



Summary of Investigation

SiRT File # 2014-041

Referral from

RCMP - Halifax

December 4, 2014

Ronald J. MacDonald, QC
Director
April 24, 2015

Facts:

On December 4, 2014, SiRT was contacted by the RCMP – Halifax to report an allegation of sexual assault by a male officer of the RCMP from the Halifax region (Officer 1). The Affected Party (AP) was a female RCMP officer. SiRT commenced its investigation on that date, which was concluded on January 25, 2015.

This incident occurred in late November, 2014. The specific date will not be disclosed as doing so may identify the victim in the matter. In addition, a media release was not circulated at the commencement of this investigation due to the initial reluctance of AP to provide details of the incident.

During the investigation no civilians were interviewed. Statements were taken from three witness officers and the report of a supervising officer was obtained.

Under the Serious Incident Response Team regulations made under the provisions of the *Police Act*, a subject officer is not required to provide SiRT with a statement. Officer 1, the subject officer, did not provide a statement.

In late November several RCMP members attended a Christmas party at Officer 1's home. This included AP, a female member with only a few years' service. Officer 1 was a supervising officer to AP. The group included Officer 2 and Officer 3, as well as many others. The evening consisted of a typical party, with food and alcohol served and consumed by those present.

Well after mid-night, most of those attending the party had left. At this point Officer 1, as well as AP, Officer 2, and Officer 3 and his girlfriend all got into the home's hot tub. Most were dressed in bathing suits, although Officer 2 and AP wore only undergarments.

Officer 3 and his girlfriend decided to leave the party. They left the hot tub and called for a taxi to take them home.

At this point only Officer 1 and 2, as well as AP, remained in the hot tub. According to statements taken from AP and Officer 2, Officer 1 and AP were intoxicated. Officer 2 noted that Officer 1 moved toward AP as she moved around the tub. At one point AP stood in the tub and leaned over the side.

AP states that at this point she was hot and stood to cool off. She indicates that because of alcohol her memory is fuzzy, but says she then felt something touching her buttocks, and thought that Officer 1 had grabbed her with his hand. She said that Officer 2 then came to her defence, and intervened.

Officer 2 indicated in his statement that when AP stood Officer 1 again moved toward her, and he saw Officer 1 press his face against AP's buttocks.

At this point Officer 2 noted that AP looked surprised, and he asked her if she was okay. Although she indicated she was, he was concerned given that Officer 1 was of superior rank. As a result, Officer 2 intervened. The two male officers argued and went into the home's garage where they discussed the matter for several minutes. Officer 1 later apologized.

AP did not report the matter. However, a few days later superior officers became aware of what occurred and the incident was referred to SiRT. In AP's initial statement she indicated she had no previous concerns about Officer 1, and had previously been to a party at his house and used the hot tub. She felt Officer 1 had too much to drink on the night in question and made a bad decision. In particular, AP indicated she did not want the matter to proceed to criminal charges. Rather, she preferred it be dealt with at the lowest possible level.

In January, 2015, AP attended the offices of SiRT and met with the primary investigator and the Director. The purpose of the meeting was to discuss her position regarding charges in the matter. She indicated that she understood the issues involved with the fact Officer 1 was a supervisor. She also confirmed that she had not been pressured by anyone regarding her position in the matter. She strongly reiterated her desire to have the matter dealt with at the lowest possible level, and she felt criminal charges should not be considered.

Relevant Legal Issue:

The potential charge in this matter is sexual assault. 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. Consent is only obtained when the complainant has given voluntary agreement to engage in the sexual activity in question.

Conclusions:

AP is not sure how she was touched, at the time believing it to be Officer 1's hand. Officer 2 saw the contact, and was able to say it was Officer 1's face. In the circumstances of this matter the touching was of a sexual nature. AP did not consent to the touching, as confirmed by the evidence of Officer 2. In particular, he noted that she looked surprised when the incident occurred.

Therefore, there are reasonable grounds to consider the laying of a charge. However, in this case AP, the victim, has indicated from the outset that she did not want charges laid. The *Police Act* makes it clear that only the Director of SiRT has the power to determine whether or not charges should be laid in any case where SiRT assumes an investigation. The primary test for such a decision is to determine if there are reasonable grounds to believe that an offence has been committed. However, other factors can play a role, including general public interest factors. Those factors can include a consideration of the wishes of a victim in a matter, particularly one, like here, which impacts a victim at a very personal level.

In this case AP's views are important. In her personal view the facts do not justify a response with the significance of criminal charges. In addition, the RCMP's internal discipline process has been engaged which can result in a range of substantial sanctions.

Other factors that must be considered include the fact Officer 1 was a superior officer, and the importance of ensuring that members of the RCMP understand that behaviour of this nature is unacceptable.

In a different case, such as where the facts of the matter are quite serious, the public interest might well call for a charge to be laid in spite of the wishes of a complainant. However, in this case, given the particular facts, which AP herself has characterized as being toward the lower end of the scale, it has been determined that the public interest does not require the laying of a criminal charge. Respecting AP's position regarding charges was a very important factor in this decision.

Therefore, there will be no charges laid against Officer 1 in this matter.