, if there was some reason for this conclusion then it should have been provided in the SIU's summary. By not providing an explanation and by not providing any details, except their conclusions they invite persons to question their conclusions.

Finally there is obvious evidence that the line of sight might have been obstructed. In fact it could be that the police officer was not provided with a sufficient line of sight if she was travelling through the intersection without stopping near the stop sign. That is clearly shown in my photographs. This is an important matter because it leads to the question of the safety of police and the public when police responding to emergency calls. If such safety issues are not documented the problem is not identified and police and the general public are placed at risk.

Now, my purpose is not to attack the SIU and to suggest that the police are faultless. Indeed I have firsthand experience that tells me otherwise. I too have encountered a situation that probably exists in one of these website articles where this very same OPP Detachment's actions were "rife with conduct issues". An elderly female was stuck by an OPP cruiser when two of these cruisers were travelling at speeds of 200 and 169 km/h. There were numerous problems with the investigation that should have been handled

by an independent party instead of by their own supervising sergeant. Equally the crown attorney's actions and that of the Justice of the Peace in convicting this woman were questionable and should be brought for further inquiry. Yet my official complaints to the Civilian agency governing police matters, the Crown Attorney's office and others led to no response. Such questionable actions lead members of the public to question whether some sort of corruption of officials is in place. Although this matter did not involve the SIU specifically there was a question whether the injuries to the elderly driver as a result of the collision should have led to the SIU's involvement. It did not help matters further that the same OPP officer from this same detachment was then charged with speeding in her un-marked police cruiser by another officer in another jurisdiction. How is the public, particularly the family and friends of the convicted elderly driver, expected to react when they are faced with these facts?

These happenings are truly unfortunate because, on the flip side of the coin, I am aware of many decent individuals who have acted admirably in their police functions. And I am not so naive of what difficult circumstances each police officer must go through every day in dealing with various criminals and their activities. It becomes doubly important that the proper actions of the many do not become tainted by the uncontrolled improper actions of the few.

Thus the time is ripe to put an end to the accusations and mud-slinging by the police association and the SIU. Problems exist and these must be corrected in the political arena before further damage is done to the images of both the police and SIU. The fact the Ontario Ombudsman's recommendations have been collecting dust for three years and have not been acted upon by the Province's politicians is a testament to where the problem truly lies, and it does not lie in the laps of either the police or the SIU.