



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

Oversight Undermined – Ombudsman’s remarks ***André Marin***

Ontario’s police oversight system is a model for the rest of Canada. This province was 20 years ahead of the rest of the country and much of the world when it first established the Special Investigations Unit – a fully independent civilian body that conducts criminal investigations in cases where police are involved in serious injuries or deaths, from start to finish.

Everyone here today knows the SIU’s history. It was born out of turmoil and controversy, and turmoil and controversy have surrounded it ever since. The SIU’s work is serious, fraught with tension and never easy. It is criticized for being too tough and criticized for being too soft. But despite all this, the SIU is something all Ontarians can be proud of.

It was rightly described as a bulwark of democracy, because it promises the kind of strong, independent oversight that enhances the credibility and accountability of every police service in the province.

The problem I’m here to talk about today is that the government has not allowed the SIU to deliver on this promise. Three years ago, I submitted a report to the government on my first investigation of the SIU, in which I found it was failing to conduct rigorous investigations and suffering from a perceived pro-police bias. I said the SIU was behaving like a toothless tiger. I called on the SIU to make improvements, and I’m happy to say that under the new director who has been there since one month after my 2008 report, it has come a long way.

But my most important recommendation was that the Ontario government support the SIU with new legislation to clarify and strengthen its mandate and authority.

For a bulwark of democracy, the SIU’s legal foundation is embarrassingly flimsy. It was created in haste, as an amendment to the *Police Services Act*. For more than 20 years, key parts of that mandate have been in doubt. Officials from police services, the SIU and the government continue to fight over it, while the public loses confidence in all three. Their only recourse has been to go to court – as two of the families featured in our report recently did. The Court of Appeal stepped into the leadership vacuum left by the government and declared that police under SIU investigation aren’t supposed to have association lawyers vetting their notes.

It shouldn’t be this way. Ontarians deserve better, and so do our police. Ontario was on the right track when it created the SIU with a bold vision of complete independence and investigative authority. But as we’ve seen over the past 21 years, that vision can’t be realized if the government doesn’t stand behind the SIU.

Many of you will remember that in 2008, the Ministry of the Attorney General welcomed my recommendations and said it would discuss them with stakeholders. Many of you asked me in 2009 why not much had happened, and again in 2010. When I launched this investigation, I discovered that the Ministry really had no intention of acting on my most important recommendations. Even more disturbing, it was actively working against the SIU Director in his efforts to do as I suggested.

There are many stories in this report of cases that illustrate the problems the SIU continues to face. But nothing paints the picture better than the sad litany of Director Scott's letters. He sent 227 letters to police chiefs in the past 3 years – polite letters, advising them that they risked violating the *Police Services Act* by failing to notify or co-operate with the SIU. He received only 20 substantive replies. Most of the time, police services – including the largest ones in the province – blatantly disregarded their watchdog.

Yet what did the Ministry of the Attorney General do, the ministry that is supposed to uphold the law? It told Director Scott to stop drawing attention to non-compliance. Don't make waves, don't publish your annual report. Don't complain about lawyers vetting police notes – even though, as it turns out, the Ontario Court of Appeal says it's prohibited.

The Ministry has failed the SIU, and by doing so, it has failed the public and the police. Even after having the chance to review this report, its response was only vague generalities, and a pledge to review SIU and police-related issues “within the next two years.” It has clearly sought to avoid controversy and tension between it, the police and the SIU.

But this should not be about controversy. It should be about upholding an oversight system that the government of Ontario values and all Ontarians, including police, can trust. A system that is important enough to warrant clear, strong legislation. Half-measures are not working and attempts to soothe tensions through silence have only made matters worse.

If strong, independent, civilian oversight of police is important to Ontario, as successive governments have said since 1990, then it's long past time to do the right thing and give the SIU the legal tools and foundation it needs to do its job.