



BACKGROUND:
OIPRD REPORT RE. CHIEF SAUNDERS AND ASSAULT OF DAFONTE MILLER

August 7, 2020

In August 2017, Dafonte Miller, through counsel, filed a complaint with the Office of the Independent Police Review Director (“OIPRD”) alleging that Toronto Police Service (“TPS”) Chief Mark Saunders committed misconduct by failing to notify the Special Investigations Unit (“SIU”) of a vicious assault of Dafonte Miller that occurred on December 28, 2016 at the hands of TPS Constable Michael Theriault.

Specifically, the complaint made two allegations. The first allegation was that TPS Chief Mark Saunders committed neglect of duty by failing to notify the SIU of the December 28, 2016 incident. The second allegation was that the reasoning behind Saunders’ failure to notify the SIU was to protect TPS Constable Michael Theriault from criminal charges which amounted to discreditable conduct.

Dafonte Miller and his counsel were provided the OIPRD report by the Toronto Police Services Board on Thursday, August 6, 2020 at approximately 9:45am – 45 minutes before Interim Toronto Police Chief James Ramer held a press conference and made public comments about the OIPRD Report.

The 12-page OIPRD Report unsubstantiated the claims against Chief Saunders on the basis that he was kept in dark about the December 28, 2016 incident and the decision not to notify the SIU.

The OIPRD Report identified Inspector Boyd as Chief Saunders SIU designate. Inspector Boyd declined to be interviewed by the OIPRD and only answered questions by email. (p. 7)

The OIPRD Report makes clear that the “discretion about whether the matter falls within the SIU mandate and warrants investigation lies not with a chief of police but solely with the SIU director. The information contained on the SIU website about on-duty/off-duty conduct in no way absolves a chief of police of his or her statutory obligations. It simply offers a public explanation about when the SIU director may choose to exercise *his or her* discretion to investigate a complaint in circumstances in which the officer is off-duty.” (p.9 para. 18)

Additionally, while the report unsubstantiated the misconduct allegations against Chief Saunders it found that “Chief Saunders misapprehends his statutory obligation. As stated earlier, the legislation requires a chief of police to notify the SIU in *all* cases where a police officer has been involved in an incident that results in serious injury; the legislation does not distinguish between



on-duty and off-duty conduct. The discretion as to whether off-duty conduct ought to be investigated is within the exclusive purview of the SIU director.” (p.10 para. 22)

Additionally, the report made the following findings:

- December 28, 2016 – Dafonte Miller and two friends came into contact with the Theriault brothers at their family home and the result of the interaction was injuries to Mr. Miller and his arrest (p.4, para 1);
- Durham Regional Police Services (“DRPS”) Inspector Nash called TPS Operations Centre to notify them of the incident on December 28, 2016 (p.4, para 2);
- DRPS Inspector Nash spoke to TPS Inspector Keith Smith regarding TPS Constable Theriault’s ‘off-duty’ arrest of Mr. Miller (p.4, para 2);
- TPS Inspector Smith was directed by supervisor Superintendent Ferguson to advise the on-call Chief’s SIU liaison designate (p. 4, para 2);
- Inspector Peter Moreira was the on-call Chief’s SIU designate on December 28, 2016 (p.4, para 3);
- TPS Inspector Moreira reported to Inspector Boyd who was the Chief’s SIU Designate (p. 4, para 3);
- TPS Inspector Moreira contacted DRPS Inspector Nash and advised the OIPRD investigators that:
 - “he learned from Inspector Nash that at no time did Constable Theriault identify himself as a police officer, produce a warrant card, or use any police-issued equipment”
 - Also, that Mr. Miller had not indicated that he was aware Constable Theriault was a police officer (p. 4-5, para 4);
 - Notably the report does not indicate whether this information provided by TPS Inspector Moreira was verified with DRPS Inspector Nash;
- TPS Inspector Moreira formed the opinion that in this situation the SIU did not have to be notified. He based this opinion on:
 - The fact that the arrest was a ‘citizen’s arrest’ (p. 5, para 5)
 - Constable Theriault did not put himself on duty (p.5, para 5)
 - Consideration of TPS Policy 13-16- Special Investigations Unit (p. 5, para 5)
 - Information provided on the SIU website specifically regarding procedure with off-duty officers (p.5, para 5);
- TPS Inspector Moreira conferred with TPS Inspector Boyd who agreed with Inspector Moreira that the SIU did not have to be notified (p. 5, para 6);
- Neither Inspector Moreira nor Inspector Boyd informed Chief Saunders of the incident that occurred on December 28, 2016 (p. 5, para 7);
- Chief Mark Saunders was notified of the December 28, 2016 incident on May 2, 2017 by Inspector Boyd after the SIU invoked its mandate (p. 5, para 7);

Misconduct Findings

1. Neglect of Duty

- O.Reg. 267/10 section 3 states that
 - “a chief of police **shall** notify the SIU immediately of an incident involving one or more of his or her officers that may reasonably be considered to fall within the investigative mandate of the SIU...” (p. 8, para 15);

- SIU website regarding off-duty conduct states
 - “... SIU will not **normally** investigate incidents involving off duty police officers acting in the course of their private lives” (pp. 8-9, para 16);
- O.Reg. 267/10
 - “creates a mandatory obligation on the chief of police to report to the SIU matters coming within their mandate; this statutory reporting obligation is not qualified by whether the conduct occurred while the officer was on or off-duty” (p. 9, para 17);
- Report states that
 - “...the information contained on the SIU website about on-duty/off-duty conduct **in no way absolves a chief of police of his or her statutory obligations**. It simply offers a public explanation about when the SIU director may choose to exercise his or her discretion to investigate a complaint in the circumstances in which the officer is off-duty...” (p. 9, para 18, emphasis added);
- O.Reg. 267/10 permits Police Chiefs to “delegate their SIU responsibility” (p. 9, para 19);
- Chief Saunders delegated this authority to Inspectors Moreira and Boyd (p. 9, para 19);
- Inspectors Moreira and Boyd made the decision not to notify the SIU, and thus did not inform Chief Saunders about the incident (p. 9, para 20);
- Chief Saunders misapprehends his statutory obligation. As stated earlier, the legislation requires a chief of police to notify the SIU in *all* cases where a police officer has been involved in an incident that results in serious injury; the legislation does not distinguish between on-duty and off-duty conduct (p. 10, para 22).

2. Discreditable Conduct

- Chief Saunders (p. 11, para 25):
 - Had no part in his officers’ decision not to notify the SIU
 - Did not know about their decision until SIU invoked their mandate on May 2, 2017;
- Saunders further denied knowing Constable Theriault or trying to protect him from criminal prosecution (p. 11, para 25).

Conclusion

In light of Chief Saunders not being notified of the incident on December 28, 2016, the allegations of neglect of duty and discreditable conduct are unsubstantiated (p. 11, para 26 & 27).