

# Toronto, Durham police accused of covering up Dafonte Miller assault case

A complaint filed with a police watchdog says the two police forces tried to protect a Toronto cop and his brother who are now charged in the teen's beating.



Const. Michael Theriault (right) and his brother, Christian Theriault are charged with aggravated assault and assault with a weapon in connection with the Dec. 28 beating of Dafonte Miller in Whitby. (CARLOS OSORIO / TORONTO STAR) | ORDER THIS PHOTO

By [WENDY GILLIS](#) News reporter  
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Calling the Dafonte Miller case the “poster child” for all that is wrong with Ontario’s independent police oversight system, the lawyer for the Black teen alleged to have been severely beaten by an off-duty Toronto police officer and his brother called for the province’s police watchdog to conduct a systemic review of the two police forces he claims deliberately covered up the incident.

On Wednesday, Julian Falconer released a lengthy formal complaint filed this week to Ontario’s Office of the Independent Police Review Director (OIPRD) detailing allegations against police in the high-profile case — including what Falconer called “undeniable proof” that police attempted to protect Toronto Const. Michael Theriault and his brother Christian Theriault from criminal charges in the teen’s beating.

Both men are now charged with aggravated assault, assault with a weapon and public mischief in connection to Miller’s injuries during the December incident, in which the teen incurred eye damage so severe it will have to be surgically removed.

The public mischief charges are based on allegations Michael and Christian Theriault [misled investigators](#).

But Falconer alleges misconduct by police on a greater scale, both by Toronto police and Durham regional forces — including attempts by the Theriaults’ father, himself a Toronto officer, to conceal his sons’ alleged crimes.

“In my opinion, (there was a) deliberate and intentional effort on the part of police authorities to conceal a crime by one of their own,” Falconer told a news conference at Queen’s Park on Wednesday.

Falconer and a coalition of rights groups together called for stronger police oversight — including giving the Special Investigations Unit (SIU), Ontario’s police watchdog, more explicit powers to lay criminal charges against officers who interfere with its investigations.

Mark Pugash, spokesperson for the Toronto police, said he could not comment on any of the allegations made in Miller’s complaint because

the case is now before the OIPRD. Toronto police Chief Mark Saunders has [previously denied](#) allegations of a coverup, saying officers acted in “good faith.”

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“To say that this is a coverup is misleading,” Saunders said last month.

Durham police spokesperson Dave Selby said he could not comment, citing the Theriault brothers’ criminal cases. But he referred the Star to previous comments made by Durham police Chief Paul Martin, who [said in a statement](#) that Durham police “will participate in any and all reviews of the details of this case.”

Miller, 19, suffered serious injuries on Dec. 28, 2016 after an early morning encounter on a residential Whitby street with Michael Theriault, 25, and Christian Theriault, 21. In addition to his eye damage, his injuries included a broken orbital bone, broken nose and fractured wrist.

According to Falconer’s summary of the incident, which has not been tested in court, Miller and his friends were confronted by the Theriaults, who had been sitting in the garage of their home nearby. Michael Theriault, who was off-duty, identified himself as a police officer and asked what the young men were doing, the summary says.

Miller and his friends did not reply and kept walking, but the brothers then chased after them and caught up to Miller. They proceeded to punch him, kick him, beat him with a metal pipe and strike him in the face, according to Falconer.

When Durham regional police arrived at the scene soon afterward, they charged Miller with theft under \$5,000, assault with a weapon and possession of a small amount of marijuana. The charges were later withdrawn by the Crown.

Despite the involvement of an off-duty officer, neither Durham or Toronto police communicated Miller’s injuries to the SIU, the civilian

police watchdog that probes deaths, serious injuries and allegations of sexual assault involving Ontario police officers.

The SIU instead only learned of the incident when Falconer contacted the unit in April, leading to an investigation that resulted in charges against the Theriault brothers last month.

Ontario's Police Services Act dictates that a police service must notify the SIU immediately of any incident that falls under its mandate, including cases of serious injuries involving police officers. The SIU typically does not investigate incidents involving off-duty officers, but will take on a case if the off-duty officer identifies himself as a police officer during an occurrence, if it leads to serious injury or death.

Saunders told reporters last month that Toronto police determined they would not contact the SIU because they understood that Michael Theriault had not identified himself as a police officer during the incident. Meanwhile, Durham police have said they did not contact the SIU because it was Toronto police's role to contact the SIU as the employer.

Toronto police have since asked [Waterloo Regional police to conduct an independent review](#) of officer actions in the case, while Durham police have announced they, too, will conduct an internal review of their handling of the case.

Miller's complaint to the OIPRD chronicles, in detail, allegations of misconduct by police in the case, including John Theriault, the father of Michael and Christian Theriault. John Theriault is a 30-year Toronto police veteran and who currently works in the professional standards unit, which deals with officer misconduct.

The complaint alleges John Theriault "repeatedly contacted DRPS investigators to gain information relating to the status of the investigation" and provided false information about injuries suffered by Christian "to aid in the concealment of the crimes committed by his sons."

The complaint also alleges Toronto police permitted John Theriault to communicate with and have access to Durham investigators.

John Theriault did not respond to a request for comment from the Star on Wednesday.

Miller's OIPRD complaint also alleges Durham police simply accepted the Theriault brothers' account, failing to interview witnesses or inquire as to how Miller had sustained serious injuries.

The call for an OIPRD systemic review of Toronto and Durham regional police service's handling of the Miller case coincided with a broader call for stronger police oversight by a coalition of rights groups.

"What happened to this young, Black man illustrates a pervasive problem in Ontario," said Renu Mandhane, chief commissioner of the Ontario Human Rights Commission. "Ontario needs more effective oversight of police services, especially in relation to alleged systemic discrimination."

The coalition, which includes the Canadian Civil Liberties Association and former Toronto police board chair Alok Mukherjee, issued an open letter calling on Attorney General Yasir Naqvi to immediately implement police oversight recommendations recently made by Court of Appeal Justice Michael Tulloch.

Released in April, [Tulloch's report](#) calls for substantial changes to police oversight, including clarifying the rules around when police services must notify the SIU and officers' duty to co-operate with the investigation.

In a statement Wednesday, Naqvi said he will introduce legislation in the fall session of the legislature "that will transform Ontario's police oversight system."

"We will be ready to introduce a bill shortly after the House resumes sitting," Naqvi said.

Falconer said that Tulloch's report should have made it explicitly clear that it's an offence for an officer to interfere with an SIU investigation. Technically, the SIU could lay a criminal charge of obstruction justice against an officer but "you will never see that happen" because it's "career-limiting" for an SIU director, Falconer said.

"We have to create consequences for the police when they undermine an investigation the way, in my opinion, this investigation was deliberately undermined."

Michael and Christian Theriault are currently [released on bail](#). Michael Theriault has been suspended with pay from the Toronto police.

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