**HAMILTON POLICE SERVICE**

**CONFIDENTIAL
INFORMATION REPORT**

|  |  |
| --- | --- |
| **TO:** | Chair and MembersHamilton Police Services Board |
| **BOARD MEETING DATE:** | September 26, 2024 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Sexual Exploitation of C.K.SIU File 24-OSA-140 |
| **REPORT NUMBER:** | 24-079 |
| **SUBMITTED BY:** **SIGNATURE:** | Frank Bergen, Chief of Police |

**EXECUTIVE SUMMARY**

On March 26, 2024, C.K. (the Complainant) contacted the Hamilton Police Service (HPS) to report a historical sexual assault. The Complainant lost her cell phone on August 8, 2005, and reported the matter to the HPS. The following day the Subject Official (SO) returned C.K.’s cell phone. C.K. and the SO started to exchange text messages and eventually the SO started to pick C.K. up to go out for food. The relationship between C.K. and the SO continued and they began to have sexual relations. C.K. believed that she was only 15 years old at the time she began having sexual relations with the SO. On one occasion the SO took C.K. to the Devil’s Punchbowl in Stoney Creek in a marked police cruiser and they had intercourse. C.K. said that there were several other occasions where the SO picked her up and they would go have intercourse. C.K. said that the relationship lasted for four years.

On March 27, 2024, the HPS notified the SIU of the allegations.

**INFORMATION**

Background

Provincial legislation requires that the Chief or designate shall cause an investigation to be conducted forthwith into any incident with respect to which the Special Investigations Unit (SIU) has been notified. The purpose of the investigation is to review the policies of, or services provided by the Police Service and the conduct of the police officers involved *(section 11(2) Regulation 267/10).* The Chief is mandated to report his findings and any action taken, or recommended to be taken, to the Board within 30 days after the SIU Director advises the Chief of Police that the results of the SIU investigation have been reported to the Attorney General. The Board may make the Chief’s report available to the public *(section 11(4) Regulation 267/10).*

On August of 2005, C.K. and the SO came to know each other. C.K. called the HPS to report her cell phone stolen. The SO investigated the stolen cell phone matter. The SO messaged C.K’s phone from his personal cell phone and was able to contact the person who stole the phone. After the SO was successful in getting back C.K.’s cell phone the two began to call and text each other with C.K. first making contact. C.K. and the SO eventually entered into a sexual relationship that lasted about four years. C.K. and SO were not exclusively dating, but they would get together on occasion to socialize and become intimate.

C.K. contacted the HPS to express concerns about her relationship with the SO. C.K. was a willing participant in the sexual acts but believed the SO conduct was inappropriate given that she was only 17 years old at the time.

C.K. was 17 years old at the time she reported the theft of the phone to HPS but turned 18 years old three months later.

On March 26, 2024, C.K. contacted the HPS report her concerns about her interactions with SO.

The SIU was notified, invoked their mandate and commenced an investigation.

Conclusion

The report prepared by the SIU Director Joseph Martino in relation to this incident is a public document and made available on the SIU’s Ontario Government website. In his report, Director Martino stated the following:

*“The offence that arises for consideration is sexual exploitation contrary to section 153 of the Criminal Code. The provision makes it a crime for a person who, inter alia, is in a position of trust or authority towards a person 14 to 17 years of age, to engage in sexual contact with that person notwithstanding the fact the person consented to the contact.*

*The Complainant says she was 17-years-old when instances of sex between the parties occurred. Her account of the incidents would give rise to a prima face case of sexual exploitation, but it would be unwise and unsafe to proceed on the strength of the Complainant’s evidence. The Complainant provided inconsistent descriptions of one of the sex acts in her statements to the SIU and to the HPS. There are other examples of discrepancies in the Complainant’s evidence.*

*The SO does not deny the sexual relationship with the Complainant, but is adamant that it began after she turned 18 in December 2005. In fact, he says he made it clear to the Complainant in their conversations that he would not be intimate with her until that time because of possible criminal jeopardy.*

*As there is nothing in the evidence to tip the scale in favour of the Complainant’s rendition of events, and some reason to doubt the reliability of her account, I am not satisfied that the evidence in its totality is sufficient to warrant being put to the test by a court. As such, there is no basis for proceeding with criminal charges in this case. The file is closed.”*

The Hamilton Police Service has undertaken an internal investigation into the actions of the SO. A review of the actions of the SO is required to determine his compliance with the Police Services Act of Ontario, at that time.

FB/W. Mason

c: Paul Hamilton, Deputy Chief – Support

 Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel