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The Honourable Chris Bentley
Attorney General of Ontario
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, Ontario
M7A 2S9

Dear Mr. Attorney:

Re: SIU Issues

Enclosed is my report regarding some SIU issues.

Sincerely,

Patrick J. LeSage, Q.C.

PJL:sn

Encl.

Report regarding SIU Issues

I was asked to review some issues that have arisen over the last few years in matters involving the Special Investigations Unit and the police and provide some recommendations.

In developing these recommendations I am mindful of the vital importance of each participant in the system of civilian oversight of police conduct: the Director and the investigators, the police, the lawyers and the public. It is critical that all maintain solid operational relationships if these important public institutions are to maintain continued public confidence.

The relationship between the various participants in this process is inherently challenging. Nevertheless it is important they each continue to work to improve their relations. The following recommendations I hope will be the beginning of this process of moving forward in a cooperative spirit.

These recommendations will, I believe, help clarify some of the roles and responsibilities of the participants in this process.

I recommend that within 2 years there be a review of these, and other SIU/Police related issues.

Definition of “Serious Injuries”

Section 113.(5) of the *Police Services Act*, R.S.O. 1990, c.P.15 limits the SIU to investigations “into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.”

I recommend that the definition of “serious injuries” referred to as the “Osler definition” be codified through legislation as follows:

“Serious injuries” shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault.

“Serious injury” shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the Unit should be notified so that it can monitor the situation and decide on the extent of its involvement.

Right to Counsel

Section 7 of O. Reg. 267/10 is clear. All officers have the right to counsel.

My recommendation is that Regulation 267/10 be amended to provide as follows:

S.7.(1) Subject to subsection (2), every police officer is entitled to consult with legal counsel or a representative of a police association and to have legal counsel or a representative of a police association present during his or her interview with the SIU.

- (i) Witness officers may not be represented by the same legal counsel as subject officers.

Officer’s Notes

I recommend that section 9 of O. Reg. 267/10 be amended to add the following subsection:

9.(5) The notes made pursuant to subsections (1) and (3) shall be completed by the end of the officer’s tour of duty, except where excused by the chief of police.

I also recommend that section 6 of O. Reg. 267/10 be amended to read as follows:

6.(2) A police officer involved in the incident shall not communicate directly or indirectly with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews.

In addition, it is my recommendation that steps be taken to request the Law Society of Upper Canada add the following clarification to the Commentaries to the Rules of Professional Conduct:

Lawyers representing more than one officer in an investigation by the Special Investigations Unit are reminded of their duty not to undermine section 6 of O. Reg 267/10 (Segregation of Officers) by disclosing to one police officer involved in the incident anything said to the lawyer by the other officer regarding his or her involvement in the incident.

Attorney General Directive

I recommend that the Attorney General make clear to Crowns that the 23 December, 1998 Directive (the “Harnick Directive”) was, and is, intended to apply not only to an officer originally designated as a ‘subject officer’ but also to an officer originally designated a “witness officer” but subsequently becomes a ‘subject officer’.

Report of Investigation by Chief of Police

Section 11 of O. Reg 267/10 is clear. The chief of police shall investigate any incident for which the SIU has been notified. The chief of police of a municipal police force reports his or her findings to the Police Services Board. The OPP Commissioner is obliged to prepare a report of his or her findings and any action taken. The SIU director’s authority does not extend to requiring the chief of police or OPP commissioner to investigate or report to him and should not be part of the SIU director’s communication with the chief of police or OPP commissioner.

Press Release/ Public Statement

I recommend that the SIU director ensure its press release and /or public statement be confined solely to issues required to preserve the integrity of the investigation as proscribed by section 13 of O. Reg. 267/10.