

# SiRT

SERIOUS INCIDENT  
RESPONSE TEAM

## Summary of Investigation

SiRT File # 2023-044

Referral from

Fredericton Police Force

September 21, 2023

Erin E. Naus  
Interim Director  
March 5, 2024

## **MANDATE OF THE SiRT**

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act* to investigate all matters that involve death, serious injury, sexual assault, and intimate partner violence or other matters determined to be of a public interest to be investigated that may have arisen from the actions of any police officer in Nova Scotia. Through agreement and the New Brunswick *Police Act*, the SiRT is authorized to review this matter in New Brunswick.

At the conclusion of every investigation, the SiRT Director must determine whether criminal charges should result from the actions of the police officer. If no charges are warranted the Director will issue a public summary of the investigation which outlines the reasons for that decision, which must include at a minimum the information set out by regulation. Public summaries are drafted with the goal of adequate information to allow the public to understand the Director’s rationale and conclusions.

## **INTRODUCTION**

On September 21, 2023, the Fredericton Police Force contacted the SiRT regarding an allegation of assault that occurred June 16, 2023, at the Twenty/20 Club (the “**Club**”) in Fredericton, New Brunswick. It was alleged that the Subject Officer (the “**SO**”), who was also employed as a bouncer at the Club when off-duty, committed an assault and injured the Affected Party (the “**AP**”). The investigation of this file was commenced by the Fredericton Police Force on September 1, 2023, when the AP provided a statement about the incident. Once medical reports were received and they learned that the AP sustained a fractured wrist, the Fredericton Police Force made a referral to the SiRT.

A serious injury includes:

- fractures to limbs, ribs, head or spine;
- burns, cuts, or lacerations which are serious or affect a major portion of the body;
- loss of any portion of the body;
- serious internal injuries;
- any injury caused by gunshot;
- significant number of stitches
- admission to hospital as a result of the injury (not including outpatient care followed by release).

The former SiRT Director determined that the injuries were serious and the SiRT commenced its investigation on September 21, 2023. The investigation concluded on January 29, 2024.

The decision summarized in this report is based on evidence collected and analyzed during the investigation, including, but not limited to, the following:

1. Initial Occurrence Reports
2. Witness Officer Statements and Notes (5)
3. Civilian Witness Statements from Employees of the Twenty/20 Establishment (3)
4. Statement from the Affected Party
5. Medical Records of the Affected Party

### **INCIDENT SUMMARY**

On June 16, 2023, at approximately 11:00 p.m. the AP attended the Twenty/20 Club in Fredericton, New Brunswick. The SO was employed by the Fredericton Police Force and was off duty but was working as a security officer for a company contracted to provide security at the Club. The AP attended the Club with four friends. One of the friends was asked by a security officer to leave and was denied entry because they were too intoxicated.

The AP challenged the decision of the security officer, to the point where Civilian Witness 1 (“CW1”), the manager of the Club, had to be engaged. CW1 provided a statement as part of this investigation and shared that he spoke with the AP to provide the legal and safety reasons for the decision. According to the Club employees, the AP continued to question the decision, was agitated, and was yelling obscenities. CW1 and security officers asked the AP to leave the Club. The AP became physically aggressive to the point where security officers had to grab her arms. The AP pulled away from the security officers and tried to punch the manager in the groin area. At this point the security officers removed her from a patio at the Club and placed her in the parking lot. The SO was not involved in this altercation.

Civilian Witness 2 (“CW2”), a witness security officer, provided a statement to the SiRT indicating once the AP was in the parking lot, she charged at the security officers who were at the top of some stairs, including the SO. The AP attacked the SO and CW2 jumped in to assist. The AP was biting, punching, kicking, and spitting on the SO and the other security officers. CW2 and the SO had to hold down the AP and escort her down the stairs. Once down the stairs, the AP’s boyfriend started attacking the SO and other security officers. Additional security officers stepped in to help, and the AP continued to bite, kick, and punch. CW2 and the SO attempted to restrain the AP, by holding her down. This was difficult as she continued to be violent, and several people had gathered around. CW2 stated he had her left hand held down, while the SO was on her right side. Both CW2 and the SO had marks, cuts, and scrapes because of the AP’s actions. CW2 did

not recall the AP complaining of any injuries. When the police arrived, they handcuffed the AP, and she was belligerent with the police officers. CW2 was of the opinion that the AP was intoxicated by something other than alcohol, considering her behaviour and level of violence.

Civilian Witness 3 (“CW3”), another witness security officer, also provided a statement to the SiRT. He stated that the SO and CW2 were both trying to control the AP until the police arrived. He said the SO had the AP face down on the ground, holding her arm around her back and her thigh with his knee. He noted this hold was not one that he believed would have caused physical discomfort to the AP. He observed the AP acting aggressively and biting CW2 six to seven times, leaving marks on him.

CW1, the Club manager, stated to the SiRT that he observed the security officers trying to restrain/pin down the AP and her boyfriend until the police arrived. He noted the AP was pinned on her stomach with her hands behind her back. He confirmed the SO was one of the individuals who had the AP pinned down. He noted that he didn’t see anything he deemed improper by the security staff who were restraining the AP and her boyfriend. CW1, who has worked in the bar industry for years, was of the opinion the AP was highly intoxicated and noted she was physically aggressive with the staff.

The AP provided a statement to the Fredericton Police Force on September 1, 2023. She stated she attended the Club the evening of June 16, 2023. The AP stated that her friend was stumbling and staggering and was asked by the security officers to leave the club. She inquired why her friend was being kicked out and was frustrated that the security officer was not giving her any time and asking her to leave. She stated she tried to walk away when the security officers grabbed her. She recalled screaming “get off of me, stop touching me, ouch you are hurting me”. The AP stated that she then sat down to pull away from the security officers, at which point she was picked up by all four limbs and removed from the Club. The AP stated she was biting the security officers who were holding her arms because they were hurting her and she wanted them to let her go. She stated there would have been 6-8 security officers on her and she felt they were being too aggressive. Once she was outside, she stated she walked away, and the bouncers had her boyfriend on the ground. The security officers then took her to the ground and advised her the police were being called. She stated her left arm was pulled behind her back and her thumb was pulled back, touching her forearm. During this altercation, she learned one of the security officers was a police officer. She stated she was yelling “you are breaking my wrist, it hurts, you cannot do this to me, you have no right to do this”. After yelling this, she recalls a security officer stated, “yes he can, he’s a police officer.” She believed he was referring to the security officer on her left, with his knees against her legs. She did not correctly recall his name but did provide a description of the SO in her statement. The AP stated the incident left her with several bruises and she attended the hospital the following

day. Medical Records described her injury on her left side as a small dorsal avulsion fracture with soft tissue swelling.

The Fredericton Police Force was dispatched, and several officers arrived. Those officers have been deemed Witness Officers (“WO”). WO1 was the first officer on scene. When he arrived, he observed the AP being restrained by the security officers, including the SO. WO1 placed the AP in the back of the police vehicle before deciding to release her in the care of her boyfriend. He observed the AP and her boyfriend enter a taxi. Once inside the taxi, WO1 observed the AP acting belligerent. The AP did not mention any injuries to herself to WO1. The other WOs did not observe the altercation between the AP and the security officers. However, they were able to confirm the SO was present at the scene and that the AP was intoxicated and acting belligerent with the officers.

It should be noted that the AP reported this incident which took place on June 16, 2023, to the Fredericton Police Force on September 1, 2023. The video footage from the incident could not be provided, as it is only kept for 3 weeks and then is overwritten.

## **RELEVANT LEGISLATION**

### *Criminal Code:*

#### Assault:

s. 265 (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

€ while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

#### Defence -use of threat of force:

s.34 (1) A person Is not guilty of an offence if

(a) they believe on reasonable grounds that force being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use of threat of force; and

€ the act committed is reasonable in the circumstances.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- € the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- € the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

### **LEGAL ISSUES & ANALYSIS**

The evidence shows that the SO was one of the security officers that was dealing with the AP on June 16, 2023. The AP was intoxicated and agitated, and her behaviour was physically violent and aggressive. The SO had been bitten, kicked, and punched by the AP. The SO and security officers took action to remove the AP from the Club premises by picking her up, restraining her, and calling the police.

The statement of the AP indicates she was not acting in a violent manner. However, this differs greatly from the other evidence reviewed as part of the investigation. There were multiple witnesses, both security officers and police, who observed her erratic behaviour and intoxicated state. The statements of the security guards and Club manager corroborate that the AP was biting, kicking, and acting aggressively.

The AP had injuries when she attended the hospital on June 17, 2023. However, there is not sufficient evidence to determine how those injuries were caused or whether the actions of the SO caused the injuries. As previously mentioned, considering the inconsistencies in the statement between the AP and the other witnesses and the AP's level of intoxication, significant weight cannot be placed on her statement. Furthermore, the left wrist was injured, but there were conflicting statements (the AP and Witness Officer 1) as to what side of the body the SO was restraining.

Even if it could be shown that the actions of the SO caused the AP's injuries, I cannot conclude the actions of the SO are criminal. The law respecting self-defence or the defence of others is set out in Section 34 of the *Criminal Code*. This section outlines how the defence applies to the use of force utilized in defending yourself or another person. It provides that conduct that would otherwise constitute an offence is legally justified if it was intended to deter a reasonably apprehended application of force, either actual or threatened to yourself or another person, and the conduct itself was reasonable. The reasonableness of the conduct must be assessed in light of all the relevant circumstances.

The evidence suggests that the AP was biting and kicking the security officers and the SO to the point where they had marks and scrapes on their bodies. She then vigorously resisted when the security officers tried to remove her from the Club. The force used by the SO and the security officers reflect the actions of the AP. The force applied to the AP was measured and not unreasonable or unnecessary.

The Fredericton Police Force has an Administration Policy Manual, which addresses secondary employment and conflict of interest. However, this is outside of the scope of the SiRT mandate.

## **CONCLUSION**

The SiRT initiated an investigation of the incident, which has now concluded. My review of the evidence indicates there are no reasonable grounds to believe that the SO committed a criminal offence.