

November 16, 2022

Mr. Jamie Van Wart  
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Mass Casualty Commission  
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Dear Mr. Van Wart:

**Re: The Serious Incident Response Team**

I am writing to provide further background for how the Serious Incident Response Team (“SiRT”) conducts its criminal investigations as I believe this information will be of assistance to the Commission’s mandate to “inquire into and make findings on matters related to the tragedy in Nova Scotia on April 18 and 19, 2020”. I provide these submissions to assist the Commission with its goal to set out an evidentiary record, based on what was learned during the process about what happened, and how and why it happened, to identify lessons learned with the goal of making recommendations to improve processes where gaps or issues may have been identified.

While the SiRT was not a Participant, it aided the Commission through providing relevant documentation and through interview evidence of past interim Director, Pat Curran, and past Director, Felix Cacchione. These individuals were the Directors of the SiRT for the relevant timeframe of the Commission’s inquiry. I am hopeful this reply, in conjunction with the earlier evidence provided by the SiRT, will assist the Commission in understanding the SiRT’s role within the overall policing framework within Nova Scotia. I recognize, however, there is a great deal more evidence required to fully understand the overall policing and oversight framework within Nova Scotia. Such a full understanding could only be gained after a thorough investigation into the roles and responsibilities of the various policing agencies, Commissions and organizations tasked with the oversight of policing in Nova Scotia. I do not intend to go into that detail as that is beyond my expertise and role as the current Interim Director of the SiRT and would require expert evidence.

The purpose of this reply is to assist the Commission with its understanding of the SiRT generally and, more specifically, to provide additional context and background for how the SiRT deals with the referrals it receives.

In 2010, the *Police Act* was amended to create the SiRT. The SiRT was created independent of police and government, with a mandate to investigate serious incidents involving police in Nova

Scotia.<sup>1</sup> All Chiefs of Police and the head of the RCMP are required by law to refer all serious incidents to the SiRT. They are required to make the referral as soon as practicable<sup>2</sup>. Referrals can also come from the Minister of Justice or members of the public. Upon receiving a referral, the Director, or his designate reviews the information and conducts a preliminary investigation or “review” to determine if the matter falls within the SiRT’s mandate. It is important to note that matters of police misconduct which do not rise to the level of criminal charges are outside of the SiRT’s mandate. Code of conduct complaints fall within the mandate of the Police Complaints Commission.

When referrals are made to the SiRT, it may not be readily apparent on the face of the record that the matter falls within the SiRT’s mandate. When this occurs, the Director or one of the SiRT’s investigators will make further inquiries to determine if the level of misconduct could result in a criminal charge. These additional, preliminary inquiries may involve interviewing third parties involved in the alleged incident or witnesses to the alleged incident to obtain a better factual foundation. At this stage, a file is opened as a “review” file. A criminal “investigation” file does not get opened until the Director has determined the subject matter of the referral involves a serious incident involving the police which may warrant criminal charges and therefore falls within the SiRT’s mandate.

If a matter is determined to fall within the SiRT’s mandate, the Director assigns a primary investigator, and other investigators as necessary, to conduct a formal criminal “investigation”. At this point, a criminal “investigation” file is opened. During the criminal investigation, investigators assigned to the case attend various investigative meetings to keep the Director apprised of the investigation. Once the criminal investigation has concluded, the primary investigator prepares an investigative report for the Director outlining the facts and findings of the investigation. The investigator may or may not make recommendations about whether charges should be laid in the report. The ultimate decision of whether a charge is laid, however, rests with the Director. At the conclusion of every criminal investigation, the Director issues a public summary of the investigation and the reasons for the decision. Where charges are laid, the summary is brief to protect the right of a fair trial for the accused.

It is important to note that while a referral may be made to the SiRT, not all referrals result in a criminal “investigation.” Some referrals lack sufficient information requiring further “review” (as noted above) to determine if the referral falls within the SiRT’s mandate. In 2020-2021, for instance, the SiRT opened forty-four files<sup>3</sup>. Twenty of those files were “review files” which did not result in a criminal investigation because the Director determined the referral did not fall within the SiRT’s mandate, or after review and initial inquiry, the Director determined there was insufficient evidence to support a criminal investigation. This information is particularly relevant

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<sup>1</sup> 2004, c.31, ss.26A-26N

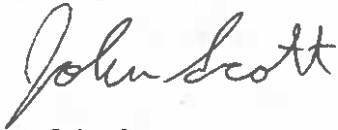
<sup>2</sup> *Supra*, note 1, s.26I (1)

<sup>33</sup> Serious Incident Response Team, Annual Report 2020-2021, [Annual Report 2020-2021.pdf \(novascotia.ca\)](https://www.novascotia.ca/annual-report-2020-2021)

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for the Commission in its consideration of any allegations that the SiRT failed to investigate a matter. All referrals result in a "review file" being opened. Because a file does not progress from a "review file" to a criminal "investigation file" does not equate to the SiRT having failed to investigate, or more specifically, inquire into a referral. What it does mean is that the SiRT had conducted its initial "review" and determined the referral did not fall within its mandate. This result could be because there was insufficient evidence to support the referral to warrant a criminal investigation thereby resulting in the matter being rejected by the SiRT or, after the review, the Director determined the subject matter of the referral did not fall within the SiRT's mandate. When a referral is rejected, the Director notifies the original complainant of the Director's decision. As no formal investigation was initiated, no public notice is issued. When the Director notifies the original complainant of the decision to reject the referral, the Director may suggest the complainant may want to consider sending the referral along to one of the other agencies responsible for investigating complaints of police misconduct, as was done on December 17, 2020 (see Comm0065367).

Respectfully yours,

A handwritten signature in cursive script that reads "John Scott".

John Scott  
Interim Director  
Serious Incident Response Team