

SPECIAL INVESTIGATIONS UNIT



DIRECTOR'S REPORT

CASE # 24-OCI-324

November 22, 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 29-year-old man (the “Complainant”).

THE INVESTIGATION

Notification of the SIU¹

On July 27, 2024, at 10:36 p.m., the Durham Regional Police Service (DRPS) contacted the SIU with the following information.

On July 27, 2024, at approximately 4:34 p.m., the DRPS received a telephone call reporting that the Complainant was on his way to a DRPS station with an airsoft gun and the intention to create a ‘suicide by police officer’. At 4:37 p.m., as DRPS were attempting to lock the front entrance to the station, the Complainant entered the outer lobby area and discharged an airsoft gun, striking an officer in the leg. One officer attempted an unsuccessful conducted energy weapon (CEW) deployment, and the Complainant entered a public washroom located off the lobby. The Complainant was not able to lock the door and remained in the washroom for some time while negotiations took place. At some point, five officers entered the washroom, and a struggle took place to take the man into custody. During the struggle, one officer delivered three palm strikes to the man’s face. The man’s nose began to bleed, and he was handcuffed. Emergency medical services (EMS) transported the Complainant to Ajax-Pickering Hospital where he was detained. The incident was captured on multiple officers’ body-worn cameras (BWCs) and the station’s video system.

The Team

Date and time team dispatched: 2024/07/29 at 7:30 a.m.

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 findings of fact following its investigation.

Date and time SIU arrived on scene: 2024/07/29 at 9:17 a.m.

Number of SIU Investigators assigned: 4

Number of SIU Forensic Investigators assigned: 1

Affected Person (aka “Complainant”): 29-year-old male; interviewed; medical records obtained and reviewed

The Complainant was interviewed on July 29, 2024.

[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.]

Subject Official (SO)

SO Declined interview and to provide notes, as is the subject official’s legal right

[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
WO #3	Interviewed; notes received and reviewed
WO #4	Interviewed; notes received and reviewed
WO #5	Interviewed; notes received and reviewed
WO #6	Not interviewed; notes reviewed and interview deemed unnecessary
WO #7	Not interviewed; notes reviewed and interview deemed unnecessary
WO #8	Not interviewed; notes reviewed and interview deemed unnecessary

The witness officials were interviewed between August 9 and 12, 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 in and around the lobby of DRPS 19 Division at 1710 Kingston Road, Pickering.

Physical Evidence

On July 28, 2024, WO #8 examined the Complainant's vehicle parked in the front parking lot of 1710 Kingston Road, Pickering. WO #8's report noted he viewed plastic packaging for a Beretta product which was in plain view in the rear passenger footwell next to the front passenger seat. He sealed the vehicle pending a warrant. The airsoft gun was a black Beretta PX4 Storm. The semi-automatic air pistol featured a blowback action that mimicked the recoil of a real firearm, adding to its authenticity.



Figure 1 – The Complainant’s Beretta airsoft gun

WO #8 photographed the scene and recorded the locations of the spent CEW cartridges, blood marks, and two BBs.

On July 30, 2024, at 1:02 p.m., a SIU forensic investigator arrived at 19 Division and met with DRPS detectives, who transferred the relevant weapons, including the officers' CEWs and the airsoft gun that had been discharged by the Complainant. Photographs were taken of the CEWs and the airsoft gun.

Forensic Evidence

CEW Deployment Data - WO #3

On July 27, 2024, at 4:34:40 p.m.,² WO #3’s CEW cartridge one was triggered and deployed for a duration of two seconds.

At 4:37:11 p.m., WO #3’s CEW cartridge two was triggered and deployed for a duration of five seconds.

CEW Deployment Data - The SO

On July 27, 2024, at 4:35:45 p.m., the SO’s CEW cartridge one was triggered and deployed for a duration of three seconds.

Video/Audio/Photographic Evidence³

BWC Footage – WO #2

On July 27, 2024, at 4:33:39 p.m., WO #2’s BWC footage commenced.

At 4:34:11 p.m., WO #3 shouted, “Get on the ground,” to the Complainant, who possessed a weapon [now known to be an airsoft gun] in the lobby area of the DRPS station. Two seconds later, WO #5 looked towards WO #2 and said, “Get a taser out, taser.”

At 4:34:23 p.m., a loud pop was heard in the background.

At 4:34:24 p.m., WO #2 retrieved a CEW from WO #1. WO #5 said, “It’s a cap gun,” as another loud pop sounded from the lobby area. WO #5 advised that the Complainant was in the washroom. Within 20 seconds, two loud pops came from the washroom area.

² CEW times are derived from the internal clocks of the weapons, and are not necessarily synchronous between weapons and with actual time.

³ 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.

At 4:35:22 p.m., WO #5 asked the Complainant for his name. The Complainant responded, "Blah, blah, blah." WO #5 said, "Okay bud, just drop it," to which the Complainant responded, "No, I wanna die."

At 4:35:42 p.m., WO #3 said, "Listen, you already hit me in the leg with that and I'm still standing here." The Complainant responded, "I'm sorry that I hit you in the leg." Five seconds later, the Complainant said, "It meant to go by you, but I want to die." WO #3 said, "Put it on the ground and step outside," to which the Complainant responded, "No."

At 4:36:05 p.m., WO #5 pointed through the protective glass towards the women's washroom and directed WO #2 and other officers to stack at the wall beside the women's washroom. The Complainant would not hear them approach and two officers could enter the washroom and effectively grab the gun.

At 4:36:24 p.m., the Complainant stated he suffered from serious depression and had attempted to kill himself before by way of medication overdose.

At 4:36:38 p.m., WO #2 directed the SO to follow him into the washroom. He said, "I'm gonna rush in and I'm just gonna dummy him." The SO responded, "I'll hit him," four times over the next seven seconds. WO #2 announced, "We're gonna do this right now," and then the SO said, "Go."

At 4:36:49 p.m., WO #2 snuck towards the women's washroom along the left wall.

At 4:36:52 p.m., WO #2 had his two hands outstretched in front of his body as he entered the washroom's doorway. The Complainant faced WO #2 with the airsoft gun pointed at him. A loud pop was heard.

At 4:36:53 p.m., WO #2 used both hands to reach for the gun. His attempt was unsuccessful as he passed by the Complainant.

At 4:36:54 p.m., WO #2 turned approximately 180 degrees and faced the Complainant. WO #4 entered the washroom. About a second later, the SO entered the washroom and was positioned behind WO #4. Two seconds later, a loud pop was heard.

At 4:36:58 p.m., WO #4 used two hands to grab the Complainant's right forearm.

At 4:36:59 p.m., the SO held his CEW in his left hand. The light from the CEW could be viewed around the Complainant's face and head area. The crackle of the CEW could be heard.

At 4:37:03 p.m., WO #2 secured the airsoft gun from the Complainant's right hand while WO #4 continued to control his right arm. The SO placed his left forearm around the nape of the Complainant's neck and pulled him to the ground.

At 4:37:05 p.m., the SO was on top of the Complainant. An unknown officer said, "Stop resisting. Give us your hands, do it now."

At 4:37:13 p.m., the SO said, "Get the gun," to which other officers confirmed it was loose. WO #5 directed WO #1 to handcuff the Complainant while WO #1 and the SO remained on top of the Complainant.

At 4:37:30 p.m., WO #2 and the SO assisted WO #1 in securing the Complainant's hands in handcuffs behind his back.

At 4:37:42 p.m., the Complainant said, "I'm sorry. I just want to die."

At 4:37:54 p.m., the SO said he struck the Complainant in the chest with a CEW deployment.

At 4:38:00 p.m., a police officer acknowledged the Complainant bled from his face: "He got punched in the face pretty good." The Complainant's nose bled and there was a pool of blood on the washroom floor. WO #1 and WO #2 assisted the Complainant to his feet.

At 4:38:33 p.m., WO #2 stated the Complainant had probes in him. The Complainant was seated on a chair in the lobby. His face was bloody, and his shirt was partly ripped off his body.

At 4:38:53 p.m., the Complainant confirmed he had urinated in the washroom and examined the lobby's layout when he entered the station the first time.

At 4:39:51 p.m., the Complainant said, "I'm sorry everyone, I didn't mean to scare you guys."

At 4:40:47 p.m., WO #6 used gauze to apply pressure to the Complainant's nose.

At 4:40:52 p.m., WO #2 indicated he injured his left shoulder.

At 4:42:01 p.m., the Complainant stated his mental health had deteriorated which caused him to lose control.

At 4:47:49 p.m., EMS arrived at the station.

At 5:03:22 p.m., the SO advised the Complainant he was arrested for "possess firearm and point weapons dangerous at a peace officer". He was provided with a caution and rights to counsel.

BWC Footage – WO #1

At 4:33:41 p.m., WO #1's BWC footage commenced. He worked on a computer in the report room.

At 4:34:55 p.m., WO #1 announced he had lethal use of force present as he entered the office.

At 4:35:02 p.m., WO #1 pointed his firearm towards the floor.

At 4:35:22 p.m., the Complainant pointed the gun around the washroom door. He used the door to cover the rest of his body.

At 4:36:53 p.m., WO #2 made entrance into the washroom. A crackle sound was heard from a CEW deployment.

At 4:37:00 p.m., a CEW probe appeared to be connected to the Complainant.

At 4:37:04 p.m., the Complainant was grounded by multiple officers.

At 4:37:09 p.m., the Complainant was face down on the washroom floor. WO #1 placed his right hand on the Complainant's left shoulder blade and used his left hand to secure the Complainant's left forearm. About two seconds later, the SO had his right hand on the Complainant's neck, and used his left hand to secure the Complainant's right forearm.

At 4:37:46 p.m., WO #1 used his handcuff tool to lock the handcuffs behind the Complainant's back.

At 4:38:16 p.m., blood dripped from the Complainant's nose as he was brought to a seated position. WO #2 stated they would bring the Complainant to the lobby where there was more room. The right side of the Complainant's face was covered in blood and his nose dripped blood.

At 4:52:42 p.m., WO #2 said when he reached for the gun, the Complainant pointed it at his face.

Video Footage – 19 Division - Front Entrance

A camera at the front entrance of the police station captured the Complainant parking his vehicle in the south parking lot at 4:28:33 p.m., July 27, 2024. Just over a minute later, he entered the police station.

At 4:31:19 p.m., the Complainant exited the front door of the station and returned to his vehicle. About two minutes later, he re-entered the station through the front door.

At 4:47:27 p.m., EMS arrived at the front of the station.

Video Footage – 19 Division – Front Desk 1

At 4:29:30 p.m., July 27, 2024, the video footage commenced. WO #3 and a civilian employee sat in the office area. Glass separated the office area from the front lobby.

At 4:29:54 p.m., the Complainant entered the lobby area of the station and the men's washroom.

At 4:31:07 p.m., the Complainant exited the washroom and glanced to his right before he exited the station.

At 4:33:37 p.m., he re-entered the station.

At 4:33:44 p.m., the Complainant used his right hand to retrieve a black airsoft gun from the back of his shorts.

At 4:33:51 p.m., he pointed the gun towards WO #3. The civilian employee quickly left the area. Three seconds later, WO #3 drew his firearm and pointed it at the Complainant.

At 4:34:03 p.m., WO #3 appeared to holster his firearm while he headed to the west side of the station. Three seconds later, the Complainant pointed the gun towards the lobby floor.

At 4:34:11 p.m., other officers attended the east side door which accessed the lobby. The Complainant entered the women's washroom as he pointed the gun towards WO #3 at the west side of the station.

At 4:34:32 p.m., the Complainant kept the washroom door partially open while he pointed the gun outside the door.

At 4:34:45 p.m., the Complainant took cover behind the door, where he only exposed his head and right hand with the gun. He continued to point the gun towards WO #3.

At 4:35:32 p.m., WO #5 appeared to communicate with the Complainant from the east side of the office.

At 4:36:49 p.m., WO #2, WO #4 and the SO exited the east door in a stack while the Complainant still had the gun pointed outside the washroom. WO #2 used his hands and pushed through the washroom door towards the Complainant. WO #4 and the SO followed WO #2 into the washroom.

At 4:36:57 p.m., the officers engaged in a physical struggle with the Complainant; however, the camera view did not capture exactly what happened inside the washroom.

At 4:38:31 p.m., WO #1 escorted the Complainant out of the washroom. He was handcuffed with his hands behind his back and his face was bloody.

At 4:38:35 p.m., the Complainant was seated on a lobby chair. His shirt was half-ripped off his torso.

At 4:40:40 p.m., WO #6 administered first-aid to the Complainant. He used gauze to apply pressure to his bloody nose.

At 4:47:27 p.m., EMS arrived at the station.

At 5:01:17 p.m., WO #2 escorted the Complainant out of the station.

Video Footage - Front Desk 2

At 4:33:47 p.m., the Complainant cocked the gun and discharged it towards the lobby floor. Gas was visible as the round projected out of the muzzle.

At 4:37:06 p.m., WO #3 removed his CEW's cartridge and dropped it on the lobby floor.

At 4:38:33 p.m., the Complainant's nose dripped blood onto the lobby floor.

Communications Recordings - 911 Call

On July 27, 2024, at 4:32:43 p.m., a 911 caller reported the Complainant was in his vehicle [a vehicle description was provided] at the DRPS station parking lot in Pickering. At 4:29 p.m., the Complainant had reportedly sent a mass text message, which included a photograph, to prove he purchased an airsoft gun and intended to enter the DRPS station to be shot and killed by police officers. The caller reported the Complainant suffered from mental health issues and was previously unsuccessful in suicide attempts by medication overdose. On multiple occasions, the Complainant was admitted to various psychiatric units for his mental health concerns.

Materials Obtained from Police Service

Upon request, the SIU obtained the following records from the DRPS between July 31, 2024, and August 1, 2024:

- Call Card and Call Summary;
- Involved Officers List;
- Police witness reports – WO #8, WO #6, WO #5, and WO #7;
- Duty book notes – WO #1, WO #2, WO #3, WO #4, WO #7, WO #8, WO #5, and WO #6;
- CEW deployment data – the SO and WO #3;
- Photos taken by WO #8;
- BWC footage – WO #2, WO #1, WO #7 and Officer #1;
- Video footage - DRPS Station – Front Desk and Front Entrance;
- Directives – Police Use of Force & Arrest and Warrant Applied For; and
- Seized Property Information.

Materials Obtained from Other Sources

The SIU obtained the Complainant's medical records from Lakeridge Health on July 30, 2024.

INCIDENT NARRATIVE

The evidence collected by the SIU, including interviews with the Complainant and witness officers, and video footage that captured the incident in part, gives rise to the following scenario. As was his legal right, the SO did not agree an interview with the SIU or the release of his notes.

In the afternoon of July 27, 2024, the Complainant walked into the lobby of DRPS 19 Division in possession of an airsoft gun. He was of unsound mind at the time and had

resolved to commit suicide by forcing what he hoped would be a lethal confrontation with police officers.

WO #3 was the lone police officer in the lobby. He was behind the front desk with a civilian staff member, the latter quickly retreating from the area at the sight of the weapon in the Complainant's hands. The officer ordered the Complainant to the ground. The Complainant refused and, instead, fired two shots. One of the pellets struck WO #3 in the left thigh. The officer fired his CEW at the Complainant but the probes did not meet their mark.

Drawn to the commotion, other officers at the station made their way to the lobby as the Complainant entered the women's bathroom. The officers realized the weapon was an airsoft gun and that the Complainant was suicidal. They called-out to the Complainant to have himself peacefully surrender. From a partially open door, the Complainant refused. He continued to fire his airsoft gun into the lobby.

WO #5 developed a plan to storm the bathroom to take the Complainant into custody. Led by WO #2, a team of four officers (including the SO) would approach the bathroom door in a stack at an angle at which, it was hoped, would prevent them being detected by the Complainant. As the team neared the door, the Complainant noticed their approach and fired his weapon in the direction of WO #2. The officer pushed the door inwards, momentarily trapping the Complainant between the wall and door, as the other team members entered the bathroom. There followed a struggle during which the SO discharged his CEW at the Complainant and struck him several times in the face before he was grounded and arrested.

Following his arrest, the Complainant was taken to hospital and diagnosed with a broken nose.

RELEVANT LEGISLATION

Section 25(1), *Criminal Code* - Protection of Persons Acting Under Authority

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

ANALYSIS AND DIRECTOR'S DECISION

The Complainant was seriously injured in the course of his arrest by DRPS officers on July 27, 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 arrest and injury.

Pursuant to section 25(1) of the *Criminal Code*, police officers are immune from criminal liability for force used in the course of their duties provided such force was reasonably necessary in the execution of an act that they were required or authorized to do by law.

The Complainant had walked into a police station and fired an airsoft gun, which gave every appearance of an actual firearm, in the direction of officers. He was clearly subject to arrest.

With respect to the force used to take the Complainant into custody, principally, a CEW discharge and several hand strikes to the face by the SO, the evidence falls short of any reasonable suggestion it was excessive. While it seems that the officers suspected the weapon in the Complainant's possession was an airsoft gun, they had good reason to believe that they were nevertheless at risk of serious injury because of its use. They could also not be sure that the Complainant was not armed with other weapons, or that there was not a third-party in the bathroom who might be placed in peril at the hands of the Complainant. In the circumstances, the decision to storm the bathroom with decisive force made sense. It would prevent the situation from escalating into a standoff, with or without the presence of another person in the bathroom, and mitigate the risk of the Complainant using the airsoft gun or some other weapon in his possession. On this record, the use of the CEW and the punches to the Complainant's face were commensurate with the exigencies of the moment, namely, the need to immediately incapacitate the Complainant and take him into custody.

For the foregoing reasons, there is no basis for proceeding with criminal charges in this case. The file is closed.

Date: November 22, 2024

Electronically approved by

Joseph Martino
Director
Special Investigations Unit