

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2023-022

RCMP “H” Division

Nova Scotia

April 12, 2023

Erin E. Naus
Interim Director
October 13, 2023

MANDATE OF THE SiRT

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act* to investigate all matters that involve death, serious injury, sexual assault, and domestic violence or other matters of significant public interest that may have arisen from the actions of any police officer in Nova Scotia.

At the conclusion of every investigation, the SiRT Director must determine whether criminal charges should result from the actions of the police officer. If no charges are warranted the Director will issue a public summary of the investigation which outlines the reasons for that decision, which must include at a minimum the information set out by regulation. Public summaries are drafted with the goal of adequate information to allow the public to understand the Director’s rationale and conclusions.

INTRODUCTION

On April 12, 2023, the Truro Police Service referred a matter to the SiRT regarding a complaint made to the Truro Police Service on March 30, 2023. The referral was regarding incidents that were alleged to have taken place on February 28, 2023, involving a potential indecent act and sexual assault by a member of the RCMP.

As a result of the allegations, the SiRT commenced an investigation. The investigation was completed on August 29, 2023.

The decision summarized in this report is based on evidence collected and analyzed during the investigation, including, but not limited to, the following:

1. Civilian Witness Statements (5)
2. Text messages
3. Affected Party Statements
4. Police Incident reports (4)
5. Police notes
6. Consultation with the Nova Scotia Public Prosecution Service

INCIDENT SUMMARY

On the afternoon of Tuesday February 28th, the Affected Party (“AP”) was at a beverage establishment in Truro, sitting at the bar and speaking with a friend (“Civilian Witness 1”/ “CW1”), who was an employee at the establishment. The AP eventually ended up sitting with the Subject Officer (“SO”). CW1 described the two as talking throughout the evening, smiling, having fun, and general flirting.

The AP had consumed alcohol, and decided it was time to go home. Evidence from CW1 indicated that the AP did not have slurred speech or trouble walking. Civilian Witness 2 spoke to the AP later that same night and stated that they did not have slurred speech.

The SO offered to walk the AP home. The AP agreed to allow the SO to walk them home and they left between 7:00-8:00pm. The AP stated that the SO took their hand and led them towards a path. The AP stated that they then walked ahead, and when they turned around, they observed the SO with their pants undone, exposing themselves. The AP stated that the SO asked them to perform fellatio and they refused. The AP stated that the SO apologized for their actions and continued to walk them home. Once at the AP’s residence, the AP asked the SO to leave, and they did so.

The AP stated that they were tired and went to bed. A short time later the AP was awakened by some noise, looked outside, and saw the SO. The AP could not recall whether they had spoken to the SO on the phone. Further, they could not recall whether the SO came in when the AP went to the door or if the AP let the SO inside. Once inside the residence the AP stated that the SO tried to kiss them. The AP stated that they refused, said “no”, and pushed the SO away. The SO left shortly thereafter without any further incident.

Although not required by law, the SO did not provide a statement in this matter.

RELEVANT LEGISLATION

The relevant provisions of the *Criminal Code* are as follows:

Indecent acts

173 (1) Everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person,

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years; or

(b) is guilty of an offence punishable on summary conviction.

Assault

265 (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Application

(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

Sexual assault

271 Everyone who commits a sexual assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

LEGAL ISSUES & ANALYSIS

1. Did the SO commit the act of an indecent act?

Section 173 of the *Criminal Code* outlines the offence of an indecent act. The term “indecent” is not defined in the *Criminal Code* and the context in which the act occurs is important. For an act to be indecent, it must exceed the community standard of tolerance and present a significant risk of harm. The evidence, including the AP’s statements and text messages with civilian witnesses, does not indicate that the AP felt that the SO’s actions caused harm or presented a significant risk of harm in the context.

2. Did the SO sexually assault the AP?

A sexual assault consists of an assault within any of its definitions in the *Criminal Code* that is sexual in nature and violates the sexual integrity of the victim. In reviewing the alleged incidents, including the potential unwanted contact of the SO's mouth to the AP's mouth in the AP's residence, there is insufficient reliable evidence of a sexual assault. The evidence included multiple text messages between the AP and civilian witnesses. There was conflicting evidence related to some of the details respecting the evening and the AP had gaps in their memory.

CONCLUSION

The matter was referred to the SiRT on April 12, 2023, regarding alleged incidents of an indecent act and sexual assault on February 28, 2023. As a result, the SiRT initiated an investigation, which has now concluded.

I am mindful that this matter has impacted the AP and the challenges relating to reporting such alleged incidents. Cases of a reported sexual assault are sensitive in nature. The release of detailed information related to reported sexual assaults may deter reporting of such matters, which are generally under-reported. These sensitivities have been considered when summarizing the evidence in this matter.

However, after a careful review of the evidence and the law, I have determined that there are no reasonable grounds to lay a charge against the SO.