



## Summary of Investigation

SiRT File # 2013-024

Referral from

Halifax Regional Police

September 9, 2013

Ronald J. MacDonald, QC  
Director  
December 11, 2013

**Facts:**

At 3:02 a.m. on September 9, 2013, a Halifax Regional Police (HRP) officer, Officer 1, was parked at the corner of Bayers Road and Connaught Avenue in Halifax, monitoring traffic. He saw a vehicle travelling east along Bayers Road fail to stop at two flashing red lights. He pursued the vehicle to Almon Street. Speeds were high, and the pursuit was ended. The pursued vehicle was driven the by affected person (AP). It drove along Almon Street, crossed Connaught, and left the road where Almon intersects George Dauphinee Avenue at a “T” intersection. The car hit a house. AP suffered very serious injuries, and a passerby called police. AP was taken to hospital where he was admitted for surgery.

As a result of AP’s condition, in accordance with the requirements of the *Police Act*, HRP referred the matter to SiRT later that morning. SiRT commenced an investigation that day, which concluded on November 20, 2013. The conclusion was delayed due to unsuccessful efforts to meet in person with AP and the one civilian witness. A statement of that one witness had been taken by HRP as part of their investigation into AP’s driving, and was obtained by SiRT. She also spoke with the SiRT investigator by phone. In addition, reports were received from two witness officers. GPS coordinates of the police vehicle were obtained, as well as the recordings of radio communications, the HRP investigative file, and photographs of the accident scene.

The Serious Incident Response Team Regulations made under the *Police Act* do not require a subject officer to provide SiRT with a statement or notes about the matter. Nevertheless, Officer 1, who was the subject of the investigation, provided his investigative report, notes and a prepared written statement.

The investigation demonstrates that after Officer 1 began to follow AP’s vehicle, he activated his emergency equipment to stop the vehicle just past the Bayers Road and Windsor Street intersection. The vehicle continued onto Young Street, and ran another red light at Kempt Road. AP then drove through a gas station parking lot and exited onto Robie Street. AP increased speed as he tried to flee police. Officer 1 was in radio contact with superiors in accordance with HRP pursuit policy. AP then turned onto Almon Street, continued at high speed, and went through a red light at Windsor Street.

Given the speeds of the pursuit, the HRP Road Supervisor advised Officer 1 to discontinue the pursuit between Oxford Street and Connaught Avenue. Officer 1 did so. As he reduced speed and continued to drive along Almon he lost sight of AP’s vehicle. He turned left (south) on Connaught Avenue, not realizing AP had continued straight.

At 03:07 a.m. a 911 call, from the civilian witness, advised of a vehicle collision with a residence on George Dauphinee Avenue. In her later conversation with the SiRT investigator she indicated that she had just delivered the newspaper to that residence. She saw AP’s vehicle speed down Almon Street, miss her by about five feet, and hit the house. After the collision, she noted a

police car come down Almon, but turn south onto Connaught. She had heard a police siren earlier, but at this point the car had no lights or siren on.

AP was the lone occupant of the vehicle and sustained serious injuries to his head and leg. The civilian witness believed he was inebriated and detected a strong odour of liquor coming from the car. In spite of his injuries he was attempting to leave the scene before the police arrived.

Officer 1 heard the radio report of the collision and immediately drove to the scene. He detected a very strong smell of liquor from AP. He contacted EHS and AP was transported to the hospital.

A review of the radio transmissions confirms Officer 1's reports. The GPS evidence gives the speed of the police vehicle at several points. It shows Officer 1 reaching a speed of over 100 km/h on Bayers Road in an attempt to catch up with AP. He then slows to near the speed limit, but once on Robie Street his speed increases to near 100 km/h as AP sped away. Officer 1's speed decreases to 62 km/h once advised to discontinue the pursuit. The pursuit continued at higher speeds for a total of about 40 to 45 seconds.

AP is expected to be charged with drinking and driving and flight from police.

### **Relevant Legal Issues and Conclusions:**

The purpose of a SiRT investigation is to determine whether the facts of a case justify any charges against a police officer. In this case the relevant possible offences would be:

1. Dangerous Driving under the *Criminal Code*.
2. Careless and Imprudent Driving under the *Motor Vehicle Act*.
3. Speeding under the *Motor Vehicle Act*.

Each is discussed below:

1. Dangerous Driving under the *Criminal Code*:

The offence of Dangerous Driving consists of two components: a) operating a motor vehicle in a dangerous manner, and b) a required degree of fault, which is a marked departure from the standard of care that a reasonable person would observe in the same circumstances of the individual in question.

Cases such as this must consider that Officer 1 is a police officer, sworn to apprehend offenders. Whenever a pursuit is necessary, the officer must constantly analyze the circumstances of the driving, and weigh any risks to other persons against the need to apprehend those who are committing offences. The safest option would be for the police

to never chase offenders. However, if they did that, offenders would know that all they had to do is speed off and they would be able to escape the law. On the other hand, if an officer is on a busy street with a great deal of traffic attempting to apprehend someone for a minor infraction, a pursuit may not be appropriate.

In this case, the pursuit took place on a city street. While it was late at night and traffic was very light or non-existent, potential risks had to be considered. This is reflected in the decision to call off the pursuit shortly after the speeds increased. Fortunately, Officer 1 was still in the area when the 911 call was made and was able to respond promptly and help ensure AP received the necessary medical care.

In the end, the decision to speed up for only a short time properly balanced the need to apprehend an offender against the potential risk to others. Considering all the facts, there is nothing about Officer 1's driving that indicates dangerous driving.

2. Careless and Imprudent Driving under the *Motor Vehicle Act*:

Section 100 the *Motor Vehicle Act* requires:

“100 (1) Every person driving or operating a motor vehicle on a highway or any place ordinarily accessible to the public shall drive or operate the same in a careful and prudent manner having regard to all the circumstances.  
(2) Any person who fails to comply with this Section shall be guilty of an offence.”

The test that determines whether driving is careless or imprudent is similar to the test for dangerous driving under the *Criminal Code*, but requires a lower degree of fault. It also requires that all the circumstances of the incident be considered. In this case, for the same reasons as considered under Dangerous Driving, Officer 1's driving was careful and prudent having regard to all the circumstances.

3. Exceeding the Posted Speed Limit under the *Motor Vehicle Act*:

The evidence demonstrates that Officer 1 exceeded the posted speed limit of 50 during the pursuit. However, the *Motor Vehicle Act* contains a specific provision allowing police to exceed the speed limit. It reads as follows:

“109 (1) The speed limitations as set forth in this Act shall not apply to vehicles when operated with due regard to safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or

suspected of any such violation, nor to fire departments or fire patrol vehicles when travelling in response to a fire alarm, nor to public or private ambulances when travelling in emergencies and the drivers thereof sound audible signal by bell, siren or exhaust whistle.

(2) This Section shall not relieve the driver of any such vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.”

The exception in section 109(1) applies here. Officer 1 was pursuing AP, who was attempting to evade a lawful attempt by the police to conduct a traffic stop. Officer 1 was duty bound to pursue this vehicle in an attempt to apprehend a person he observed violating the law.

The sections of the *Police Act* relevant to SiRT state that the Director of SiRT has the sole authority to determine whether charges should be laid in any matter investigated by SiRT. In this case I have determined there are no grounds to consider any charges against Officer 1. The injuries suffered by AP would have been avoided if he had done what the law requires: pull over when you see the flashing lights of a police vehicle.