

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-034

Referral from

Royal Canadian Mounted Police

October 14, 2014

Ronald J. MacDonald, QC  
Director  
February 26, 2015

**Facts:**

In October of 2014, the RCMP received a complaint that one of their male officers (Officer 1) may have allowed a 4 year old girl, the Affected Party (AP), to touch his genital area. In accordance with the provisions of the *Police Act*, the RCMP contacted SiRT on October 14. SiRT commenced its investigation into the matter on that date. It was completed on November 26, 2014. This report has been delayed somewhat due to SiRT's current workload.

A media release was not issued at the outset of this matter. There was a concern that a public release may negatively impact AP and her cooperation with the investigation.

During the investigation SiRT interviewed a total of four civilian witnesses. This included AP, both her parents, and the wife of Officer 1. AP's interview was conducted by a representative from the Department of Community Services trained in child interviews, as well as an investigator similarly trained.

Under the Serious Incident Response Team regulations made under the provisions of the *Police Act*, a subject officer is not required to give an interview to SiRT. In this case, however, Officer 1, the subject officer, agreed to be interviewed.

The investigation showed that Officer 1's wife cared for children in her home during the day. Between September, 2013, and June, 2014, AP was cared for in the home a few days a week. There were usually three or four other children in the home as well. AP was three-years-old during that time.

AP's father reported that during July of 2014 AP, now four-years-old, while playing with him on the couch, had reached toward him and quickly touched him on his genital area. He told her that she should not do this as that is a person's private area. He indicated that AP then said Officer 1 let her do that. AP's mother came into the room, and she repeated the comment. However, when the parents asked AP for more information she did not provide any. The parents also attempted to get more information from AP a few times over the next few weeks, but she would not discuss the matter further.

The parents reported the incident to their family doctor, and later spoke to a relative who is a police officer. That led to the report to the RCMP, who then contacted SiRT. In spite of the equivocal nature of the comment by AP, it was determined the matter required investigation.

In her statement, Officer 1's wife described that she cares for several children, although the numbers vary depending on the day. She indicated that Officer 1 has no real contact with the children, other than letting them in the house and perhaps helping with meal preparation. He

often is out of the home at his job or preoccupied with other matters. She described him as an excellent father and husband.

Through his counsel, Officer 1 arranged to be polygraphed by a private forensic polygraph provider. The results of that test were made available to SiRT. They showed he was truthful in his answers to all questions in the test, which were that he did not have any sexual contact with AP, that he did not have any incidents with her that were sexual, and that there were no sexual incidents between him and AP.

Officer 1 decided to give a statement to SiRT against the advice of his counsel. In it he denied that AP ever touched him in the genital area. He said he had very little contact with the children that his wife cared for in their home. He finds the children loud and tries to avoid the day care portion of the home as much as possible. He notes the children stay in the main area of the home, which is an open concept. He is never alone with them. He took the polygraph and gave a statement as he felt it was important to clear his name.

#### **Relevant Legal Issues:**

The allegation in this matter is that AP touched Officer 1 in the genital area, with the implication that Officer 1 allowed or encouraged that to happen. The possible offence resulting from those facts could only be an invitation to sexual touching. That offence is committed when a person invites or encourages a person under the age of 16 to touch them for a sexual purpose.

#### **Conclusions:**

In this case, the only evidence anything occurred would be the evidence from AP's parents repeating the few brief comments AP made to them suggesting Officer 1 allowed her to touch him in the genital area without complaint. That is hearsay evidence, which is usually not admissible in a criminal proceeding. It can be admissible in very specific circumstances **if** there are strong circumstantial guarantees of reliability that will demonstrate the comment was both truthful and accurate. In these circumstances, these hearsay comments are not capable of meeting the test to be used in a criminal proceeding. AP made brief comments, in ambiguous circumstances, capable of more than one explanation. For example, the touch described by the father was quick and brief. When he described the area of the body to the four year old as "a person's privates" did she fully understand the area of the body in question? Did AP mean she was allowed to touch Officer 1 in the genitals or just in general, or could it have meant he allowed her to touch others that way? Is it possible she made these comments simply as a response to the perceived scolding of her father? Did AP even realize where she had touched her father? None of these questions need to be answered conclusively. In the end, it is unusual for a hearsay comment to be admissible in court. This is far from a case where such a statement could be used as evidence in a criminal proceeding, capable of convicting a person of a serious criminal offence.

Thus direct evidence of an offence from AP herself would be required. However, there is no such evidence here. The parents attempted to elicit further evidence from AP, which she did not provide. AP was interviewed in a controlled setting by trained investigators. She still did not provide any commentary consistent with the suggestion she was allowed to touch Officer 1 in the genitals.

In addition, even if AP's statement were taken at face value, it only suggests that Officer 1 acquiesced to the touching. Without Officer 1's active encouragement to be touched, no offence could be committed.

The statements of Officer 1 and his wife are compelling. They credibly gave evidence that Officer 1 would not have been in a situation with this child or any other where this could have occurred. Officer 1 voluntarily subjected himself both to a polygraph and interrogation, which he decided to do to clear his name.

In these circumstances, it would be very unsafe to draw any conclusions based on the evidence of the parents about the brief comments AP made to them. While the matter required an investigation, the fact of an investigation should not be taken to suggest anything occurred between Officer 1 and AP. There is no evidence of an offence, and Officer 1 and his wife gave credible statements to refute the possibility that anything happened.

For these reasons there are no grounds to consider that Officer 1 committed any offence or acted in any way inappropriately in this case.