

SPECIAL INVESTIGATIONS UNIT



DIRECTOR'S REPORT

CASE # 24-OCI-099

June 27, 2024

MANDATE OF THE SIU

The Special Investigations Unit is a civilian law enforcement agency that investigates incidents involving an official where there has been death, serious injury, the discharge of a firearm at a person or an allegation of sexual assault. Under the *Special Investigations Unit Act, 2019* (SIU Act), officials are defined as police officers, special constables of the Niagara Parks Commission and peace officers under the *Legislative Assembly Act*. The SIU's jurisdiction covers more than 50 municipal, regional and provincial police services across Ontario.

Under the *SIU Act*, the Director of the SIU must determine based on the evidence gathered in an investigation whether there are reasonable grounds to believe that a criminal offence was committed. If such grounds exist, the Director has the authority to lay a criminal charge against the official. Alternatively, in cases where no reasonable grounds exist, the Director cannot lay charges. Where no charges are laid, a report of the investigation is prepared and released publicly, except in the case of reports dealing with allegations of sexual assault, in which case the SIU Director may consult with the affected person and exercise a discretion to not publicly release the report having regard to the affected person's privacy interests.

INFORMATION RESTRICTIONS

Special Investigations Unit Act, 2019

Pursuant to section 34, certain information may not be included in this report. This information may include, but is not limited to, the following:

- The name of, and any information identifying, a subject official, witness official, civilian witness or affected person.
- Information that may result in the identity of a person who reported that they were sexually assaulted being revealed in connection with the sexual assault.
- Information that, in the opinion of the SIU Director, could lead to a risk of serious harm to a person.
- Information that discloses investigative techniques or procedures.
- Information, the release of which is prohibited or restricted by law.
- Information in which a person's privacy interest in not having the information published clearly outweighs the public interest in having the information published.

Freedom of Information and Protection of Personal Privacy Act

Pursuant to section 14 (*i.e., law enforcement*), certain information may not be included in this report. This information may include, but is not limited to, the following:

- Confidential investigative techniques and procedures used by law enforcement agencies; and
- Information that could reasonably be expected to interfere with a law enforcement matter or an investigation undertaken with a view to a law enforcement proceeding.

Pursuant to section 21 (*i.e., personal privacy*), protected personal information is not included in this report. This information may include, but is not limited to, the following:

- The names of persons, including civilian witnesses, and subject and witness officials;
- Location information;
- Witness statements and evidence gathered in the course of the investigation provided to the SIU in confidence; and
- Other identifiers which are likely to reveal personal information about individuals involved in the investigation.

Personal Health Information Protection Act, 2004

Pursuant to this legislation, any information related to the personal health of identifiable individuals is not included.

Other proceedings, processes, and investigations

Information may also have been excluded from this report because its release could undermine the integrity of other proceedings involving the same incident, such as criminal proceedings, coroner's inquests, other public proceedings and/or other law enforcement investigations.

MANDATE ENGAGED

Pursuant to section 15 of the SIU Act, the SIU may investigate the conduct of officials, be they police officers, special constables of the Niagara Parks Commission or peace officers under the *Legislative Assembly Act*, that may have resulted in death, serious injury, sexual assault or the discharge of a firearm at a person.

A person sustains a “serious injury” for purposes of the SIU’s jurisdiction if they: sustain an injury as a result of which they are admitted to hospital; suffer a fracture to the skull, or to a limb, rib or vertebra; suffer burns to a significant proportion of their body; lose any portion of their body; or, as a result of an injury, experience a loss of vision or hearing.

In addition, a “serious injury” means any other injury sustained by a person that is likely to interfere with the person’s health or comfort and is not transient or trifling in nature.

This report relates to the SIU’s investigation into the serious injury of a 69-year-old man (the “Complainant”).

THE INVESTIGATION

Notification of the SIU¹

On March 2, 2024, at 7:22 p.m., the Durham Regional Police Service (DRPS) contacted the SIU with the following information.

On March 2, 2024, at 2:57 p.m., DRPS officers were dispatched to a disturbance call at the Goldies Cafe, located at 75 Bayly Street West, Ajax. Officers arrived and directed the Complainant to reveal his hands. The Complainant refused to do so and advanced towards the Subject Official (SO). He was pushed backward, fell, and struck his head on the ground. At 3:08 p.m., the Complainant was transported via Emergency Medical Services (EMS) to the Lakeridge Health Ajax-Pickering Hospital and diagnosed with a brain bleed.

The Team

| | |
|--|-------------------------|
| Date and time team dispatched: | 2024/03/04 at 8:48 a.m. |
| Date and time SIU arrived on scene: | 2024/03/04 at 9:26 a.m. |
| Number of SIU Investigators assigned: | 3 |
| Number of SIU Forensic Investigators assigned: | 0 |

¹ Unless otherwise specified, the information in this section reflects the information received by the SIU at the time of notification and does not necessarily reflect the SIU’s finding of facts following its investigation.

Affected Person (aka “Complainant”):

69-year-old male; not interviewed
(declined)

[Note: An affected person (complainant) is an individual who was involved in some form of interaction with an official or officials, during the course of which the individual sustained serious injury, died, was reported to have been sexually assaulted, or was shot at by a firearm discharged by an official.]

Civilian Witness (CW)

CW Interviewed

The civilian witness was interviewed on March 9, 2024.

Subject Official

SO Interviewed, but declined to submit notes, as is the subject official’s legal right

The subject official was interviewed on March 19, 2024.

[Note: A subject official is an official (whether a police officer, a special constable of the Niagara Parks Commission or a peace officer with the Legislative Protective Service) whose conduct appears, in the opinion of the SIU Director, to have been a cause of the incident under investigation.

Subject officials are invited, but cannot be legally compelled, to present themselves for an interview with the SIU and they do not have to submit their notes to the SIU pursuant to the SIU Act.]

Witness Officials (WO)

WO #1 Interviewed; notes received and reviewed
WO #2 Interviewed; notes received and reviewed

The witness officials were interviewed on March 11, 2024.

[Note: A witness official is an official (whether a police officer, a special constable of the Niagara Parks Commission or a peace officer with the Legislative Protective Service) who, in the opinion of the SIU Director, is involved in the incident under investigation but is not a subject official in relation to the incident.

Upon request by the SIU, witness officials are under a legal obligation pursuant to the SIU Act to submit to interviews with SIU investigators and answer all reasonable questions. The SIU is also entitled to a copy of their notes.]

EVIDENCE

The Scene

The events in question transpired on the grounds outside the premises situated at 75 Bayly Street West, Ajax.

Video/Audio/Photographic Evidence²

Body-worn Camera (BWC) Footage

On March 2, 2024, starting at about 3:05 p.m., the SO was captured exiting his SUV cruiser in a parking lot and walking around the front. The Complainant stepped off a sidewalk and began walking towards him, his left hand in his jacket pocket. The SO stated, "Get your hands out of your pocket for me." The Complainant replied, "No," and put his right hand inside his jacket pocket. The SO made a second request that the Complainant remove his hands and told the Complainant twice not to come near him, as the SO backed away. The Complainant kept responding, "No," and continued to advance on the SO.

As the Complainant reached the end of a parking spot in the parking lot, he continued his approach. About six seconds after being told to remove his hands, he was within arm's-length of the SO. The SO's pushed the Complainant's torso. The Complainant fell backward and landed on his buttocks with both his hands by his side, his head striking the pavement in the process. The SO approached and put the Complainant on his left side.

At 3:06 p.m., the SO requested an ambulance and reported that the Complainant had been pushed and fell backward. He was conscious and breathing. The SO opened the Complainant's jacket and placed a hand on his bare chest, rubbing it.

At 3:07 p.m., the Complainant attempted to sit up, but the SO held him down. The SO asked the Complainant what he thought would happen when he charged at a police officer. The Complainant replied, "Jail." The Complainant was placed in a seated position to await the arrival of EMS.

At 3:12 p.m., WO #1 arrived and asked about the head injury. The SO replied, "I had to. He was coming at me and wouldn't stay back. I pushed him and he fell." The Complainant periodically yelled and spoke of God.

At 3:18 p.m., the SO reported to a paramedic, "There was a fight. I started talking to him, I pushed him back, he fell and hit his head." When speaking to the paramedics in the back of the ambulance, the Complainant admitted that he had been diagnosed as a paranoid schizophrenic and that he took medication by injection and orally. When asked where he lived, the Complainant replied, "That's a good question," and said on Earth because God had sent him. He continued with periodic ramblings. While in the ambulance, the SO had a

² The following records contain sensitive personal information and are not being released pursuant to section 34(2) of the *Special Investigations Unit Act, 2019*. The material portions of the records are summarized below.

telephone conversation and subsequently told paramedics that the Complainant would be apprehended under the *Mental Health Act* (MHA).

Police Communications Recordings

On March 2, 2024, at 2:56 p.m., a 911 caller from Goldies Cafe reported that a man [the Complainant] had thrown a customer against a window. While on the 911 call, the Complainant could be heard yelling loudly in the background and the caller reported that he had returned but was outside the cafe. He was saying, "Fight me. Kill me," as he attacked a man.

At 2:58 p.m., a second 911 call was received in relation to the Complainant. The caller reported that the Complainant was assaulting and spitting on people. The Complainant could be heard screaming in the background. He was reported to be at the cafe, after which he was said to have walked towards the No Frills grocery store. The caller reported that the Complainant had spat on him and tried to punch and kick him.

A police dispatcher sent officers to Goldies Cafe, advising of the dispute. An officer - the SO - advised that he was near the TD Bank. About one minute later, the SO requested EMS and reported that the Complainant was pushed and had fallen backward onto his head. The Complainant was conscious but bleeding from the back of his head.

The dispatcher advised that the Complainant was a diagnosed schizophrenic, with a caution for violence and a past MHA apprehension.

Materials Obtained from Police Service

Upon request, the SIU obtained the following materials from the DRPS between March 5 and 6, 2024:

- Communications recordings;
- Footage from BWCs of the SO, WO #2 and WO #1;
- General Occurrence Report;
- Notes – WO #2 and WO #1;
- Witness Report – WO #2;
- Witness Report – WO #1; and
- Photographs.

INCIDENT NARRATIVE

The material events in question, clear on the evidence collected by the SIU, may briefly be summarized.

In the afternoon of March 2, 2024, the SO arrived at the plaza located at 75 Bayly Street West, Ajax, to investigate a disturbance. 911 calls had been received reporting that a male had assaulted a customer at the Goldies Cafe and was spitting on people.

The Complainant was the male. He appears to have been of unsound mind at the time. The Complainant was outside a bank situated at the plaza when the SO arrived on scene.

The SO exited his cruiser and was promptly confronted by the Complainant walking towards him. The officer asked the Complainant to remove his hands from his pockets and to stop his advance. The Complainant refused and continued to near the officer. When he was within arm's-length of the SO, the officer used his hands to push the Complainant away. The Complainant stumbled backward, fell and struck his head on the pavement.

Seeing blood on the back of the Complainant's head and realizing he had been injured, the SO called for an ambulance. The Complainant tried to get back up but the officer kept him from doing so.

The Complainant was transported from the scene to hospital in ambulance. He was reportedly diagnosed with a brain bleed.

RELEVANT LEGISLATION

Section 34, *Criminal Code* - Defence of Person – Use or Threat of Force

- 34** (1) A person is not guilty of an offence if
- (a) They believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
 - (b) The act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
 - (c) The act committed is reasonable in the circumstances.
- (2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:
- (a) the nature of the force or threat;
 - (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
 - (c) the person's role in the incident;
 - (d) whether any party to the incident used or threatened to use a weapon;
 - (e) the size, age, gender and physical capabilities of the parties to the incident;
 - (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
 - (f.1) any history of interaction or communication between the parties to the incident;
 - (g) the nature and proportionality of the person's response to the use or threat of force; and

(h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

(3) Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

ANALYSIS AND DIRECTOR'S DECISION

The Complainant was seriously injured just prior to his arrest by a DRPS officer on March 2, 2024. The SIU was notified of the incident and initiated an investigation naming the SO the subject official. The investigation is now concluded. On my assessment of the evidence, there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the Complainant's injury.

Section 34 of the *Criminal Code* provides that conduct that would otherwise constitute an offence is legally justified if it was intended to deter a reasonably apprehended assault, actual or threatened, and was itself reasonable. The reasonableness of the conduct is to be assessed in light of all the relevant circumstances, including with respect to such considerations as the nature of the force or threat; the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force; whether any party to the incident used or threatened to use a weapon; and, the nature and proportionality of the person's response to the use or threat of force.

The SO was lawfully placed throughout the series of events culminating in the Complainant's injury. Having been dispatched to the scene of a violent disturbance, the officer was within his rights in approaching the Complainant to investigate his role in the matter.

I am satisfied that the SO acted to defend himself from a reasonably apprehended assault when he pushed the Complainant backward. That is what he indicated to the SIU and there is no reason to disbelieve him. The Complainant had continued his advance on the officer despite being told to stop and had encroached on the officer's personal space when the SO reacted. In the circumstances, the SO had cause to fear that he was at risk of imminent attack when he forced the Complainant back.

I am also satisfied that the force used by the SO – a push to the torso – constituted reasonable force in self-defence. The force was at the very low end of the range of options available to the officer, who did not resort to weapons or strikes of any kind. It also occurred after efforts to de-escalate – including requests by the SO that the Complainant stop and show his hands, and a partial retreat by the officer – failed to halt the Complainant's advance. Given the Complainant's reported violence, the SO had reason to fear that he was on the verge of being attacked by the Complainant, whether with or without weapons, and the force he used to defend himself was clearly a proportionate response in the circumstances.

In the result, while I accept that the Complainant's injury was the unfortunate result of the force brought to bear by the SO, I am not persuaded that it is attributable to any unlawful conduct on the part of the officer. As such, there is no basis for proceeding with criminal charges in this case. The file is closed.

Date: June 27, 2024

Electronically approved by

Joseph Martino
Director
Special Investigations Unit