



Serious Incident Response Team

Civilian Director's Report
SIRT-NL File No. 2023-0006

Michael NR King
Director
September 11, 2023

Introduction

On February 17, 2023, a member of the public contacted the Serious Incident Response Team (SIRT-NL), alleging a Royal Canadian Mount Police (RCMP) officer committed perjury during testimony at Provincial Court of NL in St. John's.

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 death, serious injury, sexual offence, domestic violence or any matter of significant public interest arising from the actions of a police officer in Newfoundland and Labrador. This matter fell within the "significant public interest" component of the SIRT-NL mandate. Accordingly, I directed a SIRT-NL investigation.

Terminology

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

- "Affected person" or "AP" for the individual who made the allegations; and
- "Subject officer" or "SO" for the police officer who is the subject of the allegations and this investigation.

Investigation

The SIRT-NL investigation began on April 10, 2023 and concluded on July 18, 2023. During the investigation, SIRT-NL took the following steps:

- Collected and reviewed the following from the affected person:
 - copies of RCMP investigative files involving AP;
 - audio recordings of witness statements;
 - copies of public complaints made to the Civilian Review and Complaints Commission (CRCC) for the RCMP;
 - Correspondences between AP and the Royal Newfoundland Constabulary (RNC) regarding a complaint AP made to the RNC;
 - Copy of a court order placed on AP;
 - Copy of AP's Notice of Appeal of conviction at trial in Provincial Court of NL;

- Phone records;
- Photographs;
- Audio recording of SO's Provincial Court testimony; and
- Emails from AP.
- Collected and reviewed material from the RCMP, including:
 - RCMP investigative files regarding the arrests of AP;
 - Investigations completed into the complaints AP made, to the CRCC, against SO; and
 - Statements of AP and SO.
- Obtained, by consent, the notes and reports authored by SO in relation to matters involving AP.
- Obtained AP's Criminal Record.
- Obtained AP's Application to Appeal to the Supreme Court of NL, General Division.
- Interviewed AP.
- Collected and reviewed material from the RNC including a complaint AP made to the RNC.

Overview

AP has been contacting SIRT-NL periodically since 2019 to make complaints against the RCMP. These complaints did not fall within SIRT-NL mandate. On February 17, 2023, however, he contacted SIRT-NL regarding allegations of perjury against an RCMP officer. AP alleged he was arrested for "trespassing at night" and other criminal offences in NL when, at the time, AP was not in the province. SO arrested AP in April 2017. AP alleged that, prior to AP's bail hearing, SO falsely reported to the Crown prosecutor that AP had a criminal record. Further, AP alleged that, during SO's testimony at AP's trial at Provincial Court, SO perjured himself by stating SO relied on several witness statements to arrest AP. AP stated this was impossible as the witness statements had not been taken at the time of his arrest.

Affected Person (AP)

On April 13, 2023, the SIRT-NL investigator obtained an audio-recorded statement from AP. During the interview, AP provided an overview of his involvement with the RCMP since 2014. Though he had many complaints spanning a plethora of topics, the only complaint that fell within SIRT-NL mandate was regarding AP's April 2017 arrest by the RCMP and the subsequent associated court proceedings.

On April 19, 2017, AP was arrested and incarcerated overnight on several offences against a woman with whom he had been in a relationship. The following day, AP appeared in court on the charges. SO had indicated in the RCMP risk assessment form, which was provided to the Crown, that AP had a violent history and a criminal record. The Crown requested that AP be held in custody due to his criminal record. AP told the Judge he did not have a criminal record. The Judge released AP on a number of conditions.

AP stated that, on July 13, 2017, he was arrested for “assault with a weapon”. The same woman, who was involved in AP’s previous charges, alleged AP tried to run her down with his vehicle. AP was taken into custody and spent the next 14 days in jail. AP denied the allegation and questioned why the RCMP did not follow up with several witnesses prior to arresting AP.

AP was also charged with “trespassing at night” on November 19, 2016. AP stated he was in Winnipeg, Manitoba in November 2016 and questioned how he could be charged with trespassing at night in NL while he was in Manitoba.

On October 2, 2017, AP called the woman’s (again, the same woman who was involved in AP’s previous charges) place of employment to make her employer aware they had a child molester working for them. Although AP knew the woman worked at the home, he claimed he was not aware she worked in the specific department he called. Because of the phone call, AP was arrested for contacting the woman (AP was on court-ordered-conditions not to contact the woman or her place of employment) and spent 354 days in custody. In total, AP spent 408 days in custody and 311 days under house arrest pertaining to the charges associated with the woman. On September 11, 2018, AP was released from custody on strict conditions.

AP stated that, on October 29, 2019, he was arrested for “criminal harassment” against “the RCMP”. In November 2019, AP pleaded guilty to the offence and was released from custody (It was learned through the SIRT-NL investigation that the RCMP officer who AP criminally harassed was SO).

AP is alleging that, during his trial in Provincial Court, SO perjured himself by testifying that he relied on the witness statements to form his grounds to arrest AP. AP questioned how this is possible when the witness statements were taken after his arrest. AP is of the belief that SO attempted to mislead justice.

AP also took issue with SO referring to the complainant (involved in his charges) by her first name during SO’s testimony. AP believes the RCMP “had it in” for him because some of the RCMP officers were in a relationship with the woman.

During the interview, the SIRT-NL investigator presented AP with a “Notification of Court Check from Provincial Court” that revealed AP had two convictions at the time of the April 2017 court proceedings: one in 1990 and the second in 2003. AP admitted to the conviction in 1990 but stated he received an absolute discharge in 2003.

Provincial Court Audio Recordings / Transcripts

SIRT-NL obtained a copy of, and reviewed, the audio recording of AP’s trial in which SO testified and allegedly perjured himself. There are three portions of the proceedings that are relevant to this matter:

1. At 08:30 of the recording, before the trial started, the Crown points out to the Judge that, while the charge listed included an offence date of November 19, 2016, for the “prowling at night” charge, she anticipated the evidence would establish the offence occurred on December 22, 2016.
2. At 17:57 of the recording, during SO’s testimony:
Crown: Did the statements of these persons assist you in this investigation?”
SO: Yes, they actually corroborated what [the complainant] initially told us in her statement.
Crown: And on the basis of everything you explained to us, the witness statements, etc., were you the officer who decided, made the decision to lay charges on these alleged offences?
SO: Yes, I was.
3. At 20:40 of the recording, during cross-examination by AP’s lawyer, SO lists three witness statements he obtained in addition to the statement of the complainant. The three statements were taken on May 7, May 20 and May 22. SO confirms the date of arrest was April 19. He also states that, at the time of arresting AP on April 19, SO “only had [the complainant’s] statement to go on”.

AP’s Criminal Record

On April 26, 2023, the SIRT-NL investigator requested a criminal record check for AP at Provincial Court of NL, Criminal Division. In response to that request, the investigator

received a copy of AP's criminal record. The record indicated 16 findings of guilt/convictions. As of April 2017, AP had two findings of guilt/convictions on his record:

1. Assault – AP was sentenced to a fine; and
2. Assault Causing Bodily Harm – AP was sentenced to a fine, probation (one year) and a DNA Order.

It appears from the record AP did not receive a discharge for either of these offences.

Issue and Conclusion

The issue for my consideration is whether there are grounds to believe the subject officer committed an offence by (i) knowingly misleading the Crown and the Court by providing false information that the affected person had a criminal record; and/or (ii) committing perjury by knowingly giving false information, under oath, during his testimony at AP's trial at Provincial Court of NL. I will deal with these allegations separately.

- (1) Did SO knowingly mislead the Crown and Court by providing false information that AP had a criminal record?

AP alleged that, on April 20, 2017, SO knowingly provided false information to the Crown that AP had a criminal record. AP claimed he did not have a criminal record at that time. SIRT-NL was able to establish, through conducting its own criminal record check on AP, through Provincial Court of NL, that AP did have a criminal record as of April 20, 2017. As outlined above, AP had convictions/findings of guilt for "Assault" (in 1999) and "Assault Causing Bodily Harm" (in 2003). Hence, SO did not provide false information to the Crown when he reported that AP had a criminal record. He therefore did not commit an offence in this regard.

- (2) Did SO commit perjury by knowingly giving false information, under oath, during his testimony at AP's trial?

AP alleged that SO committed perjury by testifying that SO relied on several witness statements to form his grounds to arrest AP. AP stated this could not have been possible as the witness statements were not obtained until after the arrest.

SIRT-NL was able to listen to the recording of SO's testimony. While the Crown could have worded her question more clearly in relation to the arrest, SO merely

confirmed he was the officer who made the decision to lay charges against AP. Later, during cross-examination, SO clearly stated the witness statements were not obtained until after the arrest and that, at the time of the arrest, he only had the complainant's statement to go on. He did not give false information, under oath, during his testimony, as AP alleged. SO therefore did not commit perjury.

Given the above, I have not formed reasonable grounds to believe the subject officer committed a criminal offence and 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
September 11, 2023
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