

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-010

Public Referral

March 24th, 2014

Ronald J. MacDonald, QC
Director
January 20, 2015

Facts:

On the evening of March 24, 2014, SiRT received a referral from a lawyer, indicating that the lawyer's client had information regarding an allegation of sexual assault against a male member of the Halifax Regional Police (HRP), Officer 1. SiRT then made contact with the lawyer's client, a young adult female, the Affected Person (AP). As a result of the information she provided, SiRT commenced an investigation that evening into an allegation against Officer 1. No media release was issued at the time to protect the integrity of the investigation. The *Police Act* mandates that all allegations of sexual assault against a police officer must be investigated by SiRT.

The investigation concluded on October 31, 2014. The conclusion was delayed for reasons noted below. This report has been delayed somewhat due to SiRT's current case volume.

During the investigation SiRT took two statements from AP, as well as statements from six civilian witnesses. A complete forensic examination was conducted of the scene, and AP's phone was forensically examined. AP was examined by Sexual Assault Nurse Examiners on the evening of March 24, 2014.

The Serious Incident Response Team Regulations made pursuant to the *Police Act* provide that a subject officer is not required to give notes or a statement to SiRT. In this case Officer 1 chose not to provide SiRT with any notes or a statement.

AP gave her first statement to SiRT on March 25, 2014. She indicated that she knew Officer 1, and in the very early morning hours of March 21, 2014 they were communicating by text messages. The texts were sexually suggestive. He then came by her home. She let him in, and she indicated they then engaged in sexual activity, including intercourse, in the living room of the house. At one point prior to the intercourse Officer 1 said he did not have a condom. AP ran upstairs to get one, which Officer 1 then used. After they were finished, Officer 1 asked to see her phone. He deleted the texts they had sent each other. He then left.

AP indicated she did not at any time resist or indicate to Officer 1 that she did not consent to sexual relations. She said that because of his position as a police officer she felt she did not have any choice but to go along with him.

With consent, AP gave her cell phone to SiRT to allow for a forensic examination of its contents.

AP's close female friends, and two other female acquaintances, were interviewed in relation to the matter. The close friend indicated that AP texted her around 1a.m. on March 21 indicating

she had just had sex with Officer 1, in a way that suggested she was happy about it. They then attempted to speak by phone, although a phone problem cut the call off.

The next day AP went to the female friend's home for supper. The two other female acquaintances were present. AP discussed her encounter with Officer 1 with the women. During her description of the incident she spoke in detail about what had occurred, and expressed pleasure in having engaged in the activity with a police officer. She made it clear she was a willing participant in the sexual activity. The women characterized her discussion to be in the nature of boasting. All three women were very surprised when they later learned AP was suggesting the encounter was a sexual assault based on how AP had talked about the incident.

Subsequently, an examination of AP's phone showed that later on March 21 AP contacted Officer 1 by text in an attempt to arrange another sexual encounter. Her language was very graphic and explicit. She also hinted at arranging an encounter with Officer 1's partner.

On April 4, 2014, AP was re-interviewed by the SiRT. Her text messages and conversations with her friends were discussed. AP acknowledged that her sexual encounter with Officer 1 was consensual. She said that on March 24, 2014 she had a meeting with a lawyer regarding other issues. She explained that during that meeting a discussion of AP's encounter with Officer 1 arose. AP said that the lawyer told her the encounter could be a sexual assault. To that point in time she did not consider it to be. The lawyer said she should call SiRT, and made the initial contact with SiRT. SiRT then followed up with AP.

SiRT contacted the lawyer to obtain a statement about the lawyer's conversation with AP regarding the sexual encounter with Officer 1. AP had given SiRT a signed consent waiving any privilege regarding those conversations. After several months, the lawyer confirmed the lawyer would not be providing a statement to SiRT. The completion of the investigation was held up while waiting for the lawyer's decision.

Relevant Legal Issues:

A sexual assault is committed whenever a person intentionally applies force against another without their consent, in circumstances of a sexual nature where the sexual integrity of the victim is compromised. The force need not be great; touching can be sufficient.

Conclusions:

In this case, the main issue for consideration relates to whether there are reasonable grounds to find that AP did not consent to the sexual contact with Officer 1.

The law recognizes there can be circumstances where a person may not actively object to or resist sexual contact, and perhaps be seen to cooperate, where, due to an imbalance of power between

that person and the alleged offender, their “consent” may not be valid at law. This issue was at the forefront of SiRT’s investigation into this matter, and care was taken to ensure that all facts were gathered to examine the case carefully as a result.

In this case, the evidence is not capable of supporting a conclusion that AP did not consent to the sexual activity. The evidence of AP regarding the encounter does not suggest a lack of consent on her part. Indeed, the evidence suggests the contrary. However, a further examination of the facts was necessary given AP’s initially stated lack of consent. That examination is only capable of supporting the conclusion that AP did in fact consent to the sexual activity. This includes her texts to her friend after the incident, her statements to her friends the next evening where she effectively boasts about what occurred, and her texts to Officer 1 the same day expressing a desire to again engage in sexual activity. Importantly, in her second statement to SiRT, AP acknowledged that she did not consider the incident a sexual assault until she spoke with her lawyer three days later, and she acknowledged that in fact she did consent to the act with Officer 1.

For these reasons there are no reasonable grounds to consider any charge against Officer 1.