



## Summary of Investigation

SiRT File # 2025-0071

Referral from

RCMP “J” Division

June 27, 2025

Erin E. Nauss

Director

December 15, 2025

## **SiRT MANDATE**

The Serious Incident Response Team (“SiRT”) has a mandate under the Nova Scotia *Police Act*, and through agreement, under the New Brunswick *Police Act*, to investigate or take other steps related to all matters that involve death, serious injury, sexual assault, intimate partner violence or other matters determined to be of a public interest that may have arisen from the actions of any police officer in Nova Scotia or New Brunswick. This mandate encompasses incidents that occur on or off-duty, to avoid the real or perceived bias of police investigating police.

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

**Mandate invoked:** This investigation was authorized under Section 24.6 of the New Brunswick *Police Act* due to the serious injury to the Affected Party (“AP”).

**Timeline & delays:** The SiRT investigation started on June 27, 2025, and concluded on October 31, 2025.

**Terminology:** This summary uses the following language in accordance with regulations made under the *Police Act* and to protect the privacy of those involved:

**“Affected Party/AP”:** means the person who died or was seriously injured in relation to a serious incident.

**“Civilian Witness/CW”:** means any non-police individual who is a witness to, was present at or has material information related to a serious incident.

**“Witness Officer/WO”:** means any police officer who is a witness to, was present at or has material information related to a serious incident.

**“Subject Officer/SO”:** means the police officer who is the subject of an investigation or whose actions may have resulted in a serious incident.

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

- |                                     |                                    |
|-------------------------------------|------------------------------------|
| 1. Affected Party Statement         | 5. Civilian Witness Statements (3) |
| 2. Affected Party's Medical Records | 6. Body Worn Camera Footage        |
| 3. Subject Officer's Reports        | 7. RCMP File                       |
| 4. Witness Officer Reports (1)      |                                    |

## **INCIDENT SUMMARY**

### *Overview*

On June 26, 2025, RCMP officers were dispatched to a group home near Sussex, New Brunswick, due to a resident (the Affected Party/AP) being violent and damaging property. The Subject Officer (SO) was the first on scene and placed the AP under arrest. The AP is a young adult, but due to cognitive impairments, their emotional responses can resemble those of a younger person. The AP was placed into the back of the SO's police vehicle and started thrashing his body and yelling. The SO opened the door to handcuff the AP, so he would not hurt himself or damage the police vehicle. While the SO was trying to gain control of the AP, the AP spit in his face. The SO lifted the AP's arm behind his back to place him in handcuffs. While doing so, the SO heard a pop and recognized the AP was injured. Emergency Medical Services (EMS) was immediately contacted. The AP was diagnosed with a fractured elbow.

### *Civilian Witness Statements and 911 Call*

RCMP received a 911 call from Civilian Witness #1 (CW1), a group home employee, who stated the AP was damaging staff vehicles in their parking lot. He provided the name and age of the AP to the dispatcher. The dispatcher advised an officer would be sent to the group home.

When police arrived, employees of the group home (for the purpose of this report, referred to as "civilian witnesses") were present and observed the interaction between the AP and SO. SiRT obtained statements from these civilian witnesses.

CW1 stated the AP has a history of violence. Staff have been instructed to walk away from him and contact police when he has a violent episode. On the day of the incident, the AP was behaving violently, and staff exited the home. The AP followed and chased a staff member who was attempting to lock a shed. The AP then started elbowing staff vehicles and denting them. CW1 called 911 advising police the AP was damaging property. At the time of the call, CW1 indicated there was no threat to the staff. The AP then grabbed a piece of asphalt and threw it through a window of the group home, breaking it. Police arrived around the time the AP was throwing the

asphalt. CW1 stated that there have been multiple incidents with the AP and police were familiar with him. They stated the SO arrived on scene and told the AP to get into the police vehicle. The AP complied and walked toward the police vehicle. The SO asked him if he had anything sharp on him and the SO stated his needles/medications were in his fanny pack. CW1 stated the AP took off the fanny pack and threw it toward the officer, close to his head. CW1 observed the AP get into the vehicle and kick and punch inside the car. CW1 stated the AP had an injured hand before the incident occurred. He believed the SO was aware of this injury. He stated the SO opened the door of the car to place the AP in handcuffs and the AP started punching and kicking the SO. CW1 stated the SO loosely grabbed the AP's arm and moved it behind his back. At that time, the AP turned his body and spit toward the SO. He stated the SO applied more pressure, causing the arm to break. CW1 stated the officer knew the AP well and believed he placed him in handcuffs to prevent any further injury to him.

Civilian Witness #2 (CW2), another group home employee who was present when the police arrived, stated that the AP was getting out of control. When the SO arrived, he calmly asked him to come with him. He noted once the AP was in the police vehicle it started to shake, and he could hear the AP screaming. When the SO opened the door, the AP was shouting and spit in the SO's face. When asked why he did that, the AP said he wanted his hand released. CW2 stated that as the SO was handcuffing the AP, the AP was moving and resisting. He recalled hearing the AP was hurt, but wasn't sure how it happened even though he was standing next to the AP.

Civilian Witness #3 (CW3), another group home employee who observed the incident, stated that after the AP spit toward the SO and tried to swing at him, the SO took the AP's arm and moved it behind his back. He heard the AP say "ouch". He said the SO's actions didn't appear to be excessive for the situation.

#### *Witness Officer Reports*

SiRT obtained reports from two witness officers. Both witness officers attended the scene after the injury had occurred and did not have any evidence to provide regarding the interactions of the AP and the SO.

#### *Subject Officer Statement*

Subject officers are not required to provide their notes or reports as part of a SiRT investigation. They are also not required to provide a statement as part of the investigation. In this case, the SO did not provide a statement but consented to his notes and reports being turned over to SiRT.

The SO's report states that on the date of the incident, he was responding to a call at the group home related to assault and property damage. He was aware the incident involved the AP, who was known to him. He knew the AP's behaviour could be unpredictable and he attended the scene alone, so he could get there quickly, knowing there were additional officers on the way. The SO stated that he assessed the situation as high-risk due to his knowledge of the AP and the information provided by dispatch that staff were being attacked. The SO reported that when he arrived the AP had a piece of asphalt in his hands, threw a rock towards a window and started walking towards the staff, as if to attack them. The SO placed his police vehicle in between the staff and the AP and walked towards the AP, telling him he was under arrest. He directed the AP to drop what was in his hands. The report states the AP uttered "I will kill the police" and dropped a rock as he was walking toward the police vehicle. The SO asked the AP to drop his fanny pack, and the AP threw it towards the group home staff. The SO wrote that he directed the AP toward the police vehicle by holding his wrist and placing his hand on his back. The SO reported the purpose of this was to contain the AP until additional officers arrived. The AP was placed into the back of the police vehicle. The SO closed the door and turned to speak with the group home employees. He noted he was interrupted by the sound of the AP screaming and thrashing inside the police vehicle. The SO observed the AP trying to harm himself by hitting his face off the silent patrolman (*Director's note: partition between the front and back of a police vehicle*) and trying to damage the vehicle by ripping the wires out of the roof panel. The SO reported that he was fearful the AP may harm himself, so opened the door and put the AP's left arm behind his back to handcuff him. The AP then turned his head toward the SO and spit in his face. The SO reported he "...closed back in on him to gain control again." He wrote that he had to gain control quickly or he could have lost control of the situation. The SO noted he held the AP's arm by his wrist with both hands, behind his back. He was issuing commands for the AP to cooperate. The AP continued to resist by attempting to spit again and kicking the SO. The SO stated the AP leaned forward and twisted his body. At that moment he felt and heard a "pop". The AP did not react, but the SO believed the twisting and pressure caused an injury to the AP. The AP stopped resisting, and the SO was able to handcuff him. The SO then positioned the AP's arm in a manner to prevent any further injuries. The SO called for an ambulance and requested another member to stay with the AP so he could report the incident to his supervisor. The SO noted the incident was not intentional and he did not want to hurt the AP.

### *Body Worn Camera Footage*

As part of the SiRT investigation, body worn camera footage of the SO was reviewed, which captures the AP's arrest and the interaction between the AP and the SO. The video starts as the SO is arriving at the group home. You can see the AP walking close to a broken window, while three group home employees are outside, several meters away from the AP and the residence.

The SO exits the police vehicle calling the AP by name and telling him to get in the car, that he is under arrest for mischief. The AP walks towards the police vehicle and the SO asks the AP if there is anything in his fanny pack and tells him to drop it. The AP removes it and throws it towards the SO. The SO grabs the AP's arm and walks him toward the police vehicle. As the AP is being placed into the back of the police car he states, "I will kill police." The SO closes the police vehicle door and turns to speak to the group home employees. Banging noises can be heard from the police car and the SO opens the car door and says, "give me your hands." The AP punches the inside of the car and then lunges toward the SO with his elbow, appearing as if he was going to strike him. The SO steps towards the AP and tells him to put his hands behind his back. He then places his hands on the AP's wrist and shoulder, twisting his arm behind his back to place handcuffs on him. He asks the AP to give him his other hand, and the AP turns his head toward the SO and spits towards his face. The SO, who still has his hands on the AP, raises the AP's arm, appearing to apply more pressure, and the AP yells "ow". The AP stops moving and the SO handcuffs him. The SO instructs the AP not to move and calls for a paramedic. The AP keeps saying "ow" and the SO removes the handcuffs and places the AP's hands in front of his body, telling him not to move.

The SO can be heard reporting on the police radio "I think I popped his elbow out". The SO continues to tell the AP not to move and that an ambulance is coming to check him out. The AP remains still and in the back of the police vehicle. Other officers arrive on scene, and the SO tells them what happened. The paramedics arrive and receive an update from the SO before administering care to the AP.

#### *Statement of the AP*

On July 4, 2025, the AP provided a statement to SiRT. He recalled attacking the group home staff that day, which is why the police showed up at the residence. He admitted he was not cooperating with the police as he was trying to hit the officer and was spitting at him. He stated when he was outside, he was throwing rocks at a window, and the officer arrested him. He stated he was afraid of the police when they arrived. When he was inside the police vehicle, he was yelling and hitting the inside of the car. The AP recalled resisting when the officer was attempting to put handcuffs on him, and he spit toward him. He stated that it was at this point where the officer twisted his arm and caused the injury.

#### *Medical Records of the AP*

Consent was provided to release his medical records to SiRT. These records indicate that the AP sustained a minimally displaced acute fracture with overlying soft tissue swelling at the lateral humeral condyle, which is part of the elbow joint. The AP had follow-up appointments for the injury and was required to wear a cast for approximately two months.

SiRT reviewed additional medical documentation provided related to the AP's cognitive condition and current medications. Records also outlined a history of multiple fractures and possible concerns with his bone density.

## **RELEVANT LEGISLATION**

### *Criminal Code:*

#### Protection of persons acting under authority

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

#### Excessive force

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

## **LEGAL ISSUES & ANALYSIS**

I must now assess the evidence to determine whether there are reasonable and probable grounds to believe a criminal offence has been committed. Reasonable and probable grounds is a standard lower than a balance of probabilities or beyond a reasonable doubt, and more than reasonable suspicion.

Section 25 of the *Criminal Code* permits a peace officer, acting on reasonable grounds, to use as much force as is necessary to enforce or administer the law, provided that the force used is not excessive based on all the circumstances. The Supreme Court of Canada in *R v Nasogaluak* [2010] 1 S.C.R. 206, at paragraph 35 stated:

Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances. As Anderson J.A. explained in *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude.

The SO had lawfully placed the AP under arrest. He had information from the 911 call that the AP was damaging property. When the SO arrived, he observed the AP next to a broken window, and his notes state the AP had a piece of asphalt in his hands. Following his arrest, the AP was placed in the back of the police vehicle. The AP walked towards the police vehicle, but when asked about his fanny pack, he became uncooperative, throwing it toward the police. He threatened to kill police. He then started punching and kicking inside the vehicle. The SO had originally placed him in the vehicle without handcuffing him, but due to the thrashing and kicking inside the vehicle, he decided to place the AP in handcuffs. The SO noted that he made this decision to prevent the AP from harming himself. The SO and the Civilian Witnesses confirmed that the SO had previous interactions with the AP and knew his behaviour. Once the SO attempted to handcuff the AP, the AP lunged toward the SO and spit towards his face.

Courts across Canada have consistently held that spitting is a form of assault and particularly reprehensible. This is especially the case when spitting in the face of another individual, as there are potential serious consequences, such as the transmission of communicable diseases. Even if there is no risk of infection, the health status of an individual is often not known at the time of the spitting. When I consider the behaviour of the AP, including the threats, the lunging, and spitting, it was reasonable for the SO to use additional force to gain control of the AP. Unfortunately, during this interaction the AP sustained an injury to his elbow. I have also considered the AP's medical history of multiple fractures and low bone density. However, it cannot be expected for the SO to know the AP's medical history when applying force. The SO applied force that was reasonable in the circumstances. When the injury occurred, the SO removed the handcuffs, re-positioned the AP's arm and requested medical care.

## **CONCLUSION**

My review of the evidence indicates there are no reasonable grounds to believe the Subject Officer committed a criminal offence.