

Cohn: With SIU and police at war, attorney general ducks

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Attorney General Chris Bentley speaks during a press conference on Oct. 1, 2008 in Toronto.

NATHAN DENETTE/THE CANADIAN PRESS



By [Martin Regg Cohn](#) Queen's Park Columnist

Open war has broken out in Ontario over who polices the police. And it's not a fair fight.

The Special Investigations Unit is being sandbagged by the very police forces it's supposed to keep in line. So who's it going to call for backup?

Not Attorney General Chris Bentley. He keeps ducking.

Bentley has just released a report on the SIU's perennial conflicts with police forces. Not one to sort through a tough issue himself, he outsourced it to former chief justice Patrick LeSage 15 months ago.

If the attorney general has so much trouble making up his mind — or standing up to the police — he might as well outsource his own cabinet post and salary to the distinguished former chief justice as well. No point paying two people for one jurist's job.

Controversy has a paralyzing effect on Bentley. That's why the attorney general went underground, never formally announcing this SIU-police review to the Legislature or the public, not even a news release.

These are life and death issues for two families that have been asking the courts to enforce the rules in the Police Act, not rewrite them. In these high-profile cases, police not only shot two men, but stymied the SIU when it tried to get police witnesses to give unvarnished — and *unvetted* — accounts of what happened.

Here's the problem: When police are a witness to a shooting, they commonly share the same lawyer, even with the officer who fired the gun. The opportunity for collusion is obvious — and the perception, odious.

Police witnesses routinely insist on seeing a union lawyer before submitting their notes. They write them up in draft form to bounce off their lawyer, and only then submit a vetted version the next day or so — not, as required, before their shift ends.

When the SIU went public with its frustrations, the police unions clamoured about a witch-hunt. One union tried to have SIU head Ian Scott disciplined (unsuccessfully) for showing “bias against the police.” Some might have been intimidated — but neither the families nor the SIU have acquiesced.

That's more than can be said for Bentley, who ran for cover a year ago when rattled by police pressure: On the eve of the first major court hearing, a panicked Bentley suddenly yanked four Crown attorneys who were supposed to help the SIU.

The attorney general refused to explain. Hiring LeSage was the best way to resolve the conflict, said Bentley, who was at pains to say he never kept this “confidential” process a secret. He just kept the public out of it.

For the victims' families, however, Bentley's mental gymnastics have not brought peace of mind. At 830 words, the final report that he commissioned is concise, but leaves much unsaid.

LeSage calls for police to submit their notes before the end of their shift, “except where excused by the chief of police” — a loophole that former OPP commissioner (and SIU foe) Julian Fantino has exploited. Belatedly, we are now told that police witnesses should stop sharing a lawyer with any fellow cop who fired their gun, so as to avoid any tainted testimony (as two previous reports long ago urged).

What the former chief justice doesn't say, however, is how to truly empower the SIU: Enforce the existing Police Act, so that officers fulfil their obligations.

Possibly LeSage was too tactful to spell it out for the risk-averse politician who hired him. So here's my suggested 13-word annex to the report, respectfully submitted herewith (before the end of my shift):

Mr. Attorney General, stop bobbing and fobbing off hard decisions on retired judges.

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