



Serious Incident Response Team

Civilian Director's Report
SIRT-NL File No. 2021-038

Michael NR King
Director
June 2, 2023

Introduction

On December 30, 2021, the Royal Newfoundland Constabulary (RNC) notified the Serious Incident Response Team (SIRT-NL) of a report of a criminal allegation involving a retired Royal Canadian Mounted Police (RCMP) officer. A woman (the “affected person”) reported to the RNC that her estranged husband (the “subject officer”) had posted intimate images of her online without her knowledge and consent.

Mandate

SIRT-NL is a civilian led oversight agency that conducts its own investigations into serious incidents. Serious incidents within this context are those involving serious injury, death, sexual offence, domestic violence or any matter of significant public interest arising from the actions of a police officer in Newfoundland and Labrador. As this is a matter of a domestic and sexual nature, I directed a SIRT-NL investigation into the incident.

When SIRT-NL became aware of the complaint, SO was retired from the RCMP. He retired in 2016. The date range of the alleged offences was unclear and it was difficult to determine if any offences occurred while SO was still employed by the RCMP. This made it difficult to determine which agency held jurisdiction over the investigation. Only offences committed while the subject was an officer fall within SIRT-NL mandate. Out of an abundance of caution, SIRT-NL took over the investigation.

The offence under investigation is “distributing an intimate image without consent” contrary to Section 162.1 of the **Criminal Code of Canada**.

Terminology

I have made the following substitutions to protect the privacy of those involved:

- “Affected person” or “AP” for the individual alleging the criminal conduct;
- “Subject officer” or “SO” for the retired police officer who is the subject of the allegations and this investigation; and
- “Witness #” or “W#” for any civilian who provided relevant information.

Investigation

Timeline

The SIRT-NL investigation began on December 31, 2021. We initially concluded the gathering of evidence on August 22, 2022. Because SIRT-NL only investigated for potential offences while SO was an active officer, we forwarded the file to the RNC in case that agency wished to investigate further for potential offences occurring after SO retired. I decided to withhold this report to avoid compromising a potential RNC investigation. The RNC subsequently advised it had concluded its investigation. SIRT-NL then concluded its investigation on May 5, 2023.

Tasks

During the investigation, SIRT-NL investigators took the following steps:

- Reviewed all preliminary investigative material from the RNC.
- Interviewed the affected person.
- Obtained Judicial Authorizations (warrants) to seize and search the computer hard drive in AP's possession.
- Conducted open source research to locate profile names of SO and other information.
- Contacted two individuals (Witness 1 and Witness 2) with whom AP suspected SO of sharing images.

The Affected Person (AP)

Statements to RNC

In her initial statement to the RNC, AP told the RNC investigator that, on September 3 2020, she discovered SO had a profile on a social media site where he was sharing images and videos of her without her consent. AP advised she had confronted SO about this and he admitted to it and was apologetic. He said he would delete the images and it would not happen again. AP advised that, in late November 2021, she discovered new websites SO used to upload photos as recently as January 10 and 13, 2021.

AP advised she recently separated from SO. He left their mutual home and was staying with his parents. While AP did not know where all the images were stored, she believed they were on an iPad or hard drive, which SO took with him.

AP advised she found images dating back to 2017. She was unsure if SO was using these websites to distribute the photos of her while he was employed with the RCMP. AP provided a prepared statement and a USB drive to the RNC. In this prepared statement, AP explained that SO had different online accounts where he could share images of her. She specifically saw internet history where SO was offering images of her to other people for trade.

AP was not sure where the images of her were stored but explained there was a desktop computer in the garage that SO used frequently. The hard drive was now missing from that computer.

Statement to SIRT-NL

In subsequent statements, AP disclosed the following:

In September 2020, while using an iPad, AP discovered SO had been on Reddit offering to trade images of her. AP used her phone to take screenshots of this. She advised the profile had photos of her with the headings “trading pictures”, “45-year-old wife” and “Milf”. She observed two profiles for trading photos and videos. The page was left open on the iPad.

AP and SO were married for 20 years and SO had many photos and videos of her. While AP allowed SO to take the photos and videos, she advised she trusted SO at the time and she believed they were for SO’s own personal use. She never gave SO permission to post or share images or videos.

AP was not sure where the images were stored. She believed they would be on a smaller iPad the couple owned, which had cellular capabilities.

AP questioned SO about what she located. SO was remorseful and apologized. Subsequently, the couple separated, reunited and separated again.

AP advised some of the sites and profiles she found were dated back to 2017. She took the usernames she located and conducted an internet search. She observed two other profiles with the same photos. She believed that, in December 2020, SO had re-created new profiles on social media site and she questioned whether he had ever stopped sharing the photos. From checking different devices, AP discovered additional email accounts, chat applications and usernames.

In November 2021, AP was in the upstairs loft of their garage where there was a computer desk and computer. She opened the bottom drawer of the desk and observed a black external hard drive.

AP later provided a USB to the RNC containing what she found. She advised she never knew SO's passwords as he was very secretive with his devices.

AP searched one of SO's usernames on the internet and could see the uploaded date on the photos. Searching the usernames prompted her to go to other links and websites. The username was also used on two different profiles, which were uploaded/created on January 2021. AP provided the investigator with several of SO's usernames and email addresses of which she was aware. AP also advised the investigator of several devices SO had in his possession.

AP clarified to the SIRT-NL investigators that, in total, she found three images of herself. Two of these depicted her wearing black lingerie. In the other photo, she was wearing clothes. None of the three photos showed AP's face.

Civilian Witnesses

Witness 1 and Witness 2

In her statement, AP provided the names of a married couple, W1 and W2, with whom AP suspected SO was sharing intimate images. SIRT-NL contacted both individuals. Both individuals declined to provide a formal statement but both denied ever having received intimate images from SO.

Forensic Evidence

Pursuant to the appropriate judicial authorizations, an examination of the computer hard drive was completed and it was determined the hard drive did not contain any evidence to substantiate the allegations made by the AP.

Issue and Conclusion

The issue for my consideration is whether there are grounds to believe the subject officer committed a criminal offence.

S. 162.1(2) provides a definition of "intimate image":

(2) In this section, "intimate image" means a visual recording of a person made by any means including a photograph, film or video recording,

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- (a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;
 - (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and
 - (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

All three of these components must be present for an image to meet the definition of “intimate” within s. 162.1.

None of the subject images depicts a person who is “nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity”. As subsection (a) above is not present, these images do not meet the definition of “intimate image” under the Criminal Code.

Even if the images did meet the definition under s. 162.1, there is insufficient evidence to provide grounds to believe the subject officer committed a criminal offence. Accordingly, as the civilian director of SIRT-NL, I will not lay a charge in this matter.

This file is now concluded.

Final Report prepared by:

Michael NR King, Director
Serious Incident Response Team - Newfoundland and Labrador
June 2, 2023
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