

CRIME

Sammy Yatim: Dennis O'Connor resigns from Chief Blair's police review in wake of streetcar shooting

The retired justice leaves the probe ordered after the Sammy Yatim shooting, in light of objections over his law firm's frequent work on behalf of police.

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Dennis O'Connor, the former associate chief justice of Ontario, seen here in Ottawa in 2006, has decided he is no longer able to assist Toronto Police Chief Bill Blair in a review into the use of force by police.

By: Betsy Powell City Courts reporter, Published on Wed Aug 28 2013

Dennis O'Connor, the former associate chief justice of Ontario, will no longer assist Toronto Police Chief Bill Blair in a review into the use of force by police.

O'Connor made the surprise announcement Wednesday following questions raised about his affiliation to the law firm Borden Ladner Gervais, the go-to law firm that represents Toronto police in civil suits and inquests.

Blair announced the appointment of the highly respected ex-jurist just two weeks ago.

“We were surprised by the objections raised by lawyers for some of the victims’ families to my conducting the review. We had thought that I could structure and conduct the review to satisfy any concern but apparently not,” O'Connor said in a press release issued by the firm.

“Upon careful consideration, I have come to the conclusion that my association with BLG may raise a public discussion about this issue that would be distracting and unfortunate. I regret that this issue has arisen but I am of the view that if there is any possibility of concern in a matter such as this, it is best to address it at the outset.”

Blair — who also released a statement saying he has “great respect” for O'Connor but understands his decision — will name a replacement Friday.

On Aug. 12, Blair announced he had retained O'Connor to help him review the service's policies, procedures and training, as well as the equipment used by officers when dealing with emotionally disturbed people, following the death of 18-year-old Sammy Yatim, shot and Tasered by police as he wielded a small knife on an empty streetcar.

“I want the people of Toronto to trust the outcome,” Blair said at the time.

But some lawyers and activists in cases involving allegations of wrongful use of police force said that was not possible with a lawyer connected to BLG.

Julian Falconer, who has been retained by Yatim's mother, Dr. Sahar Bahadi, and daughter, Sarah Yatim, said they are grateful O'Connor has put “the process and its need for perceived independence above all else.”

He called BLG the “legal face of policing.”

“Victims of police abuse who have experienced the firm's tough and effective advocacy defending police officers ...understandably link Borden Ladner Gervais lawyers with the police,” he said in an emailed statement.

Peter Rosenthal, the lawyer who will represent a man killed by police at an upcoming inquest, said O'Connor's actions are “in accordance with the integrity he has always shown.”

Psychiatric survivor advocate Pat Capponi said O'Connor has acted with integrity “and shown keen awareness that even the appearance of conflict matters in this important review when the public trust is already at issue.”

After retiring from the bench last year, O'Connor joined BLG, a large national law firm with a team of lawyers practising in the area of municipal liability.

Over the years, those lawyers have been frequently called on to represent Toronto police in a long list of civil claims and coroners' inquests, many centred around allegations of the wrongful use of lethal force and other issues.

BLG lawyers, for example, represented the Toronto Police Services Board at the inquest into the death of Edmund Yu, 35, shot and killed in 1997 while threatening officers with a hammer on a TTC bus. They were also on the front lines for the board and police chief in the death of Otto Vass, 55, who died in 2000 after he was subdued and handcuffed by officers outside a west-end 7-Eleven. BLG has also represented many officers named as defendants in lawsuits, including the Adam Nobody G20 case.

Lawyer Barry Swadron, whose Toronto firm has probably sued police forces on behalf of clients more than any other in the country, was also critical that O'Connor was picked, despite holding him in the "highest regard."

"Any recommendations for change ... should come from a fiercely independent source," Swadron wrote in an email before O'Connor resigned. "To have them come from a member of a firm which often seeks to justify when and how much force was used is an unacceptable avenue of approach."

Suzan Fraser is another lawyer who has squared off against BLG lawyers in her public interest law practice, said O'Connor's connection to the firm was "pretty hard to stomach from a community perspective."

"The issue from a legal perspective is that if the work is to be independent, does it create a reasonable apprehension of bias? I think it does, and it pains me to say it."

Others, however, did not see an issue.

"Whether you consider the problem as a conflict of interest issue or a bias issue, in my view there is no reason for concern," says Toronto lawyer Gavin MacKenzie, a former treasurer of the Law Society of Upper Canada and author of the book *Lawyers and Ethics: Professional Responsibility and Discipline*.