

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2022-002

Referral from

RCMP

February 2, 2022

John L. Scott
Interim Director
November 22, 2022

This matter was referred to SiRT on February 2, 2022 by RCMP “H” Division. The referral concerned the actions of a Halifax Regional Police (HRP) officer assigned to an integrated investigative team. The referral mentioned a number of allegations against the officer, all having a similar theme of inappropriate behavior which related to the substantive allegation of breach of trust by a public officer contrary to Section 122 of the Criminal Code of Canada. The HRP officer, now referred to as the Subject Officer (SO), was in a position of trust with a vulnerable person and the SiRT investigation centered on determining whether there was a breach in that relationship. SiRT commenced their investigation immediately and concluded it on August 29, 2022.

The following information was reviewed and considered in the preparation of this report; interviews of members of the team the SO was assigned, the Affected Party (AP), the AP’s mother and a close friend of the AP who was present during the call. The SO agreed to be interviewed and provided a statement.

Facts:

In looking at the referral made on this matter, it is extremely important to set out the relationship between the SO and the AP. The SO works as a police officer in a unit where there is a connection to the AP in SO’s role and duty as an officer. The officer’s role is to help and assist the AP should they require it as it related to the criminal investigative mandate of the unit. The AP in this matter has just become a young adult who understands why the SO is there to give assistance and advice on any concerns the AP may have. The AP would look at the SO as someone they could trust in whatever assistance asked for navigating a criminal situation.

The time period this investigation centered on was between September 2019 and June 2020. The allegation forming the basis of the investigation was that at some point between these dates the AP states the SO called and asked the AP to meet at a hotel. The AP says they could tell the SO was drinking and the SO indicated it was their birthday. The AP also said that this call occurred when the AP was in a car with a friend.

The AP was interviewed by SiRT concerning the call. When interviewed by SiRT, the AP indicated that they had no independent way to verify if in fact it was SO’s birthday on the day of the call or if the SO was being truthful to the AP, therefore the accuracy of the date of the call is left to speculate. The AP further stated that they have memory issues due to a head injury incurred in a car accident and a prior diagnosis of PTSD (post-traumatic stress disorder).

SiRT also interviewed the friend of the AP who was in the car and overheard the request made at the time by the SO to meet at a hotel. This friend has no current relationship with the AP and was not aware of an investigation before SiRT interviewing them.

The AP, the witness from the car, and mother of the AP were all concerned about the frequency of calls from the SO; however, it is important to point out, it was part of the role of the SO to have frequent contact with the AP for the purpose of meeting the team’s mandate.

SiRT made a request for an interview with the SO, who accepted the invitation to give a statement concerning the investigation. The SO acknowledged having frequent contact with the AP. A couple of contacts were in person and others were by text or phone calls. The SO indicated it was impossible to record all contacts with the AP and also admitted not being efficient at taking notes of various contacts with the AP.

As to the “call” which formed the basis of this investigation, the SO denies making any such call to the AP. The SO indicated that meeting persons such as the AP in relation to their job do not occur at hotels. As to the call occurring on SO’s birthday, the denial by the SO pertained to any date suggested. Requests for personal phone records around the SO’s birthday and the taking of a polygraph were refused by the SO after consulting with counsel. It is important to note, the SO used a personal cellular device to contact the AP when the SO had knowledge that all communication with clients was to be done on a police agency issued phone, that was provided.

SiRT also interviewed other members of the integrated investigative team the SO was member of, but nothing of relevance pertaining to the main issue was forthcoming.

The final piece from the SiRT investigation worth noting is the acknowledgement from the mother of the AP, nearing the end of the investigation, that the AP wanted nothing more to do with the investigation.

Conflict on the Facts:

This matter factually does give rise to a question of credibility on the issue of whether a phone call was made by the SO to the AP, pertaining to them meeting at a hotel. The date of the call is irrelevant, although the AP indicates the SO said it was their birthday.

On a balance of probabilities, I find the call was made by the SO. I accept, despite the AP’s memory issues, the AP received this call and I also accept the AP’s friend was there at the time and discussed the contents of the call with the AP. The SO refused both a polygraph and a request to have their personal cell phone records checked by the SiRT investigator, but it is acknowledged that the SO has no obligation to do anything involving the SiRT’s investigator requests made to the SO.

The AP and the witness who was in the car at the time, both acknowledge that the SO did not say or suggest any specific purpose for the meet; however, both inferred that the AP was being invited for a sexual purpose.

The SO also raised an issue concerning another person whom they believed could have a vendetta against the SO and may have put the AP up to making this complaint for nefarious reasons. That concern was dismissed because that third party did not have any contact with the AP in a significant period of time.

Law and Application to our Facts:

Breach of Trust by Public Officer

S.122 Every official who, in connection with the duties of their office, commits fraud or breach of trust, whether or not the fraud or breach of trust would be an offence if it were committed in relations to a private person is guilty of

- a) an indictable offence and liable to imprisonment for a term of not more than five years or:
- b) an offence punishable on summary convictions

One of the leading cases on breach of trust in Canada is the case of R.v. Boulanger [2006] 2 S.C.R. 49 There the Supreme Court of Canada set out the criteria the Crown must establish to prove the offence beyond a reasonable doubt.

The five criteria elements are:

1. the accused is an official
2. the accused was acting in connection with the duties of his or her office
3. the accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office.
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust.
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt, or oppressive purpose.

In my analysis of the SO's conduct in relation to the above criteria set out in the Boulanger case the SO has not breached Section 122 of the Criminal Code. It is pure speculation to say that what the SO asked in that phone call to the AP represents a marked departure from the standards expected of the SO. To impose an ability to read the mind of the SO and suggest it was for a corrupt, "oppressive" purpose again calls for speculation on my part. In any crime there is the "mens rea" component to our actions or omissions. The intent of the SO (guilty mind) cannot be inferred by asking the AP to meet at the hotel; there could be any number of reasons why the SO suggests a hotel and there could be any number of valid reasons why the SO wanted to meet. As to being satisfied under criteria 3,4, and 5 as set out in the Boulanger case, the SO's call and request made, fail.

Conclusion:

There is nothing criminal in the SO's actions in making the contentious phone call to the AP on whatever date it was made, that gives rise to any breach of trust. Therefore, there are no grounds for any charges against the SO.