

Why bad cops usually get away with brutish behaviour: DiManno

Choosing to believe the best of law enforcement gets ever harder when the evidence available is so discouraging.



Dafonte Miller was beaten with a metal pipe last December in Whitby, allegedly by two brothers, one of whom was an off-duty Toronto cop.

By [ROSIE DIMANNO](#) Columnist

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The disclaimer is always about *a few bad apples*.

That handful of wormy cops who are (rarely) charged with criminal offences, almost uniformly acquitted — second-degree murder, attempted murder, manslaughter, sexual assault and assault among the trials I've personally covered over these past few decades which have resulted in not guilty verdicts — or brought up on Police Act disciplinary charges.

More like a bushel and a peck, I'd say.

In the past fortnight alone, we've had at least 10 officers from Toronto — with drifts to Durham Region — before the courts and police tribunals or charged or acquitted for lack objective evidence beyond a reasonable doubt.

The doubt, like the tie, invariably goes to cops.

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I choose to believe that most cops are professional in their job and decent human beings in their contacts with the public. Indeed, I've experienced it myself as someone charged with assault. It is not an easy vocation and day-after-day exposure to the worst among us doubtless calcifies the heart. But choosing to believe the best of law enforcement gets ever harder when the evidence before my eyes is so discouraging.

Cops who drink'n'dine out on the perks of their badge.

Cops who troll, in their off-hours, the underbelly world of vice and sleaze.

Cops who lie and plant evidence and perjure themselves on the witness stand.

Cops who allegedly beat up civilians and then lay charges of obstruct police.

Cops who allegedly [mock a young woman](#) with Down syndrome.

The violations range from the severe to the picayune, although nothing is picayune when the courts exact consequences from those who run afoul of the law. In one instance, which has received no publicity, a police officer charged a 19-year-old boy I know intimately with smoking — *smoking* — outside a restaurant in a Downsview strip mall. When the youth was unable to identify himself — which he had the right not to do; there was no allegation of a suspect being sought for a crime — he was arrested, taken to the station and subjected to a search which turned up a flick knife and small quantity of marijuana. Charges included possession of a restricted weapon, resulting from what very likely may have been an illegal search under the circumstances. The young man pleaded guilty earlier this month and is now burdened with a criminal record.

Since when do Toronto cops charge for *smoking*, unless they've got a burr up their butt? That's a job for bylaw enforcement officers and, thus far this year, they've laid precisely two tickets for non-compliance with the municipal regulation.

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[If Toronto police are serious about restoring our faith they need to root out the bad-apple cops: Keenan](#)

My point is that cops have too much discretionary authority and they wield it like the bullies too many of them are.

Bad apples? When compared proportionately with the civilian population, are they more or less criminal, more or less discreditable, more or less likely to catch a break from colleagues, courts and the justice system?

Social media has made it more difficult these days for cops to keep their own unruly behaviour off the radar. Every smartphone is a surveillance camera. Yet that evidence, brought into a courtroom or a

police tribunal or a coroner's inquest, can be freeze-frame parsed into incoherency by deft cop lawyers, the kind you and I could probably not afford.

And what do we, the public, have to shield against police brutality, whether it happens on a deserted street at three o'clock in the morning or in broad daylight on the lawns of the legislature by cops who've removed their identifying badge numbers?

We have the Criminal Code, of course, except police officers are extensions of it because they do the charging and the investigating, even when another police force is brought in. We have the near toothless Special Investigations Unit, generally staffed by ex-cops. We have Internal Affairs and Professional Standards Units that sometimes — as in the case of parking enforcement officer who brought sex assault charges against three Toronto constables — conduct stunningly sloppy investigations.

We have civilian oversight agencies such as the Office of the Independent Police Review Director which too often tosses complaints back to police chiefs for investigation and determination of charges.

And we have endless reviews, task forces, internal and external audits, hundreds of recommendations that amount to a hill of beans.

Cops have learned the lesson well: There are few consequences for brutish behaviour. Chances are you'll get away with it, even if subjected to the mild unpleasantness of being public identified on a charge sheet. Even then, your salary will continue to be paid and you won't be fired by your chief because that's a legal mosh-pit.

On Wednesday, lawyer Julian Falconer called for both a systematic review by the OIPRD to look at "underlying causes" of the alleged mishandling of a complaint by both Toronto Police Service and Durham Regional Police Service — concealing of an alleged crime to avoid SIU involvement — and a wider probe of how the SIU is being prevented from executing its mandate. Falconer has asked that the matter *not* be referred back to the TPS, the DRPS or any other police

service for investigation. Which leaves I don't know what, given the current complaint structure.

Falconer has been down this road before with complainants, a road that has wound its way to the Supreme Court of Canada, which vouchsafed the statutory obligation for police officers to co-operate fully with the SIU in their investigations.

I've lost count of the number of times this was shown not to have happened — and I don't mean just subject officers, who are constitutionally protected against self-incrimination and therefore aren't compelled to make a statement or submit to questioning. (A matter which seriously deserves a second-think by the Supremes.)

“Here I sit in 2017 facing the same issue,” Falconer told a press conference. “Why do police have the power to charge with obstruct justice those who interfere in an investigation but SIU investigators do not. And the answer is that there is every reality that it will be enormously career-limiting for a director of SIU to even contemplate laying an obstruct justice charge. This has to change.”

Falconer represents a 19-year-old Black male, [Dafonte Miller](#), who was beaten with a metal pipe last December in Whitby — extensive injuries suffered, including permanent loss of vision in one eye, broken orbital bone, broken nose, fractured wrist — allegedly by two brothers, one of whom was an off-duty Toronto cop. And further, Falconer maintains, that their father, himself a Toronto cop with Professional Standards, was complicit in concealing his sons' alleged crimes by having communication with the Durham investigators. He sets out, in his formally filed complaint, “clear steps that were taken in protecting these two thugs.”

The investigation, as it unfolded that night, certainly appears shabby, with the brothers' version of events — that they'd been attacked by Miller, with a pipe — accepted as de facto truth, with no follow-through on how Miller came by all those serious injuries. Nor was the SIU informed of the incident — as is required when a member of the

public suffers serious injury or death in an incident involving police — until four months later.

The interim upshot: All charges against Miller were withdrawn. The SIU has charged Michael and Christian Theriault with aggravated assault, assault with a weapon and public mischief for misleading investigators. Nothing against their father, Det. John Theriault.

Not good enough, argues Falconer.

“We have to equip our SIU investigators with the same powers of other police officers. We have to create consequences for the police when they undermine an investigation the way in my opinion this investigation was deliberately undermined. There are no incentives for them to comply with the law.

“Think of the exposure for John Theriault’s two sons had the right thing been done that night and SIU been brought in right away. All of the incentives operate in the opposite direction. There is no law they’re breaking when they undermine an SIU investigation but if they get nailed they face severe consequences. The incentives go in the wrong direction.

“It’s high time that we make sure that it’s safe for our SIU directors to lay the appropriate charges. Public mischief won’t do it.”

With the confluence of so many recent events involving on-duty and off-duty cops, the crisis of confidence in policing has become acute.

But it’s no longer just a handful of activists and journalists decrying police delinquency and monkey-business.

The public is demanding: What the hell?

Rosie DiManno usually appears Monday, Wednesday, Friday and