



# NIAGARA REGIONAL POLICE SERVICE

## Police Services Board Report

**CONFIDENTIAL AGENDA**

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**Subject:** Special Investigations Unit – Case Number 21-OFP-123 – Incident of April 16, 2021

**Report To:** Chair and Members, Niagara Police Services Board

**Report Date:** 2021-11-25

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### **Recommendation(s)**

- 1. That the Niagara Police Services Board receives this report for information, and**
- 2. That the Niagara Police Services Board makes the report available to the public.**

### **Key Facts**

- The purpose of this report is to advise the Board of the findings and any action taken or recommended by the Chief of Police following a notification and investigation of an incident by the Special Investigations Unit (SIU).
- Ontario Regulation 267/10, Section 11 under the Police Services Act requires that the Chief of Police initiate an investigation following a notification to the SIU.
- The purpose of the Chief's investigation is to review the policies of, or services provided by the Police Service, and the conduct of its police officers.
- On August 13, 2021, the SIU notified the Service that their investigation had concluded and advised that there were no grounds for criminal charges against any police officer.
- The subsequent Section 11 investigation by the Professional Standards Unit determined there were minor issues with respect to officer conduct, policies or services provided by the Niagara Regional Police Service. The Service has taken steps to address these issues.

### **Financial Considerations**

There are no financial costs or implications associated to the recommendations.

### **Analysis**

On April 16, 2021 at approximately 12:30 am, police were dispatched to a residence on River Road in Niagara Falls in response to a property damage and threats call for service. The complainant called 911 after his neighbour, AB, slashed the tires of his vehicle and then threatened him. The residence is a multi-unit dwelling with the complainant residing

in one of the units. AB resides within another unit at this location. The incident was caught on video by the complainant. At the time of this incident, there was also a warrant out for the arrest of AB for the same allegations that occurred against the same complainant four days earlier.

At approximately 1:00 am, patrol officers attempted to speak with AB at the front door of his unit. AB became extremely irate and slammed the door shut and locked it. Officers stood by securing the residence until judicial authorization was obtained to enter the residence and arrest AB. At approximately 10:36 am, after judicial authorization was obtained, Emergency Task Unit (ETU) officers attended the residence of AB. Two telephone calls were made by Officer CD to AB to have him exit the residence on his own. Both phone calls went unanswered. ETU officers were then given direction to enter the residence by Officer CD. The door to AB's unit had to be forced open as it was locked and barricaded. AB was immediately combative with entry officers assuming a fighting position with fists clenched and raised. Entry officers being EF, GH, IJ, and KL utilized a Conducted Energy Weapon (CEW) as well as an Anti Riot Weapon Enfield (ARWEN) to affect the arrest of AB. During the arrest, Officer IJ deployed the CEW which resulted in both probes contacting AB, and Officer EF fired two rounds from the ARWEN at AB. It is uncertain whether the two ARWEN rounds struck AB as he sustained no injuries consistent with being struck by the ARWEN projectiles. After a continued struggle, AB was taken into custody. Paramedics subsequently removed two CEW probes from AB and medically cleared him. AB was lodged in the Central Holding Unit pending a bail hearing.

The officer in charge of the Emergency Services Unit, MN, later in the day made notification of the discharge of an ARWEN at a person, to the Professional Standards Unit.

Due to the discharge of the ARWEN, which is technically considered a firearm, by an officer at AB, the SIU was notified and invoked their mandate.

On April 20, 2021, the SIU designated Officer EF as a Subject Official.

On April 22, 2021, the SIU designated Officers CD, GH, IJ, and KL as Witness Officials

On August 13, 2021, the SIU closed its investigation into this matter. In his decision letter SIU Director Mr. Joseph Martino wrote "*In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official*".

A copy of the SIU report was publicly posted on the SIU's website at the following links:  
[https://www.siu.on.ca/en/directors\\_reports.php](https://www.siu.on.ca/en/directors_reports.php)  
[https://www.siu.on.ca/fr/directors\\_reports.php](https://www.siu.on.ca/fr/directors_reports.php).

In accordance with Ontario Regulation 267/10, Section 11, the Service's Professional Standards Unit conducted an investigation and review of this incident which considered the following three areas:

1. The policies of the Police Service,
2. The services provided by the Police Service, and
3. The conduct of its police officers.

The Section 11 investigation encompassed a compliance review of applicable Provincial legislation which governs members of the Service, as well as General Orders, policies and procedures, and the conduct of the involved officers.

Where available, investigations include a review of communications recordings, Service occurrence reports, forensic evidence and reports, officer interviews conducted by the SIU and all duty book notes, SIU documentation including the Director's conclusion letter and investigative report, statements of civilian witnesses gathered and released by the SIU at the conclusion of their investigation upon the consent of the civilian witnesses, and any other information and evidence available on a case by case basis.

### **1. The Policies of the Niagara Regional Police Service**

Professional Standards Unit investigators determined that the following General Orders had primary relevance in this matter, and they have been reviewed accordingly in the context of this incident.

1. General Order 079.10 – Special Investigations Unit
2. General Order 168.06 – Officer Note Taking
3. General Order 100.10 – Powers of Arrest
4. General Order 053.22 – Use of Force
5. General Order 095.10 – Major Incidents & Routine Criminal Investigations

Upon review, it was determined that the direction and guidance provided by the relevant General Orders is sufficient in its governance for members of the Service and no issues were identified.

### **2. Services Provided by the Niagara Regional Police Service**

There were no issues identified relating to the services provided by the Niagara Regional Police Service during this incident.

### **3. Conduct of Niagara Regional Police Officers**

In his Decision Letter dated August 13, 2021, SIU Director Joseph Martino stated the following concerns:

*"I note for the record that this matter was reported late by the NRPS. The new Special Investigations Unit Act, 2019, clearly includes within the SIU's jurisdiction ARWEN discharges at persons, and yet the SIU was not notified of this incident until 1920*

*hours of April 16, 2021, almost nine hours after it occurred. Moreover, though clearly falling within the SIU's mandate, one of the involved officers – [GH] – picked up the two ARWEN rounds from the scene after they had been discharged. Conduct of this nature detracts from the SIU's independence, compromises the integrity of its investigations, and undermines public confidence in policing and policing oversight. I ask that your service review these matters and take such steps as may be appropriate to mitigate the risk of delayed notifications moving forward.”*

### **SIU Identified Issues**

Upon review, it was determined that involved officers were not compliant with Section 3.2 of General Order 079.10 – Special Investigations Unit which states; “The scene of an incident where the mandate of the SIU has been or may be invoked shall be preserved as in any crime scene. Every Official or NRPS Member who are at the scene of the incident shall take any lawful measures that appear to them to be necessary for the purposes of protecting, obtaining or preserving evidence relating to the incident, until an investigator takes charge of the scene.” Officer GH had picked up two ARWEN rounds from the scene after they had been discharged. Additionally, Officer MN did not make timely notification to the Professional Standards Unit of the ARWEN discharge at a person which resulted in an almost nine hour delay of incident notification to the SIU.

Upon review with Officer MN, he advised it was an oversight on his part as at the time of the incident there were no injuries and therefore, he directed his officers accordingly, which included retrieving the two ARWEN rounds. It wasn't until the General Order was reviewed several hours later, that MN realized the discharge of the ARWEN, whether it caused injury or not, fell under the SIU mandate. Once this fact was discovered, the deployed rounds of the ARWEN that were seized were immediately and properly secured and eventually delivered to the SIU. It should also be noted that at the time of this incident, the discharge of a firearm, and in this case an ARWEN firearm, at a person that did not cause injury was only added to the SIU mandate on December 1, 2020.

With the expanded mandate of the SIU to include any incident where a police officer discharges a firearm at a person in the course of their duties, having come into effect on December 1, 2020, the Service on this date also issued a Training Bulletin to all members advising of the expanded mandate of the SIU. Also as a result, the Service issued General Order 079.10 – Special Investigations Unit to reflect changes made as a result of the new Special Investigations Unit Act, 2019. This revised General Order was issued November 30, 2020, the day before the new act came into force.

### **Remedy/Going Forward**

On October 29, 2021, Detectives from the Professional Standards Unit conversed with members of Emergency Services on the role of the Unit. Included with the messaging was the responsibilities and obligations of members as it pertains to General Order

079.10 – Special Investigations Unit, and in particular discharges of firearms and ARWENs at persons.

Additionally, conversations were had with Officer MN who acknowledged his initial misunderstanding of SIU notification when an ARWEN is discharged at a person. Officer MN is now fully understanding of the relevant General Order. Other than the Emergency Services Unit, which Officer MN oversees, no other areas of command within the Niagara Regional Police Service utilize the ARWEN Use of Force option.

The Professional Standards Unit investigation and review of this incident was undertaken in compliance with Section 11 of Ontario Regulation 267/10 made under the Police Services Act. The relevant policies of the Police Service, the services provided, and the conduct of the involved Service members was the focus of this review and investigation.

In conclusion, other than the issues identified regarding compliance with the governing Special Investigations Unit General Order, no other issues were identified as it pertains to services provided, the conduct of the involved Police Service members, or the existing General Orders governing these situations.

### **Alternatives Reviewed**

- 1) To not receive the report.
- 2) To not make the report available to the public.

Subsection 11(4) of Ontario Regulation 267/10 made under the Police Services Act provides that, upon receiving this report, the Board may make it available to the public.

The Police Services Act provides that meetings of the Police Services Board shall be open to the public subject to exceptions that are set out in Subsection 35(4). The applicable exception to be considered in this case is whether or not “*the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.*”

In considering whether or not to make this report available to the public, it is respectfully submitted that the Board consider the following factors:

1. There are no public security matters revealed in this report.
2. This report does not reveal any intimate financial or personal matters.

### **Relationship to Police Service/Board Strategic Priorities**

Not applicable.

## **Relevant Policy Considerations**

Not applicable.

## **Other Pertinent Reports**

Not applicable.

*This report was prepared by Inspector Dave Masotti, Professional Standards Unit and recommended by David Meade, Acting Deputy Chief of Police, Support Services.*



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**Submitted by:**  
Brett Flynn #9295  
Acting Chief of Police

## **Appendices**

Not applicable.