SPECIAL INVESTIGATIONS UNIT

DIRECTOR'S REPORT

CASE #:22-TCI-199

December 5, 2022

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 injuries of a 34-year-old man (the "Complainant").

THE INVESTIGATION

Notification of the SIU

On August 7, 2022, at 1:11 p.m., the Toronto Police Service (TPS) contacted the SIU with the following information.

On August 6, 2022, at 7:00 p.m., the TPS had received a call regarding a man in crisis at Yonge Street and Dundas Street. The Complainant had a metal stick and was causing damage to vehicles. When TPS officers from 52 Division arrived, they saw that the Complainant had a stick and rock wrapped in a sheet. The TPS officers took the Complainant to the ground, and he struck his head. The event was captured by body-worn cameras (BWCs). The Complainant was taken to St. Michael's Hospital (SMH) to be examined for possible head injuries. As no injury had been confirmed at the time of initial notification, the TPS was asked to, and subsequently did, provide updates.

On August 8, 2022, the TPS reported that the Complainant was awake, but hospital staff would not confirm his injury.

The Team

Date and time team dispatched:	08/08/2022 at 11:59 a.m.
Date and time SIU arrived on scene:	08/08/2022 at 12:36 p.m.
Number of SIU Investigators assigned:	6
Number of SIU Forensic Investigators assigned:	0

Affected Person (aka "Complainant"):	34-year-old male; interviewed; medical records obtained and reviewed

The Complainant was interviewed on August 19, 2022.

*[**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; notes received and reviewed

The subject official was interviewed on September 16, 2022.

*[**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
WO #2	Interviewed
WO #3	Not interviewed; notes received and reviewed
WO #4	Not interviewed; notes received and reviewed

The witness officials were interviewed on August 22, 2022.

*[**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 scene was on Dundas Street West, just west of Yonge Street, Toronto.

The scene was not held and no SIU forensic investigator attended.

Video/Audio/Photographic Evidence[1]

911 Calls

The TPS provided the SIU with a recording of the 911 calls on August 19, 2022. The following is a summary of the pertinent information contained in this record.

At 6:58 p.m., a man called 911 about another man carrying a pointy stick and threatening people near the Eaton Centre at Yonge Street and Dundas Street. A description of the man was provided. The caller believed there were mental health issues at play.

At 7:03 p.m., a woman called 911 saying that a man was out front of the H & M store at One Dundas Street; he appeared homeless and was yelling at children. He carried a short broom handle and swung it at people, and yelled homophobic slurs.

At 7:04 p.m., a man called 911 indicating a man was near the H & M store holding a sharp metal stick. The man, described as possibly having mental health issues, said he would stab anyone who came his way. He swung the stick at ten or more people.

At 7:10 p.m., a man called 911 about the man in front of H & M, stating he had a sharp stick and was taunting people by making stabbing motions at them. He forced some people off their bicycles. The caller believed the man might be suffering from mental health issues.

At 7:19 p.m., a man called 911 about another man with a stick in one hand and a rock in the other. The man had swung the stick at him and other pedestrians, and was aggressive and shirtless. He suggested at least two TPS officers were needed to safely deal with the man.

There were five more similar 911 calls received by TPS dispatch.

Communications Recordings

The TPS provided the communications recordings to the SIU on August 19, 2022. The following is a summary of the pertinent information contained in this record.

Officers were dispatched at 7:03 p.m. to the call for service, initially characterized as a priority two call, then upgraded to a 'person in crisis' call involving a man with a broomstick. At 7:36 p.m., the call was upgraded to a 'hot shot' call. Multiple 911 calls had come in,

[1] 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.

describing the man as having a stone and a stick in his hands. He was threatening and chasing people. A supervisor acknowledged the call.

WO #1 acknowledged and stated he would clear his call and assist. Another broadcast from a bicycle officer indicated bicycle officers were en route from the Rogers Centre.

Dispatch provided information to the effect that a 911 caller had said the man had a knife, and advised caution. Another caller indicated the man had thrown a propane tank on the road.

At 7:58 p.m., WO #1 broadcast that they had one in custody, and asked for Emergency Medical Services (EMS) for a cut to the man's forehead.

BWC Footage – WO #1

The footage from WO #1's BWC was received by the SIU on August 10, 2022.

WO #1 and the SO are captured both telling the Complainant to "drop it" eight times. The video depicted the SO tackling the Complainant with both arms around the midsection, causing them both to fall to the pavement. The Complainant fell on his back, and his head hit the pavement and (possibly) streetcar rail. Blood was visible on the ground under the Complainant's face, on his left side. There was a 3-cm laceration near his ear.

BWC Footage – the SO

BWC from the SO was received by the SIU on August 10, 2022.

The SO was captured telling the Complainant to drop it repeatedly, but the Complainant stood facing the TPS officers, still holding a stick and shirt (which later was learned had a rock in it). When the Complainant was distracted looking at WO #1, the SO ran and tackled the Complainant. The officer wrapped his left arm around him and took him to the ground in the middle of Dundas Street West.

Once in handcuffs behind his back, the Complainant said, "Look, my ears are bleeding," and later believed something was stuck in his ear. The SO consoled the Complainant and searched him. When the SO tried to get gauze to stop the bleeding, the Complainant kicked the first-aid box away.

EMS arrived. While dealing with the Complainant, he said, "I was trying to fight them all. I tried to fight them, but I couldn't fight them all."

Civilians identified themselves to TPS officers as having their vehicles damaged by the Complainant. A security guard came forward to advise he was assaulted by the Complainant.

BWC Footage – WO #2

BWC from WO #2 was received by the SIU on August 10, 2022.

The video captured TPS officers considering the use of a conducted energy weapon prior to engaging the Complainant. On this BWC footage, WO #1 could be seen locating a rock inside the shirt. The Complainant was heard saying, "I hope I die," and, "I want to kill myself."

Twitter Video

On August 10, 2022, a video recording was uploaded onto Twitter.

The Complainant was captured shirtless, wearing grey pants, and throwing a propane tank from a hot dog vendor onto the sidewalk. The video was edited prior to posting on Twitter, and the next portion had the Complainant standing in the middle of Dundas Street holding a stick in his left hand, and an unknown object in his right hand. He punched the hood of a nearby vehicle.

The Complainant yelled at the crowd that was watching, who seemed to be cheering him on. He had a large rock in his right hand and raised it above his head in an effort to throw it. He yelled further and a civilian tried to engage him, but the Complainant swung his stick at the man.

The Complainant then ran after a Toyota and smashed out the rear window. A crowd was watching and could be heard reacting.

The video did not capture the SO tackling the Complainant, but it did capture the moments after when the Complainant was on the ground and on his chest, being placed in handcuffs behind his back. The crowd that gathered cheered.

Materials Obtained from Police Service

Upon request, the SIU received the following materials from the TPS between August 10 and 19, 2022:

- General Occurrence Report;
- Computer-assisted Dispatch Report;
- Communications and 911 recordings;
- Involved Officials- List;
- Notes- WO #2;
- Notes- the SO;
- Notes- WO #1;
- Notes- WO #3;
- Notes- WO #4;
- BWC footage- WO #2;
- BWC footage- the SO; and
- BWC footage- WO #1.

Materials Obtained from Other Sources

The SIU obtained and reviewed the following records from other sources:

- Medical records from SMH; and
- Video from Twitter.

INCIDENT NARRATIVE

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

In the evening of August 6, 2022, multiple 911 calls were received by the TPS from passersby in the area of Dundas Street West and Yonge Street, Toronto. The callers described a male who appeared to be in crisis. He was carrying weapons and acting erratically, and had threatened persons and damaged property. Officers were dispatched to investigate.

The male was the Complainant. The Complainant was of unsound mind at the time. In one hand, he had a short sharp stick of some sort. In the other, he held a shirt that was wrapped around a rock. The Complainant threatened to stab people, and swung the stick and rock at multiple persons. At one point, while in the middle of Dundas Street West, west of Yonge Street, the Complainant walked up behind an eastbound vehicle and swung the rock at the rear window, smashing it in the process.

The SO, together with WO #1 and WO #2, all on bicycle patrol, arrived on scene shortly before 8:00 p.m. Standing in the middle of Dundas Street West, the SO and WO #1 were the first to confront the Complainant. They repeatedly told him to put down his weapons. The Complainant did not do so. As the Complainant turned to face WO #1 to his left, the SO, from a position to the Complainant's right, rushed him from several metres away and tackled him to the ground. The back of the Complainant's head struck the roadway, and possibly even the metal streetcar tracks in the area. Within seconds, the officers turned the Complainant over and handcuffed him behind the back.

The Complainant was taken from the scene in ambulance to hospital. He was diagnosed with a skull fracture and epidural hemorrhage.

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 TPS officers on August 6, 2022. One of the officers – the SO – was identified as the subject official in the ensuing SIU investigation. 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 injuries.

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 SO was in the execution of his lawful duties when he responded to the scene and sought to take the Complainant into custody. Given what the officer knew of the 911 calls that had been broadcast over the radio, and his personal observations of a male in possession of weapons, there were ample grounds to arrest the Complainant.

With respect to the force used by the SO in aid of the arrest, namely, a takedown, I am satisfied that it was legally justified. The Complainant was in possession of weapons and had demonstrated a willingness to use them. In the circumstances, it made sense to bring the Complainant to the ground as soon as an opportunity presented itself. In that position, any continuing threat posed by the Complainant and his weapons could be much better managed given his position of relative disadvantage on the ground. Once on the ground, the SO and the other officers were able to quickly, and without the use of any strikes, secure the Complainant in handcuffs.

In the result, while it is regrettable that the Complainant was seriously injured in the process of the takedown, there are no reasonable grounds to believe that the injuries are attributable to unlawful conduct on the part of the SO. As such, there is no basis for proceeding with criminal charges. The file is closed.

Date: December 5, 2022

Electronically approved by

Joseph Martino
Director
Special Investigations Unit