

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2016-007

Referral from

RCMP - PEI

March 9, 2016

Ronald J. MacDonald, QC

Director

June 23, 2016

Facts:

On March 9, 2016, SiRT received a request from the Prince Edward Island Department of Justice and Public Safety and the RCMP in PEI to investigate complaints of sexual assault made against a PEI RCMP officer. The allegations related to incidents alleged to have occurred between February 1, 2013, and March 31, 2014. SiRT agreed to assume responsibility for the investigation and was formally appointed to do so on March 11, 2016. The investigation was completed on April 18, 2016. The Affected Person (AP), and Officer 1, who was alleged to have committed the offences, were informed of the outcome of the investigation on April 28, 2016.

The investigation involved the interview of AP, as well as seven civilian witnesses, and a police witness. Officer 1, who was the subject officer, like any person accused of a crime, was not required to provide a statement to investigators. However, he agreed to be interviewed upon being notified of the matter, and was interviewed the same day. He was cooperative with the investigation throughout. In addition to the interviews, the investigation reviewed some documentary evidence provided by AP, as well as relevant file materials held by the RCMP, relevant text messages held by witnesses, and Facebook and cell phone information of Officer 1.

In addition to the complaint against Officer 1, AP also made a complaint against a second male, a civilian. She was interviewed in relation to that matter by a member of the PEI RCMP Major Crime Unit. The content of that interview was reviewed for this investigation.

In an effort to protect the privacy of AP, the details of the complaints will be discussed in general terms only.

AP's complaint came to the attention of the RCMP in early March when she told a female RCMP officer about being sexually assaulted on two occasions by Officer 1 (the Initial Complaint). That led to the investigation being commenced by SiRT. The Initial Complaint suggested two separate sexual assaults, one in early February, 2013, and a second incident the following year. She was very clear that she was physically forced into the sexual activity on both occasions.

AP provided SiRT with two separate interviews. This was done to ensure AP had a complete opportunity to explain the facts.

With respect to the first incident, AP stated a friend of her then husband came to her house late one evening while her husband was away. At the conclusion of her statements it was clear her explanation of what occurred did not constitute a sexual assault. She acknowledged that she voluntarily consented to the sexual activity.

AP stated the second incident consisted of sexual activity she was forced to perform without her consent. If sufficiently reliable, those facts could constitute a sexual assault.

During her interviews, AP gave other information related to the incidents. This included that she did not really know Officer 1 very well before the first incident, that she tried to avoid contact with him, and that she had cut off contact with him prior to making the complaint to police. Other evidence showed this information to be false. This included an encounter between AP and Officer 1 by video phone, some months after the alleged sexual assault, which involved mutual sexual acts. AP originally denied this incident but later agreed it had occurred.

At the time of the Initial Complaint, AP made a complaint about the second male. SiRT reviewed the statement she gave to the RCMP in that matter. In spite of her initial claims of being forced to engage in sexual activity with this person, her own evidence confirmed she voluntarily consented to the sexual activity. The RCMP determined that the evidence did not disclose any offence.

In her second interview with SiRT, AP asked the investigator whether an act was consensual if Officer 1 had “talked her into it” after which she participated with her consent.

Officer 1 was interviewed. He freely acknowledged the sexual encounters he had with AP. He included details not included by AP, and which she denied, which were against his interest. Officer 1 acknowledged his encounters with AP were morally wrong given they were both in relationships, but was firm and frank that the encounters were consensual.

Persons who knew AP were interviewed. Those interviews showed that AP claimed in text messages obtained by SiRT that not only was she sexually assaulted by Officer 1, and the second male, but by a third male as well. Other information obtained from AP demonstrated in her words that the incident with the third male was in fact consensual.

Relevant Legal Issue:

The offence of sexual assault is committed whenever a person applies force, however slight, to another person, without that other person’s consent, in circumstances of a sexual nature where the sexual integrity of the other person is violated. In the circumstances of this case, if Officer 1 had sexual contact with AP without her consent that would constitute a sexual assault.

In order to lay any charge SiRT must find there are reasonable grounds to believe an offence has been committed.

Conclusions:

In the Initial Complaint, AP stated Officer 1 sexually assaulted her on two occasions. In her interviews with SiRT, it became clear that she consented to the sexual contact on the first occasion. Thus there was no sexual assault on that occasion.

Her description of the second incident, if reliable, provided evidence that describes a sexual assault. In considering whether her evidence is sufficiently reliable, the following is important:

1. AP's Initial Complaint described the first incident as a sexual assault committed with significant force. She later gave evidence that this is not what occurred.
2. Officer 1's description of the second incident included information against his interest which would be illogical for him to make up. AP denied that occurred. The investigation found Officer 1 to be more credible regarding this information. Indeed, Officer 1 presented as a credible and believable witness.
3. AP gave evidence about her lack of contact with Officer 1 which proved to be unreliable.
4. AP originally described her encounters with the second man as involving significant non-consensual sexual activity. This proved to be untrue.
5. AP told one of her friends that she was sexually assaulted by a third male as well. This proved to be untrue.
6. AP originally told SiRT the video call that occurred after the sexual assault had not occurred, and later admitted it had. This deliberate falsehood is significant.
7. It seems unlikely AP would agree to engage in the voluntary activity by video call if Officer 1 had previously forcibly sexually assaulted her. While there can be circumstances where a victim will again take part in sexual activity with the same person, this situation does not fit those types of circumstances.
8. AP seemed to confuse lack of consent with the fact an encounter was the other person's idea, even though she voluntarily participated. Her confusion about these issues detracts from her reliability.

The evidence available raises significant issues with the reliability of the evidence offered by AP. As a result, it is not possible to say her evidence regarding the second incident is capable of giving reasonable grounds to believe that AP was sexually assaulted by Officer 1. This is especially the case when compared to Officer 1's credible description of the incident.

In the circumstances, there are no reasonable grounds to justify charges against Officer 1.