

Don't wait for an outcome in the Dafonte Miller case: fix Ontario's police oversight system now

How is it that an off-duty cop can allegedly beat up a man and no one is really sure who has jurisdiction?

By Matt Gurney, [for CBC News](#) Posted: Aug 25, 2017 5:00 AM ET Last Updated: Aug 25, 2017 5:00 AM ET



Dafonte Miller was allegedly beaten by an off-duty Toronto police officer last December. (Photos courtesy of Leisa Lewis)

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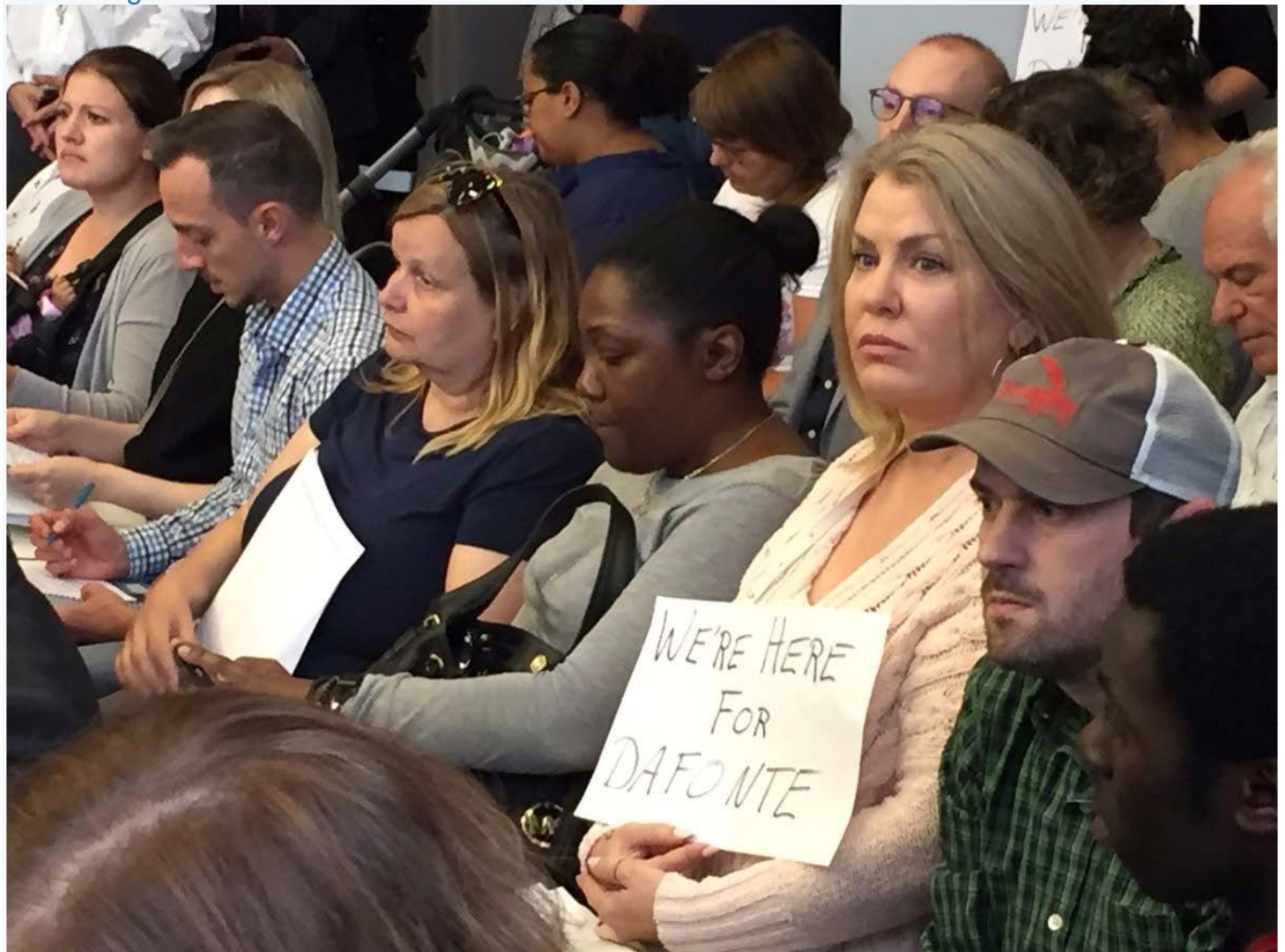
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The case of Dafonte Miller, a young man allegedly beaten by an off-duty Toronto police officer last December, is simply terrifying.

Miller's horrific injuries (he will lose an eye) as well as the racial undertones to the entire incident (Miller is black, his alleged assailants — brothers Michael and Christian Theriault, both are white) have understandably been the focus of much of the media coverage and public reaction to the incident. Miller's supporters showed up to Thursday's Toronto Police Service Board [meeting](#) to remind the public of that.

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Several audience members holding "We're here for Dafonte" signs

But there's a broader, arguably simpler narrative also unfolding here, and it's one that's probably easier to meaningfully address: Ontario's system of police oversight is clearly not functioning properly.

In Ontario, allegations of serious police misconduct resulting in injury are referred to the Special Investigations Unit (SIU), an arm's-length investigative body that polices the police. But not all crimes involving law enforcement officers are reported to the SIU; petty crime and drunk driving, for instance, would be investigated through normal police channels.

Indeed, not even all violent crime involving officers is reported to the SIU: if the officer is not on duty and is not alleged to have identified himself as a police officer or used police-issued equipment during a crime, there's no legal obligation to notify the SIU. The unit would not be called in to investigate an alleged domestic assault, for example, unless the allegation was that a police-issued weapon was used.

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This is important to understanding the broader problem, as is the sequence of events (as they are currently known). One of the most controversial elements of the Miller case is the Toronto Police Service's failure to notify the SIU. The Durham Regional Police in Whitby responded to the initial 911 call, and when they arrived, they found Miller badly injured.

One of the alleged attackers, Toronto Police Constable Michael Theriault, identified himself as an officer to the Durham police, according to Miller's lawyer. The local officers provided Miller with medical attention, charged Miller with a series of crimes and notified the Toronto police that one of their officers had been involved in an incident, as they say the law requires.

And then ... nothing happened. For months.



Michael and Christian Theriault arrive at court on Wednesday, August 2. (Lisa Xing/CBC)

In April, Miller's lawyer, Julian Falconer, notified the SIU about the entire incident. This was the first they had heard of it. The charges against Miller were quickly dropped. Late last month, the SIU charged Michael Theriault, and his brother Christian, with aggravated assault and assault with a weapon (a charge of public mischief, apparently relating to false statements, was later laid).

But why did the SIU only become involved after Miller's lawyer called them?

Many suspect a conspiracy, or, bluntly, a cover-up. The father of the Theriault brothers, John, is [reportedly](#) a senior officer in the Toronto Police, serving in the very unit that would notify the SIU of an incident requiring investigation.

If it was indeed a cover-up, that's horrific, full stop. The thought of Toronto police conspiring to protect family members who had beaten a young man to within an inch of his life is absolutely appalling to me, a proud supporter of law enforcement, from a family with a long history of police service.



Police chief questioned about Dafonte Miller case0:58

But there's also a much more benign explanation, and it's the one [offered](#) by Toronto Police Service Chief Mark Saunders: that his officers studied the incident carefully and concluded that it did not meet the legislated requirements for SIU notification. Theriault "did not identify himself as a police officer to the person that he was in contact with" at the time of the incident, Saunders said.

But here's the thing: the benign explanation isn't really all that less alarming. Even if the Toronto police thoroughly and properly reviewed the incident and concluded, in good faith, it didn't require involving the SIU, the SIU itself *clearly disagreed* (they laid charges once notified, after all). The best-case scenario is that Ontario's system of police oversight is so dysfunctional that an off-duty cop can allegedly severely beat a man and no one is really sure who has jurisdiction.

A lot hinges on whether Theriault identified himself as a police officer; Miller's lawyer says that he can be clearly heard doing so on an unreleased 911 recording and has called for the recording to be released. That would indeed be helpful understanding the timeline.



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If his identity as a police officer was known, however, the problem is clear: the Toronto police are either wrong about when the SIU needs to be involved or the SIU has overstepped its mandate to lay charges when they have no authority.

These options might be preferable to an outright conspiracy and coverup, but only marginally. The entire point of having an agency like the SIU is to maintain public faith in the quality of our policing. It's not working here.

The charges against the Theriault brothers will have to work their way through the courts. And the various police services involved will not be able to say much, since once the SIU mandate is invoked, they are obligated to remain silent.

Fair enough. But let's set the specifics of this incident to one side and focus on the big picture: no reasonable Ontarian can look at this and conclude our system of police oversight — a vital part of any functioning democracy — is working. There is no reason to wait on the final outcome of the Miller affair to begin making the changes to the oversight system that are clearly so badly needed.

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