



MEMBER UPDATE

FROM CHIEF DANNY SMYTH

November 20, 2018

Blue Wall Separates Police Watchdog from the Facts?

By now most of you will have read or heard about the Winnipeg Free Press articles written by Ryan Thorpe that have been very critical of the Independent Investigations Unit (IIU) and the Service. I take exception to the manner in which Mr. Thorpe has characterized our Service.

Many aspects of Mr. Thorpe's articles are inaccurate; he has taken a great deal of liberty weaving together statistics with incomplete and heavily redacted IIU documents he acquired through FIPPA requests, and then adding general commentary from academics or anonymous sources with limited or no knowledge of the specific incidents or existing critical incident protocols.

Through it all Mr. Thorpe boldly suggests we are uncooperative, obstructive, and implies that we are corrupt. These articles come across as long winded editorials rather than serious investigative reporting.

That being said, I find myself in a dilemma with no obvious path or response. Mr. Thorpe did in fact ask to interview me prior to the articles being published. However, it was clear that he wanted to discuss individual investigations. I was not prepared to comment on individual investigations involving our front line members. Instead I provided a general statement:

I will not be commenting on specific cases.

As for the relationship with the IIU, I can say that we have a positive professional relationship with that agency. Civilian Director Zane Tessler and I communicate and meet with one another routinely. As with any new protocol, there were what I would characterize as "growing pains" at the beginning of its mandate. At times, we have disagreed on the interpretation of regulations as they pertain to officer involved conduct.

We have worked through those matters when they arose. The Winnipeg Police Service is committed to ensuring the success of civilian oversight as it pertains to police governance, and more specifically independent investigation of officer involved incidents that fall within the jurisdiction of the IIU as prescribed under the Police Services Act.

I am not about to get into a back and forth response with Mr. Thorpe; however, I do think it is important to provide members of our organization with an explanation so that you can put this situation into some context.

For example, in today's article, Mr. Thorpe indicates that I refused to hand over requested documents, blocked interview requests and denied IIU had the right to look into certain cases at all. Specifically quoting statements I made on August 10th and 11th, 2017 that I would not be reporting a matter to the IIU as they

lacked jurisdiction to investigate the incident as officer conduct was not at issue. To make you aware, this incident being discussed was the workplace accident involving the mechanical failure of a Service firearm. I indicated there would still be oversight, just not by IIU. This was a "*As a serious workplace accident it was reported to Manitoba Labour, pursuant to the Workplace, Safety and Health Act.*"

Indeed I have pushed back where I believe IIU lacks jurisdiction and is not entitled to copies of files involving our members. For example, the Police Services Act is specific in its application to *police officers*, but not civilian staff. In this regard the Service employs many classes of staff, some with peace officer powers that are not police officers. These include Identification Technicians, River Patrol Officers, Cadets, and most recently Central Processing Officers.

These types of peace officers are not unique to policing. They exist under other provincial legislation such as Safer Communities, Witness Security, Conservation, Legislative Security, Tax Administration and the Fire Commissioner. Even IIU investigators are "peace officers", but not "police officers".

Notwithstanding that we had several classes of staff with peace officer powers, a deliberate decision was made by government to exclude from IIU jurisdiction any member of the Service who is not a "police officer".

While I have invited the IIU to seek legislative change, procedurally at this time, IIU is not entitled to designate non-police officers as either witness or subject officers and I have resisted disclosure in those situations because they have no legislative authority.

In the cases where IIU has taken jurisdiction, charges have been laid in 7 instances, or 4.5% of all cases. While this is similar to Ontario (4.9%), charges should not be the measure of

IIU's "success". Indeed the legislative purpose of the IIU and civilian oversight is to improve transparency and accountability in the delivery of policing services where they have jurisdiction.

Police officers are authorized by law to use as much force as reasonably necessary in administering or enforcing the law, if they act on reasonable grounds and use no more force than is necessary for that purpose. This is the standard used by IIU when investigating any use of force situation involving a Service member (police officer) as noted in a recent IIU decision holding a member's use of force in a deadly encounter was both justified and unavoidable:

Reasonableness of an officer's use of force must be assessed in regards to the circumstances as they existed at the time the force was used, particularly when it is considered in light of the dangerous and demanding work engaged by police and the expectation that they react quickly to all emergencies. These police officers' actions must be assessed in light of these exigencies. Where lethal force is used (intended or likely to cause death or grievous bodily harm), there must be a reasonable belief by the subject officers that the use of lethal force was necessary for their own self-preservation or the preservation of any one under their protection from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness'

I am a strong supporter of civilian oversight, including the mandate of the IIU. As police officers we have unique powers including the ability to arrest and detain, and the ability to use reasonable force. With these powers comes responsibility; we must be accountable for our

conduct. And in my view, we are accountable; in fact I would argue that the policing profession is subject to more scrutiny and oversight than any other profession in society. This extends beyond IJU and includes LERA, the civil and criminal courts, Inquests, Inquiries, and even the Workplace Safety and Health Act.

I am also a strong supporter of procedural justice. It is important that anyone accused of wrongdoing or subject of an investigation be treated fairly. That is what I have attempted to do. I recognize that there are gaps in the Police Service Act that require amendments. The Act explicitly provides oversight and procedures for "police officers" but offers no framework for "peace officers".

Amendments are required to provide clarity so that those with "peace officer" status are treated consistently and fairly. I am committed to ensuring procedural justice for all of our members regardless of whether they are "police officers" or "peace officers". Perhaps Justice Officials will now be motivated to consider changes to the act to address these gaps but it has come with a cost:

Mr. Thorpe has used his authority as a reporter to undermine trust in the police. He has succeeded with some in the community. It may result in making our job more difficult than it already is. That is a hell of a price to pay.

In closing I would like you to know that you have my full support and the support of the Winnipeg Police Board.