



SPECIAL INVESTIGATIONS UNIT

ANNUAL REPORT 2013–2014

DIRECTOR'S MESSAGE



Tony Loparco, Director

I am pleased to present the SIU's **2013–2014 Annual Report**. Speaking with numerous people about the SIU in my first year as Director has made me appreciate how important independent, thorough and transparent investigations are to maintaining community confidence in civilian oversight of the police in relation to cases of serious injury, death and allegations of sexual assault. ►

DIRECTOR'S MESSAGE *continued*

It has taken a long time for civilian oversight to become an accepted reality and slowly but surely it has happened in Ontario. I am pleased to say it is beginning to happen throughout the country as well. This national trend will only strengthen the SIU's ability to do its work more efficiently and effectively in the public interest.

As I have come to learn more about the history of this organization I have discovered that throughout our 24 years of existence there have been slow-developing but significant changes in its processes. These changes have attempted to address systemic issues which made it more difficult to do the important work of the Unit. Sometimes the changes have resulted from incremental amendments to the *Regulations* of the *Police Services Act* and sometimes as a result of decisions from the Courts or clarifications of the Law Society rules.

In this past fiscal year, for instance, the Supreme Court of Canada in *Wood v. Schaeffer* spelled out the rules pertaining to the making of police officers' notes in SIU investigations. In essence, they must make duty notes independently, in a timely fashion and without the assistance of counsel (or anyone else). To date it appears that this judgement is being respected by the officers involved in our investigations and facilitated by senior command in police services throughout the province. This landmark decision will serve to strengthen public trust regarding the evidence that is being presented to the SIU— that it is an independent, contemporaneous first-hand account of an officer's involvement in an incident.

On the other hand, in June of 2013 the Law Society of Upper Canada ruled in a complaint brought by my predecessor that a lawyer had not breached the rules of professional conduct by entering into a joint retainer with multiple witness officers. The complaint was dismissed notwithstanding the law society's advisory of November 2012 which observed that it was "difficult" to see how lawyers could act for multiple officers given their professional

obligation in joint retainer situations to share information between clients. Seemingly this would put a lawyer in conflict with the prohibition in the regulations of "direct or indirect" communications among police officers involved in SIU investigations. In addition to the potential conflicts and troublesome perception that this law society ruling has unfortunately allowed to continue, it has also caused practical issues that affect our work. Specifically, it has impacted the timeliness of the SIU's interviews on occasion as police witness officers wait to speak to their counsel, who is busy assisting another of his joint clients, prior to themselves being interviewed by SIU investigators.

In order to maintain and further develop the Unit's investigative excellence I am working with the Ministry of the Attorney General to ensure that SIU investigators have continued access to training and the most up to date administrative and forensic technology. This will help the Unit stay current with developments in the rapidly evolving field of investigative techniques. The improvements in efficiency which are likely to be realized as the SIU adapts to the latest in investigative technology and techniques will help the office stay on top of its ever increasing caseload, which amounted to 318 occurrences in this fiscal year.

In closing, I would like to thank the SIU staff without whose ongoing professionalism, commitment and hard work, the goal of effective civilian oversight would be impossible. As the new Director I have really come to appreciate the effort required by the dedicated members of this Unit to ensure that oversight in this province is both meaningful and effective. SIU staff continues to do this difficult work knowing that in large part their efforts are underappreciated and thankless. No matter what they discover during the course of their investigations the decisions that result from their work are likely going to make someone unhappy. Notwithstanding this reality I can happily say that they are honoured to continue working tirelessly in the public interest.

VISION, MISSION AND VALUES

Our Vision

The essence of the SIU is our conviction and belief in our role demonstrated by all.

- We are always striving for understanding of SIU by community and police throughout Ontario;
- We strive for stability through shared leadership and individual empowerment in a continually changing environment;
- We believe in open, respectful communication in all directions to promote common understanding;
- We inspire excellence through teamwork;
- We invest where it matters: in our talent, tools and training;
- We are committed to being a great place to work.

Our Mission

- We are a skilled team of civilians dedicated to serving Ontario's diverse communities.
- We conduct thorough and unbiased investigations where someone is seriously injured, alleges sexual assault or dies when involved with the police.
- Our independence in seeking and assessing all the evidence ensures police accountability, inspiring the confidence of all in the work of SIU.

Our Values

Integrity / Teamwork / Communication / Excellence /
Accountable / Unbiased / Dedicated

A LOOK AT CIVILIAN OVERSIGHT

The SIU and Canadian Association for Civilian Oversight of Law Enforcement



▲ Former Director **Ian Scott** listens to questions at CACOLE 2013.

Once again, the SIU was heavily involved in the annual Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) conference held in Charlottetown, Prince Edward Island, from May 27th to May 29th, 2013. Former Director Ian Scott was program chair of the conference, and the SIU's Outreach Coordinator, Jasbir Brar, one of the principal organizers. The conference was attended by over one hundred delegates, mostly from Canada, but also from the United States, Hong Kong and Trinidad and Tobago. Mr. Scott gave a talk on reforming the SIU (the contents of his presentation may be found in an article later published in Volume 60 of the *Criminal Law Quarterly*). He completed his term as president of CACOLE at the conference, and Mr. Stan Lowe, Commissioner of the British Columbia Office of the Police Commissioner, was elected as his successor.

BEYOND OUR BORDERS

During this fiscal period the SIU was once again active beyond our borders.

*The SIU hosts delegation from **Trinidad and Tobago***



On June 4, 2013, former Director Ian Scott hosted Commissioner Jacqueline Cheesman and Director Kerry Sumesar-Rai from the Trinidad and Tobago Police Service Commission Secretariat. Ms. Cheesman and Dr. Sumesar-Rai traveled to the office following their attendance at the CACOLE conference in Prince Edward Island, where they were introduced to the various oversight models across Canada. During their visit to the SIU's head office, they looked at how the SIU conducts its business in order to find ways to strengthen their own system, which was overhauled in 2007. The conversation ranged from our respective investigative procedures to our media and outreach operations. The two also expressed a strong desire to foster longer term professional ties with our office and the broader oversight movement in Canada through CACOLE.

◀ **L to R: Ian Scott**, Former SIU Director, **Dr. Kerry Sumesar-Rai**, Director Trinidad and Tobago Police Service Commission Secretariat, **Jacqueline Cheesman**, Commissioner, Trinidad and Tobago Police Service Commission Secretariat, and **Joseph Martino**, SIU Counsel.

*The SIU meets with university researchers at the **American University of Central Asia (Kyrgyzstan)***



On February 13, 2014, Director Loparco, SIU Counsel Joseph Martino and Executive Officer William Curtis hosted Matthew Kennis and Maria Lisitsyna, researchers working with the American University of Central Asia on a comparative research study to identify and document effective independent models of investigation into complaints of police abuse. The project was particularly focused on developing recommendations for reforming the system of police oversight in Kyrgyzstan. Mr. Kennis had previously travelled to Guatemala and Jamaica to examine how systems of oversight are taking root in challenging police environments. The project has also taken a close look at the jurisdictions of Bulgaria, Georgia and Northern Ireland. The purpose of their visit to the SIU was to examine what a mature oversight office looks like in a more stable setting. The conversation covered a wide range of topics spanning the administrative, operational and legal challenges the SIU has faced and continues to confront in its mission to conduct effective and independent investigations.

◀ **L to R: Maria Lisitsyna**, researcher with the American University of Central Asia, **Tony Loparco**, SIU Director and **Matthew Kennis**, researcher with the American University of Central Asia.

LEGAL DEVELOPMENTS IN CIVILIAN OVERSIGHT

WOOD V. SCHAEFFER [2013] SCC No. 71

On April 19, 2013, The Supreme Court of Canada heard an appeal from the Ontario Court of Appeal decision in *Schaeffer et al v. Wood et al.*, 2011 ONCA 716. In the Court of Appeal decision, the court had ruled that police officers could not enlist the help of lawyers when preparing their notes of an incident under investigation by the SIU.

The litigation was spearheaded by the families of two men who had been shot and killed in separate incidents by officers with the Ontario Provincial Police. They sought a judicial declaration that the rules governing SIU investigations prohibited what had occurred during the Unit's investigation of the deaths of their loved ones, namely, police lawyers assisting the officers under investigation with their notes. The Court of Appeal held that a police officer's public duty to prepare independent notes was incompatible with having a lawyer advise officers regarding the content of their notes. The Court ruled that the extent of a lawyer's involvement in advance of an officer's notes was limited to the provision of basic legal advice regarding their rights and obligations during an SIU investigation.

On December 19, 2013, the Supreme Court of Canada issued its ruling in the matter. It dismissed the appeal that had been filed by the police officers named in the litigation, who argued that the Court of Appeal erred by failing to recognize an officer's right to receive the full assistance of legal counsel in the preparation of their notes. According to the Supreme Court of Canada, the Court of Appeal was right to reject such an interpretation as being incompatible with the public law duty on police officers to prepare independent notes. Justice Michael J. Moldaver, writing for the majority, summarized the Court's reasoning at paragraph 47 of the decision:

Read in its entire context, s. 7(1) does not provide a freestanding entitlement to consult with counsel at the note-making stage. I reach this conclusion for three reasons. First, consultation with counsel at the note-making stage is antithetical to the dominant purpose of the legislative scheme because it risks eroding the public confidence that the SIU process was meant to foster. Second, the legislative history demonstrates that s. 7(1) was never intended to create a freestanding entitlement to consult with counsel that extended to the note-making stage. Third, consulting with counsel at the note-making stage impinges on the ability of police officers to prepare accurate, detailed and comprehensive notes in accordance with their duty under s. 9 of the regulation.

The Supreme Court went further and allowed the cross-appeal that had been filed by the SIU and the families of the deceased individuals, who argued that even consultation with a lawyer limited to “basic legal advice” in advance of the preparation of an officer's notes was prohibited. Again writing for the majority on this issue, Justice Moldaver said the following at paragraph 83:

In my view, the legislative history shows that s. 7(1) was not meant to create an entitlement to counsel before an officer has completed his or her notes. Without in any way impugning the integrity of counsel or police officers, even the perfunctory consultation contemplated by the Court of Appeal is liable to cause an “appearances problem” similar to the one I have already identified. Because the initial consultation is privileged, the public will have no way of knowing what was discussed. As a result, the same threat to public confidence exists, even if on a somewhat diminished scale.

The Supreme Court of Canada's decision caps a long and winding legal road, started by the Schaeffer and Minty families in 2009, when they first took the officers to court seeking a declaration about the propriety of certain police practices in the investigations of their loved ones. It puts an end to what had been routine police practice in SIU investigations, namely, conferral with legal counsel ahead of the preparation of an officer's notes. Moving forward, the SIU can have more confidence that the police notes, which are a significant part of the evidence it gathers in its investigations, are truly independent and, therefore, inherently more reliable. The winners in all of this are those whose injuries trigger an SIU investigation, the families of persons whose death is the focus of an SIU investigation, the police community and the public at large, all of whom share the SIU's interest in its search for the truth.

Law Society of Upper Canada Advisory Regarding Police Lawyers in SIU Cases

On November 6, 2012, the Law Society of Upper Canada ('LSUC') issued an advisory to lawyers representing police officers regarding the combined effect of the rules relating to joint retainers and the SIU regulations which govern SIU investigations. The LSUC observed that it was "difficult" to see how lawyers could act for multiple police officers given their professional obligation in joint retainer situations to share information between clients and the prohibition in the regulations of "direct or indirect" communication among police officers involved in SIU investigations. The upshot of the LSUC advisory was to strongly suggest that lawyers could not be retained by multiple officers in SIU cases.

The practice of joint retainers by lawyers representing police officers in SIU investigations had long since been recognized as problematic by those reviewing the SIU. For example, **George Adams, Q.C.**, had drawn attention to the issue in his 1998 and 2003 reports concerning the SIU. As well, Ontario's Ombudsman **André Marin** recommended a legislative prohibition against joint retainers in his 2008 report entitled *Oversight Unseen*.

Notwithstanding the LSUC's advisory, some lawyers involved in SIU investigations continue to represent multiple officers. In an effort to achieve clarity in this area, the SIU launched a complaint to the LSUC in one such instance hoping to use it as a test case. In June 2013, the LSUC dismissed the SIU complaint. Notwithstanding the apparent import of its advisory, it concluded that the lawyer had not breached the rules of professional conduct by entering into a joint retainer with multiple witness officers.

COMMUNITY CONNECTION

Student Profile / Nicholas DelCore



Nicholas DelCore
2013–14 Co-op Student

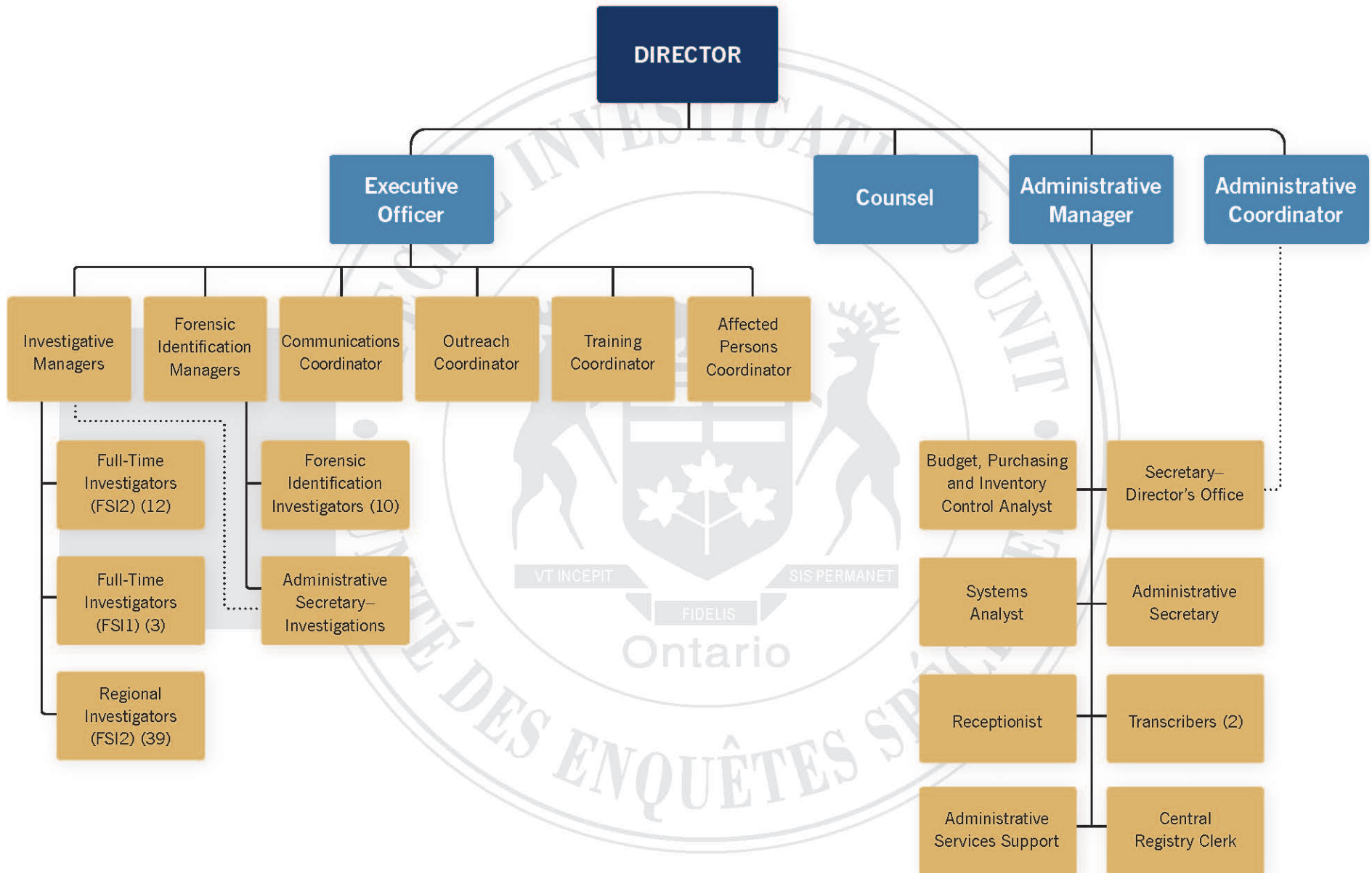
During the 2013–2014 academic year, I had the unique privilege of participating in a co-op placement with the Special Investigations Unit (SIU). This placement was the perfect capstone to my Criminology studies at the University of Toronto and allowed me to “get out of the armchair” and receive hands-on experience in the field.

During my term, I had the opportunity to attend court with the investigators at the SIU to observe the SIU’s role in pursuing criminal charges. Through opportunities such as this, I gained a valuable understanding of legal practices as well as policing practices that will serve me well as I continue on to Law School at Queen’s University in September 2014.

My internship at the SIU was the ideal opportunity to observe how investigations are performed and to assist in a number of ongoing cases. A major project in which I was involved during my time at the SIU was a research project on how the availability of “Tasers” in policing has affected how often officers utilize their firearms. This research has major policy implications and I was able to apply the skills and knowledge gained through my undergraduate studies.

The SIU has challenged my understandings of policing and crime by showing me the importance of balancing a need to address crime and the safety and rights of everyone involved. It has been a true pleasure to have such an educational and transformative experience. I am honoured to have been selected for this placement.

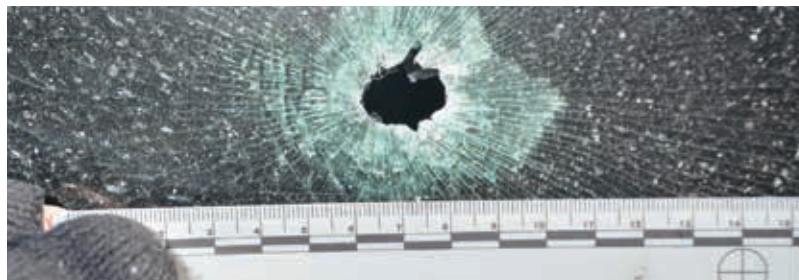
SIU ORGANIZATION CHART



CASES AT A GLANCE

The nature of the SIU mandate means that the Unit often deals with complex and traumatic situations involving police and civilians. Interpreting these situations and arriving at a decision is rarely easy.

Under section 113(7) of the *Police Services Act*, the Director, who under the *Act* must never have been a police officer, has the sole authority at the SIU to decide whether or not charges are warranted. The Director relies on many years of experience in the area of criminal law and takes into consideration all aspects of an investigation, arriving at a decision by applying established legal tests. The Director's job is not to decide whether the police officer, who is the subject of an investigation, is innocent or guilty. If a charge is laid, the courts ultimately determine that question by deciding whether the charge has been proven beyond reasonable doubt. The Director, on the other hand, is limited in his or her mandate to considering whether there is enough evidence to justify laying a charge. He or she applies a lower standard to the evidence than do the courts, namely, whether there are reasonable grounds to believe an offence has been committed. ►



STATUS UPDATE

10-TSA-093



On November 5, 2010, former Director Ian Scott caused a criminal charge of *Sexual Assault*, contrary to s. 271 of the *Criminal Code of Canada*, to be laid against Constable Mandip Sandhu in relation to a sexual assault on a 44-year-old masseuse in North York on June 3, 2010.

The sexual assault trial of Constable Sandhu began in the fall of 2012. In addition to the masseuse testifying, the officer also took the stand in his own defence. On June 14, 2013, following Constable Sandhu's conviction, Judge John Moore sentenced the officer to 15 months in jail and 2 years of probation. Constable Sandhu was also ordered to seek counselling as directed, and was prohibited from owning weapons or contacting the victim. The decision is being appealed by Constable Sandhu. The appeal is set to be heard on December 6, 2014. ●

13-TCD-069

INCIDENT OVERVIEW



On Sunday, March 17, 2013, at 9:40 p.m. the Toronto Police Service (TPS) reported a firearms injury to Zoltan Hyacinth. According to TPS, members of the Guns and Gang Task Force (GGTF) attempted to arrest Mr. Hyacinth at Keele Street and Sheppard Avenue at approximately 8:52 p.m. Mr. Zoltan Hyacinth and another individual were suspects in a robbery and TPS officers also had information that Mr. Hyacinth had a gun.

That night, as Mr. Hyacinth drove up to the speaker box of a Burger King™ to place his order, unmarked vehicles from the Guns and Gang Task Force (GGTF) boxed in his Sunfire™ from the front and back. Approximately 12 plainclothes GGTF officers approached the Sunfire™ to effect the arrests. Officers informed both of the car's occupants they were police officers and that they were being arrested for robbery. Mr. Hyacinth's passenger was quickly apprehended without incident and escorted away from the vehicle. Mr. Hyacinth refused to leave his vehicle and initially tried to place his foot on the gas pedal in an apparent attempt to push one of the police vehicles out of the way.

The first subject officer began pulling Mr. Hyacinth's legs out of the Sunfire™ while another officer was unbuckling Mr. Hyacinth's seatbelt. The subject officer then started pulling Mr. Hyacinth's left arm in an attempt to extricate him from the car. The struggle was intense enough that a nearby CCTV security video recording depicted the Sunfire™ shaking up and down for a protracted period. Eventually, the struggle between the officers and Mr. Hyacinth ended up on the ground outside the vehicle. In the process of removing him, a second subject officer, who was near the driver's door, yelled out, "He's got a gun." By this point, the first subject officer was holding Mr. Hyacinth in a bear hug such that his back was pressed against the

officer's chest area. The officer dropped Mr. Hyacinth to his knees by using his body weight and then forced him to the ground. The officer momentarily released Mr. Hyacinth's right hand because the hood of his winter coat was blocking his vision. He said he heard at least two shots fired in rapid succession, and then felt Mr. Hyacinth's body go limp. The officer stood up and ordered other officers to handcuff Mr. Hyacinth. The officer can be seen on the security video being checked by another officer for possible firearm injuries.

As Mr. Hyacinth was being handcuffed, it was obvious that he had sustained at least one firearm wound to his head. A .40 calibre Ruger semi-automatic pistol was found near Mr. Hyacinth's body. Two officers commenced CPR while paramedics were called to the scene. Mr. Hyacinth was transported to Sunnybrook Health Sciences Centre where he was pronounced dead.

- Copy of the Police Witness List;
- Copy of the Civilian Witness List and any statements made;
- Copies of any photographs and/or videotape taken relevant to the incident;
- Platoon/detachment/division shift schedules;
- Training and posting history of subject officer;
- Vehicle and Property Damage Report;
- Copies of Centre of Forensic Science Submission Reports;
- A copy of Mr. Hyacinth's fingerprints; and
- A copy of the scene log.

The SIU also obtained and reviewed a copy of the Burger King™ security video which recorded the area of the drive-through.

THE INVESTIGATION



On March 17, at approximately 9:53 p.m., the SIU dispatched four investigators and three forensic investigators to probe the circumstances of this incident. Forensic investigators videotaped and photographed in and around the shooting scene. The investigators also mapped out the scene with the aid of a Sokkia Total Station. They seized a number of items of evidentiary value, including bullet fragments and one projectile, three copper coloured spent cartridge cases, a Ruger .40 calibre handgun, and a Silver coloured Pontiac Sunfire™. As part of the investigation, seven witness officers and four civilian witnesses were interviewed. All three subject officers provided their notes and statements to the SIU.

The SIU requested the following material from the TPS:

- Copy of all radio transmission tapes or communications tapes pertaining to the incident;
- Copy of the computer-aided dispatch printout relevant to the incident;



▲ **13-TCD-069** / Numbered markers designate the location of a firearm found at the scene.

A subsequent post-mortem examination found the cause of death to be a contact gunshot wound to the head. The entrance wound was to the right side of the head above and behind the right ear. The bullet projectile exited the left side of the head above the left ear.

Analysis of the seized Ruger pistol revealed that the pistol had the capacity to hold 11 bullets and had eight remaining in its clip. Three fired .40 calibre cartridge cases were found in the vicinity of the rear side driver's door of the Sunfire™. Subsequent testing by a firearms examiner from the Centre of Forensic Sciences determined that the seized Ruger fired those three cartridge cases. There was also a bullet projectile found lodged in the rear tire tread of the front driver's tire. This projectile was determined to have been fired from the same Ruger pistol. The officers involved in this incident were armed with Glock handguns.

Director Scott continued, "The involved officers had the lawful authority to arrest Mr. Hyacinth – they had credible information that he was involved in a recent robbery and drug transactions, and may have been in possession of a gun. When Mr. Hyacinth refused to leave his vehicle, they had the lawful authority to use reasonable force to forcibly remove him from the vehicle. Given my conclusion that Mr. Hyacinth shot himself in the head with his own weapon after he was wrestled to the ground, I am of the view that the police actions in this incident cannot attract any criminal liability – Mr. Hyacinth was the inadvertent author of his own misfortune." ●

THE DIRECTOR'S DECISION

Former Director Ian Scott said, "When one pieces together the autopsy findings, the scene photographs, the Burger King™ CCTV security videotape, the Ruger pistol and bullet parts, along with the involved officers' statements, the most likely scenario of events after Mr. Hyacinth was removed from his vehicle is the following. As he was taken to the ground by one of the subject officers near the rear driver's side door of the Pontiac Sunfire™, Mr. Hyacinth brought a Ruger pistol—which had been secreted on his person—with his right hand up to the area of his head. At this point, Mr. Hyacinth's body was either flat or almost flat on the ground and perpendicular to his car with his head very close to the rear driver's door. The officer had his body weight on top of him. Mr. Hyacinth discharged the gun three times in quick succession as it was pointed in a northerly direction almost parallel to the ground, presumably in an attempt to shoot one or more officers involved in his arrest. Instead of affecting his purpose, he shot himself in the head, causing his own demise."

13-PFD-178

INCIDENT OVERVIEW



At approximately 4:30 p.m. on Thursday, July 25, 2013, four officers with the Ontario Provincial Police (OPP) were dispatched to a home on Arden Road in Central Frontenac to deal with reports of a suicidal male who had indicated that he intended to burn himself to death. They parked their vehicles at the top of a graveled laneway. The officers were armed with service firearms and other use of force options including ASP batons. One of the officers was carrying a fire extinguisher and another one of the officers was equipped with a conducted energy weapon (CEW).

As the officers descended the laneway toward the man's trailer, one of the officers called out the man's name. The man burst out of the front door of the trailer, empty-handed and naked. While screaming and yelling, the man sprinted across to a picnic table, picked up a scoped rifle lying on the table, raised it and pointed it at the officers. The man was ordered to drop his weapon, but would not do so. One of the officers deployed his CEW, but was too far away for it to have any effect. While still holding his rifle, which was pointed at the officers, the man turned around, began walking toward the front porch of his residence, and stopped at the porch stairway.

The man did not heed repeated commands to drop his weapon. Two of the officers discharged their firearms, striking him six times. He was transported to Kingston General Hospital where he underwent surgery for his injuries. He succumbed to his injuries and was pronounced dead on the evening of July 28, 2013.

THE INVESTIGATION



The SIU assigned five investigators and two forensic investigators to the incident. As part of the investigation, five witness officers and 10 civilian witnesses were interviewed. Two subject officers were also designated. One subject officer took part in an SIU interview but did not provide his notes, and the other subject officer declined to provide an interview or his notes to the SIU, as was their legal right. The scene and all of the firearms were secured and examined.



▲ **13-PFD-178** / An SIU forensic investigator searches for shell cases at the scene.

The SIU obtained and reviewed the following material from the OPP:

- General Occurrence Report;
- Incident Report;
- Event Chronology;
- Computer Aided Dispatch report;
- The deceased's subject profile;
- OPP Communications recording; and
- Transcript of a telephone call made by the deceased to the OPP.

- (1) the loud music at the scene and its secluded location,
- (2) the man's alleged proclivity for violence and hatred of the police,
- (3) the man's mental state,
- (4) the man's pronouncements about committing suicide,
- (5) the pointing of the rifle at the officers, and
- (6) the rapid speed at which the incident occurred."

Director Loparco concluded, "Having reviewed all the evidence in its totality I am duty bound to ask: 'Were the subject officers justified in the use of lethal force in these circumstances?' I am of the view that they were and accordingly, I have no reasonable grounds to believe that any of the officers committed a criminal offence in relation to this unfortunate death. His actions put him into a position where the officers had no other recourse than to use deadly force. To do otherwise would have been to put their lives or the lives of their partners at risk." ●

THE DIRECTOR'S DECISION

In his decision, Director Tony Loparco said, "In light of the information about his suicide threats the police in this case had a duty to apprehend the man under Section 17 of the *Mental Health Act*. They properly engaged emergency services to assist them if necessary. Because of information they had about the man's unpredictability and his hatred of police, one of the officers attended with a CEW and another brought a rifle to the scene.

"The moment the man ran naked screaming and yelling to the picnic table in his yard and picked up his air rifle—which appeared to be a lethal high powered scoped rifle with a flared barrel—and pointed it at the officers, he initiated the sequence of actions that led to his death. One of the subject officers who discharged his service pistol indicated he believed that the man intended to kill him. The other witness officers also indicated a fear of death and helplessness or vulnerability. Objectively, factors which informed the reasonableness of this subjective fear included the following:

10-TFD-210

INCIDENT OVERVIEW

The Toronto Police Service (TPS) contacted the SIU on September 29, 2010 after 26-year-old Mr. Eric Osawe was shot during an Emergency Task Force and Guns and Gangs search warrant execution in an apartment on Dunbloor Road in Etobicoke.

THE INVESTIGATION



▲ **10-TFD-210** / A bullet casing is pictured at the scene.

At 2:15 a.m. five SIU investigators and three SIU forensic investigators were assigned to this investigation. As part of the investigation, 16 witness officers and nine civilians were interviewed. The subject officer did not provide the

SIU with a copy of his duty notes and declined to be interviewed, as was his legal right. In addition to conducting a forensic examination of the apartment, forensic investigators took custody of a bullet case found in the apartment and the subject officer's uniform, equipment and use of force options, including his pistol, conducted energy weapon and MP-5 rifle.

The SIU obtained and reviewed the following material in the course of the investigation:

- Computer Aided Dispatch report;
- Communications recordings;
- Occurrence reports;
- Copy of the search warrant;
- Notebook entries of the witness officers;
- Firearm Discharge Report;
- Operational Procedures regarding search warrant entries;
- Policies regarding use of force, executing search warrants and service firearms;
- Duty Rosters;
- Toronto Police course training standards;
- Training records of the subject officer;
- Security video recordings from the building; and
- Ontario Police College firearm lesson plans and training material.

THE DIRECTOR'S DECISION

Based on the evidence and information collected in relation to this incident, the SIU Director concluded that there were reasonable grounds to believe that the subject officer committed a criminal offence. As a result, on November 30, 2010, Constable David Cavanagh was arrested and charged with *Manslaughter*, contrary to s. 236(a) of the *Criminal Code of Canada*.

THE PROSECUTION



The case was referred to the Justice Prosecutions Branch of the Crown Law Office– Criminal. It is the responsibility of that branch of the Ministry of the Attorney General to prosecute SIU cases.

On February 22, 2012, the charge against Constable Cavanagh was changed to *Second Degree Murder*, contrary to s. 235(1) of the *Criminal Code of Canada*.

The preliminary inquiry was conducted in March 2012. On March 1, 2013, Justice J. Block delivered his conclusion. Justice Block found that there was no evidence from which a reasonable jury, properly instructed, could infer that the shooting of Mr. Osawe was a deliberate act and that Constable Cavanagh used his firearm in a manner consistent with professional standards. Consequently, Justice Block discharged Constable Cavanagh on the charge and any potential included offences.

The decision was appealed and on September 12, 2013, Justice Michael Quigley found that the preliminary inquiry judge clearly and correctly articulated the legal tests and considered all of the evidence presented to him. Justice Quigley concluded that there was no foundation to disturb Justice Block's findings and dismissed the application.

On October 8, 2013 the Crown filed a notice of appeal of this decision with the Ontario Court of Appeal. At the close of this fiscal year a decision had not yet been rendered. ●

13-OCI-214

INCIDENT OVERVIEW



At approximately 3:30 a.m. on Wednesday, August 28, 2013, two civilians driving on Thomas Street, in Mississauga, saw a woman walking along in a seemingly aimless fashion with a large knife in one hand. The knife had a black handle and an eight inch serrated blade. The civilians attempted to communicate with the woman, later identified as Ms. Iole Pasquale, but were unsuccessful. As a result, one of them phoned 9-1-1 and relayed their observations to the police.

Three Peel Regional Police (PRP) officers were dispatched to the area. The officers attempted to engage Ms. Pasquale, but she was unresponsive. The subject officer subsequently arrived and was equipped with a conducted energy weapon (CEW). He also observed Ms. Pasquale holding the knife in her left hand with the blade pointing down. He parked his cruiser east of her, exited and immediately demanded that she drop the knife. Ms. Pasquale was unresponsive and continued to walk in an easterly direction passing in front of the subject officer's cruiser. The subject officer decided to apprehend Ms. Pasquale under the provisions of the *Mental Health Act* because he thought she was suffering from a mental disorder and could cause serious bodily harm to herself or others.

After repeated efforts to have Ms. Pasquale drop the knife failed, the subject officer discharged his CEW, which caused Ms. Pasquale to fall to the ground. The two witness officers attempted to disarm Ms. Pasquale. When she would not release the knife, the subject officer deployed the CEW again. This time, the two witness officers managed to take the knife from her. Ms. Pasquale was transported to Credit Valley Hospital and was diagnosed with a fractured left hip.

THE INVESTIGATION



The SIU assigned two investigators and one forensic investigator to probe the circumstances of this incident. As part of the investigation, two witness officers and three civilian witnesses were interviewed. The subject officer provided his duty notes and an interview to the SIU. The SIU forensic investigator photographed the scene and collected pertinent exhibits. The CEW was also obtained from the PRP as well as the serrated kitchen knife.



▲ 13-OCI-214 / A conducted energy weapon component at the scene.

The SIU also obtained and reviewed the following material in the course of the investigation:

- Computer Aided Dispatch Report;
- Patrol Zone Sheet for the division;
- The PRP Use of Force Policy;
- The PRP Mental Health Policy; and
- Communications recordings.

THE DIRECTOR'S DECISION

Former Director Ian Scott said, “In my view, the attending officers had the lawful authority to apprehend Ms. Pasquale under the *Mental Health Act*; by refusing to drop a large knife when it was being demanded of her by uniformed police officers when walking in a public area, and by not providing any reason for refusing to disarm herself, I am of the opinion that the involved officers could reasonably conclude that she suffered from a mental disorder and may cause serious bodily harm to herself or others. Once the involved officers had the authority to apprehend Ms. Pasquale, they also had the lawful authority to use reasonable force to effect that apprehension. The more difficult question was whether the subject officer’s deployment of the CEW in these circumstances was a reasonable or excessive use of force as understood by the *Criminal Code*. For the reasons below, I am of the view the force used was reasonable.

“The subject officer in his statement to the SIU said he considered a number of use-of-force options before deciding to use a CEW. He first considered the open hands technique – in essence, approaching her and trying to wrestle the knife out of her hand. He rejected this option. Further, he considered pepper spray and his baton but also rejected these as options. I agree with him that these use-of-force options were potentially inappropriate in this

situation. Open hands technique would have exposed him to potentially serious injury; while Ms. Pasquale was an elderly woman, she was armed with a large knife, appeared to be suffering from a mental disorder and was noncompliant with the officers’ requests to disarm herself. Similarly, the use of pepper spray in this situation could have led to Ms. Pasquale injuring herself while being disoriented and in any event its use does not ensure its recipient will disarm him or herself. The use of a baton could have been effective in causing her to drop her knife by striking her hand or arm, but this action would have likely caused her a serious injury. In the subject officer’s view, this left the option of the CEW. Unfortunately, its deployment caused Ms. Pasquale to fracture her hip when she fell to the ground.” ●

STATISTICALLY SPEAKING...

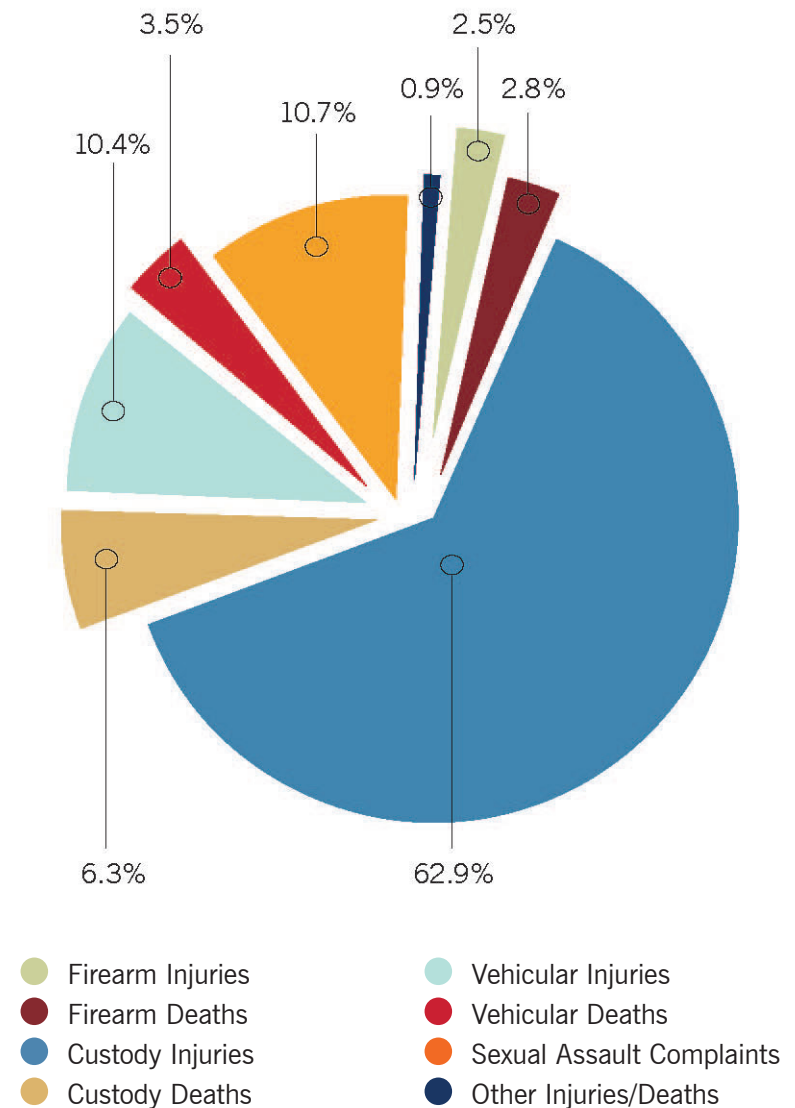
Occurrences

During the 2013–14 fiscal period, 318 cases were opened by the Unit. The figure represents a 14.5% decrease from the number of occurrences in the 2012–13 fiscal year. Putting it into perspective, the Unit's average annual caseload for the last five fiscal periods is 314 cases, representing a 40% increase compared to the corresponding average of 225 cases for the preceding five-year period. In 2013–14, criminal charges were laid in 10 cases against a total of 11 officers.

APPENDIX A (page 13) illustrates where incidents occurred in the province by cross-referencing the caseload data with geographical regions and police services.

TYPES OF OCCURRENCES / 2013–2014	
Firearm Injuries	8
Firearm Deaths	9
Custody Injuries	200
Custody Deaths	20
Vehicular Injuries	33
Vehicular Deaths	11
Sexual Assault Complaints	34
Other Injuries/Deaths	3
TOTALS	318

Types of Occurrences by Percentage



SIU Occurrences By Fiscal Year

TYPES OF OCCURRENCES	2004–2005	2005–2006	2006–2007	2007–2008	2008–2009	2009–2010	2010–2011	2011–2012	2012–2013	2013–2014
Firearm Injuries	4	10	11	14	10	5	12	12	8	8
Firearm Deaths	8	8	6	7	4	7	10	8	5	9
Custody Injuries	58	107	129	124	182	172	163	172	218	200
Custody Deaths	15	22	35	21	27	16	30	17	34	20
Vehicular Injuries	30	25	28	29	33	50	27	33	48	33
Vehicular Deaths	9	9	5	9	7	9	4	6	7	11
Sexual Assault Complaints	11	23	24	41	34	24	44	55	49	34
Other Injuries/Deaths	2	0	0	1	2	4	1	1	3	3
TOTALS	137	204	238	246	299	287	291	304	372	318

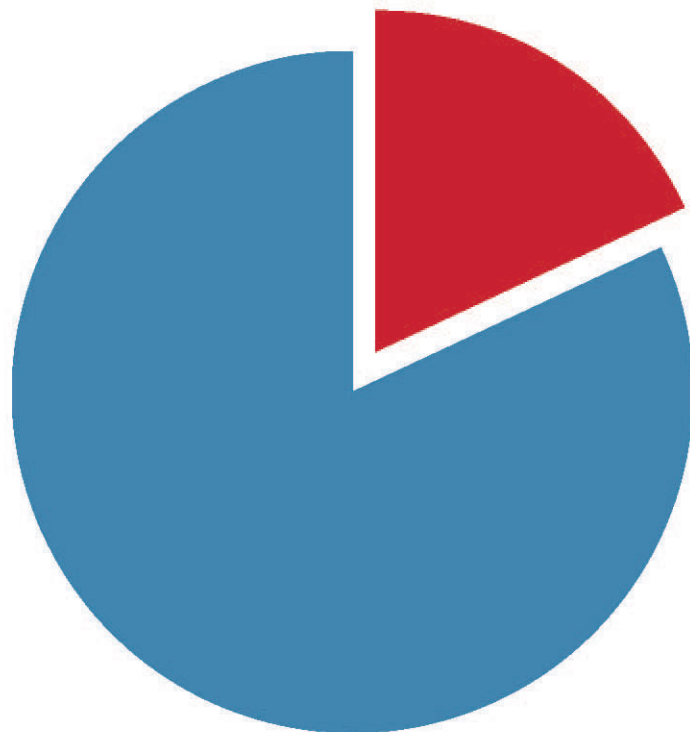
Information about Complainants

“Complainants” are individuals who are directly involved in an occurrence investigated by the SIU and have been seriously injured, report that they have been sexually assaulted or are deceased.

There may be more than one complainant per SIU case.

“...the Unit’s average annual caseload for the last five fiscal periods is 314 cases, representing a 40% increase compared to the corresponding average of 225 cases for the preceding five-year period.

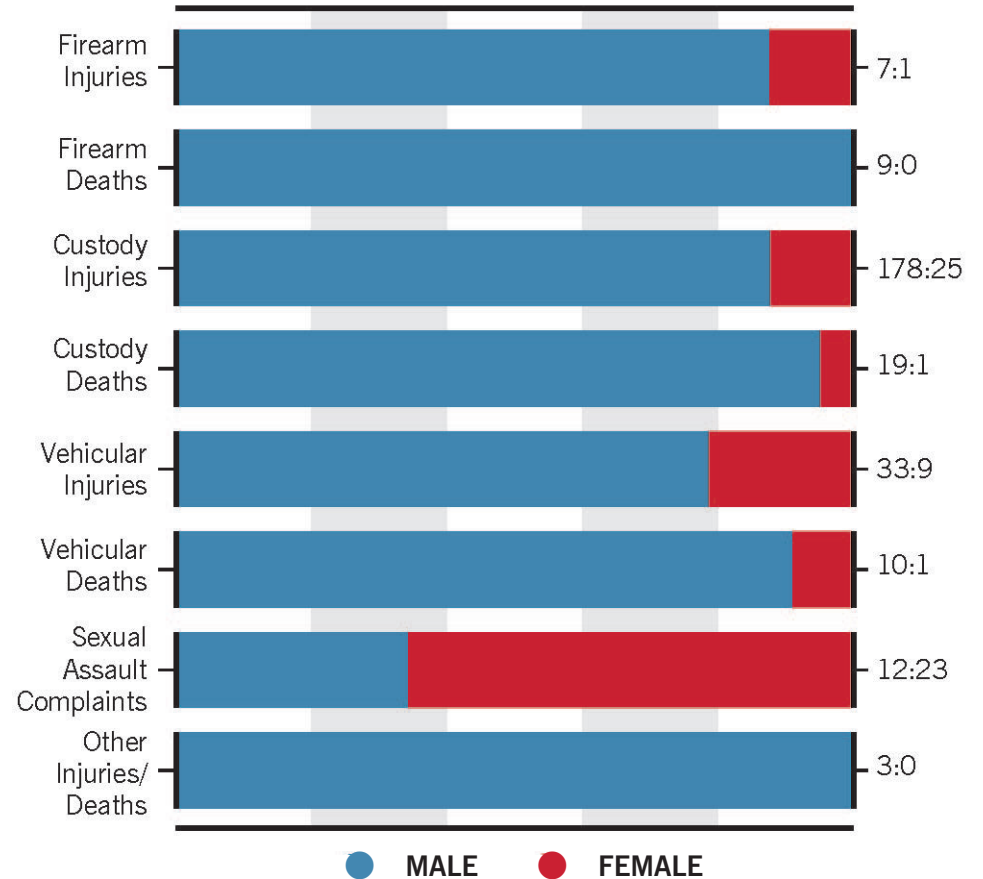
Percentage of Complainants by Gender



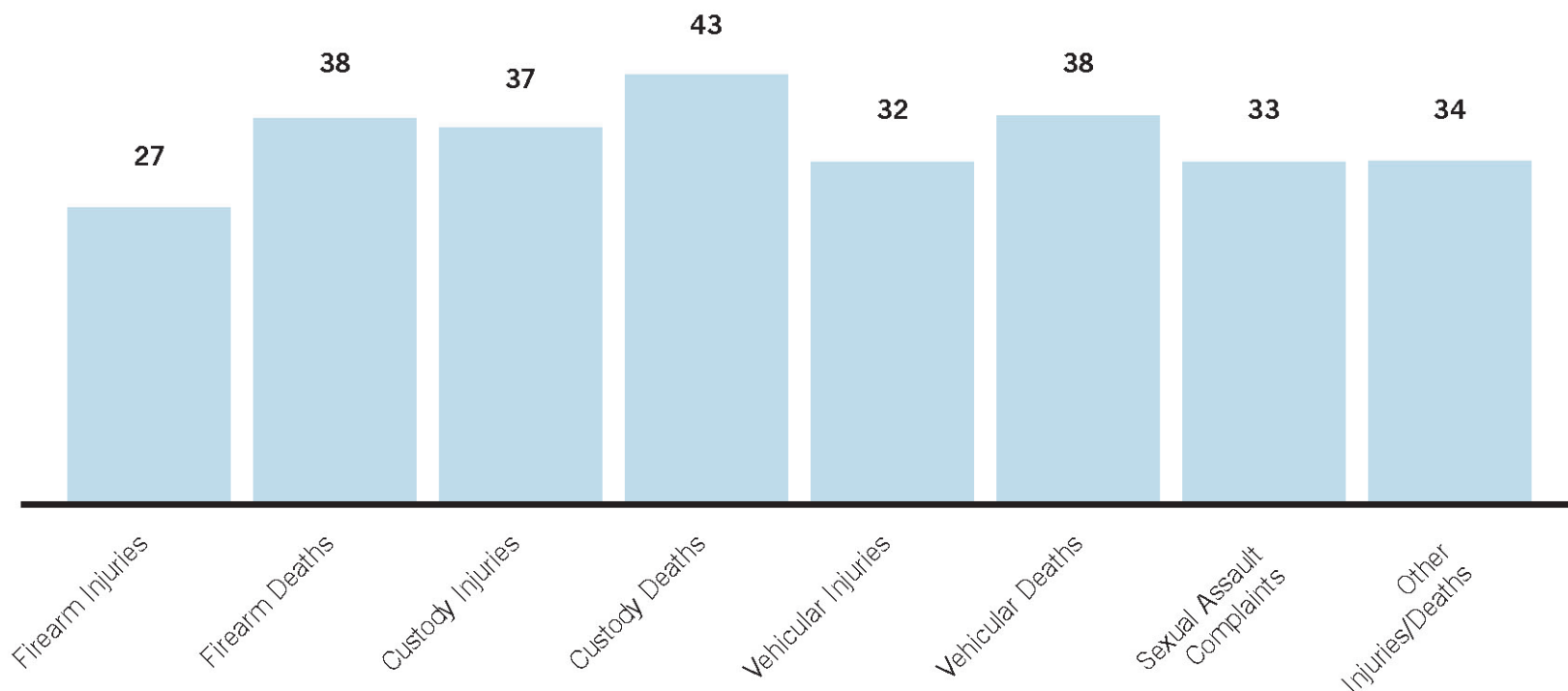
● MALE 271 Complainants / 82%

● FEMALE 60 Complainants / 18%

Number of Male and Female Complainants by Case Type



Average Age of Complainant by Case Type



Learn more about Ontario's **Special Investigations Unit**

> NEWS
> UPDATES

> HISTORY
> STATISTICS

> REPORTS
> RESOURCES

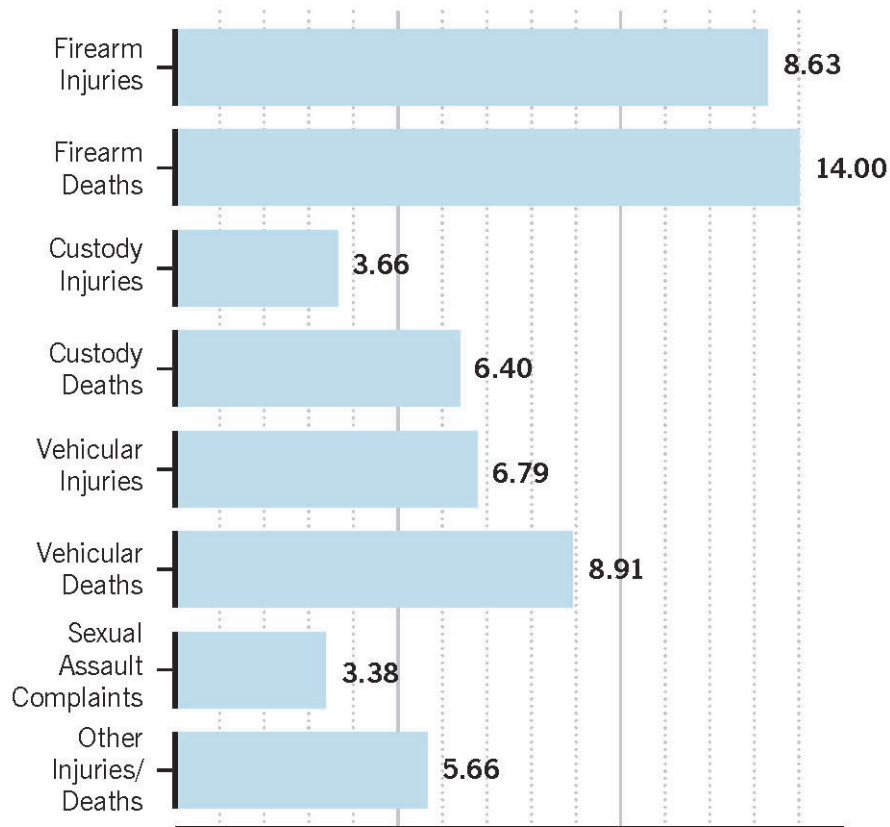
> FAQs
... plus more

Visit our website at www.siu.on.ca

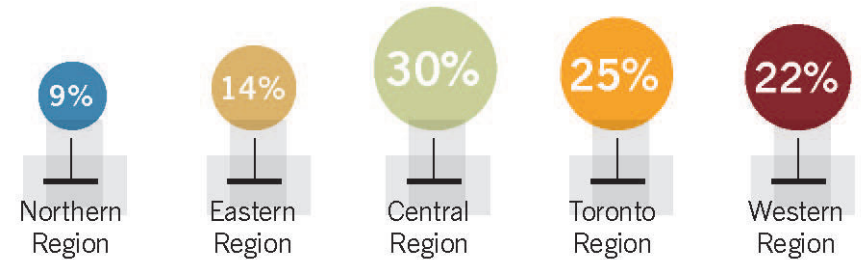
Investigative Response

To assist in understanding the required investigative response in an SIU incident, the SIU tracks the number of investigators deployed to a scene. The number of investigators initially dispatched to an incident is important in many cases because of the need to secure physical evidence and to meet with witnesses before they leave the scene.

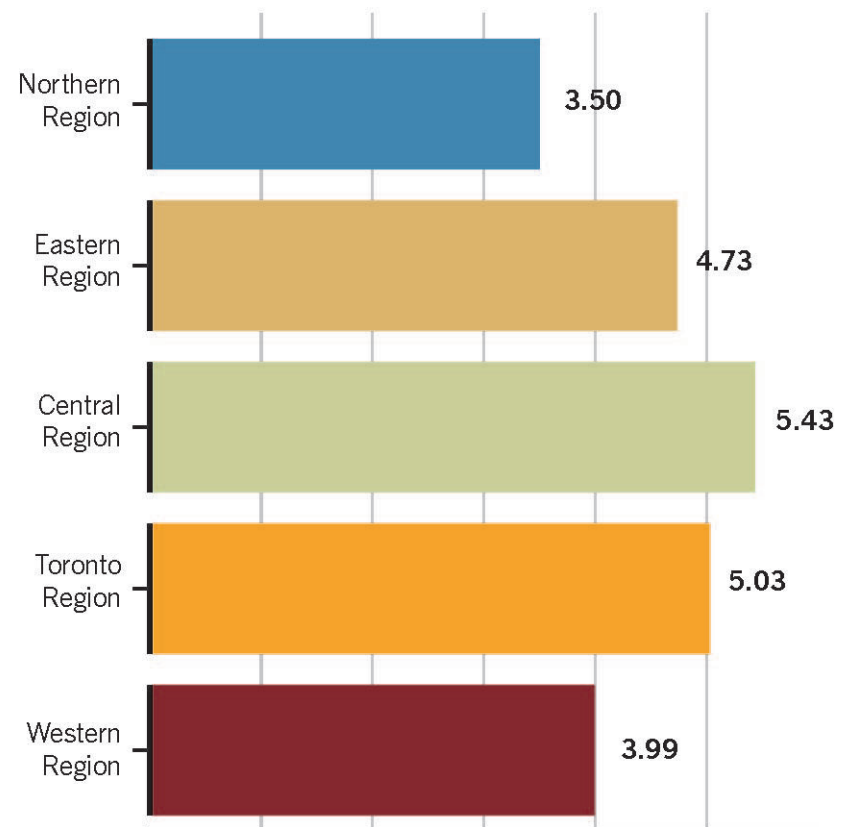
Average Number of Investigators by Case Type



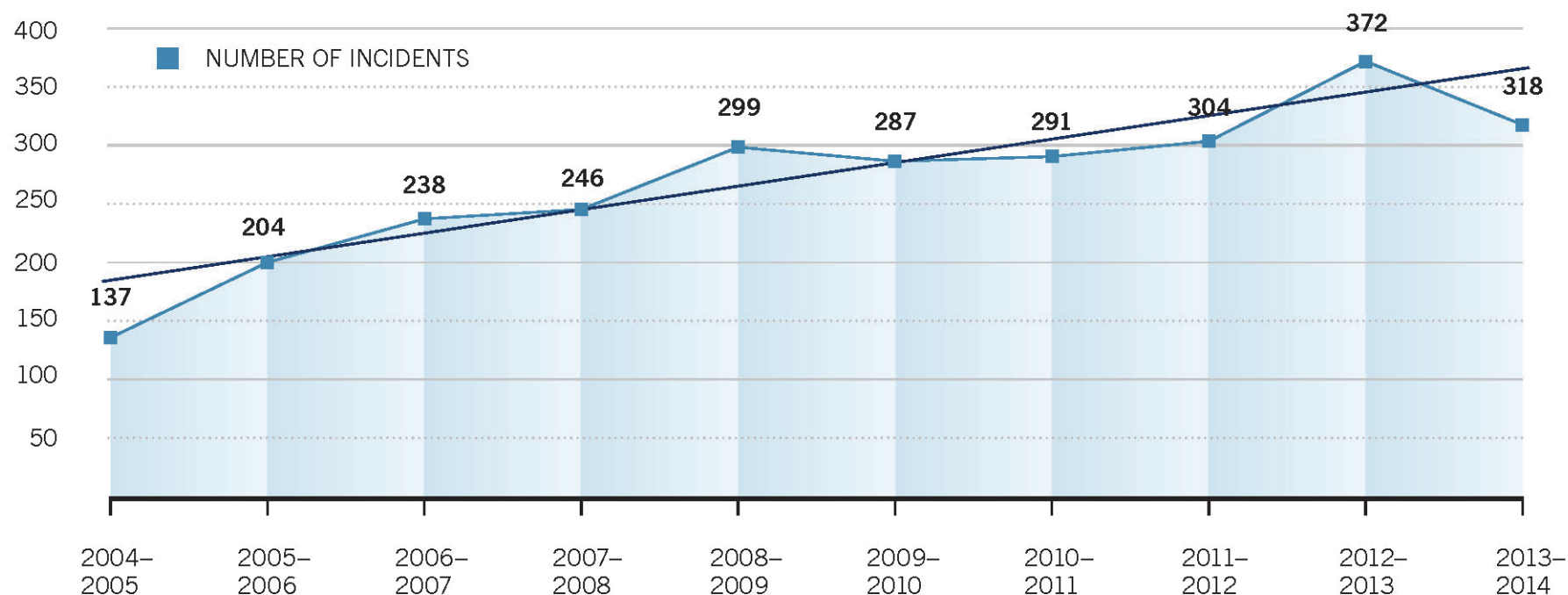
Investigations Per Region (%)



Average Number of Investigators by Region Where Incident Occurs



Fiscal Yearly Trend



Follow the **Special Investigations Unit** on **TWITTER**

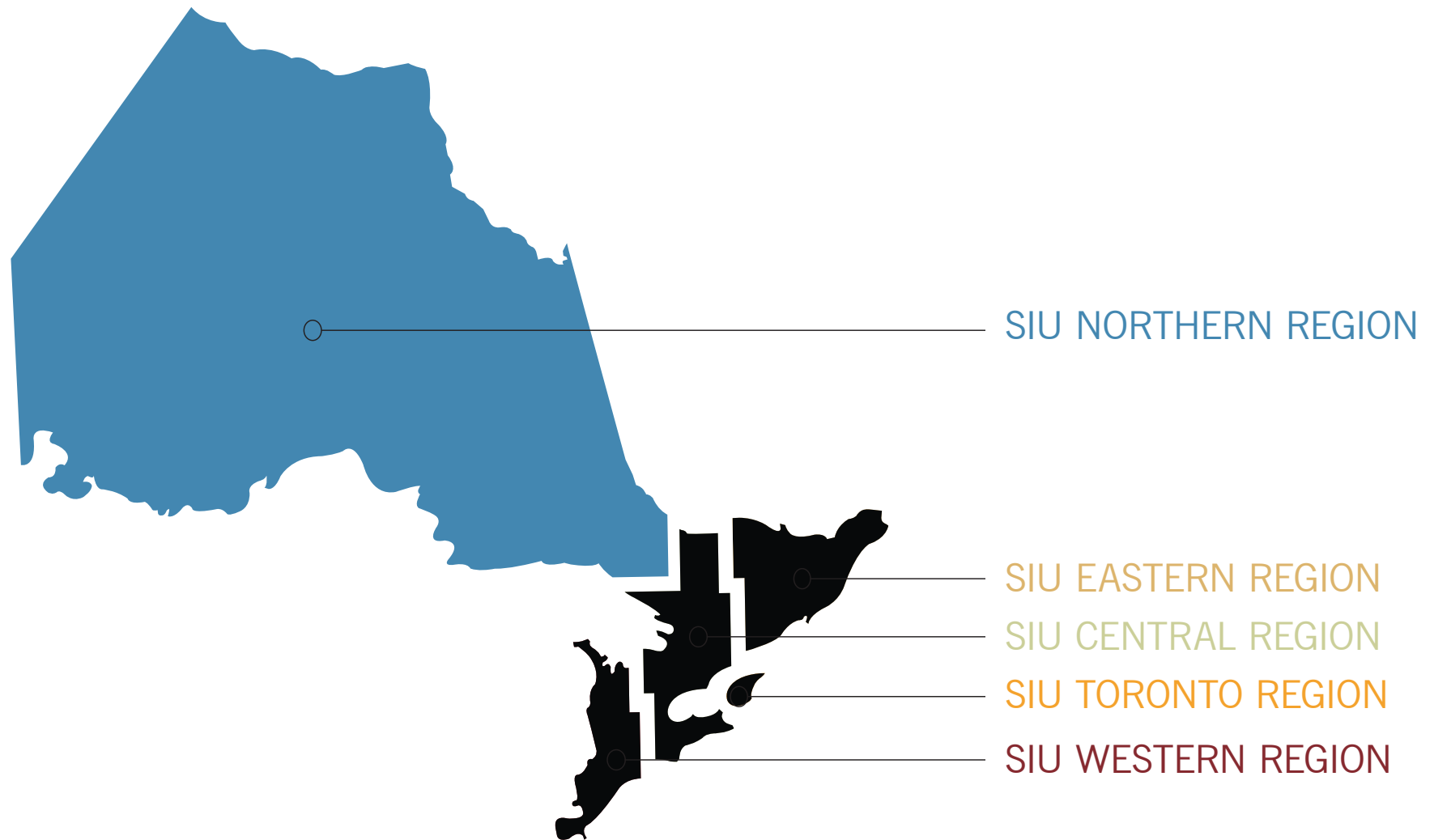
INVESTIGATION UPDATES / STATEMENTS / NEWS RELEASES / ALERTS / EVENTS / *plus more*



@ SIU Ontario

APPENDIX A

SIU Case Breakdown by County, Police and Population



SIU ANNUAL REPORT 2013–2014 / Appendix A

COUNTY	POPULATION*	POLICE SERVICE	TOTAL CASES	% OF TOTAL CASES	FIREARM INJURIES	FIREARM DEATHS	CUSTODY INJURIES	CUSTODY DEATHS	VEHICULAR INJURIES	VEHICULAR DEATHS	SEXUAL ASSAULT COMPLAINTS	OTHER INJURIES/ DEATHS
SIU CENTRAL REGION												
Dufferin County	56,881	Orangeville Police Service	3	0.9%							3	
Haldimand-Norfolk	109,118	OPP Norfolk County Detachment	1	0.3%					1			
Brant County †	136,035	OPP Brant County Detachment	1	0.3%			1					
Halton Regional Municipality	501,669	Halton Regional Police Service	10	3.1%		1	7		1		1	
		OPP Burlington Detachment	2	0.6%					1	1		
Simcoe County	446,063	Barrie Police Service	3	0.9%			3					
		Midland Police Service	1	0.3%							1	
		OPP General Headquarters	1	0.3%			1					
		OPP Huronia West Detachment	1	0.3%					1			
		OPP Southern Georgian Bay Detachment	1	0.3%				1				
		OPP Orillia Detachment	4	1.3%			3				1	
Niagara Regional Municipality	431,346	Niagara Regional Police Service	16	5.0%			14	1	1			
Hamilton Division	519,949	Hamilton Police Service	12	3.8%		1	5	2	3		1	
Durham Regional Municipality	608,124	Durham Regional Police Service	6	1.9%		1	3		2			
		OPP Whitby Detachment	1	0.3%						1		
York Regional Municipality	1,032,524	York Regional Police Service	9	2.8%			6		1	2		
Peel Regional Municipality	1,296,814	Peel Regional Police Service	23	7.2%		1	16	2	3	1		
		OPP Port Credit Detachment	2	0.6%			1			1		
TOTAL– SIU CENTRAL REGION	5,138,523*	Percent of Ontario's population = 39.9%	97	30.5% †	0	4	60	6	14	6	7	0

SIU ANNUAL REPORT 2013–2014 / Appendix A

COUNTY	POPULATION*	POLICE SERVICE	TOTAL CASES	% OF TOTAL CASES	FIREARM INJURIES	FIREARM DEATHS	CUSTODY INJURIES	CUSTODY DEATHS	VEHICULAR INJURIES	VEHICULAR DEATHS	SEXUAL ASSAULT COMPLAINTS	OTHER INJURIES/ DEATHS
SIU EASTERN REGION												
Lennox and Addington County	41,824	OPP Napanee Detachment	3	0.9%			2	1				
Prince Edward Division	25,258	Belleville Police Service	1	0.3%								1
Lanark County	65,667	Smiths Falls Police Service	1	0.3%			1					
		OPP Lanark County Detachment	2	0.6%					1		1	
Prescott and Russell United Counties	85,381	OPP Russell County Detachment	1	0.3%			1					
Leeds and Grenville United Counties	99,306	Brockville Police Service	1	0.3%					1			
		Gananoque Police Service	1	0.3%					1			
Stormont, Dundas and Glengarry United Counties †	111,164	Cornwall Community Police Service	3	0.9%			2				1	
Frontenac County	149,738	OPP Frontenac Detachment	1	0.3%		1						
		Kingston Police Service	2	0.6%			2					
Ottawa Division	883,391	Ottawa Police Service	14	4.4%	1		5	2	2	2	2	
Kawartha Lakes Division	73,214	Kawartha Lakes Police Service (City of)	1	0.3%			1					
		OPP The City of Kawartha Lakes Detachment	1	0.3%				1				
Renfrew County	101,326	OPP Upper Ottawa Valley Detachment	1	0.3%			1					
Northumberland County	82,126	Cobourg Police Service	1	0.3%			1					
		OPP Quinte West Detachment	2	0.6%				1		1		
		Port Hope Police Service	1	0.3%								1
Peterborough County	134,933	Peterborough-Lakefield Community Police Service	3	0.9%			2				1	
		OPP Peterborough County Detachment	4	1.3%			3					1
TOTAL– SIU EASTERN REGION	2,106,614*	Percent of Ontario's population = 15.6%	44	13.8% †	1	1	21	5	5	3	5	3

COUNTY	POPULATION*	POLICE SERVICE	TOTAL CASES	% OF TOTAL CASES	FIREARM INJURIES	FIREARM DEATHS	CUSTODY INJURIES	CUSTODY DEATHS	VEHICULAR INJURIES	VEHICULAR DEATHS	SEXUAL ASSAULT COMPLAINTS	OTHER INJURIES/ DEATHS
SIU NORTHERN REGION												
Parry Sound District	42,162	OPP West Parry Sound Detachment	1	0.3%			1					
Sudbury District	21,196	OPP Noelville Detachment	1	0.3%			1					
Timiskaming District	32,634	OPP Temiskaming Detachment	1	0.3%			1					
Kenora District †	57,607	OPP Pickle Lake Detachment	1	0.3%			1					
		OPP Red Lake Detachment	1	0.3%	1							
		OPP Sioux Lookout Detachment	2	0.6%							2	
Nipissing District †	84,736	North Bay Police Service	1	0.3%			1					
Cochrane District †	81,122	OPP Cochrane Detachment	1	0.3%			1					
		OPP Kapuskasing Detachment	1	0.3%			1					
		OPP Moosonee Detachment	1	0.3%			1					
		Timmins Police Service	3	0.9%			1	1			1	
Algoma District †	115,870	Sault Ste. Marie Police Service	3	0.9%			2				1	
		OPP East Algoma Detachment	1	0.3%			1					
Thunder Bay District †	146,057	Thunder Bay Police Service	5	1.6%			3	1			1	
		OPP North West Region Headquarters	1	0.3%							1	
		OPP Thunder Bay Detachment	1	0.3%							1	
Greater Sudbury Division	160,376	Greater Sudbury Police Service	3	0.9%			2		1			
TOTAL– SIU NORTHERN REGION	833,225*	Percent of Ontario's population = 6.5%	28	8.8% †	1	0	17	2	1	0	7	0

SIU ANNUAL REPORT 2013–2014 / Appendix A

COUNTY	POPULATION*	POLICE SERVICE	TOTAL CASES	% OF TOTAL CASES	FIREARM INJURIES	FIREARM DEATHS	CUSTODY INJURIES	CUSTODY DEATHS	VEHICULAR INJURIES	VEHICULAR DEATHS	SEXUAL ASSAULT COMPLAINTS	OTHER INJURIES/ DEATHS
SIU WESTERN REGION												
Huron County	59,100	Wingham Police Service	1	0.3%			1					
		OPP Huron Detachment	2	0.6%			1		1			
Bruce County	66,102	Saugeen Shores Police Service	2	0.6%				1			1	
		Hanover Police Service	1	0.3%			1					
		OPP South Bruce Detachment	2	0.6%			1				1	
		OPP Bruce Peninsula Detachment	1	0.3%			1					
Elgin County	87,461	OPP Elgin County Detachment	1	0.3%			1					
Grey County	92,568	OPP Grey County Detachment	1	0.3%			1					
Oxford County	105,719	OPP Oxford Detachment	3	0.9%			3					
		Woodstock Police Service	3	0.9%			2				1	
Chatham-Kent Division	104,075	Chatham-Kent Police Service	4	1.3%			3	1				
Lambton County	126,199	Sarnia Police Service	2	0.6%			1				1	
		OPP Lambton Detachment	3	0.9%			1	1	1			
Wellington County	208,360	Guelph Police Service	9	2.8%			6		2		1	
Essex County	388,782	Windsor Police Service	10	3.1%			9				1	
		OPP Essex County Detachment	1	0.3%						1		
Middlesex County †	439,151	London Police Service	12	3.8%			7	1	2		2	
		OPP Middlesex Detachment	1	0.3%	1							
		Strathroy-Caradoc Police Service	1	0.3%					1			
Waterloo Regional Municipality	507,096	Waterloo Regional Police Service	10	3.1%			10					
Perth County	75,112	OPP Perth County Detachment	1	0.3%					1			
TOTAL– SIU WESTERN REGION	2,259,725*	Percent of Ontario's population = 17.6%	71	22.3% †	1	0	49	4	8	1	8	0

COUNTY	POPULATION*	POLICE SERVICE	TOTAL CASES	% OF TOTAL CASES	FIREARM INJURIES	FIREARM DEATHS	CUSTODY INJURIES	CUSTODY DEATHS	VEHICULAR INJURIES	VEHICULAR DEATHS	SEXUAL ASSAULT COMPLAINTS	OTHER INJURIES/ DEATHS
SIU TORONTO REGION												
Toronto Division	2,615,060	Toronto Police Service	77	24.2%	5	4	53	3	4	1	7	
		OPP Toronto Detachment	1	0.3%					1			
TOTAL– SIU TORONTO REGION	2,615,060*	Percent of Ontario's population = 20.3%	78	24.5% †	5	4	53	3	5	1	7	0

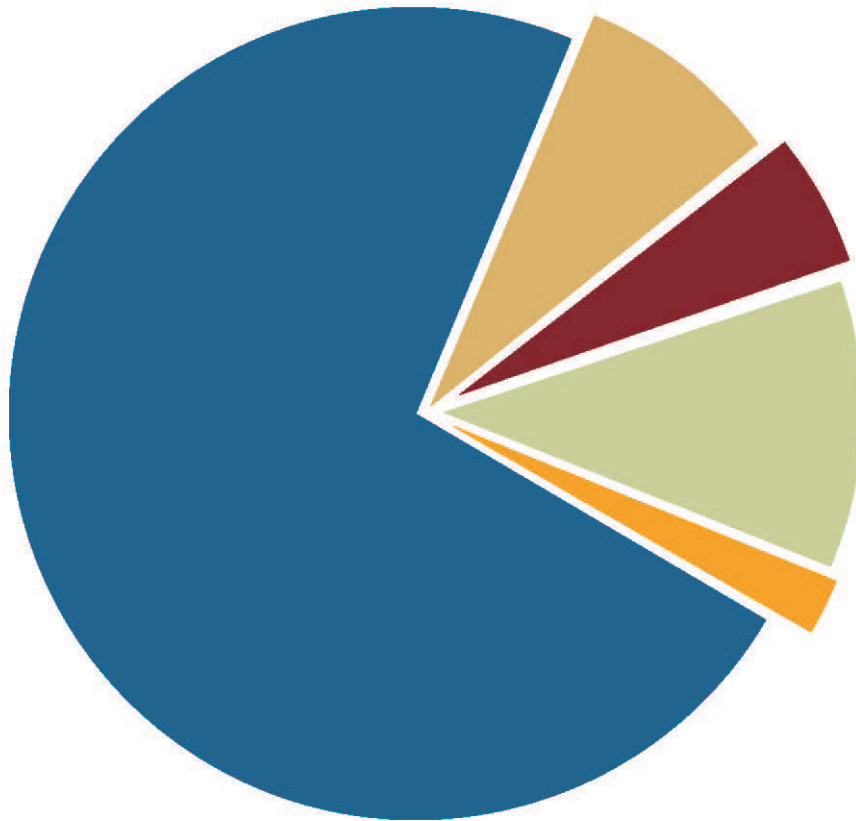
COUNTY	POPULATION*	POLICE SERVICE	TOTAL CASES	% OF TOTAL CASES	FIREARM INJURIES	FIREARM DEATHS	CUSTODY INJURIES	CUSTODY DEATHS	VEHICULAR INJURIES	VEHICULAR DEATHS	SEXUAL ASSAULT COMPLAINTS	OTHER INJURIES/ DEATHS
SIU ALL REGIONS												
TOTAL– ALL SIU REGIONS	12,851,821	Percent of Ontario's population = 100%	318	100%	8	9	200	20	33	11	34	3

* Population information provided by 2011 Census Canada. Statistics Canada excludes First Nations data where enumeration was incomplete. For further information please refer to the Statistics Canada website. The total population for each region includes a population figure for counties in which no SIU cases took place, and therefore are not listed on the chart.

† Inconsistencies in total percentages are due to rounding.

2013–2014 FINANCIALS

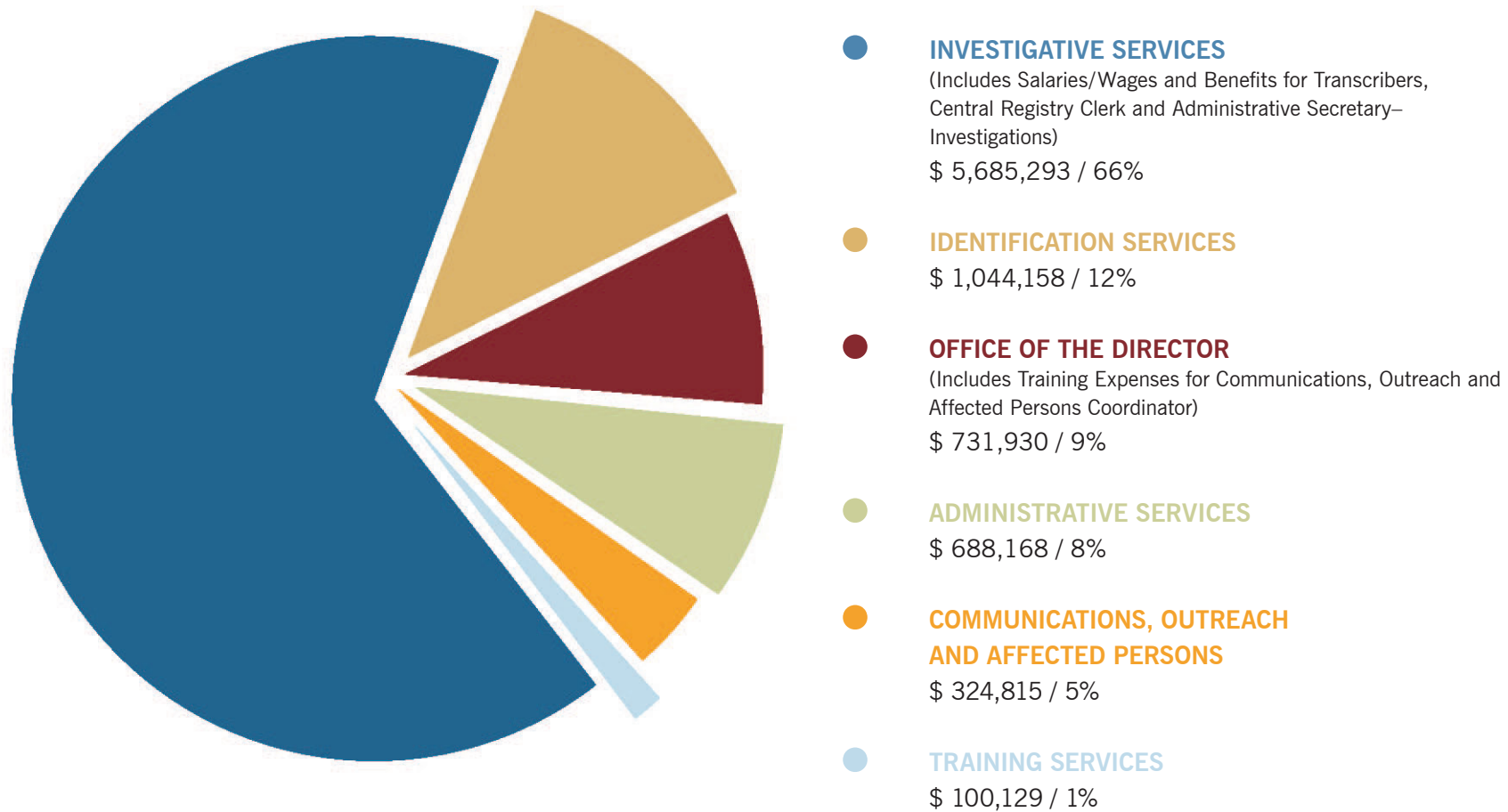
Expenditures by Type



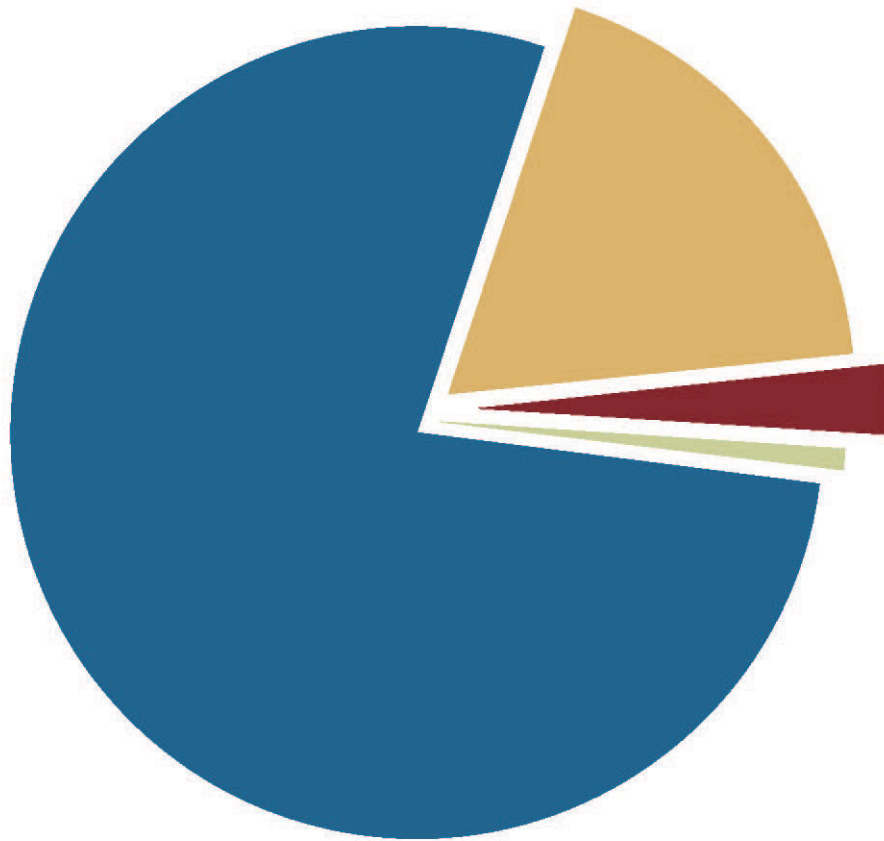
Total annual expenditures for the year ended **March 31, 2014** were **\$ 8,574,493**.

- **SALARIES AND WAGES**
\$ 6,245,986 / 74%
- **BENEFITS**
\$ 726,251 / 8%
- **TRANSPORTATION AND COMMUNICATIONS**
\$ 458,698 / 5%
- **SERVICES**
\$ 972,204 / 11%
- **SUPPLIES AND EQUIPMENT**
\$ 171,354 / 2%

Expenditures by Section



Training Expenditures



Total expenditures of **\$229,931** related to training in **2013–2014** were **2.8%** of the SIU's final budget.

- **INVESTIGATIVE SERVICES**
\$ 180,022 / 78%
- **IDENTIFICATION SERVICES**
\$ 42,051 / 18%
- **OFFICE OF THE DIRECTOR**
\$ 6,351 / 3%
- **ADMINISTRATIVE SERVICES**
\$ 1,506 / 1%



SPECIAL INVESTIGATIONS UNIT

5090 Commerce Boulevard
Mississauga, Ontario L4W 5M4

Toll-Free**Local Phone****Local Fax**

1 800 787-8529

416 622-0SIU (0748)

416 622-2455

Website

www.siu.on.ca

Twitter

@SIUOntario

Ce document est disponible en français.