

SPECIAL INVESTIGATIONS UNIT



DIRECTOR'S REPORT

CASE # 24-OFP-406

January 20, 2025

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 discharge of a firearm by the police at a 15-year-old male (the “Complainant”).

THE INVESTIGATION

Notification of the SIU¹

On September 22, 2024, at 7:46 p.m., the Durham Regional Police Service (DRPS) contacted the SIU with the following information.

On September 22, 2024, at 4:53 p.m., police officers were requested to attend an address in Oshawa for a family disturbance. A woman had called to report that the Complainant had threatened the Civilian Witness (CW) with a pole from his bedframe and barricaded himself in his bedroom. A short time later, DRPS officers responded, including a mental health officer. Eventually, Tactical Support Unit (TSU) officers also attended. Negotiations were initiated with the Complainant and continued for approximately an hour and a half. Officers tried to convince him to surrender to police. When communications broke down for a period of approximately 20 minutes, a breach of the bedroom door was authorized. Police officers were confronted by the Complainant who was armed with the bedframe. At 6:39 p.m., one Anti-riot Weapon Enfield (ARWEN) and one conducted energy weapon (CEW) were deployed at the Complainant. He immediately complied with police officers, who apprehended him under the *Mental Health Act*. Paramedic services were requested to attend the residence. The Complainant was transported to Lakeridge Health and psychologically assessed. No injuries were sustained during the interaction.

The Team

Date and time team dispatched: 2024/09/22 at 8:14 p.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: 2024/09/22 at 11:12 p.m.

Number of SIU Investigators assigned: 3

Number of SIU Forensic Investigators assigned: 1

Affected Person (aka “Complainant”): 15-year-old male; interviewed

The Complainant was interviewed on October 1, 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.]

Civilian Witness

CW Interviewed

The civilian witness was interviewed on October 1, 2024.

Subject Official (SO)

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

The subject official was interviewed on November 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
WO #3	Not interviewed; notes reviewed and interview deemed unnecessary
WO #4	Not interviewed; notes reviewed and interview deemed unnecessary

WO #5	Not interviewed; notes reviewed and interview deemed unnecessary
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
WO #9	Not interviewed; notes reviewed and interview deemed unnecessary
WO #10	Not interviewed; notes reviewed and interview deemed unnecessary

The witness officials were interviewed between September 25, 2024, and October 8, 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 a bedroom of a residence situated in Oshawa.

Physical Evidence

On September 22, 2024, at 11:12 p.m., a SIU forensic investigator attended the scene.

The bedroom door was no longer attached to the door frame. The door had round ram marks and damage on the hinge side of the door.

A SIU forensic investigator collected the following exhibits of evidence: two CEW probes and wires, one ARWEN projectile and one cartridge case, four CEW microdots, and a piece of a bedframe.

The piece of the bedframe had evidentiary value to DRPS to support charges against the Complainant and was collected by the police service. An identical representative sample piece of the bedframe was collected by the SIU. The bedframe piece was a hollow square design and made of steel. It measured 0.75 inches wide by 0.75 inches wide by 29 inches

long. The original function of the bedframe piece was as one of the bed slats used to support the width of the mattress.



Figure 1 – The SO's ARWEN

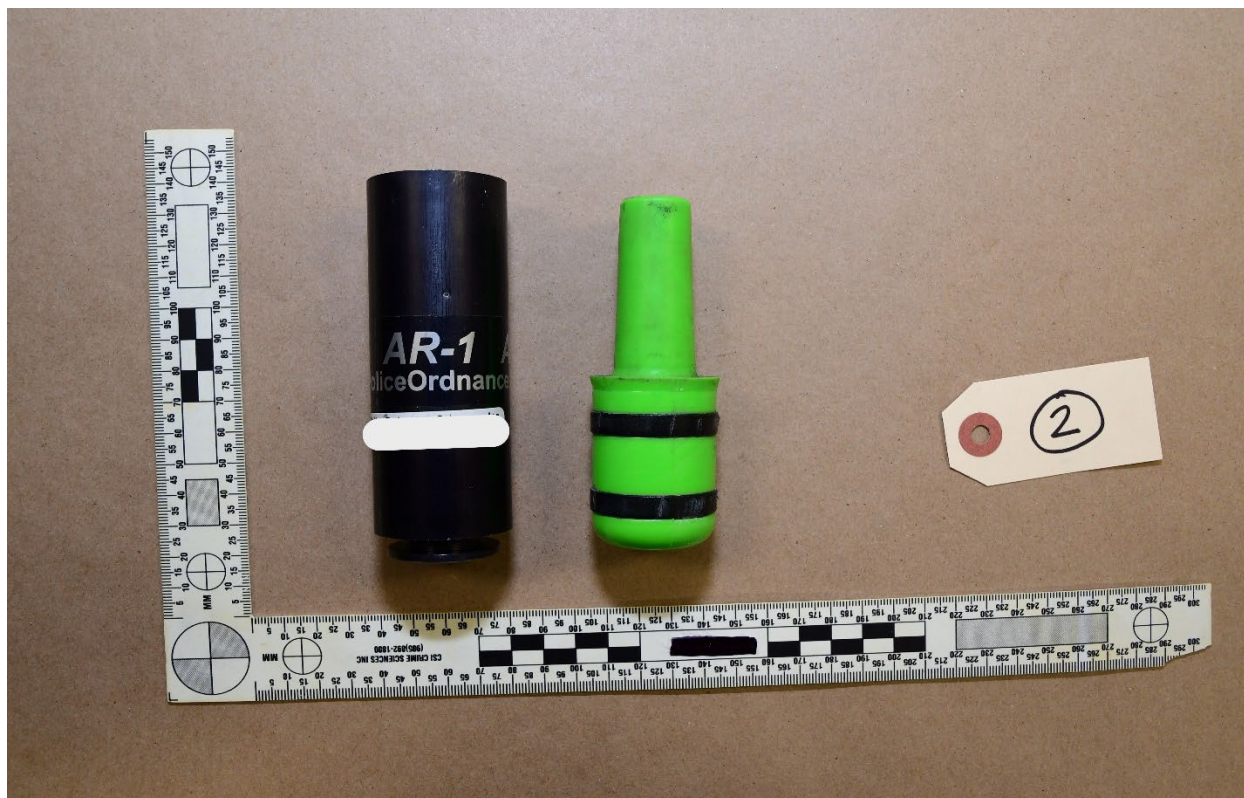


Figure 2 – ARWEN projectile and cartridge case



Figure 3 – Metal piece of bedframe

Forensic Evidence

CEW Deployment Data - WO #1's CEW

On September 22, 2024, at 6:37:22 p.m.,² WO #1 deployed Cartridge #1. Electricity was discharged for five seconds.

Video/Audio/Photographic Evidence³

DRPS Body-worn Camera (BWC) Footage

On September 22, 2024, starting at about 5:03:12 p.m., WO #5 and WO #4 arrived at the residence in Oshawa. They spoke with the CW on the driveway. The CW said he heard bangs and went to the Complainant's room. The CW saw the door was barricaded. He pushed the door open slightly. The Complainant banged on the door with a metal bedframe piece.

Starting at around 5:04:28 p.m., WO #5 knocked on the Complainant's door and identified himself as a police officer. WO #5 pushed on the door, but it would not open. He asked the

² The time is derived from the internal clock of the weapon, and is not necessarily synchronous 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.

Complainant to move what blocked the door. WO #4 spoke with the Complainant, and something struck the other side of the door.

Starting at around 5:12:00 p.m., WO #5 told the Complainant, "If you don't voice out, we're going to make entry." There was no response.

Starting at around 5:21:11 p.m., a mental health officer [WO #3] and a mental health nurse arrived. WO #3 called out to the Complainant through the door. WO #3 asked if the Complainant wanted to speak with the nurse. There was no response. The nurse called out to the Complainant. She asked him to say one word, so they knew he was alright. He replied indiscernibly. The nurse continued to speak until the Complainant struck the other side of the door five times. The nurse backed away from the door and left the room. WO #7 aimed his CEW at the closed door.

Police officers continued to try and communicate with the Complainant but received no response.

Starting at around 5:55:21 p.m., WO #5 said to the Complainant through the door, "You can tell us to fuck off, you can tell you're gonna to kill us again, but just anything to know you're at least awake and alive in there." There was no response.

Starting at around 6:11:38 p.m., TSU officers arrived.

Starting at around 6:15:29 p.m., the SO entered the residence and approached the bedroom door.

Starting at around 6:20:42 p.m., the SO stood behind WO #2 and WO #1. WO #2 called out to the Complainant and identified himself as a TSU officer. He asked if the Complainant was alright. There was no response. WO #2 called out again and received no response.

Starting at around 6:22:44 p.m., WO #9 used a ram and struck the door near the hinges on the right side of the door frame. He pushed the door inwards.

Starting at around 6:22:51 p.m., the Complainant appeared from behind the collapsed door. He held a pole [metal bedframe piece] in his right hand and moved towards the TSU officers. WO #2 held a ballistic shield in front of himself. He pointed a firearm with the flashlight attachment activated and shined it on the Complainant's face. The Complainant moved his right arm to his left side and threw the metal bedframe in a backhanded fashion towards the TSU officers. At 6:22:53 p.m., the SO deployed his ARWEN. WO #2 entered the room with the ballistic shield held out in front.

Starting at around 6:22:56 p.m., WO #1 deployed his CEW into the room over WO #2's left shoulder. WO #2 grabbed the Complainant by his right arm and held him down to a mattress which rested diagonally against something unseen. WO #2 directed the Complainant to provide his hand repeatedly. WO #2 struck the Complainant with his right hand on the back of his head.

Starting at around 6:23:07 p.m., the SO said, "Is it in his hand, or no?" WO #2 replied, "No, he dropped it."

Starting at around 6:23:36 p.m., the Complainant was successfully handcuffed with his hands behind his back. WO #2 asked if the Complainant was alright. There was no response. He was escorted out of the bedroom. TSU officers sat him down in a chair.

Starting at around 6:24:54 p.m., the Complainant was assessed by a tactical paramedic. The Complainant was asked numerous questions as part of the assessment, which received no response. He was assessed for any sign of an impact from the ARWEN round, and none was found. A single CEW probe was removed from his back.

Police Communications Recordings

On September 22, 2024, at 4:53:09 p.m., a 911 caller reported that the Complainant was behaving violently with metal poles from his bedframe. He had attempted to strike the CW with the poles. The Complainant barricaded himself in his bedroom. The caller requested that DRPS attend the residence in Oshawa and provided the address.

Materials Obtained from Police Service

Upon request, the SIU obtained the following records from the DRPS between September 24, 2024, and October 7, 2024:

- General Occurrence Report;
- BWC footage;
- Communications recordings;
- Scene photographs;
- CEW deployment data – WO #1;
- Use of Force training records – the SO;
- Use of Force Directive;
- Persons in Crisis Directive;
- Tactical Support Directive;
- Notes – WO #6;
- Notes – WO #2;
- Notes – WO #1;
- Notes – WO #9;
- Notes – WO #10;
- Notes – WO #3;
- Notes – WO #4;
- Notes – WO #5;
- Notes – WO #7;
- Notes – WO #8; and
- Notes – Officer #1.

INCIDENT NARRATIVE

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

In the afternoon of September 22, 2024, DRPS were dispatched to a home in Oshawa following a call to police from a resident about an ongoing domestic disturbance. The Complainant had reportedly threatened the CW with a metal pole and barricaded himself inside his bedroom.

Uniformed officers began arriving at the scene at about 5:00 p.m. From outside the bedroom door, they attempted to speak with the Complainant. The Complainant was not receptive. He occasionally banged on the bedroom door with a metal pole – a piece of the bedframe in the room. A mental health unit consisting of an officer and nurse arrived to assist. The Complainant remained incommunicado. As time wore on with no responses from the Complainant, officers became concerned for his wellbeing. A decision was made to deploy the TSU.

A team of TSU officers, including the SO, arrived on scene at about 6:10 p.m. They too tried to engage the Complainant in conversation from outside the door. When that failed, the TSU decided to enter the bedroom. The door was forced open and the officers were met by the Complainant with a metal pole in his right hand, which he threw in their direction. Standing behind an officer holding a shield, the SO and WO #1 deployed their weapons – an ARWEN and CEW, respectively – at the Complainant. The ARWEN projectile missed and the CEW was ineffective. The officers approached the Complainant and forced him onto a mattress. Following some initial difficulty during which WO #2 punched the Complainant in the back of the head as the officers struggled to control his arms, the Complainant was handcuffed and led out of the bedroom. He had not suffered any serious injuries.

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

On September 22, 2024, the DRPS contacted the SIU to report that one of their officers had earlier that day fired an ARWEN at a young person – the Complainant. The SIU 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 use of his ARWEN against the Complainant.

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.

I am satisfied that the TSU, including the SO, were within their rights in moving to arrest the Complainant when they forcibly entered the bedroom. They had information that the Complainant had threatened the CW with a metal pole and were justifiably concerned about his wellbeing inside the bedroom.

I am also satisfied that the officers used no more force than was reasonably necessary in taking the Complainant into custody. The Complainant had equipped himself with a metal pole, threatened the CW with it, and refused to engage with the officers as they tried to negotiate a peaceful resolution to the standoff. On this record, the TSU could reasonably expect they would be met by a combative Complainant as they forced open the bedroom door. The Complainant gave credence to these concerns when he threw the pole in the officers' direction as they entered the bedroom. Consequently, it became imperative that steps be taken to immediately subdue the Complainant. The use of the ARWEN and CEW seemed a reasonable tactic in the circumstances. If they worked as intended, they would temporarily immobilize the Complainant, creating an opportunity during which the Complainant might safely be arrested without the infliction of serious injury. With respect to the single strike delivered by WO #2 to the back of the Complainant's head, I am unable to reasonably conclude that it amounted to excessive force in light of evidence that the Complainant initially struggled against the officers' efforts to secure his arms.

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

Before closing the file, I note what appears to have been possible violations of sections 18 (SIU as lead) and 20 (securing the scene) of the *Special Investigations Unit Act, 2019*. I will be raising this matter in my reporting letter to the chief of police. I will also be notifying the Complaints Director of the Law Enforcement Complaints Agency, pursuant to my legal obligation under section 35.1 of the *Special Investigations Unit Act, 2019*.

Date: January 20, 2025

Electronically approved by

Joseph Martino
Director
Special Investigations Unit