

Oversight Unseen – OPENING REMARKS
André Marin

Unique problems require unique solutions. The Special Investigations Unit (SIU), a civilian criminal investigations body of the Ministry of the Attorney General, was created in 1990 as a unique solution to the problem of police investigating the police when they have killed or seriously injured a citizen. For the last 18 years in Ontario, the SIU has been tasked with the important legislated duty of ensuring that the police are investigated in the same way that they conduct criminal investigations, with thoroughness and impartiality. When there is serious death or injury, regardless of the parties involved, police or civilian, the rule of law demands that a vigorous investigation be conducted.

From its glossy Annual Report, to its website, to its outreach literature, the SIU embraces its “One Law” motto, proudly boasting of “holding police officers to the same law as everyone else.” I have concluded, based on the Office of the Ombudsman’s most intensive systemic investigation in recent history, that these claims are just empty rhetoric and puffery by an organization that has lost its way.

There are two reasons that have led the SIU to wither. First, it has a faulty infrastructure and insufficient authority to do its job. The SIU does not have its own constituting legislation, its mandate lacks clarity, and it is administratively and technically challenged. Transparency is also missing in action – SIU reports and significant policy issues are kept hidden from public view. Furthermore, its Director, and indeed the whole unit, is kept on a very short leash by the Ministry of the Attorney General. The SIU was created by legislation and legislation is needed to fix this problem.

The second and most important reason that the SIU is failing the citizens of Ontario is an internal one. The SIU has become so timid and fearful in its watchdog role that police oversight has hit rock bottom in Ontario. It has preferred to focus its energy on an introspective, esoteric, pie-in-the sky “journey” that has little to do with holding police accountable.

The SIU’s indolent and unenthusiastic involvement has become the norm, from the moment the police notify them of an incident to the conclusion of the investigation. The problem starts even earlier. We have found that the police rarely notify the SIU about incidents as quickly as they are supposed to by law, without any objection from the SIU. And when the SIU is alerted, it fails to respond with rigour and urgency – at times inexplicably overlooking the closest investigators, and following routines that result in precious time being lost.

Throughout the SIU's investigative process, it turns a blind eye to police failure to comply with their legal obligations. For example, police officers are simply not held to their obligation to submit to interviews immediately. It is common practice for police interviews to be delayed for weeks, even months.

I am putting forward 45 recommendations today. Some will require the government to pass new legislation, to enshrine the SIU properly in law and enhance its credibility. But many of the changes I recommend can come from within the SIU. It needs to become more rigorous and stop tolerating delays and police resistance. It needs to root out the remains of police culture among its staff – for instance, the wearing of police rings by SIU investigators should absolutely not be tolerated, and yet some of them even wore them to their interviews with us. It needs to recruit and train more civilians and stop buying into the notion that only former police officers are capable of conducting investigations.

Both the SIU and the Ministry have reacted positively to my recommendations, and I look forward to seeing them implemented. They have committed to reporting back to me on their progress – although I can't help noting that some of their commitments so far have been vague and, frankly, vapid. I will be watching them closely to make sure these promises translate to action, because I strongly believe that with the improvements I have recommended, the SIU can be the “bulwark of democracy,” to borrow the words of former justice George Adams, that Ontarians deserve, and that the rest of the country should emulate.