

## Former SIU directors question 'deplorable' police handling of Dafonte Miller case

Neither Toronto nor Durham police forces notified Ontario's Special Investigations Unit

Lucas Powers · [CBC News 10 Hours Ago](#)



Dafonte Miller, 19, is shown before and after an alleged attack with a steel pipe in the early morning hours of Dec. 28, 2016. (Leisa Lewis)

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A former director of Ontario's Special Investigations Unit said police handling of an alleged beating of a black man by an off-duty Toronto constable in Whitby last year was "very unusual," while another called it "deplorable."

Ian Scott, who served as director of the police watchdog from 2008 to 2013, and André Marin, who headed the organization from 1996 to 1998, both spoke with CBC Toronto on Wednesday about the [case of 19-year-old Dafonte Miller](#).

"I think it's a deplorable situation that the SIU was notified not hours, days or weeks, but months — many months — after the incident when the law says that the SIU must be notified immediately," said Marin.

According to his lawyer, Miller was allegedly run down and beaten with a steel pipe by two men on a residential Whitby street in Dec. 2016. He suffered multiple broken bones, and is awaiting surgery to remove his left eye, which was badly wounded in the attack.

This week, the SIU announced that Toronto police Const. Michael Theriault is facing one charge each of aggravated assault, assault with a weapon and public mischief. He was off-duty when the incident began, but according to Miller's lawyer, Theriault identified himself as a police officer during a subsequent 911 call from the scene, converting his status to on-duty.

Durham police responded and initially charged Miller in relation to the beating, but all of those charges were later withdrawn. Neither Durham police nor Theriault's employer, Toronto Police Service, notified the SIU. Investigators were only made aware of an officer's involvement after Miller's lawyer contacted them directly in April.

This was off-duty police officer who put himself, allegedly, on duty.- *Ian Scott, former SIU director*

"Any police officer who's aware of another police officer causing serious injury or death, has to notify, immediately, the SIU. Full stop. It's not an issue of which badge you're wearing, which uniform you're wearing," Marin said.

"The freshest evidence is always the best evidence. And by delaying it for so long they have potentially interfered with the administration of justice," he added.

## **Durham passes the buck**

Scott echoed that sentiment, saying the four-month delay in notifying the SIU will likely "erode the integrity of the investigation." He cautioned, however, that there are still several critical unanswered questions about what transpired that morning.

"This was an off-duty police officer who put himself, allegedly, on duty. And the question at that point becomes: 'Who has a duty to notify the SIU?'" he explained.



Toronto police Const. Michael Theriault is seen here in a video submitted by a CBC Toronto reader who filmed the officer while he and his partner made a traffic stop. (Submitted to CBC/Youtube)

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In his view, "the minute" Durham police officers realized that an officer who had put himself on duty was connected to the incident, "they should have notified the SIU," Scott added.

It's not clear, however, if the Durham officers who responded were aware that Theriault was a Toronto constable.

In a telephone interview, Durham police spokesperson Dave Selby said the force expected Toronto police to notify the SIU.

"We certainly liaised with Toronto police once we became aware that he was an off-duty officer and we certainly believe that the police service that employs the officer should be phoning the SIU," he told CBC Toronto.

According to the legislation that lays out the SIU's mandate, the chief of the service in which the officer charged was serving at the time of an alleged crime is responsible for contacting investigators.

Toronto police said in a brief statement that it will not comment on the case as it is currently before court.



Ian Scott said SIU legislation is "very, very clear" that investigators should be notified immediately if someone is hurt or killed during an interaction with police. (CBC)

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## **'Extremely rare' public mischief charge**

Further to the delay, Miller's lawyer, Julian Falconer raised other concerns about the conduct of Durham police. For example, he said Tuesday that Durham investigators failed to interview an eyewitness to the beating.

Selby would only say that "numerous people were interviewed as a result of our investigation" but he was unable to provide any specifics.

Scott also noted that a public mischief charge is "extremely rare," saying that when such a charge is laid, there are reasonable grounds to believe that an individual has misled police.



Dafonte Miller's left eye was badly injured in the beating. He's currently waiting for a surgery date to have the eye removed. (Leisa Lewis)

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Both Scott and Marin said the case should amplify previous calls to give Ontario's SIU-related legislation more teeth. Currently there's no enforcement mechanism to ensure SIU investigators are called promptly when it's warranted.

In an independent police oversight review released publicly in April, Justice Michael H. Tulloch recommended criminal consequences for forces that are shown to have violated the SIU's mandate.

*With files from Chris Glover* [Report Typo](#)