



# Section 11 Report

SIU CASE # 17-TCI-098 (Miller)

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## Legislative Background

Pursuant to section 11 of the *Police Services Act's* Regulation 267/10: Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit, the Chief of Police is required to cause an investigation to be conducted into any Special Investigations Unit ("SIU") incident, subject to the SIU's lead role in investigating the incident. The purpose of the Chief's investigation is to review the policies, procedures/services provided by the Police Service and the conduct of its police officers.

The Chief must report the finding and any actions taken or recommended to be taken to the Police Services Board after the SIU director advises the Chief that the SIU has reported the results of the SIU's investigation to the Attorney General (or if charges are laid, following the completion of those matters) – this is known as a "Section 11 Report".

The Board has the discretion under the Regulation to make all or part of the report available to the public (having in mind, the protection of investigative techniques, personal or private information of the members or third party and any other confidential information).

In relation to SIU Case #17-TCI-098 (Miller), the, then Chief of the Toronto Police Service, Mark Saunders, requested the Waterloo Regional Police Service prepare the Section 11 Report on behalf of the Toronto Police Service to ensure transparency.

## Incident Overview

Christian and Michael Theriault are brothers. Michael Theriault is a police officer with the Toronto Police Service. In relation to the incident in question, Michael Theriault was off-duty and not in uniform.

As a result of an interaction the Theriault brothers had with Dafonte Miller in the early morning hours of December 28, 2016 the Special Investigations Unit (SIU) invoked their mandate. The SIU ultimately charged the Theriault brothers jointly with Aggravated Assault and Attempting to Obstruct Justice.

This matter proceeded to trial where Michael Theriault was found guilty of assault and was acquitted of Attempting to Obstruct Justice. Christian Theriault was acquitted of all charges. Both the defense and the crown have filed appeals on this verdict. Notwithstanding the on-going appeals, the crown has provided approval for the Waterloo Regional Police Service to proceed with the Section 11 Report.

The purpose of a Section 11 Report is not to determine what did or did not occur that morning between the Theriault brothers and Mr. Miller. Nor is it to determine criminal liability or fault – that is the role of the Criminal Court and/or an adjudicated *Police Services Act* disciplinary proceeding. The purpose of the Section 11 Report is to determine whether Michael Theriault or any member of the Toronto Police Service was in contravention of the requirements set out in the *Police Services Act* and/or policies and procedures of the Toronto Police Service and whether those policies and procedures are appropriate or require amending.

With that purpose in mind, the following brief overview of the incident in question is provided.

On December 28, 2016 at approximately 2:45 am, Michael and Christian Theriault were in the garage located at 18 Erickson Drive, Whitby, Ontario. The Theriaults had an interaction with two males in the laneway of, or in front of this residence. The Theriaults stated they caught the two males inside of a vehicle in the driveway of this residence and when they confronted the males they fled on foot. The Theriaults believed the males were committing a theft from the vehicle.

One of those males was ultimately identified as Dafonte Miller. Miller denies that they were inside the vehicle and states the Theriaults immediately started questioning him and his associate for simply being in the area and then started chasing them with a pipe.

This distinction was litigated at the criminal trial with no specific finding of fact and is irrelevant for the purpose of this Section 11 review. Regardless, as a result of the interaction, the Theriault brothers gave chase to Mr. Miller and his associate which is undisputed. Mr. Miller and his associate split up and the Theriault brothers continued pursuing Mr. Miller and caught up with him in front of 13 Erickson Drive, Whitby.

There was then a physical altercation between the Theriaults and Mr. Miller that resulted in Mr. Miller being arrested and physically restrained on the ground by Michael Theriault while Christian Theriault called 911 to request police assistance. There again is significant differences between the parties on what occurred during that physical altercation including who had the pipe and who struck who; however, the Criminal Court Judge has made findings which, for the purpose of this report are adopted.

During the struggle Mr. Miller got away from the Theriaults, he ran to the front door at 13 Erickson Drive, Whitby, he pounded on the door and yelled for them to call 911. James Silverthorn heard the knocking and had his wife call 911 at 2:48 am and reported that there were males fighting on his property.

At 2:48 a.m. Christian Theriault called 911 on his cell phone and asked for police to respond. He advised the dispatcher that his brother was an off-duty officer with Toronto Police Service. He advised that the male was being restrained on the ground and needed an ambulance. He advised that the male was bleeding from his face.

While Michael Theriault was struggling to restrain Mr. Miller on the ground, he told Mr. Miller that he was **under arrest**, however contends he never identified himself as a police officer. During this time, Mr. Miller called 911 from his cell phone, Michael Theriault took the phone from him and spoke to a dispatcher. During this call Michael Theriault could be heard saying *"You're under arrest"* and *"Back the fuck up."* Moments later Michael Theriault is heard saying *"Dude you're under arrest"*. Mr. Miller replied *"I know"*.

Cst. Bowler and Cst. Zabdyr from Durham Regional Police responded to the scene. While enroute they learned that a person had been apprehended for breaking into cars and that there was an off-duty Toronto Officer present. The officers arrived at 2:55 am. They observed a black male (Mr. Miller) laying on his stomach and a white male (Michael Theriault) was on top holding his hands behind his back. Cst. Zabdyr spoke with Michael Theriault. She gave him her handcuffs so he could handcuff Mr. Miller. Michael Theriault handcuffed him and brought him to his feet and leaned him against a car. Michael Theriault searched Mr. Miller and located some marihuana.

Mr. Miller was charged by Durham for assault with a weapon, theft under \$5000, weapons dangerous and possession of cannabis. These charges were later withdrawn by the Crown.

Mr. Miller sustained the following injuries during the physical altercation with the Theriaults: permanent vision loss to his left eye, reduced vision in his right eye, broken orbital bone, broken nose and a fractured wrist.

The Durham Regional Police Service notified the Toronto Police Service through a series of calls and updates (see Timeline and Involved Officers marked as Appendix "A") of the incident and enquired whether they would be notifying the SIU as it was their position that the obligation to notify the SIU rested with the Toronto Police Service as it was their officer involved in the incident. The Durham Regional Police Service shared all known information with the Toronto Police Service at the time of the incident.

The Toronto Police Service ultimately informed the Durham Regional Police Service that they would not be notifying the SIU.

The SIU was eventually notified when Mr. Miller with the assistance of counsel notified them on April 27, 2017, just under four months after the incident.

## **Conduct of Constable Theriault regarding Criminal Charges**

Regarding the assaultive actions/use of force by Constable Theriault, those matters have been subject of charges, a trial, conviction and now appeal. Therefore, the actions and misconduct arising therefrom are properly the subject to the Toronto Police Service's parallel Part V, *Police Services Act* investigation. Constable Theriault has been (and should subsequently be, per the conviction in the criminal proceeding) served with the appropriate Notices of Investigation under the Act. There are no further recommendations that can be made regarding such conduct per the limits of the Section 11 review and separate *Police Services Act* processes.

## Analysis of TPS Policies and Procedures

### TPS Procedure 13-16 Special Investigations Unit (current version on the date of the incident) – Attached as Appendix B

This procedure requires the Chief's SIU On-Call Designate to perform such duties pursuant to s. 2(1) of O.Reg. 267/10 which requires notification of the SIU when an incident meets their mandate. This procedure also states that:

*“SIU is legislated to investigate the circumstances of serious injury or death that may have resulted through criminal offences committed by a police officer. The death or serious injury is in relation to a citizen, another police officer or other member of the Service. The SIU mandate may be invoked for deaths or serious injuries that occur in circumstances where there has been police engagement. For example, but not limited to injuries or death occurring:*

- in the course of making an arrest*
- in the course of a suspect apprehension pursuit*
- while in police custody*
- while in the hospital following apprehension or police custody; or*
- allegations of sexual assault.”*

This procedure further states:

*“Off-duty events may be subject to an SIU investigation. For example, but not limited to, the following events:*

- where a police officer verbally identifies themselves as a police officer;*
- where a police officer produces police identification;*
- where a police officer uses police equipment or property;*
- where a police officer operates a Service vehicle; or*
- where a police officer otherwise engages their oath of office.”*

*The decision to contact the SIU in such circumstances will be at the discretion of the Chief's SIU On-Call Designate or, in their absence, the Duty Senior Officer – Toronto Police Operations Centre.”*

Multiple members of Durham Regional Police Service contacted multiple members of the Toronto Police Service throughout the early morning of December 28, 2016 to provide notification of the incident involving the off-duty Toronto Police Service officer and further updates and information as it became known (again, see Timeline and Involved Officers marked as Appendix “A”).

Then Inspector Ed Boyd was the Chief's SIU On-Call Designate for this incident and Inspector Peter Moreira was his designate. The responsibility to notify the SIU therefore ultimately fell with them per this TPS procedure. However, there were far too many people involved in the conveyance of information from Durham Regional Police Service to the Toronto Police Service; such that it was almost impossible to know ultimately and exactly what information was conveyed to the SIU Liaisons.

Then Inspector Boyd (who never directly spoke with Durham Regional Police Service) stated to the SIU in his interview that the reasons they did not notify the SIU were that:

- The officer did not identify himself as a police officer
- No Toronto police equipment was used
- The officer was acting as a civilian not a police officer
- Therefore the level of injury was irrelevant

These reasons mirror the TPS procedure on the SIU.

Michael Theriault denies identifying himself as a police officer in his statement and that information was conveyed to Inspectors Boyd and Moreira the morning of December 28<sup>th</sup> and seemed to form an important factor in the decision to not notify the SIU.

Mr. Miller has stated that Michael Theriault did identify himself as an off-duty police officer, however, that information was not available to Inspectors Boyd and Moreira when Durham Regional Police Service was updating Toronto Police Service shortly after the incident.

Constable Barbara Zabdyr of the Durham Regional Police Service was the first responding officer and provided a statement to the SIU that when she arrived and saw Michael Theriault restraining Mr. Miller with his hands behind his back, she passed him her handcuffs and then Michael Theriault handcuffed Mr. Miller. They stood him up together and Michael Theriault proceeded to search Mr. Miller locating a small quantity of cannabis. Again, this information was not available to Inspectors Boyd and Moreira when Durham Regional Police Service was updating Toronto Police Service shortly after the incident. Had it been known this would have triggered a duty to notify the SIU

as the TPS procedure does not differentiate between “Toronto” owned and issued police equipment and police equipment.

However, it is apparent that Michael Theriault did “*otherwise engage his oath of office.*” He acknowledges in his statement to Durham Regional Police that he arrested Mr. Miller for breaking into a vehicle. This information was sent to Inspectors Boyd and Moreira at the time of this incident prior to their final direction to Durham Regional Police that they would not be notifying the SIU.

An off-duty police officer remains a peace officer and although there was no information that Michael Theriault told Mr. Miller he was a police officer at the time of this incident, he had to have been viewed as having otherwise engaged his oath of office by making an arrest. A police officer cannot detain, arrest, use force and/or search an individual as a private citizen (i.e., a “citizen’s arrest”). If the officer exercises any of those powers, they do so as a police officer, and arguably put themselves on-duty, as well.

***Therefore based on the TPS procedure on the Special Investigations Unit, Inspectors Boyd and/or Moreira failed to follow the procedure by not notifying the SIU of this incident at the time. As such this matter should be referred to the Chief for discussion on appropriate action under Part V of the Police Services Act (if and to the extent they remain subject to the Act).***

***As well, it is recommended that the internal processes and/or the SIU Procedure be reviewed so that updates and discussion upon possible SIU matters are provided directly to the decision-maker regarding SIU notification.***

## **TPS Procedure 01-01 Arrest** (current version on the date of the incident) – Attached as Appendix C

This procedure lays out the following steps when an officer is making an arrest:

*‘When making an arrest shall*

- *Identify themselves as a police officer*
- *Inform the person that they are under arrest*
- *Inform the person of the reason for the arrest...*”

Michael Theriault insisted that he did not identify himself as a police officer to Mr. Miller. This was relied upon as a faulty justification for the Toronto Police Service to not notify the SIU of this incident. However, by not identifying himself as a police officer throughout this interaction Michael Theriault was clearly in contravention of this procedure. The procedure makes no distinction between off-duty and on-duty arrests. There is also no indication that Michael Theriault informed Mr. Miller of the reason for the arrest.

***Therefore based on the TPS procedure on Arrest, Constable Michael Theriault failed to follow the procedure as directed by the Chief, by not identifying himself as a police officer and informing Mr. Miller of the reason for his arrest. As such this matter should be referred to the Chief for discussion on appropriate action under Part V of the Police Services Act, if not already forming part of Notices of Investigation provided.***

## **TPS Procedure 15-01 Use of Force (current version on the date of the incident) – Attached as Appendix D**

This procedure states in relation to excessive force:

*“Everyone who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.”*

It also states under Reporting Use of Force:

*“Ontario Regulation 926/90 compels members to submit a UFR Form 1 to the Chief of Police when a member*

- uses physical force on another person that results in an injury that requires medical attention”*

Michael Theriault was charged with Aggravated Assault in relation to this incident. After a trial he was found guilty of assault and therefore the use of force was deemed to not be necessary and reasonable. Michael Theriault also did not complete the required UFR Form 1.

***Therefore based on the TPS procedure on the Use of Force, Constable Michael Theriault failed to follow the procedure as directed by the Chief, by using excessive force and failing to file a UFR Form 1. As such, this matter should be referred to the Chief for discussion on appropriate action under Part V of the Police Services Act, if not already forming part of Notices of Investigation provided.***

## **Additional Recommendations on Amendments to TPS Procedures/Training**

### **TPS Procedure 13-16 Special Investigations Unit – Attached as Appendix B**

(a) Addition to “Off-duty events”

Currently this procedure states:

*“Off-duty events may be subject to an SIU investigation. For example, but not limited to, the following events:*

- *where a police officer verbally identifies themselves as a police officer;*
- *where a police officer produces police identification;*
- *where a police officer uses police equipment or property;*
- *where a police officer operates a Service vehicle; or*
- *where a police officer otherwise engages their oath of office.*

*The decision to contact the SIU in such circumstances will be at the discretion of the Chief’s SIU On-Call Designate or, in their absence, the Duty Senior Officer – Toronto Police Operations Centre.”*

**It is recommended that this section of the procedure has an additional bullet point added that states:**

- **where a police officer effects an off-duty detention or arrest of any person**

As stated, effecting an off-duty arrest or detention does engage a member’s oath of office and effectively puts them on-duty (an officer cannot effect a citizen’s arrest), however this addition will remove any ambiguity on the positive obligation to report to the SIU.

(b) Duty to Inquire

While it is recognized that SIU legislation requires a nexus between off-duty conduct and being a police officer to trigger a notification, absent of anything verbalized, certain information and/or off-duty actions alone create that nexus or result in putting an officer on-duty. For example, we cannot make assumptions that an officer did not verbally identify themselves to mean that people involved were unaware they were dealing with a police officer. As such, there should be duty to fully inquire as to whether an off-duty officer has put themselves on-duty by their words or actions.

**It is additionally recommended that the SIU Procedure and/or training of the SIU Liaison officers should include a duty to make certain inquiries when notified of an officer's purported off-duty actions have resulted in injuries that meet the SIU threshold. These inquiries should include:**

- (a) whether the officer identified themselves as a police officer – directly by words or indirectly by their actions – and/or were known to be a police officer;**
- (b) whether the officer exercised any powers of a police officer, including but not limited to detention, arrest, search, seizure, etc.;**
- (c) since information immediately following an incident may not always be complete or accurate, follow up should be done within a reasonable time to ascertain whether additional information is available or known that may alter the original assessment as to whether it meets the notification of the SIU requirements set out in legislation and/or procedure.**



# Appendix “A”

## Timeline and Involved Officers

### Toronto Officers

Inspector Keith Smith(Duty Officer)  
Supt. Hugh Ferguson(Police Operations Centre Officer)  
Inspector Edward Boyd(Chief Designate SIU)  
Inspector Peter Moreira(SIU Designate Insp)  
S/Sgt. Ed McKay(Operations Centre)  
Supt. Joanna Beaven-Desjardins  
S/Sgt. Armin Hafiz(Operations Centre)

### Durham Officers

Inspector Chuck Nash(SIU Liaison)  
S/Sgt. Micah Wagenberg(Duty  
Deputy Chief Christopher Fernandes

### Timeline

#### December 28, 2016

02:48 hour's incident reported to Durham Police Service.

02:55 Dafonte Miller was arrested by Durham Regional Police Service.

0350 S/Sgt. McKay(TPS) spoke with S/Sgt. Wagenberg(DRP)

- Advised of a TPS officer involved in an incident in Whitby. Discussed SIU and both did not think they were required.

0400 S/Sgt. McKay(TPS) notified Inspector Smith(TPS)

- Sent an email to Inspector Smith with the info about the incident.

04:30 Insp. Smith(TPS) phoned S/Sgt. Wagenberg(DRP)

- Discuss SIU mandate, decided it did not meet the requirement.

4:32 S/Sgt. Wagenberg(DRP) notified Toronto Police Operations Centre

04:40 Inspector Nash(DRP) notified Inspector Moreira(TPS)

- Reported seriousness of the injuries.

04:45 S/Sgt. Wagenberg(DRP) called Inspector Nash(DRP)

- Advised an off-duty Toronto Officer was involved

04:46 Inspector Smith(TPS) emails Supt. Beaven-Desjardins(TPS)

- Advised of the event.

0500 Deputy Chief Fernandes(DRP) received call from Inspector Nash(DRP)

- Updated him about the event. Concluded that the injury would meet SIU mandate, however for Toronto to notify.

05:12 Inspector Smith(TPS) sent out update to Supt. Ferguson(TPS)

- Asked to speak to the SIU liaison for TPS

05:30 S/Sgt. McKay(TPS) spoke with Inspector Nash(DRP)

- Updated about serious injuries.

0530 Inspector Smith(TPS) spoke with Inspector Nash(DRP)

- Update provided about the seriousness of the injuries. Discussed SIU, decided not notify.

05:41 Inspector Smith(TPS) phoned Insp. Moreira(TPS)

- Updated about the event.

06:03 S/Sgt. Wagenberg(DRP) emailed Major Incident Executive Notification

06:00(approx) Inspector Nash(DRP) spoke with Supt. Ferguson(TPS)

- Requests to speak to TPS SIU liaison.

06:05 Inspector Moreira(TPS) and Inspector Nash speak(DRP)



- Discussed the incident and SIU.

06:33 Inspector Moreira(TPS) sends a message to Inspector Boyd(TPS)

- Wants to discuss the incident.

06:40 Inspector Nash(DRP) emails Inspector Moreira(TPS)

- Update on the event. TPS is still discussing SIU.

06:52 Inspector Boyd(TPS) spoke with Inspector Moreira(TPS) by phone

- Discuss whether it meets the SIU threshold.

08:20 Inspector Moreira(TPS) emails Inspector Boyd(TPS)

- Advises that they do not have a duty to report to SIU.

0900 Deputy Chief Fernandes(DRP) spoke to Inspector Nash

- Advised that Toronto Police are not notifying SIU.

0906 S/Sgt. Hafiz(TPS) emails Inspector Ferguson(TPS)

- Advised that Inspector Moreira will not be notifying SIU.

0919 Inspector Boyd emails Inspector Moreira

- Agrees with Inspector Moreira's decision re SIU.



# CONDUCT

## 13 – 16    Special Investigations Unit

New        Amended        Reviewed – No Amendments   

Issued:            R.O. 2016.12.19–1401

Replaces:        R.O. 2016.07.20–0826

### Rationale

This Procedure outlines the responsibilities of members regarding investigations where the Province's Special Investigations Unit (SIU) mandate has been or may be invoked. *Ontario Regulation 267/10* (O. Reg. 267/10) made under the *Police Services Act* (PSA) directs the Toronto Police Service (Service) regarding the conduct and duties of police officers with respect to investigations conducted by the SIU.

### Supervision

#### **Attendance**

- Supervisory Officer
- Chief's SIU On-Call Designate

#### **Mandatory Notification**

- Supervisory Officer
  - when a Service member is involved in an incident where the SIU mandate is or may be invoked
- Officer in Charge - TPOC
  - when the SIU mandate is or may be invoked
- Duty Senior Officer
  - when the SIU mandate is or may be invoked
- Chief's SIU On-Call Designate
  - when the SIU mandate is or may be invoked

### Governing Authorities

**Provincial**      Police Services Act – Part VII, Special Investigations  
Police Services Act, O. Reg. 267/10, Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit

### Associated Service Governance

Number	Name
<a href="#">04-21</a>	Gathering/Preserving Evidence
<a href="#">08-01</a>	Employee and Family Assistance Program (EFAP)

<a href="#">08-04</a>	Members Involved in a Traumatic Critical Incident
<a href="#">13-17</a>	Memorandum Books and Reports
<a href="#">15-03</a>	Service Firearms

## **Definitions**

- [Administrative Investigation](#)
- [Association](#)
- [Chief's Special Investigations Unit \(SIU\) On-Call Designate](#)
- [Chief's Special Investigations Unit \(SIU\) Liaison Officer](#)
- [Critical Incident Response Team \(CIRT\)](#)
- [Critical Incident Response Team \(CIRT\) Coordinator/Employee and Family Assistance Program \(EFAP\) Liaison](#)
- [Notes](#)
- [Peer Support Volunteer \(PSV\)](#)
- [Police Officer – SIU Investigations](#)
- [Serious Injury](#)
- [Professional Standards Support Special Investigations Unit \(SIU\) Liaison Investigator](#)
- [Special Investigations Unit \(SIU\) Mandate pursuant to Part VII PSA](#)
- [Subject Officer – SIU Investigations](#)
- [Witness Officer – SIU Investigations](#)

## **Procedure**

### **Wellbeing of Members**

The medical and psychological wellbeing of Service members is a priority for the Service. To assist involved officers in coping with an event in which the SIU mandate is or may be invoked, access, as required, to medical care and/or a representative of the Critical Incident Response Team (CIRT) / Employee Family Assistance Program (EFAP) / Peer Support Volunteer (PSV) will be provided.

### **Notification of SIU**

In cases where the SIU mandate may be invoked, the Supervisory Officer – Toronto Police Operations Centre (TPOC) shall be responsible for immediately notifying the Duty Senior Officer - TPOC (Duty Senior Officer) and the Deputy Chief of Police (Deputy Chief) of the Command involved. The Duty Senior Officer shall be responsible for notifying the Chief's Special Investigations Unit (SIU) On-Call Designate.

Only the Chief's SIU On-Call Designate, or in their absence, the Duty Senior Officer, shall be responsible for notifying the SIU directly. The Duty Senior Officer must attempt to contact the Chief's SIU On-Call Designate prior to initiating contact with the SIU.

All requests or inquiries related to an SIU investigation shall be made to the Professional Standards Support – Special Investigations Unit Liaison Section (PSS – SIU Liaison Section).

### **Chief's SIU On-Call Designate Duties Relating to SIU Investigations**

Section 2 of O. Reg. 267/10 allows the Chief of Police to designate a uniform senior officer of the Service, who is not a Subject Officer or Witness Officer in the incident, to act in the place of the Chief of Police. The Chief's SIU On-Call Designate assumes all the duties and powers of the Chief of Police in matters

respecting an incident under investigation by the SIU. The Chief of Police has authorized the following senior officers to act in this role:

- Uniform Senior Officer – authorized by the Chief of Police
- Duty Senior Officer

The Chief's SIU On-Call Designate will direct the Service's response to the SIU investigation.

Professional Standards Support (PSS) shall have custody of the Administrative Investigation into the policies of or services provided by the Service and the conduct of police officers, as directed by s. 11 of O. Reg. 267/10.

All requests for SIU personnel to participate in training or conferences, and any request made by the SIU for members to provide training, must be made through the Chief's SIU Liaison Officer. If a member of the SIU makes such a request directly to a member of this Service, they shall be referred to the Chief's SIU Liaison Officer.

### **Control of Scenes**

The scene of an incident where the mandate of the SIU is or may be invoked shall be protected and preserved in a manner consistent with Service procedures and usual practice pursuant to s. 4 of O. Reg. 267/10. Every police officer has a duty to ensure that the scene is properly preserved from contamination or deterioration. Entrance to the scene is strictly prohibited, except as authorized by the Chief's SIU On-Call Designate or SIU investigators. Under no circumstances shall the media or other personnel be allowed within the perimeter without prior approval from the SIU.

### **Injured Parties**

The medical assistance necessary for the safety and wellbeing of all injured parties remains the primary importance in all incidents. Injured parties, whether victims or suspects, shall be assisted, as directed by the PSA and Service Governance.

### **Collection of Evidence**

In cases where the SIU mandate is invoked, the SIU shall collect all evidence. However, in cases where the SIU mandate may be invoked and a lack of immediate action may jeopardize the evidence or where there is a potential hazard to the public, such evidence will be collected and preserved by Service members as detailed in Procedure [04-21](#).

### **Search and Seizure of Service Property by SIU**

The SIU will be permitted, subject to the direction of the Chief's SIU On-Call Designate, to seize any police-issued equipment, without warrant, that is relevant to an SIU investigation. Any other items can only be seized by consent or by search warrant. The Chief's SIU On-Call Designate is solely responsible for the release of all equipment and documents to the SIU. Under no circumstances will equipment, documents, or memorandum books be surrendered to the SIU without the specific direction of the Chief's SIU On-Call Designate.

### **Seizure of Service Firearms by SIU**

In cases where Service firearms are involved, firearms shall remain holstered until proven safe at a proving station, in compliance with Procedure [15-03](#) and in the presence of an SIU investigator and the Chief's SIU On-Call Designate. The firearm may then be turned over to the SIU, at the direction of the Chief's SIU On-Call Designate.

In exigent circumstances, such as in the case of an injured officer, a supervisory officer shall seize the firearm by means of seizing the whole duty belt, ensuring it is secured and shall comply with the direction of the Chief's SIU On-Call Designate.

In instances involving other Service firearms, the police officer discharging the firearm shall unload the firearm in the presence of an SIU investigator, the Chief's SIU On-Call Designate and in compliance with Procedure [15-03](#) and training. If the officer is unable to perform this task, another officer who is currently qualified in the handling of the firearm shall perform this task.

### **Seizure of Service Vehicles by SIU**

Service vehicles equipped with radios and/or mobile workstations having access to confidential records, and/or specialized equipment must be stored in a secure location. The following process shall be followed when a Service vehicle equipped with the aforementioned is seized by the SIU:

- The Chief's SIU On-Call Designate is solely responsible for coordinating the release of the Service vehicle. A departmental tow truck shall be used to tow the Service vehicle to a secure Service garage. The vehicle shall be securely stored until the authorized member of the Service is available to remove the radio, mobile workstation, and/or equipment. The removal of equipment will not occur until the SIU are in attendance, unless the SIU consents not to be present. Any equipment that is removed shall be securely stored by the Service and replaced in the vehicle when returned. Other Service and/or officer's personal equipment shall only be removed under the direction of the Chief's SIU On-Call Designate, prior to the vehicle being towed. Members wishing to remove personal items from the vehicle shall make the request to the Chief's SIU On-Call Designate.
- When a Service vehicle requires forensic examination as part of the SIU investigation, the Service vehicle shall be towed by a departmental tow truck to either a secure Service garage or the Centre of Forensic Sciences vehicle storage area. In this circumstance, no equipment shall be removed from the Service vehicle unless directed by the Chief's SIU On-Call Designate.

### **Media Releases**

When an incident has occurred where the SIU mandate is invoked, release of information to the media is restricted. The Chief of Police and/or Unit Commander – Corporate Communications may make an initial release of information indicating an incident has occurred and the SIU mandate has been invoked. Members shall not provide information to the media or participate in a media interview unless authorized by the Chief's SIU On-Call Designate or the Unit Commander – Corporate Communications.

### **Criminal Investigations**

Officers shall be mindful of the circumstances that led to the involvement of the police and ensure that the original investigation continues, subject to certain restrictions as outlined below.

Section 5 of O. Reg. 267/10 directs that the SIU shall be the lead investigator, and shall have priority over any police service in the investigation of an SIU-related incident.

Co-operation between the Service and the SIU is essential to ensure the timely completion of investigations. Where the SIU mandate has been invoked, priority in witness interviews and the collection or inspection of evidence shall be given to the SIU.

All investigations conducted by members of this Service that may conflict with the SIU mandate shall first be cleared by the Chief's SIU On-Call Designate.

## **Chief's Administrative Investigation**

Service investigations within this category will be conducted through PSS to determine issues related to the policies of, or services provided by, the Service and the conduct of involved police officers.

Subject Officers, Witness Officers or any other member of the Service shall provide the assigned investigator with a copy of their notes, and shall make themselves available for an interview, when directed.

The exceptions provided to a Subject Officer with regard to providing notes or attending an interview listed under the SIU criminal investigation do not apply to the Chief's Administrative Investigation. All members shall cooperate as directed by s. 11 of O. Reg. 267/10.

Service subject matter experts shall be assigned Chief's Administrative Investigations. The following internal units shall be assigned Administrative Investigations:

<b>Professional Standards</b>	<ul style="list-style-type: none"><li>officer-involved firearm discharge where death or injury occurs</li></ul>
<b>Professional Standards Support</b>	<ul style="list-style-type: none"><li>serious injury relating to arrest</li><li>serious injury relating to a person in custody</li></ul>
<b>Specialized Criminal Investigations – Homicide</b>	<ul style="list-style-type: none"><li>death in police custody – other than an officer-involved firearm discharge</li></ul>
<b>Specialized Criminal Investigations – Sex Crimes</b>	<ul style="list-style-type: none"><li>allegations of sexual assault</li></ul>
<b>Traffic Services</b>	<ul style="list-style-type: none"><li>suspect apprehension pursuit or officer-involved collision, where death or serious injury occurs</li></ul>

## **SIU Investigative Interviews**

The SIU will communicate all requests directly to the Chief of Police. The PSS - SIU Liaison Section shall direct all officers in relation to the SIU requests. Should the SIU contact an officer directly, the officer shall immediately notify the PSS - SIU Liaison Section. The scheduling of all investigative interviews requested by the SIU shall be arranged through the PSS - SIU Liaison Section.

In accordance with O. Reg. 267/10, Witness Officers, when properly designated as such, shall attend for an investigative interview with the SIU and shall answer all questions immediately, or within 24 hours if appropriate grounds for delay exist.

A police officer's preference for a particular counsel is not a justifiable excuse for unreasonable delay in attending interviews or for providing the required notes.

Subsection 8(3) of O. Reg. 267/10 directs the SIU to record or cause the interview to be recorded and to give a copy of the record to the Witness Officer as soon as it is available. Subsection 8(4) of O. Reg. 267/10 directs that this recording shall not be by audiotape or videotape except with the consent of the Witness Officer.

## **Representation During an Interview**

Subsection 7(1) of O. Reg. 267/10 entitles every police officer to consult with legal counsel or a representative of the Association and to have the legal counsel or Association representative present during their interview with the SIU.

Subsection 7(3) of O. Reg. 267/10 directs Witness Officers that they may not be represented by the same legal counsel as Subject Officers.

## **Notes**

Subsections 9(1) and 9(3) of O. Reg. 267/10 require Subject and Witness officers to complete in full, the notes for an incident in accordance with their duty. Subsection 9(5) of O. Reg. 267/10 directs that the notes made shall be completed by the end of the officer's tour of duty, except where excused by the Chief of Police.

The Supreme Court of Canada (SCC) ruled in *Wood v. Schaeffer, 2013 SCC 71* that police officers are not permitted to consult with counsel before completion of their notes. As such, the following directions shall be adhered to by all police officers (both witness and subject):

- Police officers involved in events which fall under the mandate of the SIU are not permitted to consult with counsel prior to completing their notes;
- Police officers have a duty to prepare accurate, detailed, and comprehensive notes as soon as practicable after an event;
- Notes are to be completed and submitted before the end of the police officers tour of duty, except where excused by the Chief of Police;
- If there is a need to inform a police officer of their duties and obligations under O. Reg. 267/10, it will be delivered by the Chief's SIU On-Call Designate or the Duty Senior Officer;
- Police officers are permitted to consult with counsel after their notes have been completed, and;
- Police officers remain entitled to the full benefit of legal counsel before and during the SIU interview.

Any recording an officer makes in accordance with their duties is considered a note and shall be treated as such in compliance with Procedure [13-17](#).

All notes are to be stored in compliance with Procedure [13-17](#), subject to court requirements.

Memorandum books shall be completed in compliance with Procedure [13-17](#) and delivered to the Officer in Charge (OIC) upon the completion of a tour of duty. Exceptions may be made in cases where there are bona fide medical reasons for not completing the notes. Only the Chief's SIU On-Call Designate can excuse officers from immediately completing their notes with respect to SIU investigations.

All reports and occurrences shall be completed in accordance with the established practice, including incidents where the SIU has invoked its mandate.

## **Release of Notes**

The Chief's SIU On-Call Designate shall provide a copy of the Witness Officers' notes to the SIU, upon proper designation, but no later than 24 hours after, except where permitted by the SIU.

Notes made by a designated Subject Officer in relation to the incident shall not be released to the SIU unless consent has been obtained from the Subject Officer.

## **Non-Service Witnesses**

Non-Service witnesses shall be segregated and transported independently, where practicable. The SIU shall have first right to interview witnesses that relate to its mandate. Officers shall encourage all witnesses to remain at the scene or a police facility. However, should a witness refuse, the officer shall obtain sufficient information to allow for follow-up at a later time.

### **Member**

1. Members shall be aware that communication with involved officers is regulated by O. Reg. 267/10.
2. Members shall not give or receive advice to/from any involved officer in relation to an SIU investigation, except when acting as a representative of the Toronto Police Association (Association).
3. Members acting as a representative of the Association and offering advice to an involved officer shall
  - advise the OIC of their arrival at the unit
  - respect the duties and obligations of the involved officer in keeping with O. Reg. 267/10, *Wood v. Schaeffer, 2013 SCC 71*, and the direction contained in this Procedure
  - offer advice only after the involved officer has completed their notes
  - be advised that all communication with the involved officer is without privilege
4. Members acting as the CIRT Coordinator / EFAP Liaison or a CIRT/PSV representative shall
  - advise the OIC of their arrival at the unit
  - respect the duties and obligations of the involved officer, in keeping with O. Reg. 267/10, *Wood v. Schaeffer, 2013 SCC 71*, and the direction contained in this Procedure
  - be advised that all communication with the involved officer is without privilege
  - also comply with direction contained in Procedure [08-04](#)

### **Police Officer**

5. When involved in an incident where the SIU mandate is or may be invoked shall
  - immediately notify a supervisory officer
  - protect and preserve the scene and all evidence
  - ensure the original investigation that gave rise to the event is completed, subject to restrictions contained in this Procedure
  - write complete and independent notes, consistent with O. Reg. 267/10 and *Wood v. Schaeffer, 2013 SCC 71*.

- submit their completed notes by the end of their tour of duty to the OIC or PSS SIU Liaison Investigator, unless excused by the Chief's SIU On-Call Designate
  - consult with legal counsel and/or an Association representative only after their notes are completed and submitted to the OIC or PSS SIU Liaison Investigator
  - not communicate directly or indirectly with any other member of the Service concerning their involvement prior to the completion of their notes and all SIU interviews
6. When the SIU mandate is invoked shall comply with O. Reg. 267/10 and this Procedure.

### **Supervisory Officer**

7. When attending an incident where the SIU mandate is or may be invoked shall
- take charge of the scene and determine the roles (only) of the involved officers
  - ensure the scene and all evidence is protected and preserved
  - segregate the involved officers
  - ensure each of the involved officers are transported separately to a designated unit, where practicable
  - ensure unauthorized persons do not question involved officers, unless there is an immediate medical requirement, or an urgency to locate outstanding suspects, or preserve evidence
  - immediately notify the OIC – TPOC
  - ensure the OIC is notified and updated on a regular basis
  - comply with the applicable portions of Procedures [08-01](#) and [08-04](#), if applicable
  - brief the Chief's SIU On-Call Designate with the details of the incident

**NOTE:** *The Administrative Investigation commences with the arrival of a supervisory officer. Any supervisory officer obtaining information from an involved officer shall do so under the compulsion of s. 11 of O. Reg. 267/10, for the purpose of the Administrative Investigation.*

8. When required to seize a Service issued firearm shall
- do so only if currently certified to handle the specific firearm
  - do so by means of seizing the whole duty belt
  - comply with direction from the Chief's SIU On-Call Designate
  - safely handle and secure the firearm in compliance with Procedure [15-03](#)

### **Officer in Charge**

9. When notified of an incident where the SIU mandate is or may be invoked shall
  - ensure the OIC – TPOC is notified
  - ensure the scene and all evidence has been protected and preserved
  - notify their Unit Commander
  - provide ongoing assistance to the members at the scene
10. When the involved officers arrive at the unit shall
  - ensure the wellness of each involved officer, including their medical and psychological wellbeing
  - ensure compliance with O. Reg. 267/10 and *Wood v. Schaeffer, 2013 SCC 71*
  - segregate each officer by placing them in separate offices, where practicable
  - direct all involved officers to complete their notes independently
  - allow contact with the involved officers by only
    - authorized personnel
    - counsel and an Association representative only after notes have been completed and submitted in compliance with this Procedure and Procedure [13-17](#)
  - brief the attending Chief's SIU On-Call Designate with the details of the incident
11. When notified, or having identified, that an involved officer requires medical and/or psychological assistance shall
  - immediately engage the appropriate supports, including a medical facility and/or a CIRT / EFAP / PSV representative, as necessary
  - make a memo book entry including details of
    - the reasons for engaging supports
    - what supports were engaged
    - any resulting delay in the completion of the involved officer's notes

### **Officer in Charge - TPOC**

12. When notified of an incident where the SIU mandate is or may be invoked shall
  - notify the Duty Senior Officer
  - ensure the Unit Commanders of all involved Subject and Witness Officers are notified of the SIU event

### **Unit Commander**

13. When notified that a member under their command has been involved in an incident where the SIU mandate is or may be invoked shall
- attend the scene of the incident, if available
  - assist in the investigation, when requested
  - provide the necessary support for involved officers
  - refer to Procedures [08-01](#) and [08-04](#), if applicable
  - confer with the Chief's SIU On-Call Designate, when necessary
  - confer with the PSS SIU Liaison Investigator, when necessary
  - ensure all side issues
    - of a serious nature are reported to PRS
    - of a less serious nature are dealt with as soon as practicable
  - arrange for replacement of seized equipment

### **Professional Standards Support SIU Liaison Investigator**

14. Shall perform such duties as required or directed by
- the Chief's SIU Liaison Officer or the Chief's SIU On-Call Designate
  - the Superintendent – PSS as related to s. 11 of O. Reg. 267/10

### **Chief's SIU On-Call Designate**

15. When authorized to act as the Chief's SIU On-Call Designate shall
- perform such duties pursuant to ss. 2(1) of O. Reg. 267/10
  - accept service of documents from the SIU and cause service of these documents on members, such as the "Letter of Designation"
  - co-ordinate the release of all Service equipment and documents to the SIU and facilitate its recovery
  - co-ordinate the recovery of evidentiary material seized by the SIU

### **Duty Senior Officer**

16. When the SIU mandate is or may be invoked shall
- attend the scene of the incident
  - determine details of the incident by consulting with supervisory officers

- provide details of the incident to the Chief's SIU On-Call Designate forthwith

17. In the absence of the Chief's SIU On-Call Designate shall assume those duties.

# ARREST & RELEASE

## 01 – 01    Arrest

New        Amended        Reviewed – No Amendments   

Issued:            R.O. 2016.02.08–0158

Replaces:        R.O. 2015.09.14–1014

### Rationale

Compliance with this Procedure will ensure that arrests are conducted and reported in a manner consistent with all legal principles and best practices.

### Governing Authorities

- Federal**
- Canadian Bill of Rights
  - Constitution Act, Part I, Canadian Charter of Rights and Freedoms
  - Controlled Drugs and Substances Act
  - Criminal Code
  - Youth Criminal Justice Act
- Provincial**
- Highway Traffic Act
  - Human Rights Code
  - Liquor Licence Act
  - Police Services Act, O. Reg. 3/99, Adequacy & Effectiveness of Police Services
  - Provincial Offences Act
  - Safe Streets Act
  - Trespass to Property Act

### Associated Service Governance

Number	Name
TPSB LE-005	Arrests
TPSB Policy	Accessibility Standards for Customer Service
<a href="#">01-02</a>	Search of Persons
<a href="#">01-03</a>	Person in Custody
<a href="#">03-05</a>	Withdrawal Management Centres
<a href="#">04-09</a>	American Sign Language and Language Interpreters
<a href="#">04-12</a>	Diplomatic and Consular Immunity
<a href="#">04-13</a>	Foreign Nationals
<a href="#">10-06</a>	Medical Emergencies
<a href="#">17-01</a>	News Media

## **Forms**

<b>Number</b>	<b>Name</b>	<b>Authorization Level</b>
TPS 493	eReports What You Need To Know	GO Review Police Officer

**NOTE:** TPS 493 forms are available in multiple languages.

## **Definitions**

- [Arrest](#)
- [Criminal Offence](#)
- [Indictable Offence](#)
- [Reasonable Grounds](#)

## **Procedure**

### **Arrest Authority**

Section [494](#) of the *Criminal Code* (CC) provides authorities for arrest without warrant by any person.

In addition to the authorities to arrest without warrant given to any person in s. 494 CC, a peace officer is given additional authorities under ss. 495(1), 524(2), 525(6) and 31(1) CC. A peace officer may arrest any person who

- |                   |  |
|-------------------|--|
| 495(1)            | <ul style="list-style-type: none"><li>• has committed an indictable offence, or a person the officer believes on reasonable grounds has committed or is about to commit an indictable offence</li><li>• the officer finds committing a criminal offence</li><li>• on reasonable grounds, the officer believes is wanted on a warrant of arrest or committal, which is in force within the territorial jurisdiction where the person is found, or</li></ul> |
| 524(2) and 525(6) | <ul style="list-style-type: none"><li>• has contravened or is about to contravene the terms of a criminal release</li><li>• has committed an indictable offence while on release for a criminal offence</li></ul>  |
| 31(1)             | <ul style="list-style-type: none"><li>• is found committing or it is believed on reasonable grounds is about to commit a breach of the peace</li></ul>   |

### **Continuation of Arrest**

A police officer shall not arrest a person without warrant for summary conviction, dual procedure or 553 indictable offences where there are reasonable grounds to believe the public interest has been satisfied having regard to all the circumstances including the need to

- establish the identity of the person
- secure or preserve evidence
- prevent the continuation or repetition of an offence
- ensure that the accused will appear in court
- ensure the safety and security of any victim of or witness to the offence.

In circumstances where the public interest is satisfied, an offender must be released

- unconditionally with no intent to proceed to court
- unconditionally with intent to seek a criminal summons, or
- by way of an Appearance Notice (Form 9).

A police officer may continue the arrest (summary, dual, indictable 553 offences) of a person where the public interest is not satisfied or for any indictable offence other than dual procedure and 553 indictable offences. The criteria for satisfying the 'public interest' are set out in s. 497 CC.

In circumstances where a continued detention is justified, the arrested person must be taken before an Officer in Charge.

**NOTE:** *The lack of appropriate release documentation to be served at an arrest scene is not a valid reason for the continuation of an arrest.*

## **Provincial Offences**

A police officer may also arrest a person under other authorities found in individual Provincial Statutes such as the *Highway Traffic Act*, the *Liquor Licence Act*, and the *Trespass to Property Act*. There is no general arrest authority for contravention of a Provincial Statute, and reference must be made to individual statutes for specific arrest authorities.

## **Arrest in a Dwelling–House (Feeney Warrants)**

As a general rule, police officers are required to obtain a warrant prior to entering a dwelling–house to arrest a person.

Entry to a dwelling–house to affect an arrest is prohibited unless

- the arrest warrant is endorsed with an authorization to enter under ss. 529(1) CC, or
- the arrest warrant is accompanied by a separate entry authorization warrant issued under s. 529.1 CC, or
- when there are reasonable grounds to suspect that entry into the dwelling–house is necessary to prevent imminent bodily harm or death to any person, or
- when there are reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling–house and that entry into the dwelling–house is necessary to prevent the imminent loss or imminent destruction of evidence, or
- in circumstances of fresh pursuit.

Prior to entering a dwelling–house to execute an arrest warrant, members shall, whenever possible, obtain

- an endorsement on the arrest warrant under ss. 529(1) CC, or
- an authorization warrant (Form 7.1) under s. 529.1 CC.

The authorization to enter may include such restrictions and conditions as the issuing Justice believes reasonable to place on the arrest process.

In all cases, members shall ensure proper announcement is made prior to entry (identification, purpose of entry, etc.) except

- as provided on the warrant, or
- where there are reasonable grounds to believe that prior announcement of the entry would
  - expose the officer or any other person to imminent bodily harm or death, or
  - result in the imminent loss or imminent destruction of evidence relating to the commission of an indictable offence.

## **Medical Considerations**

### **Positional Asphyxia**

Members should be aware that certain restraint positions (i.e. stomach down) might compromise heart and lung functions increasing the risk of death. Unless circumstances make it impossible, persons should be restrained in a sitting position while being closely watched. Use of the sitting position permits easier breathing and cardiac function while affording good positional control over the individual.

### **Excited Delirium**

Excited delirium is a condition that can be caused by drug or alcohol intoxication, psychiatric illness or a combination of both. Symptoms displayed by persons suffering from the condition may include any combination of

- *abnormal tolerance to pain*
- *abnormal tolerance to pepper spray*
- *acute onset of paranoia*
- *bizarre or aggressive behaviour*
- *disorientation*
- *hallucinations*
- *impaired thinking*
- *panic*
- *shouting*
- *sudden calm after frenzied activity*
- *sweating, fever, heat intolerance*
- *unexpected physical strength*
- *violence towards others.*

Due to their inclination to violence and extreme exertion, persons exhibiting the symptoms of excited delirium are often restrained for their own protection and the protection of others. Members should be cognizant of positional asphyxia when dealing with persons exhibiting the symptoms of excited delirium and, unless circumstances make it impossible, restrain the person in a sitting position as noted above.

Persons exhibiting the symptoms of excited delirium must always be treated as suffering from a medical emergency and once secured, be transported to hospital for examination.

### **Police Officer**

1. When making an arrest shall
  - identify themselves as a police officer
  - inform the person that they are under arrest
  - inform the person of the reason for the arrest
  - take physical control of the person
  - inform the person of the Right to Counsel, including the existence and availability of duty counsel and free legal advice (Legal Aid)
  - ensure that the person understands the Right to Counsel

- search the person in compliance with Procedure [01-02](#)
- place the person in handcuffs in accordance with training and utilize the double lock mechanism where possible
- when handcuffs are not used, be prepared to justify this decision

**NOTE:** *Keeping in mind officer and public safety, officers may use discretion when determining whether to handcuff an individual as it may not be practical or necessary in all circumstances (e.g. due to a person's medical condition, age, disability, pregnancy, or frailty).*

- allow reasonable access to a telephone as soon as practicable
- ensure that, when an arrested person has the care, charge or custody of another person who, because of age, physical or medical condition, is unable to care for themselves, every effort is made to obtain interim care for the dependent person

2. In all cases of arrest, regardless of the authority used or whether charges are laid, shall

- conduct a Person Query, including a CPIC check, obtaining details on any positive result
- record pertinent information in the memorandum book including, but not limited to
  - reason for the arrest
  - reason for the release or continued detention of the person
  - all details regarding the person (identification and description)
  - all other relevant details regarding the incident
- complete the applicable eReports
- comply with the applicable release/detention procedure
- if the arrest involves an arrest warrant, check the Master Name Index (MNI); note any previous arrest number and case number and comply with the applicable procedure
- comply with Procedure [17-01](#), if applicable
- serve documents required for court on the person, if applicable
- submit all documents to the Officer in Charge prior to the completion of the tour of duty

3. When a non-violent person is arrested for being intoxicated in a public place shall comply with Procedure [03-05](#).

4. When dealing with an arrested person who has ingested a potentially harmful substance (e.g. cocaine, methanol, etc.) and appears to require medical attention shall immediately

- if necessary, and if qualified in standard first aid, perform first aid on that person
- comply with Procedures [01-03](#) and [10-06](#)
- ensure the person is transported to the nearest hospital

5. When dealing with a prisoner who cannot communicate in English or has difficulty communicating due to a medical problem shall comply with Procedure [04-09](#).

6. When considering the continued detention of an arrested person who is accompanied by a guide dog due to blindness, visual impairment, hearing impairment, or other physical disability, shall
  - make reasonable effort to have the guide dog accommodated by friends or relatives, or contact the Toronto Police Operations Centre (TPOC) for further resources such as Canine Vision Canada or the Humane Society
  - not transport the guide dog to court with the prisoner
7. When releasing a person following arrest shall make reasonable efforts to ensure the safety of other persons who may be affected by the release and the safety of the person being released, having regard for the circumstances and the time and place of release.
8. When releasing a person on either a Form 9 or Form 10, or when proceeding by way of criminal summons shall serve the person with a TPS 493.
9. When dealing with an incident involving a person who provides identification as a diplomatic or consular official shall
  - comply with Procedure [04-12](#)
  - not arrest a person on these premises

**NOTE:** *Foreign embassies and consulates are considered foreign land and outside the jurisdiction of police officers.*
10. When arresting a foreign national
  - shall comply with Procedure [04-13](#)
  - should not normally arrest a person during a religious ceremony or judicial hearing

### **Officer in Charge**

11. When an arrest has been made shall ensure
  - consideration is given to the public interest in deciding to continue the detention of an arrested person including the need to
    - establish the identity of that person
    - secure or preserve evidence
    - prevent the continuation or repetition of an offence
    - ensure that the accused will appear in court
    - ensure the safety and security of any victim of or witness to the offence
  - all required eReports are completed promptly
  - the particulars are recorded in the Unit Commanders Morning Report (UCMR), as required
  - compliance with the appropriate release provisions of the CC pursuant to the respective procedure
12. When releasing a person shall ensure they have been served with a TPS 493.

# USE OF FORCE & EQUIPMENT

## 15 – 01    Use of Force

New        Amended        Reviewed – No Amendments   

Issued:            R.O. 2016.12.19-1401

Replaces:        R.O. 2016.02.08-0158

### Rationale

The Toronto Police Service (Service) places the highest value on the protection of life and the safety of its members and the public, with a greater regard for human life than the protection of property. Members of the Service have a responsibility to only use that force which is reasonably necessary to bring an incident under control effectively and safely.

The Ontario Use of Force Model (Model) is an aid to promote continuous critical assessment and evaluation of every situation, and can assist members to understand and make use of a variety of force options to respond to potentially violent situations. It is not intended to serve as a justification for a member's use of force, nor does it prescribe specific response options appropriate to any given situation. However, the Model does provide a valuable framework for understanding and articulating the events associated with an incident involving a member's use of force.

### Supervision

#### **Attendance**

- Supervisory Officer
  - firearm discharge

#### **Mandatory Notification**

- Supervisory Officer
  - firearm discharge
  - when a conducted energy weapon has been used
- Officer in Charge of Division of occurrence
  - firearm discharge

### Governing Authorities

<b>Federal</b>	Criminal Code
<b>Provincial</b>	Police Services Act Police Services Act, O. Reg. 3/99, Adequacy & Effectiveness of Police Services Police Services Act, O. Reg. 926/90, Equipment and Use of Force
<b>Other</b>	Ontario Use Of Force Model Policing Standards Manual

## **Associated Service Governance**

<b>Number</b>	<b>Name</b>
TPSB Policy	Use of Force
<a href="#">04-02</a>	Death Investigations
<a href="#">04-21</a>	Gathering/Preserving Evidence
<a href="#">08-04</a>	Members Involved in a Traumatic Critical Incident
<a href="#">10-06</a>	Medical Emergencies
<a href="#">13-16</a>	Special Investigations Unit
<a href="#">13-17</a>	Memorandum Books and Reports
<a href="#">14-20</a>	Auxiliary Members
<a href="#">15-02</a>	Injury/Illness Reporting
<a href="#">15-03</a>	Service Firearms
<a href="#">15-04</a>	C-8 Rifle
<a href="#">15-05</a>	Shotgun
<a href="#">15-06</a>	Less Lethal Shotguns
<a href="#">15-08</a>	MP5 Submachine Gun
<a href="#">15-09</a>	Conducted Energy Weapon
<a href="#">15-10</a>	Suspect Apprehension Pursuits
<a href="#">15-16</a>	Uniform, Equipment and Appearance Standards
<a href="#">17-03</a>	Municipal Freedom of Information and Protection of Privacy Act

## **Forms**

<b>Number</b>	<b>Name</b>	<b>Authorization Level</b>
<a href="#">TPS 105</a>	Injury/Illness Report	Unit Commander
<a href="#">TPS 584</a>	Conducted Energy Weapon Use Report	Unit Commander
<a href="#">TPS 586</a>	Firearm Discharged Report	Unit Commander
TPS 649	Internal Correspondence	Member
<a href="#">UFR Form 1</a>	Use of Force Report	Officer in Charge

## **Definitions**

- [Authorized Range](#)
- [Conducted Energy Weapon \(CEW\)](#)
- [Dispatching of an Animal](#)
- [Firearm](#)
- [Firearm Discharge](#)
- [Firearm Discharge Investigator \(FDI\)](#)
- [Handgun](#)
- [Use of Force Review Committee \(UFRC\)](#)

## **Procedure**

The *Criminal Code* (CC) empowers every person who is required or authorized to do anything in the administration or enforcement of the law, when acting on reasonable grounds, to use as much force as necessary for that purpose. Every person is liable, both criminally and civilly, for any unjustified or excessive force used.

## **Training**

*Ontario Regulation 926/90 (O.Reg. 926/90)* made under the *Police Services Act (PSA)* prohibits a member of a police service from using force on another person, unless the member has successfully completed the prescribed training course on the use of force, and that at least once every 12 months, members who may be required to use force on other persons receive a training course on the use of force. When a use of force option is employed, its application shall be in keeping with the training received.

## **Approved Use of Force Options**

*Ontario Regulation 3/99* provides that, at minimum, police officers are

- issued a handgun
- issued oleoresin capsicum (OC) aerosol spray
- issued a baton and
- trained in officer safety, communication and physical control techniques

Members shall not use a weapon other than a firearm unless

- that type of weapon has been approved for use by the Solicitor General
- the weapon conforms to technical standards established by the Solicitor General
- the weapon is used in accordance with standards established by the Solicitor General
- the weapon, in the course of a training exercise, is used on another member in compliance with Service Governance

## **Intermediate Force Options**

Members may use an intermediate weapon such as their issued baton, OC spray or conducted energy weapon (CEW) as a force option

- to prevent themselves from being overpowered when violently attacked
- to prevent a prisoner being taken from police custody
- to disarm an apparently dangerous person armed with an offensive weapon
- to control a potentially violent situation when other force options are not viable
- for any other lawful and justifiable purpose

## **Weapons of Opportunity**

Despite the foregoing, nothing in *O.Reg. 926/90* or this Procedure prohibits a member from the reasonable use of weapons of opportunity when none of the approved options are available or appropriate to defend themselves or members of the public.

## **Authorized Restraining Devices**

Handcuffs, leg irons and other restraints authorized by the Chief of Police (e.g. plastic flexi-cuffs) may be used

- to control the violent activities of a person in custody
- when prisoners are being transferred from one place to another
- to prevent a prisoner from escaping

## **Fleeing Suspect**

A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- c) the person to be arrested takes flight to avoid arrest;
- d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- e) the flight cannot be prevented by reasonable means in a less violent manner.

[Authority: CC, ss. 25(4)]

## **Motor Vehicles**

Discharging a firearm at a motor vehicle is an ineffective method of disabling the vehicle. Discharging a firearm at a motor vehicle may present a hazard to both the officer and to the public. Police officers are prohibited from discharging a firearm at a motor vehicle for the sole purpose of disabling the vehicle.

Police officers shall not discharge a firearm at the operator or occupants of a motor vehicle unless there exists an immediate threat of death or grievous bodily harm to officers and/or members of the public by a means other than the vehicle.

Police officers shall be cognizant that disabling the operator of the motor vehicle thereby disabling the control over the motor vehicle may also present a hazard to both the officer and the public.

Except while in a motor vehicle, officers shall not place themselves in the path of an occupied motor vehicle with the intention of preventing its escape. Additionally, officers should not attempt to disable an occupied vehicle by reaching into it.

Pursuant to Procedure [13-03](#) and [13-05](#), any apparent breach of this Procedure will be carefully considered on its merits having regard to all the circumstances before discipline is commenced.

## **Excessive Force**

Everyone who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess. (Authority: CC, s. 26)

## **Reporting Use of Force**

*Ontario Regulation 926/90* compels members to submit a [UFR Form 1](#) to the Chief of Police when a member

- uses physical force on another person that results in an injury that requires medical attention
- draws a handgun in the presence of a member of the public, excluding a member of the police force while on duty
- discharges a firearm
- points a firearm regardless if the firearm is a handgun or a long gun
- uses a weapon other than a firearm on another person

**NOTE:** *For the purpose of reporting a use of force incident, the definition of a weapon*

*includes a police dog or police horse that comes into direct physical contact with a person.*

Additionally, officers are required to submit a [UFR Form 1](#) and a [TPS 584](#) to the Chief of Police when the officer uses a CEW

- as a “demonstrated force presence”
- in drive stun mode or full deployment, whether intentionally or otherwise.

Use of force reports are collected and used to identify individual and group training requirements, or Service use of force governance requirements.

## **Team Reports**

Specialized Emergency Response – Emergency Task Force (ETF) and Emergency Management & Public Order – Public Safety (Public Safety), when operating/responding as a team, shall submit a Team Report UFR Form 1 in situations where force, meeting the reporting requirements, is merely displayed. An incident in which force was actually used, including the Demonstrated Force Presence of a CEW, requires a separate [UFR Form 1](#) from each individual officer involved.

## **Exemptions to the Reporting Criteria**

A UFR Form 1 is not required when

- a firearm, other than an issued handgun, is merely carried or displayed by an officer
- a handgun is drawn or a firearm pointed at a person or is discharged in the course of a training exercise, target practice or ordinary firearm maintenance in accordance with Service Governance
- a weapon other than a firearm is used on another member of the Service in the course of a training exercise
- physical force is used on another member of the Service in the course of a training exercise

## **Use of Force Reports – Prohibited Uses**

Under no circumstances shall the [UFR Form 1](#), or the personal identifiers associated with Part B be retained beyond the limitations dictated by *O.Reg. 926/90*, and in accordance with Board Policy.

The UFR Form 1 shall not be admitted in evidence at any hearing under Part V of the *PSA*, other than a hearing to determine whether the police officer has contravened ss. 14.5 of *O.Reg. 926/90* and Service Governance on use of force reporting.

The information from the UFR Form 1 shall not be contained in an officer’s personnel file.

The UFR Form 1 shall not be introduced, quoted from, or in any way referred to, during considerations of promotion or job assignment without the consent of the reporting officer.

## **Duplication/Disclosure/Retention**

Members shall not make or retain a copy of the UFR Form 1 for any purpose, except as required to conduct a proper analysis for training purposes and Service Governance review.

Where a court order, subpoena, or prosecutor’s request for disclosure of the UFR Form 1 is received, such request shall be directed to Legal Services. Where the request is made under the *Municipal Freedom of Information & Protection of Privacy Act* and not by a court order, subpoena, or prosecutor’s

request for disclosure, such request shall be directed to the Coordinator – Records Management Services – Access and Privacy Section.

### **Additional Training**

The Unit Commander of a member who has been identified with a training issue shall submit a TPS 649 to the Unit Commander – Toronto Police College (TPC) detailing the issue. The TPC shall be responsible for liaising with a Unit Commander recommending individual training for a member, and shall schedule the required training in accordance with unit specific guidelines. Final determination on individual training will be made by the Unit Commander – TPC.

### **Additional Investigative Requirements – Firearm Discharge**

When a Service firearm has been discharged, the Senior Duty Officer shall be notified forthwith.

The Firearm Discharge Investigator (FDI) shall be responsible for all administrative investigations pertaining to firearm discharges. The discharging officer's supervisory officer is required to complete a Firearm Discharge Report. A supervisory officer from the involved officer's unit may be assigned to support and assist the FDI in the investigation.

### **Exemption to the Additional Investigative Requirements**

A FDI is not required when investigating the discharge of an impact projectile launcher or a tear gas launching device, where the projectile expelled by the firearm is designed or intended as a less-lethal mechanism.

The investigation and report on the incident shall be the responsibility of the Unit Commander, in conjunction with the training staff, of the unit responsible for the discharge.

### **Court Officers and Auxiliary Members**

Court officers and auxiliary members are not issued firearms.

With the exception of firearms, the provisions of this Procedure regarding training, use of force options and the reporting of force used shall also govern court officers and auxiliary members.

### **Member**

1. Members shall not use force on another person unless they have successfully completed the prescribed training course on the use of force.
2. Members who may be required to use force on other persons shall complete a training course on the use of force at least once every 12 months.
3. Members
  - unless otherwise authorized, shall only use the use of force options identified in the Approved Use of Force Options and Intermediate Force Options sections in this Procedure
  - may use weapons of opportunity when none of the approved options are available or appropriate to defend themselves or members of the public
4. Unless otherwise authorized, members shall

- only use their Service issued baton
- not use impact devices commonly known as 'saps' or 'blackjacks'

**NOTE:** *Batons are the only impact weapon permitted for use when dealing directly with the public.*

5. When authorized to use OC aerosol spray shall

- only use it when other options reasonably present a risk of injury to a subject or themselves
- make all reasonable efforts to decontaminate sprayed individuals at the earliest safe or practicable opportunity, including the consideration of aerosol water mist decontamination devices

6. Police officers issued with and/or authorized to carry firearms or ammunition shall

- not draw a handgun, point a firearm at a person, or discharge a firearm unless
  - there are reasonable grounds to believe that to do so is necessary to protect against loss of life or serious bodily harm (Authority: O. Reg. 926/90, s. 9)
  - engaged in a training exercise, target practice or ordinary weapon maintenance (Authority: O. Reg. 926/90, ss. 9.1)
  - the discharge of a handgun or other firearm is to call for assistance in a critical situation, if there is no reasonable alternative [Authority: O. Reg. 926/90, ss. 10(a)]
  - the discharge of a handgun or other firearm is to destroy an animal that is potentially dangerous or is so badly injured that humanity dictates that its suffering be ended [Authority: O. Reg. 926/90, ss. 10(b)]
- not discharge a firearm
  - at a motor vehicle for the sole purpose of disabling the vehicle
  - at the operator or occupants of a motor vehicle unless there exists an immediate threat of death or grievous bodily harm to the officers and/or members of the public by a means other than the vehicle
  - as a warning shot

**NOTE:** *Warning shots present an unacceptable hazard to both the public and the police.*

7. When it is necessary to discharge a Service issued firearm for the purpose of dispatching an animal shall comply with Procedure [15-03](#).

8. In critical situations shall, when tactically appropriate

- avoid confrontation by disengaging to a place of safety
- take all reasonable measures to contain the scene
- notify the communications operator and request the attendance of
  - a supervisory officer
  - Toronto Paramedic Services (Paramedics), if required

9. When the use of force results in an injury to a person shall

- comply with Procedure [10-06](#)

- ensure the person receives proper medical attention, making all reasonable efforts to relieve their discomfort
  - notify the communications operator and request the attendance of
    - a supervisory officer
    - Paramedics, if required
10. Members unless engaged in an approved training exercise shall submit a [UFR Form 1](#) to their supervisor prior to the completion of the tour of duty when they
- use physical force on another person that results in an injury that requires medical attention
  - draw a handgun in the presence of a member of the public, excluding a member of the police force while on duty
  - discharge a firearm
  - point a firearm regardless if the firearm is a handgun or a long gun
  - use a weapon other than a firearm on another person
  - use a CEW as Demonstrated Force Presence, Drive Stun Mode, Full Deployment or when an unintentional discharge occurs
11. When a CEW is used as a Demonstrated Force Presence, in Full Deployment, Drive Stun Mode, or when an unintentional discharge occurs shall comply with Procedure [15-09](#).
12. When discharging any firearm other than at an authorized range or under the exemption provisions shall immediately notify
- their supervisory officer
  - the Officer in Charge of the division in which the discharge occurred.
- NOTE:** *As per the Firearm Discharge definition, this includes discharges that occur at an authorized range or under the exemption provisions that result in injury or death.*
13. After the at-scene portion of the event has concluded shall
- complete a
    - [UFR Form 1](#) when force has been used
    - [TPS 105](#) when injury or illness has occurred
    - [TPS 584](#) when a CEW is used as Demonstrated Force Presence, Drive Stun Mode, Full Deployment or unintentional discharges
  - attach the TPS 105 and TPS 584 , as applicable, to the UFR Form 1 and submit to their supervisor prior to the completion of the tour of duty
  - where critical incident stress may have occurred, comply with [08-04](#)
14. When additional use of force training has been recommended by the Unit Commander shall attend as directed.
15. When becoming aware of a firearm discharge by a law enforcement officer from another law enforcement agency shall immediately notify their supervisor.
16. When making recommendations regarding training, equipment or policy issues related to the use of force shall submit details of the recommendations on a TPS 649 to the Unit Commander.

### **Supervisory Officer**

17. When notified of a firearm discharge incident shall
- attend the scene immediately
  - ensure the scene and all evidence are protected and collected in compliance with Procedure [04-21](#)
  - exercise all due caution to ensure the evidence is not contaminated, overlooked or destroyed
  - advise the Officer in Charge at the first available opportunity and provide regular updates
  - ensure the Officer in Charge of the division in which the firearm discharge occurred has been notified, if the discharge did not occur in the members home unit
  - support and assist the FDI and investigate as required
  - submit a [TPS 586](#) to the Officer in Charge prior to the completion of the tour of duty

### **Supervisor**

18. Upon receipt of a [UFR Form 1](#) shall
- where critical incident stress may have occurred, comply with [08-04](#)
  - ensure the report is accurate and completed in accordance with this Procedure
  - ensure the [TPS 105](#), [TPS 584](#) and [TPS 586](#), as applicable, are attached to the UFR Form 1
  - submit the completed UFR Form 1 and TPS forms to the Officer in Charge prior to the completion of the tour of duty
  - where a member is incapable of completing the [UFR Form 1](#), as the immediate supervisor, complete the member's portion
  - if recommending additional training, complete the applicable section of the [UFR Form 1](#)
  - comply with Procedure [15-03](#), if applicable

### **Officer in Charge**

19. Upon being notified of a firearm discharge shall
- ensure a supervisory officer is assigned to support and assist the FDI during the course of the firearm discharge investigation in accordance with the 'Additional Investigative Requirements – Firearm Discharge' section of this Procedure
  - where the firearm discharge results in injury or death to a person, notify the Unit Commander and comply with Procedures [04-02](#) and [13-16](#), as applicable
  - notify the Officer in Charge – Toronto Police Operations Centre forthwith

- ensure a description of the event is detailed in the Unit Commander's Morning Report (UCMR)
20. Upon receipt of a [UFR Form 1](#) shall
- where critical incident stress may have occurred, comply with [08-04](#)
  - ensure the [TPS 105](#), [TPS 584](#) and [TPS 586](#), as applicable, are attached to the UFR Form 1
  - ensure the reports are accurate and complete
  - if recommending additional training, complete the applicable section of the [UFR Form 1](#)
  - submit the completed reports to the Unit Commander prior to the completion of the tour of duty
  - comply with Procedure [15-03](#), if applicable

### **Unit Commander**

21. When in command of members who, in the course of their duties, may be required to use force on other persons shall ensure
- the members have successfully completed a training course on the use of force
  - at least once every 12 months, the members receive a training course on the use of force
22. When notified that a firearm discharge has occurred shall ensure the incident is investigated in accordance with this Procedure.
23. Upon being notified of a firearm discharge shall ensure a supervisory officer is assigned to support and assist the PRS, as requested.
24. Upon receipt of a [UFR Form 1](#) and the [TPS 105](#), [TPS 584](#) and [TPS 586](#), as applicable, shall
- where critical incident stress may have occurred, ensure compliance with Procedure [08-04](#)
  - ensure the forms are accurate and complete
  - if recommending additional training, complete the applicable section of the [UFR Form 1](#)
  - ensure the completed forms are distributed appropriately

**NOTE:** *The original [TPS 586](#) shall be forwarded to PRS by the next business day.*

*The applicable forms shall be forwarded to the Training Analyst – TPC within 4 days of receipt.*

- comply with the provisions of Procedure [15-03](#), if applicable
- except for information pertaining to additional training, as outlined in item 26, ensure the information from a UFR Form 1 is not contained in a member's personnel file

25. In addition to the duties described above, where a use of force results in serious injury or death, shall comply with Procedure [13-16](#).
26. When additional training is recommended for a member shall ensure
  - a TPS 649 is forwarded to the Unit Commander – TPC, and a copy is forwarded to the respective Staff Superintendent/Director
  - the member attends training as directed
  - all information pertaining to additional training is included in the member's personnel file, except the UFR Form 1
27. When receiving or making recommendations regarding training, equipment or policy issues about the use of force shall forward a TPS 649 to the Training Analyst – TPC.

#### **Officer in Charge – Toronto Police Operations Centre**

28. Upon being notified of a firearm discharge by an officer from another law enforcement agency shall notify the Senior Duty Officer and on-call FDI forthwith.

#### **Senior Duty Officer – Toronto Police Operations Centre**

29. Upon being notified of a firearm discharge shall ensure the
  - incident is investigated in compliance with this Procedure
  - on-call FDI has been notified
30. In addition to the duties described above, where a use of force results in serious injury or death, shall comply with Procedure [13-16](#).
31. When becoming aware of a firearm discharge within the City of Toronto by a law enforcement officer from another law enforcement agency shall liaise with the agency and ensure all appropriate action is taken.

#### **Firearm Discharge Investigator – Professional Standards**

32. When advised that a firearm discharge incident has occurred shall
  - take charge of the investigation
  - direct all required resources to ensure compliance with the additional investigative requirements
  - conduct a thorough investigation and submit the appropriate report

#### **Unit Commander – Toronto Police College**

33. In addition to unit specific guidelines, shall designate a member as the Training Analyst to

- schedule and co-ordinate additional use of force training
- review all [UFR Form 1](#), [TPS 105](#), [TPS 584](#) and [TPS 586](#) reports, as applicable, to identify individual and group training requirements
- if individual training requirements are identified, conduct a further review of the use of force incident and direct appropriate remedial training through the applicable Unit Commander
- if group training requirements are identified, conduct a further review of required training and make changes as appropriate
- conduct ongoing review and evaluation of all use of force procedures, training and reporting
- submit an annual CEW report

#### **Unit Commander – Professional Standards Support**

34. The Unit Commander – Professional Standards Support shall ensure
- a database of use of force data from Part A of all [UFR Form 1](#) reports is maintained
  - at least once every calendar year, a study, including an analysis of use of force trends for the entire Service, which does not contain data that identifies reporting police officers, is produced

#### **Staff Superintendent – Corporate Risk Management**

35. Upon receipt of an administrative report for a firearm discharge, in addition to unit specific guidelines, shall
- ensure a thorough investigation has been conducted and appropriate reports submitted
  - ensure recommendations concerning policy or training are forwarded to the UFRC
  - have final sign-off authority on the conduct portion of the investigation

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### **Associated Documents (LINKS)**

[Appendix A – Provincial Use of Force Model](#)

[Appendix B – Provincial Use of Force Model Background Information](#)