

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2017-017

Halifax Regional Police

Public Referral

May 4, 2017

Ronald J. MacDonald, QC
Director
September 22, 2017

Facts

On May 4, 2017, SiRT commenced an investigation into a complaint by a male that a member of the Halifax Regional Police (HRP) had deleted video from his cell phone. The male stated the video was of his friend being arrested outside of Cheers Bar and Grill (Cheers) on Grafton Street, Halifax on April 27, 2017. That matter had been referred to SiRT by HRP. That investigation has now been concluded.

During that investigation, SiRT became aware of additional information relevant to the arrest the male said he recorded. It was determined that the circumstances of that arrest raised issues which were of a significant public interest. The matter therefore met SiRT's public interest mandate and on June 5, 2017, SiRT assumed jurisdiction over the investigation into the circumstances of the arrest. That investigation was completed on September 7, 2017.

During the investigation, SiRT took statements from four civilian witnesses and three witness police officers. Other evidence relevant to the matter was collected.

On September 26, 2017, SiRT will lay one charge of assault against Cst. Derek Howard Fish, alleged to have occurred on April 27, 2017. Cst. Fish will be summoned to appear in Halifax Provincial Court on November 2, 2017.

Relevant Legal Issues

An assault is committed whenever a person intentionally applies force against another person without their consent. Police officers have the right to use reasonable force when arresting a person they have reasonable grounds to believe has committed an offence. A police officer also has the right to use reasonable force to protect themselves against a use of force by another person. However, if the force used by the police officer is not reasonable, the actions of the officer can constitute the offence of assault. Where reasonable grounds exist to believe such an offence has been committed, the Director may charge the police officer. Any offence must be proven beyond a reasonable doubt before the accused can be found guilty.

Conclusion

This investigation has led to the conclusion that there are sufficient grounds to lay a charge of assault against Cst. Derek Fish. However, this matter is currently before the courts. In accordance with SiRT policy, this report will not discuss the facts of the matter in any further detail. To do otherwise might compromise the fair trial interests of the accused. The Serious Incident Response Team Regulations under the *Police Act* state that the Director may choose to provide a supplemental summary of the investigation at the conclusion of the prosecution.