



# NIAGARA REGIONAL POLICE SERVICE

## Police Services Board Report

**CONFIDENTIAL AGENDA**

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**Subject:** Special Investigations Unit – Case Number 22-OCI-283 – Incident of October 29, 2022

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

**Report Date:** 2023-07-03

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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 268/10, Section 32 under the Police Services Act requires 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 force and the conduct of its police officers.
- On February 24, 2023, the SIU notified the Service that their investigation had concluded and advised "In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the subject official."
- The subsequent Section 32 investigation by the Professional Standards Unit determined there were no issues with respect to officer conduct, policies or services provided by the Niagara Regional Police Service (NRPS).

### **Financial Considerations**

There are no financial implications relating to the recommendations contained in this report.

### **Analysis**

On October 29, 2022, at approximately 2:10 a.m., officers responded to a disturbance outside of a nightclub on James Street in St. Catharines.

A male, KK, was observed to be arguing with his girlfriend and yelling and berating her in an aggressive manner. KK's behaviour was so concerning that it began to draw the attention of bystanders.

A civilian bystander intervened, which resulted in KK punching and kicking him in the face. The girlfriend of the bystander tried to stop the assault and she too was kicked in the face by KK. As officers arrived, KK fled on foot. Officers gave chase and were able to catch up to KK in an alleyway, at which point he attempted to fight with officers and was taken to the ground and handcuffed. KK was transported to Central Holding where he complained of a sore shoulder. He was transported to the GNGH where it was determined that he suffered a broken clavicle.

The SIU was contacted and invoked their mandate.

The SIU designated Constable AB as the Subject Official.

The SIU designated 5 Witness Officials: Constable CD, Constable EF, Sergeant GH and Constable IJ and Constable KL.

On February 24, 2023, the SIU closed its investigation into this matter. In his Director's Report, SIU Director Mr. Joseph MARTINO wrote "In the result, while I accept that the takedown likely caused the Complainant's injury. I am unable to reasonably conclude that the SO comported himself other than lawfully throughout their engagement. As such, there is no basis for criminal proceedings in this case. The file is closed."

A copy of the SIU report was publicly posted on the SIU's website.

In accordance with Ontario Regulation 268/10, Section 32, 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 32 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 NRPS

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 053.24 – Use of Force

Upon review, it was determined 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 NRPS

There were no issues identified relating to the services provided by the NRPS during this incident.

### 3. Conduct of Niagara Regional Police Officers

There were no officer conduct issues identified during the SIU investigation or the Professional Standards Unit investigation and review of this incident with regard to compliance with general orders or legislation. On behalf of the SIU, Mr. Martino thanked the members of the police service for their cooperation during the investigation.

The Professional Standards Unit investigation and review of this incident was undertaken in compliance with Section 32 of Ontario Regulation 268/10 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, there were no issues 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 34(1) of Ontario Regulation 268/10 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**

C8.6/2023.05.25 – Request for Legal Indemnification – SIU Case Number 22-OCI-283 – Incident of October 29, 2022

*This report was prepared by Lynda Hughes, Inspector, Professional Standards Unit and reviewed by Paul Koscinski, Acting Superintendent, Executive Services. Recommended by*



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**Submitted by:**

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Chief of Police

### **Appendices**

Not applicable.