

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2018-046

Referral from

RCMP Halifax District

December 20, 2018

Felix Cacchione

Director

May 21, 2019

SiRT was contacted on December 20, 2018 by the RCMP regarding a complaint of sexual assault against a male member of the RCMP - Halifax District. The female complainant, the Affected Party (AP1), alleged she had been sexually assaulted by the Subject Officer (SO) on more than one occasion. She also alleged that another female, Affected Party (AP2), had also been sexually assaulted several times by the same Subject Officer (SO). Both females were known to the SO and to each other.

The *Police Act* mandates that all allegations of sexual assault against a police officer must be investigated by SiRT. SiRT began an investigation into the matter on December 31, 2018. No media release was issued at the time to protect the integrity of the investigation.

The initial complaint made by AP1 was in regard to two incidents involving herself and the SO which occurred in another country, a location outside the territorial jurisdiction of SiRT and prior to its formation on April 20, 2012. The complaint involving AP1 was not investigated because of these factors despite there being some confirmatory evidence of the allegations. The complaint involving AP2 related to three incidents alleged to have occurred in 2014 in locations that were either in SiRT's jurisdiction or where jurisdiction could have been obtained. The complaint involving AP2 was investigated and the investigation concluded on May 9, 2019.

Audio and video recorded statements were taken from AP1, AP2, and the SO. These statements, together with screenshots of text messages between AP1 and the SO, were reviewed. AP2's medical records from various hospitals in different provinces for the period from 2012 to May 2015 were also obtained and reviewed.

Facts

AP2 first disclosed to AP1 in June 2018, the offences alleged to have been committed against her by the SO. The disclosure was made when AP1 was relating to AP2 how she had, years earlier, been sexually assaulted by the SO. AP1 noticed a change in AP2's body language when she was telling her about the sexual assault. This change caused AP1 to ask AP2 direct and probing questions about whether something sexual between AP2 and the SO had also occurred. AP2 indicated that something of that nature had in fact occurred.

AP1 did not report this to the authorities until six months later. AP1 attributed the delay in reporting this to the authorities to other pressing issues in her life during that period.

AP2 was first interviewed on January 8, 2019. AP2 suffers from dystonia, a neurological movement disorder syndrome, as a result of a self-inflicted injury in early 2012. Dystonia causes sustained or repetitive muscle contractions resulting in twisting and repetitive movements or abnormal fixed posture. AP2 was able to converse and comprehend questions that were posed and reply usually with delayed answers consisting of one or two words. A pure version statement was difficult to obtain because of this limited verbal response impediment. This caused the initial

investigator to use more leading questions in an attempt to obtain as much information as possible. The result of this interview was the disclosure of two incidents where the SO exposed his penis in AP2's presence and one incident where he digitally penetrated her.

The difficulty posed by AP2's dystonia in obtaining a statement containing greater details without the use of leading questions led SiRT to obtain the services of specially trained investigators with expertise in conducting Stepwise interviews. Such interviews are normally used when conducting child interviews.

AP2 was interviewed on March 6, 2019 by a specially trained investigator with extensive experience in conducting Stepwise interviews. AP2 was able to relate to the interviewer her daily activities and was oriented as to time, place and the purpose of the interview. During this interview the three incidents that were the focus of the investigation were also addressed.

AP2 related how, on one occasion when she was staying at the SO's house, the SO called her into his bedroom. When she entered, the SO was naked. AP2 said "sorry" and the SO told her it was okay. AP2 also described an occasion when she went for a ride on a golf course in a golf cart with the SO. During that ride the SO stopped the cart, got out, took his penis out of his shorts and began stroking it until he ejaculated. The third incident described by AP2 occurred in an RV at a campground on Prince Edward Island. The SO, his wife, AP1 and her boyfriend and AP2 were all staying in the RV. AP1 and her boyfriend were sleeping in the only private bedroom in the RV. The SO, his wife and AP2 were sleeping in beds in the open area of the RV where they could all see each other. AP2 woke up early and saw the SO, who was also awake, gesturing with his finger to come over to her location. AP2 agreed. The SO came over, got into her bed under the covers and penetrated her vagina with his fingers. This lasted for a few minutes and the SO then returned to his bed.

AP2 indicated during the interview that she consented to what happened on those three occasions. The concept of consent was reviewed with her and she was asked if she understood what consent meant. She indicated that she understood the meaning of consent. AP2 was also asked if she felt pressured or forced to do anything because of the SO's status as a police officer and she indicated that she did not.

A review of all the medical records obtained and particularly those relating to the relevant time period in 2014 indicates that AP2, although suffering from a significant physical disability and some mild cognitive deficiencies, did meet the minimum level of competency in 2014. These records also show that as far back as late 2012, AP2 met the basic criteria for competency. One report dated in 2015 refers to the physician having AP2's consent to interview her mother for background information. This report also noted that AP2's basic working memory, novel problem-solving skills and concept formation were not impaired and other cognitive areas assessed were within the normal range.

The SO was interviewed and admitted that AP2 had stayed at his residence; that he had been with her at a golf course and taken her for a ride there, although not in a golf cart but rather on an ATV, and being with her in an RV at a campground on Prince Edward Island. The SO denied exposing himself to the AP2, masturbating in her presence and penetrating her vagina with his fingers.

Relevant legal issues

The offence of indecent act requires that the act either be done in a public place in the presence of one or more persons or in any other place with intent to insult or offend any person. A public place is any place to which the public has access as of right or by invitation express or implied.

Sexual assault is the intentional application of force against another person without their consent in circumstances of a sexual nature where the sexual integrity of the victim is compromised. Consent is only obtained when the complainant has given voluntary agreement to engage in the sexual activity in question.

Sexual exploitation of a person with a mental or physical disability requires that a person be in a position of trust or authority towards a person with a mental or physical disability or be a person with whom the person with a disability is in a position of dependency. There must also be a counselling or incitement to sexual activity without the consent of the disabled person.

Conclusion

Two of the three alleged incidents occurred in Nova Scotia. One was in a public place, a golf course to which AP2 had been invited and the other was the SO's residence where AP2 was residing temporarily. In neither incident is there any basis for finding that AP2 was either insulted or offended. AP2 indicated that she was okay with what happened and did not feel forced to do anything because the SO was a police officer.

The law recognizes that there can be situations where a person may not actively object to or resist sexual contact, and perhaps be seen to cooperate, where because of an imbalance of power between the alleged offender and the AP their consent may not be valid at law. This issue was at the forefront of this investigation not only because the SO is a police officer but also because of AP2's neurological movement disorder syndrome and her limited verbal response impediment. The medical records establish that AP2, despite these impediments, was competent and able to consent. AP2 indicated in her statement of March 6, 2019 that she consented to the activities that took place and understood the meaning of consent.

The investigation also determined that the SO was not in a position of trust or authority towards AP2 and that she was not in a position of the dependency on the SO.

The third incident described by AP2 occurred in Prince Edward Island which is normally outside the jurisdiction of SiRT unless ministerial approval from the government of PEI is obtained to allow SiRT to pursue charges on behalf of the PEI government. Such approval could have been sought but was not because no criminal offence was committed as AP2 consented to the sexual activity in question.

The evidence gathered in this investigation establishes that there are no reasonable and probable grounds to conclude that the SO committed a sexual assault with respect to AP2. Therefore, there are no grounds to consider any charge against the SO.