

SPECIAL INVESTIGATIONS UNIT



DIRECTOR'S REPORT

CASE # 24-OCI-415

January 28, 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 serious injury of a 26-year-old man (the “Complainant”).

THE INVESTIGATION

Notification of the SIU¹

On September 29, 2024, at 4:43 p.m., the Durham Regional Police Service (DRPS) notified the SIU of an injury to the Complainant.

According to DRPS, on September 29, 2024, at 3:30 p.m., the DRPS Tactical Support Unit (TSU) assisted with a *Feeney* endorsed warrant² for the arrest of the Complainant at an address in the area of Whites Road and Highway 401, Pickering. The Complainant resisted arrest, and a struggle ensued in which a conducted energy weapon (CEW) was deployed. The Complainant was taken to the Lakeridge Health - Ajax Pickering Hospital (LH) and diagnosed with a fractured nose.

The Team

Date and time team dispatched:	2024/09/29 at 5:50 p.m.
Date and time SIU arrived on scene:	2024/09/29 at 5:58 p.m.
Number of SIU Investigators assigned:	3

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.

² Obtained via the scheme set out in section 529 and 529.1 of the *Criminal Code*, and named after the Supreme Court of Canada decision in *R v Feeney*, [1997] 2 SCR 13, a *Feeney* warrant authorizes the forcible entry by police officers into a dwelling-house to effect an arrest.

Number of SIU Forensic Investigators assigned: 0

Affected Person (aka “Complainant”): 26-year-old male; interviewed; medical records obtained and reviewed

The Complainant was interviewed on September 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 Interviewed, but declined to submit notes, as is the subject official’s legal right

The subject official was interviewed on November 20, 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

The witness officials were interviewed on October 15, 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.]

Investigative Delay

Delay was incurred in the investigation awaiting the receipt of CEW deployment data.

EVIDENCE

The Scene

The events in question transpired in the basement apartment of a house in the area of Whites Road and Highway 401, Pickering.

Forensic Evidence

CEW Deployment Data – The SO's CEW

The data indicated that the device was deployed on September 29, 2024, at 1:55:57 p.m.³ for a duration of 14 seconds. There was a loss of connection between positive and negative at two points during the deployment.

The data indicated that the device's ARC switch was activated on September 29, 2024, at 1:56:17 p.m. for a duration 2.3 seconds.

Video/Audio/Photographic Evidence⁴

Body-worn Camera (BWC) Footage

On September 29, 2024, starting at about 1:33 p.m., members of the TSU attired in grey tactical uniforms assembled in a parking lot for a debriefing prior to attending a residence in the area of Whites Road and Highway 401, Pickering, where the Complainant was believed to be residing in a basement unit.

³ The times are derived from the internal clock of the weapon, and are not necessarily synchronous with actual time.

⁴ 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.

Starting at about 1:34 p.m., the SO led the team to an entry door to the residence, where uniform officers were positioned. TSU officers walked into the main level of the house and proceeded to clear rooms.

Starting at about 1:36 p.m., TSU officers proceeded downstairs in a stack formation to the hallway in the basement where the Complainant's unit was located. The SO led the team, with WO #1 behind him, followed by the other TSU officers. WO #5 and WO #4 were at the back of the stack.

Starting at about 1:37 p.m., the SO stopped midway on the stairs and shouted, "[The Complainant's first name], Durham Regional Police Tactical Support Unit," and that he was under arrest and to come to the stairs with nothing in his hands.

Between about 1:38 p.m. and 1:39 p.m., the SO issued the same command several times from the staircase.

Starting at about 1:39 p.m., TSU officers moved down the remaining stairs, stopping in line in the hallway out front of the closed door to the Complainant's unit. The SO announced again, "[The Complainant's first name], Durham Regional Police Tactical Support Unit, you are being placed under arrest, let me hear the sound of your voice and that you are okay?" There was no response. The SO held his shield and firearm pointed at the closed door, and continued to issue commands. The officers moved back down the hallway.

Between about 1:41 p.m. and 1:44 p.m., the SO continued to issue commands, "[The Complainant's first name], Durham Regional Police Tactical Support Unit, you're under arrest for threatening, need you to come out with nothing in your hands, need to know you're okay," and, "[The Complainant's first name], Durham Regional Police Tactical Support Unit, there's a warrant for your arrest man, need you to come out with nothing in your hands and just need to take care of. Alright?" Officers talking and radio transmissions could be heard in the background, as the team stood in the hallway.

Starting at about 1:49 p.m., Officer #2 announced three times, "[The Complainant's first name], it's the Durham Regional Police Canine Unit. We know you're in there and we are not going away, let me hear the sound of your voice, the door will be breached, you will be bit." The police service dog barked. No response was heard.

Starting at about 1:50 p.m., WO #4 received the *Feeney* warrant on his cellphone, and reviewed it with WO #5, who told TSU officers to execute the warrant.

Starting at about 1:54 p.m., WO #7 utilized a breaching tool while WO #3 assisted with a ram to breach the door. The SO announced, "Durham Regional Police Tactical Support Unit, [the Complainant's first name], you are under arrest for threatening and need to come to the door." WO #5 advised the officers to arrest the Complainant on the bed if there was an opportunity. The team entered the room. A bed was visible in the corner of the room across from the doorway. The Complainant laid on the bed with a comforter over him. The SO moved to the left side of the bed and pressed his shield on top of the Complainant. WO #1, WO #3 and WO #2 surrounded the Complainant trying to gain control of him. The officers continued to order him to give them his hands.

Starting at about 1:55:19 p.m., the SO delivered two strikes with his hand to the Complainant's face/head area, followed a third strike a short time later. The Complainant said he did not have anything and told the officers to stop punching him.

Starting at about 1:55:47 p.m., an officer said, "Stop grabbing at us man."

Starting at about 1:55:56 p.m., the SO said, "Taser, Taser, Taser." He deployed a CEW, and one prong connected with the Complainant's upper left shoulder blade. The Complainant's hands were held behind his back.

Starting at about 1:56:33 p.m., the Complainant was handcuffed with his hands behind his back. WO #3 controlled the Complainant's right arm and head. The Complainant was bleeding from the nose, and there was blood on the mattress. He began physically resisting the officers again after they told him they were standing him up. He kicked at the SO and WO #2, who were on his left lower side, and WO #3 and WO #1, who were on his right side.

Starting at about 1:57:35 p.m., WO #3 and WO #1 stood the Complainant up facing a wall. The officers told him to stop kicking. The Complainant complained he could not breathe and that he was having a heart attack, but an officer assured him he was not. WO #4 was outside the residence, on the street, and spoke to the uniform sergeant to request shackles as the Complainant was still resisting and kicking at officers.

Starting at about 1:58 p.m., WO #4 advised the uniform sergeant that the Complainant was in custody, but was "fighting, flailing and kicking". He advised that he would be assessed by the medic before custody would be turned over to uniform officers. They discussed the possibility of having the Complainant sedated. WO #5 advised the medic that the Complainant had a CEW prong and a bloody nose. He was also advised of potential mental health issues.

Starting at about 1:59 p.m., WO #3 and WO #1 escorted the Complainant upstairs and outside where he was assessed by the tactical medic. WO #4 was advised that the Complainant was behaving and walking, and that shackles were not required. Officer #1 loosened and adjusted the handcuffs as the Complainant complained that they were too tight. The medic assessed the Complainant, who was bleeding from the nose.

Starting at about 2:03 p.m., WO #4 advised WO #5 that the residence would be turned over to uniform officers.

Starting at about 2:06 p.m., the Complainant advised he wanted to be taken to hospital by ambulance. WO #5 instructed WO #3 to turn custody of the Complainant over to the uniformed officers to await EMS. WO #3 advised the Complainant again that he was under arrest for threatening and could call a lawyer. The Complainant responded he just wanted to go to the hospital. WO #4 was standing on the street and advised uniform officers that the Complainant would be transported to the hospital by EMS.

Starting at about 2:08 p.m., custody of the Complainant was turned over to the uniform officers. Officer #3 exchanged handcuffs and took custody of the Complainant. Officer #3 told him again that he was under arrest for threatening and could speak to a lawyer.

Communications Recordings - 911 Call

At 5:39 p.m., on September 28, 2024, Witness #1 called DRPS to report that her basement tenant had threatened to get a ".38 and come back to kill her". She recorded the interaction on video. She said there was a very volatile episode with the Complainant at 3:00 a.m. that morning where he trashed the entire basement and dumped the broken furniture outside. The Complainant had been seen prior with a bat and had broken a wooden broom handle. He was possibly using drugs as he was smoking something out of a pipe. He had left on foot.

Communications Recordings – Radio

At 5:45 p.m., on September 28, 2024, DRPS officers were dispatched to an address in the area of Whites Road and Highway 401 for a priority one landlord/tenant dispute. The 911 caller reported that the basement tenant, the Complainant, had threatened to kill her.

The suspect was identified as the Complainant. The dispatcher queried the Complainant on police records and found that he was flagged for violence and had a history of charges related to the possession of explosives and prohibited firearms.

At 6:01 p.m., the dispatcher advised officers that the Complainant had returned and was threatening people on the street.

At 6:03 p.m., the dispatcher indicated that the 911 caller had said the Complainant was in a rage the night before, and that his behaviour continued today.

At 6:04 p.m., the dispatcher advised the Complainant was back in the basement.

At 6:09 p.m., officers attended and spoke to the 911 caller at the residence. The Complainant was believed to be in the basement apartment.

Materials Obtained from Police Service

Upon request, the SIU obtained the following records from the DRPS between September 29, 2024, and January 27, 2025:

- Occurrence / Supplementary / Arrest Reports;
- Computer-aided Dispatch Report;
- Communications recordings;
- List of previous interactions related to the Complainant;
- BWC footage from the SO, WO #1, WO #2, WO #3, WO #5, WO #6, Officer #1, Officer #2, and WO #4;
- Notes and written statements – WO #1, WO #2, WO #3, WO #5, WO #6, WO #7, and WO #4;
- *Feeney* warrant;
- CEW deployment data; and
- Scenes of Crime Officer photographs after warrant execution.

Materials Obtained from Other Sources

The SIU obtained the Complainant's medical records from LH on October 11, 2024.

INCIDENT NARRATIVE

The evidence collected by the SIU, including interviews with the Complainant and the SO, and video footage of the incident, gives rise to the following scenario.

In the afternoon of September 29, 2024, a team of DRPS TSU officers gathered outside a home in the area of Whites Road and Highway 401, Pickering. The day before, Witness #1 – a resident – had contacted police to report that the Complainant – a tenant in a basement apartment of the home – had threatened to kill her with a gun. The threat occurred when Witness #1 confronted the Complainant about his volatile behaviour. Uniformed officers were dispatched but were unable to arrest the Complainant as he had retreated to his apartment. The TSU officers intended to enter the apartment and take the Complainant into custody.

From the stairway to the basement and from the hallway outside the apartment, members of the TSU, including the SO, called out to the Complainant. They explained who they were, indicated they planned to arrest the Complainant for having uttered threats, and ordered him to come out. These entreaties were met by silence from within the apartment.

Shortly before 2:00 p.m., following the issuance of a *Feeney* warrant, the TSU broke open the apartment door and made entry. The SO was first into the apartment. He located the Complainant lying on a mattress under bed covers and immediately moved in on him, pinning him with a shield. WO #1, WO #2 and WO #3 also engaged the Complainant on the mattress. The Complainant struggled against the officers' efforts to secure him in handcuffs. The SO, from the Complainant's left side and near his upper body, punched him three times in the head before he discharged his CEW. Shortly after, the officers took control of the Complainant's arms and affixed them in handcuffs.

The Complainant was seen in hospital after his arrest 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 September 29, 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 TSU had a *Feeney* warrant authorizing the Complainant's arrest and were proceeding lawfully to take him into custody.

As for the force used by the SO, namely, three strikes to the head and the use of a CEW, I am satisfied it was legally justified. The evidence indicates that the Complainant, confronted by the officers on his mattress, physically resisted arrest by grabbing the officers and their equipment, and refusing to release his arms to be handcuffed. When the officers were unable to quickly wrestle control of the Complainant, they were entitled to escalate their use of force. Time was of the essence and it was imperative that he be subdued as quickly as possible given the Complainant's previous conviction in connection with explosives and the possibility he had a gun. On this record, I am unable to reasonably conclude that the SO acted precipitously by striking the Complainant in the head and, when that failed, resorting to his CEW, which proved effective.

For the foregoing reasons, while I accept that the Complainant's nose was broken in the course of the struggle with police, most likely the result of the punches struck by the SO, there are no reasonable grounds to believe the injury is attributable to unlawful conduct on the part of the subject official. As such, there is no basis for proceeding with criminal charges in this case. The file is closed.

Date: January 28, 2025

Electronically approved by

Joseph Martino
Director
Special Investigations Unit