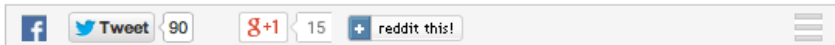


Opinion / Commentary

## Truth about police who lie in court

Latest case of police officer lying in court exposes yawning holes in Ontario justice ministry's vaunted net of accountability.



MARTA IWANEK / STAR FILE PHOTO

In his decision on Oct. 28, an Ontario Court justice said that aspects of OPP Const. Mark Kowalyk's sworn testimony were "preposterous" and amounted to a "fraud."

**By:** Daniel Brown Published on Wed Nov 12 2014

If a lie goes around the world before the truth has had a chance to put its pants on, that is doubly so when the liar is a police officer.

Fellow officers flinch. Headlines are a certainty. The community becomes a little bit more jaundiced. At the same time as they demean their profession, lying police officers shake our collective faith in the justice system.

In the latest instance to come to light, an Ontario Court justice observed elegantly, but damningly, that a police witness had shown "an indifference to the truth" in his courtroom testimony.

In his decision on Oct. 28, Justice Melvyn Green said that aspects of OPP Const. Mark Kowalyk's sworn testimony were "preposterous" and amounted to a "fraud."

As is often the case when an officer pillages the truth, the offence was relatively piddling — an impaired driving charge against a Toronto man, Delon Joseph. Nonetheless, Green's ruling constitutes a stinging setback for a province that so recently moved to rein in police duplicity.

Less than two years ago, former attorney general John Gerretsen ordered Crown prosecutors to [report adverse judicial findings about police witnesses](#) to their superiors to determine whether a police investigation was warranted. The policy was a laudable response to a [Toronto Star exposé](#) of a hundred instances of police deception in the courts.

Few expected the new policy to eliminate police lying overnight, yet hope abounded. Publicizing testimonial misconduct and disciplinary action that flows from it would surely render police more accountable and deter future misconduct.

Well, perhaps not. The Joseph case has exposed yawning holes in the ministry's vaunted net of accountability and made prophets of those who warned that the Gerretsen remedy was incomplete.

To be clear, there is no epidemic of police lying. Most police officers are either uninterested in winning by deception or are unwilling to risk the consequences of being caught out.

Yet, a cursory search of court judgments using terms such as “untruthful,” “fabricated,” “collusion” or “misleading” reveals the extent of the problem. Some officers embellish, stretch or shade the truth to conceal their investigative errors or to enhance the chances of securing a conviction.

The Gerretsen policy specifically directed prosecutors to inform a superior if a judge makes a finding or suspects that an officer falsified evidence. The director of Crown operations is expected to review the matter and decide if it should be forwarded to the police force in question, potentially prompting an internal probe.

Is the procedure working? Flash forward to the Joseph case. The ministry has refused to reveal whether Green’s comments resulted in an internal report. Discouragingly, ministry spokesman Brendan Crawley asserted that, “the ministry does not comment on whether such reviews are undertaken in specific matters, or the results of any such review.”

Sure enough, one looks in vain for a single reported instance of the Crown actually investigating and reporting a lying officer to his police force, let alone a force disciplining such an officer.

In other words, enforcement of the policy has fallen prey to the ministry’s legendary penchant for secrecy; an atmosphere of concealment that covers everything from requests for courtroom publication bans to instances of prosecutorial misconduct.

While there might be an initial need for privacy pending the results of an investigation, the need for public accountability makes that time period very short.

We can only assume that Gerretsen’s promise has proved disappointingly hollow. Where is the accountability? What guarantee does the public have that the Crown does forward adverse judicial comments to police, and that they are being properly investigated?

Several reforms are needed if we are going to defeat the scourge of police lies.

While dishonest police officers are increasingly detected through enhanced video technology — such as in-cruiser cameras and video surveillance in police stations — more can be done. Ontario needs to join other jurisdictions where officers are equipped with body-worn cameras that record every element of an encounter or incident.

Appellate courts can also play a valuable role by permitting trials to hear evidence that police witnesses previously lied under oath. Currently, there remain too many jurisprudential obstacles to exposing an officer’s track record for dishonesty.

And finally, there is the need for genuine transparency. The ministry ought to want the world to see that its proactive stance to combat police lying is obtaining positive results.

A transparent process would also encourage systemic change within police forces and vindicate officers who recognize that in a fair criminal justice system, their word is an irreplaceable bond.

***Daniel Brown** is a criminal defence lawyer and a Toronto Director with the Criminal Lawyers’ Association.*