

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2012-015

Referral from Cape Breton Regional Police

October 25, 2012

Ronald J. MacDonald, QC

Director

December 19, 2012

**Facts:**

On October 25, 2012, Chief Peter McIsaac of the Cape Breton Regional Police Service (CBRPS) contacted the Serious Incident Response Team (SiRT) with an allegation of obstruction of justice regarding a member of his force (Officer 1). The contact was made because of a statement taken from a civilian during a criminal investigation. It was referred as the individual's evidence could be interpreted to suggest that a supervising member of CBRPS, Officer 1, may have obstructed justice by leaking information to a potential target (PT) of a search warrant.

The SiRT responded by having three investigators and the Director travel to Sydney on October 25<sup>th</sup> to commence the investigation. The investigation was concluded on December 3, 2012 and included interviews with one civilian, PT, and 15 police officers. Officer 1 gave a statement, and a copy of relevant notes, even though as the subject officer he was not obligated to do so as per the SiRT Regulations made under the *Police Act*.

The investigation revealed that over the previous several months, members of the CBRPS had been investigating numerous thefts in an attempt to locate those responsible and recover stolen property. In early August 2012, they had identified PT as being in possession of some stolen property. One unit, led by Officer 2, was primarily responsible for this investigation. His unit was hoping to obtain a search warrant to enable them to search PT's property and possibly locate stolen property.

This was discussed with his supervisor, Officer 1. Officer 1 felt there was a better way to proceed. He was able to make arrangements with PT to have many stolen items, some of significant value, returned directly to the police. This saved police resources and gave certainty to the recovery of the goods. Officer 2 did not agree with this decision and expressed his dissatisfaction to Officer 1. He even suggested that the actions of Officer 1 constituted a criminal offence. Unfortunately, over the next few months the issue caused some dissension within the department.

Later in the fall, PT was interviewed by Officer 2's unit regarding ongoing criminal activity. In his statement he made reference to the fact that he had been contacted by Officer 1 in August regarding the return of the stolen property and about the potential of a search warrant. It was those comments that caused the matter to be reported to the SiRT. Depending on the context, his comments could be interpreted to suggest that Officer 1 had unlawfully interfered with an investigation by leaking information to PT about a search warrant. The purpose of the SiRT investigation was to uncover all the facts relevant to those comments to determine their actual context.

**Relevant Legal Issues:**

The offence of obstruction of justice can be committed in numerous ways. The relevant act in this case would be what is often referred to as “tipping off” a suspect about a potential search by police. In other words, secretly telling a suspect that the police are about to search a property to allow that person to either move or get rid of any illegal items to avoid criminal liability. If that occurs, it is a serious crime.

On the other hand, the police are entitled to exercise a certain amount of discretion in their jobs. For example, police may sometimes seek the return of stolen goods without a charge being laid. The considerations in each case can be varied, and depend on each circumstance. This is a valid part of the criminal justice system and allows police the necessary flexibility when dealing with the many different fact situations they encounter every day.

**Conclusion:**

The facts of this case are quite distinct from a case of “tipping off”. Rather, Officer 1, a police supervisor, was faced with two choices: continuing with the involved process of attempting to obtain a search warrant and then possibly recovering goods, perhaps leading to a charge, **or** a second, more straightforward process, where, with the cooperation of PT, the goods could be recovered with certainty, with no charge laid.

In this case, Officer 1 made a discretionary call to proceed with the second option. That decision weighed numerous factors. Officer 1’s subsequent contact with PT was not secret, and the goods were not hidden but were instead given to the police for return to the owners. This was a valid exercise of police discretion by a superior officer.

While other police in the same circumstances may have made a different decision, this decision was still lawful.

Therefore, there are no grounds to consider any charges against Officer 1 in this matter.