

Durham police launch an internal review of Dafonte Miller assault

Former head of SIU says probe of Durham officers by Durham officers will not be a true investigation.

By Peter Goffin Staff Reporter

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Durham Regional Police Chief Paul Martin, seen here in a 2016 photo, says his deputy will lead a review of police conduct surrounding a Black teen's 2016 assault. (Jesse McLean / Toronto Star)

Durham Police Chief Paul Martin has ordered an internal review of his officers' actions surrounding the 2016 beating of Black teen Dafonte Miller, in which an off-duty Toronto police constable was charged.

But a former head of Ontario's police watchdog says a probe of Durham officers by Durham officers will not be a "true" investigation.

The internal review, led by Deputy Chief Uday Jaswal, will examine whether Durham police acted correctly in arresting Miller on the day of his assault, and in failing to report the incident to the Special Investigations Unit, which investigates deaths, serious injuries or alleged sexual assaults involving police, Martin said.

"There's obviously some information out there about things we did or didn't do, and I want to make sure that I'm satisfied in my mind that, based on the information we had that night, we did everything we should have done," Martin told the Star.

The Durham chief could not say for certain whether the findings of the internal review would be made public.

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Internal police reviews are not effective, and the public is unlikely to believe otherwise, “because the police are investigating themselves,” said former SIU Director Howard Morton, who now works as a defence lawyer.

“I don’t think this will be a true investigation and even if it is, the public’s perception will be that it is not,” Morton said.

“Public interest and perception about a cover-up in Durham requires them to be completely

All findings of the review should be made public, Morton said, except for information that might prejudice the trial of Toronto police Const. Michael Theriault and his brother Christian Theriault, the men charged in Miller’s beating.

The Star sent interview requests to Durham Police Services Board Chair Roger Anderson on Thursday and Friday, but he was not available for comment.

The Theriaults’ lawyers were in a Durham court Friday, attempting to have the conditions of the brothers’ bail changed. Michael and Christian Theriault face charges of aggravated assault, assault with a weapon, and public mischief.

On Dec. 28, 2016, Miller was punched, kicked and hit repeatedly in the face with a metal pipe, said his lawyer, Julian Falconer. One of Miller’s eyes will have to be surgically removed, Falconer added. When Durham Police arrived on scene, it was Miller who was arrested, and charged with assault, weapons and drug offences. His charges were later dropped without a trial.

Durham officers interviewed multiple people, collected evidence and took photographs during their investigation of the Dec. 28 incident, Martin said in a news release Friday.

“As a result of our investigation, we charged ... Dafonte Miller, with several offences,” he added.

Neither Durham nor Toronto police disclosed Miller’s injuries or Michael Theriault’s involvement to the SIU. The watchdog was only informed when Falconer contacted them in April.

The Theriaults’ father, John Theriault, is a longtime detective in the Toronto police professional standards unit, Falconer said.

Under Ontario's Police Services Act, which regulates law enforcement, a chief of police must "notify the SIU immediately of an incident involving one or more of his or her police officers that may reasonably be considered to fall within the investigative mandate of the SIU."

The responsibility to contact the SIU should lie with whichever police force is first notified of an incident, Morton told the Star.

Martin told the Star he "appreciated" Morton's opinion, but that the responsibility to inform the SIU lay with Toronto police.

"There's nothing to say we can't do things over and above the legislation, so we're going to take a look at our procedures and policies on that," Martin said. "But the legislation is not ambiguous that we notify the (other) service and it is the service or the chief that employs that officer that informs the SIU."

Toronto Police Chief Mark Saunders has repeatedly defended his service's decision not to contact the SIU. Members of his professional standards unit decided, based on the information they had at the time, that the Theriault case did not meet the threshold to report to the police watchdog, Saunders told reporters.

Saunders announced Thursday that Waterloo police had been called in to conduct a third-party investigation into the circumstances of Miller's beating.

"At this stage of the game I don't have any plans for (an external investigation)," Martin told the Star. "But that doesn't mean I won't change my mind at some point."