

SIU clears officers involved in 2016 arrest at Guelph splash pad

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The province's Special Investigations Unit has cleared two Guelph police officers of any wrongdoing related to injuries sustained by a man with special needs during his 2016 arrest.

"The SIU concluded that there were no grounds to proceed with criminal charges against either officer," said Joseph Markson, the lawyer retained to represent the officers in the recently-wrapped SIU investigation.

The SIU is a civilian agency that conducts investigations into circumstances involving police and civilians that have resulted in serious injury, death or allegations of sexual assault. It has the power to lay charges if needed.

In this case, the investigation related to a July 2016 incident in which Derrick Miller, 32, was injured when he was arrested at the city hall splash pad on charges of voyeurism, possession of child pornography and mischief.

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The charges against Miller didn't proceed to court, and Miller and his parents subsequently filed a \$5-million lawsuit against the Guelph Police Services Board and several members of the service.

The claim, which was dated Jan. 18, 2017, describes three arresting officers as having used "non-consensual physical contact that escalated to excessive force and brutality."

Markson said the SIU's investigation into the matter only designated two officers as "subject officers," and he

emphasized that the civil lawsuit and the SIU's investigation are separate matters.

"The SIU only designates officers whose actions may have resulted in the physical injury," Markson said, noting he could not comment on why the civil claim named three arresting officers.

In the case of the two the SIU investigated, the agency had no concerns about the conduct of the officers, he said.

"It's regrettable that injury occurred, but it's not the product of any criminality on the part of the officers," he said.

Both the subject officers and Guelph police were notified in February that the SIU had found no grounds to lay criminal charges, he said.

"The public is entitled to know that this matter was objectively investigated," he said.

Asked for details about the investigation, SIU communications co-ordinator Monica Hudon provided little information.

"The director of the Special Investigations Unit, Tony Loparco, has determined there are no reasonable grounds to lay criminal charges against any Guelph Police Service officer in relation to the injuries sustained by a 32-year-old man in July of 2016," she said in an email to the Mercury Tribune.

The Millers' lawyer, Kevin Kemp, said the SIU's decision will not have an impact on the lawsuit.

"The action will proceed regardless," he said in an email response to a Tribune inquiry.

Asked for an update on the case, Kemp said after a wait of several weeks, legal counsel for the defendants provided the identity of two of the officers — previously referred to as John Doe and Jane Doe in the statement of claim.

Since then, a draft amendment of the statement of claim has been amended to include the correct names, he said.

Const. Michael Lunn and Const. Alexandria Positano are now listed as defendants, along with Const. Trevor Byard, Police Chief Jeff DeRuyter, Sgt. Manfred Hoyer and Sgt. Doug Pflug.

Hoyer is named in the claim as the supervising sergeant of the three arresting constables.

The claim against Pflug is that he “negligently repeated the false and defamatory allegations” against Miller to media outlets.

The lawsuit is seeking “general damages in the amount of \$3,000,000 for assault, battery, abuse of process, defamation, malicious prosecution, false arrest, false imprisonment, injurious falsehood, and negligent investigation.”

The claim also asks for “punitive, exemplary and aggravated damages in the amount of \$2,000,000,” as well as “special damages in an amount not yet determined.”