

Lower injury threshold needed to trigger police oversight: O'Connor



"Bodily harm" injuries caused to civilians by police should automatically trigger an independent probe instead of the current system where only those deemed "serious" are reported and investigated, says Toronto civil litigator [Sarah O'Connor](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments after the [Toronto Star](#) reported that a Toronto police officer and his civilian brother were [charged](#) in July in connection with last December's alleged metal pipe beating of a 19-year-old man in Whitby.

The teen suffered serious injuries and was blinded in one eye in the alleged assault involving an off-duty officer and his brother, the [Star](#) reports, but the [Ontario Special Investigations Unit](#) (SIU) wasn't notified until the victim's lawyer reported it about four months later.

"I think the threshold for the SIU should be lowered and it should be better defined to make it more akin to bodily harm," O'Connor tells [AdvocateDaily.com](#). "I think extending it from 'serious injury' to 'bodily harm' would be a good way" to get the SIU involved in more cases where civilians are hurt.

Toronto Police didn't alert the SIU because its liaison officer didn't believe the injuries fell within the civilian organization's definition of serious injury, death or sexual assault, the [National Post](#) reports, adding Durham Regional Police didn't call because it believed it was the responsibility of the other police service.

The SIU charged the constable and his brother with aggravated assault, assault with a weapon and public mischief. None of the allegations have been proven in court.

"The fact that the officer is suspended with pay and the two men are criminally charged shows how serious the SIU is taking it now," O'Connor says.

Bodily harm is defined in the Criminal Code as "any hurt or injury to a person that interferes with the health or comfort of a person and that is more than merely transient or trifling in nature," she says.

The SIU's [definition](#) of serious injury includes "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."

O'Connor, who is not a party to the case and comments generally, says broadening the definition of injury is warranted.

"Would that open the floodgates and result in the SIU being overburdened? Potentially," she says. And if that is the case, the agency could reveal the extent of a the problem, she says.

"Whenever I've dealt with litigation involving police, broken bones or a broken nose, are not considered cases of excessive force," O'Connor says.

The SIU [reported](#) a total of 266 investigations — including 154 cases involving in-custody injuries — in 2014-2015, its most recent figures.

In the Whitby incident, two men allegedly demanded a group of teens walking through their neighbourhood to explain their presence and to identify themselves.

The teens initially ignored the men but later fled. It's alleged the men caught up with the victim and despite his injuries, Durham police charged him with assault with a weapon, theft under \$5,000 and possessing marijuana, the [Post](#) reports. Those charges were later dropped.

O'Connor says case law has determined that a police officer is on duty at all times, so the teens should have responded to the request to identify themselves once they knew he allegedly was a police officer.

"If an undercover or an off-duty officer identifies himself as such and says, 'I want to know who you are,' say it," she says.

O'Connor says, in general, a civil case would follow the outcome of the criminal matter. The teen has a two-year limit to file a claim and, by that time, she says the extent of his injuries and the impact they will have on his life will become clearer.

"Is he off work? Is he going to miss school? These are all things he should be compensated for," she says. But she wonders about the community's reaction as the teenager's "only apparent crime was walking with friends. How do you fix that?"