

## Are these cops above the law?

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Left: Prasanth Tella, former Durham Region constable cleared of assaulting drunk driver Hafeez Mohamed. Right: Hafeez Mohamed, drunk driver was held face down and repeatedly punched in head.

### SUBMITTED PHOTOS

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A Toronto police officer inexplicably floors his gas pedal, speeds into an illegal right turn and runs down a grandmother, severing her brain stem and killing her instantly.

An OPP constable wearing a bulletproof vest and carrying a baton and pepper spray shoots and kills an intellectually challenged 59-year-old man holding a small pocket knife.

During a traffic stop near Canada's Wonderland, York Region officers rough up a small, 50-year-old accountant, breaking his arm and leaving him roadside.

A Peel Region police officer sucker-punches a handcuffed prisoner and breaks his jaw in two places.

Two teens chatting on the grass in a public park are run over by a Durham Region squad car, suffering extensive injuries.

All of these officers were quickly cleared by the Special Investigations Unit (SIU) — the provincial agency responsible for investigating serious injuries and deaths resulting from interactions between police and the public. All still work as police officers.

The *Toronto Star* investigated two decades of SIU cases. It found that police officers across the province are treated far differently than civilians when accused of shooting, beating and running over and killing people, some of them innocent bystanders.

Ontario's criminal justice system heavily favours police and gives officers breaks at every turn — from the SIU, which hardly ever charges officers, to prosecutors, juries and judges.

Where civilians causing similar damage are typically prosecuted, cops walk.

Even in the rare instances when officers are charged and convicted, they almost always avoid jail time.

The *Star* also found police officers' lack of preparation, reckless and ill-advised tactics, and tendency to use excessive force led to civilian injuries and deaths.

“(The SIU) doesn't charge anybody. It's all a waste of time,” said David Orbst, the short, unintimidating accountant whose arm was broken during a traffic stop by York Region police officers, including an officer Orbst identified as Const. Derek Cadieux. “If a (civilian) had done this to me, I point the finger and they get arrested.”

The head of the SIU, Ian Scott, defended his agency in an interview with the *Star* but said, “Police officers get all kinds of breaks in the (criminal justice) system.”

The *Star* found in many cases that the reckless actions of some police officers have tarnished the oft-stated mottos — “to serve and protect” or “leaders in community safety” — of police forces across the province.

In one case, Toronto Police Supt. Neale Tweedy, who was tasked with disciplining a constable who killed a bystander, said police officers must lead by example. He said “preventing property damage, injury and death is a core business function.”

The *Star* found the SIU is hampered by a justice system that heavily favours police, and has not done its job holding officers to this standard.

In its 20-year history, the SIU has conducted at least 3,400 investigations and laid criminal charges after only 95 of them, according to a *Star* analysis. The SIU does not track what

happens to those it charges. But the *Star* has, and found only 16 officers have been convicted of a crime. Only three have seen the inside of a jail — as inmates.

“Two words on the (SIU) website are: Independent and rigorous. (But) it's just a farce organization,” says Emal Bariali, whose schizophrenic brother Elyas was shot dead by Durham police in 2005. “Seems to me like there are no consequences (for officers). Why would the police take the SIU seriously?”

The numbers should not surprise Scott. Four years before he took the helm in 2008, he said he had little faith in the agency's effectiveness given the constraints of the justice system.

In a presentation he made to a lawyers' conference in 2004, Scott, who once worked as a prosecutor, noted that police officers accused of using excessive force stood a less than one-in-five chance of facing the same level of justice as civilians accused of similar crimes.

“It is an ineffective use of state resources to investigate, charge and prosecute cases in which the high probability is ... acquittal,” Scott wrote in 2004.

He proposed a second option — give the SIU the power to send some suspect officers to the Ontario Civilian Policing Commission, an independent oversight agency, where they could be fined or fired. He said a commission verdict would act as a “deterrent” to police misconduct. But Scott's call went unanswered.

The SIU was created in 1990 after a series of police shootings of black civilians provoked community backlash and fear the incidents would be covered up by police-friendly investigations. In one case in 1988, a Peel Region officer shot and killed teenager Michael Wade Lawson as he drove a stolen car.

Supporters of the new agency, including the Toronto police chief of the day Bill McCormack, said the independent SIU would boost public confidence in police oversight. But community groups expressed concern that the unit, staffed by former police officers, would not be independent enough. Today, the SIU employs 54 full- and part-time investigators, 47 of whom are former police officers.

“While the SIU is far from perfect ... the alternative is to return to the police investigating the police, an option that has fallen into disfavour due to the conflict-of-interest issues,” SIU director Scott said.

The taxpayer-funded agency, which today has an annual budget of around \$7 million, refused to cooperate with the *Star* investigation by providing short summaries of hundreds

of investigations, internal reports the SIU writes after it concludes investigations, and other documents.

The *Star*, through police, court and civilian witness sources, built files on 700 SIU cases. In some cases, sources provided evidence collected during SIU investigations.

The *Star* found:

- The SIU missed or ignored crucial evidence in at least six cases.
- Officers are too quick to take aggressive action against civilians.
- A cozy relationship between police and prosecutors has allowed officers to avoid punishment.
- Police officers involved in an incident investigated by the SIU break a conduct rule by delaying writing their notes, and share the same lawyer, leaving victims worried officers are collaborating to get their story straight and prevent the SIU from learning the truth.

As a result, neither police nor victims believe the SIU can conduct the kind of independent, “rigorous” investigations it was set up for.

Some cases the *Star* reviewed involved innocent bystanders while others involved those with criminal records, histories of violence and a variety of backgrounds police often come into contact with in the course of their duties.

In 2006, Hafeez Mohamed was punched in the head, neck and shoulder eight to 10 times during an arrest by Durham Region police officer Prasanth Tella.

Responding to a report of an assault outside a house in Elmvale, Ont., OPP Const, Jeff Seguin arrived to talk with the suspect, Doug Minty, an intellectually challenged 59-year-old living with his mother. Minty moved toward Seguin and was shot dead.

The SIU did not conduct a thorough investigation and cleared Seguin, though his sketchy story failed to conclusively show that a fatal bullet was his only option. Minty's brother John said the family still does not understand why Doug was killed last summer.

“I think the family is entitled” to answers, John Minty said. “And the SIU investigation certainly didn't, and won't, provide us with those answers.”

Grandmother Mei Han Lee, 67, was not a suspect. She was walking home to help care for her autistic grandson when Toronto police officer Juan Quijada-Mancia sped into an illegal right turn, hit Lee and killed her instantly.

Lee's family says the SIU was eager to sweep the case into obscurity. The officer was not responding to an emergency call, and to this day neither the SIU nor Toronto Police have said where Quijada-Mancia was going in such a hurry on that February morning in 2005.

"She always obeyed the law. What was the officer doing?" asks Lee's daughter-in-law Rose Chen.

Police officers such as Quijada-Mancia can also face internal disciplinary hearings, which are conducted by superiors in their own force and carry softer punishments than those that could result from a criminal charge.

Quijada-Mancia was disciplined by the Toronto Police. He lost 40 hours' pay. It was in this decision that Supt. Tweedy stressed the importance of police officers being held to the same standard as civilians.

The *Star* found no accountability for incidents that caused civilian injuries and deaths. The SIU completes reports after investigations and then gives them to the Ministry of the Attorney General. But the victims and the public do not get to see the information.

Most of the police officers involved in incidents probed by the *Star* declined to be interviewed.

Durham Insp. Bruce Townley said officers are traumatized by incidents that result in death or injury.

"Contrary to what may be perceived, that we're all cowboys, we're human beings," said Townley, whose force features in three cases reviewed by the *Star*. "These people are out to protect the public and protect themselves."

The *Star* found that the virtual immunity police officers enjoy is not the SIU's fault alone. The agency faces obstacles that Scott knew well before he took over in 2008.

An officer investigated by the SIU benefits from a presumption of good character by jurors and judges.

In the rare instance when the SIU has laid charges, one of every four officers sees the charges dropped before trial, many others are acquitted, or, as has happened at least 10

times, an officer is found guilty before a judge spares him jail time. Some guilty police officers walk out of court with their record wiped clean.

Hamilton Police Const. Jason Williams was charged in 2002 with assault for kicking a handcuffed 57-year-old psychiatric resident of a group home in the head. Five fellow officers testified they saw Williams repeatedly punch and kick the man. Williams was convicted of assault, though the judge dismissed the more serious charge of assault causing bodily harm. Ian Scott was the prosecutor. At sentencing, he asked for jail time, but Williams received none.

Scott also prosecuted Niagara constable Michael Moore, found guilty in 2002 of breach of trust after he accepted oral sex from a woman in exchange for not issuing her a traffic ticket. Scott called Moore a “wolf in police uniform” and wanted him jailed for six to nine months. Moore got a year of house arrest. He has since resigned from the force.

Police trials, Scott said in an interview, are “very different” because many in the justice system view these as “occupational crimes” — the consequences of a dangerous job — as opposed to crimes committed by criminals.

Officers also enjoy stiff protection from the sturdy blue wall of their police force, insulation by scrappy lawyers working for unions with deep pockets, and typically a close working relationship with prosecutors.

Following a judge's criticism of this type of relationship, the SIU recently re-investigated and charged a Peel Region police officer with assault against Quang Hoang Tran.

Tran had been convicted of playing a role in a series of brutal home invasions, but the conviction was thrown out this year after an appeals court found Peel officers “beat him up” and “attempted to cover up their shocking conduct.”

Because of the behaviour of the police and prosecutor, a criminal walked free.

Though they are afforded special powers — to stop and arrest civilians, and carry a gun — officers enjoy some of the same protections as civilians when investigated.

Police officers at the centre of SIU probes do not have to give a statement to the agency — a right zealously protected by police lawyers and unions.

One well-known police lawyer, Gary Clewley, recently said in an article he wrote for a police union magazine that he has been tempted to tell so-called “subject officers” to “Shut the f--- up” before writing their notes, and talk to a lawyer.

As part of their internal disciplinary proceedings, police forces can compel officers to give statements, but the SIU is not entitled to that crucial evidence.

Now that Scott has the job he previously thought so impotent, a defence lawyer who has represented officers investigated by the SIU summed up Scott's untenable position this way: "Ian has the worst job in the province. Everyone hates him — the police, the community. No matter what he does he can't do anything right. Every decision he makes will be criticized for years."

The powerful OPP union has sent out a newsletter accusing Scott of anti-cop bias.

Though the justice system heavily favours police, one Ontario judge was surprised that police officers complain of persecution when they are hardly ever charged. In 2001, when Justice John Ground threw out a \$10 million malicious prosecution lawsuit brought by York Region officer Robert Wiche against the SIU, he said:

"There appeared to be on the part of certain police witnesses and certain police associations an almost Pavlovian reaction against a civilian agency (the SIU) investigating the conduct of police officers ... and against the idea that such an agency could conduct an investigation which could be fair to police officers," the judge wrote.

"This is particularly surprising when ... in about 97 per cent of the cases, the investigation exonerates the subject officer."

*Fist in a series.*

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