**HAMILTON POLICE SERVICE**

**CONFIDENTIAL
INFORMATION REPORT**

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| **TO:** | Chair and MembersHamilton Police Service Board |
| **BOARD MEETING DATE:** | February 20, 2025 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Injury of J.H.SIU File 24-OVI-388 |
| **REPORT NUMBER:** | 25-007 |
| **SUBMITTED BY:** **SIGNATURE:** | Frank Bergen, Chief of Police |

**EXECUTIVE SUMMARY**

On September 15, 2024, at 9:00 am the Subject Official (SO), working within the Traffic Branch, was operating a low profile traffic police cruiser northbound on Upper Wellington Street. He received information from his dash mounted radar that another southbound vehicle was travelling at 38 km/h over the posted speed limit. The SO turned and followed the vehicle to Mohawk Road East, turning east bound for the purpose of a traffic stop for speeding. As the speeding vehicle continued at a high rate of speed, the SO utilized his roof lights and sirens to attempt to have the vehicle stop. At Upper Wentworth Street, the speeding vehicle was involved in a motor vehicle collision. The SO arrested the driver; there was also a passenger that was arrested by an attending Patrol Officer. The vehicle was determined to be stolen.

The driver, J.H. (the Complainant), is 15 years old. He was transported to Division 3, where he made complaints of shoulder pain. The Complainant was taken to McMaster Hospital via ambulance where he was diagnosed with a shoulder fracture.

The SIU was contacted and invoked their mandate.

**INFORMATION**

Background

Provincial legislation requires that the Chief or designate shall conduct an investigation promptly into any incident in which the Special Investigations Unit (SIU) has investigated a member of a police service. The purpose of the Chief’s investigation is to investigate the member’s conduct in relation to the incident, the policing provided by the member in relation to the incident, and the procedures established by the Chief of Police as they related to the incident (Section 81(4)). The Chief is mandated to make the report to the Board within 90 days after the SIU Director publishes a report in respect of the incident (if no charges are laid), or within 90 days after the disposition of the charges (if charges are laid) (Section 8(3) of Ontario Regulation 90/24). The Board shall publish the report on the internet within 30 days of receiving the report (section 8(5) O. Regulation 90/24).

On September 15, 2024, at 9:00 am the Subject Official (SO), working within the Traffic Branch, was operating a low profile traffic police cruiser northbound on Upper Wellington Street. He received information from his dash mounted radar that another southbound vehicle was travelling at 88 km/h. The speed limit in this area is 50 km/h. This vehicle was being operated by J.H. (the Complainant); he is 15 years old. The SO turned and followed the vehicle to Mohawk Road East, turning east bound for the purpose of a traffic stop for speeding. The speeding vehicle continued at a high rate of speed. The SO utilized his roof lights and sirens to attempt to have the vehicle stop; this was a pursuit.

At the intersection of Mohawk Road East and Upper Wentworth Street, there were east bound vehicles stopped at a red light. The speeding vehicle attempted to get past them, but struck the rear driver’s side of one vehicle. The vehicle being operated by the Complainant came to stop in the intersection. The SO arrested the driver; there was also a passenger that was arrested by an attending Patrol Officer. The vehicle was determined to be stolen. The total distance of the pursuit was approximately 1.1 kilometres.

The Complainant was transported to Division 3, where he made complaints of shoulder pain. The Complainant was taken to McMaster Hospital via ambulance where he was diagnosed with a shoulder fracture.

The SIU was notified, invoked their mandate and commenced an investigation.

Conclusion

The report prepared by the SIU Director Joseph Martino in relation to this incident is a public document and made available on the SIU’s Ontario Government website. In his report, Director Martino stated the following:

“The Complainant was seriously injured in a motor vehicle collision in Hamilton on September 15, 2024. As the vehicle was being pursued by a HPS officer at the time, the SIU was notified of the incident and initiated an investigation. The SO was identified as the subject official. The investigation is now concluded. On my assessment of the evidence, there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the collision.

The offence that arises for consideration is *dangerous driving causing bodily harm* contrary to section 320.13(2) of the *Criminal Code*. As an offence of penal negligence, a simple want of care will not suffice to give rise to liability. Rather, the offence is predicated, in part, on conduct that amounts to a marked departure from the level of care that a reasonable person would have observed in the circumstances. In the instant case, the issue is whether there was a want of care in the manner in which the SO operated his vehicle, sufficiently egregious to attract criminal sanction, that caused or contributed to the collision. In my view, there was not.

Having observed the Accord speeding, I am satisfied the SO was within his rights in deciding to stop the Complainant for a traffic infraction.

I am also satisfied that the SO comported himself with due care and regard for public safety throughout the pursuit. The only issue of real concern was the officer’s top speed – upwards of 130 km/h – which he reached while eastbound on Mohawk Road East. The speed was dangerous but not a marked departure from a reasonable standard of care in light of the overall circumstances, including the fact that there was very little pedestrian and vehicular traffic along the pursuit route, the officer gave warning of his presence by using his emergency equipment, and the roadways were dry and the weather was clear. It should also be noted that the SO had not identified the vehicle or its occupants before the collision, considerations that might have tilted in favour of discontinuing the pursuit had he made a positive identification, nor was he so close to the Accord that it could not have safely come to a stop ahead of the collision had the Complainant been so inclined.

For the foregoing reasons, there is no basis for proceeding with criminal charges in this case.”

The SIU Director also noted in an email to Hamilton Police Service, dated January 13, 2025, “I note what appears to have been a late notification of the incident to the SIU in possible contravention of section 16 of the *Special Investigations Unit Act, 2019*. There is evidence that the police service was aware of Mr. H.’s injury as early as 1100 hours on September 15, 2024, but the SIU was not notified until 1535 hours. Late notifications of this nature jeopardize the integrity of SIU investigations, detract from the SIU’s independence and credibility, and undermine the public’s confidence in policing and policing oversight. I ask that your service inquire into this matter and take such steps as may be necessary to mitigate the risk of late notifications moving forward. Pursuant to section 35.1 of the *Special Investigations Unit Act, 2019*, I will also be notifying the Complaints Director of the Law Enforcement Complaints Agency.” A review of the Investigative file revealed that officers were actually made aware of the nature of the Complainant’s injury at 12:39 hours, notification to the SIU was done at 15:18 hours. The Law Enforcement Complaints Agency was made aware of the incident. Their response, dated January 29, 2025, states “the Complaints Director has determined that it is not in the public interest for LECA to initiate an investigation into this matter in the absence of a public complaint”.

Two separate independent oversight bodies have reviewed this matter. No actionable concerns were identified. A further comprehensive review of the events and information gathered in relation to the complaint has determined that there were no breaches of Hamilton Police Service Policies and Procedures.

FB/W. Mason

c: Paul Hamilton, Deputy Chief – Support

 Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel