

regarding his handling of the SO's sidearm and did little to expound on this in his PROS report. Even though a year has passed since the incident investigators should consider interviewing Cpl. O'KEEFE to capture his observations of the SO when he first encountered him upon arrival at the scene, any spontaneous utterances the SO made, and to clarify the handling of the SO's firearm (the unloading, removal of the magazine, bullet count, whether a live round was ejected from the pistol when it was unloaded, etc.).

Because the SO was the sole witness to the incident, any spontaneous utterances, declarations of bodily and mental feelings and conditions, declarations explaining relevant events, or any statements which by their content create legal rights or liabilities statements made by him would be of paramount importance. Any spontaneous statements could be measured against the physical and forensic evidence for consistency and accuracy. Those statements could be useful in establishing correlations to facts and evidence obtained during the investigation. Observations of his physical appearance, movements, and demeanor of the SO at the scene could have value in piecing evidence together.

#### Re-enactments

A video recorded re-enactment of Cpl. HENSTRIDGE dropping a folder similar to the one held by the SO when the AP allegedly pointed a rifle at him was conducted. The folder was held by Cpl. HENSTRIDGE in a position with some minor variations when he dropped it.

The investigators should consider a re-enactment of dropping the .22 calibre rifle from the position allegedly held by the AP to determine that the proximity it comes to rest is consistent or plausible to the location the rifle was found in at the scene.

#### Examination of the AP's Chair

Ms. Meghan DUNPHY disclosed in her second statement that the AP's chair was a manually activated "lift chair" that could assist the person sitting in it to a standing position. ARROWSMITH made an inquiry with Cpl. BURKE whether there any documentation in the disclosure concerning the examination of the functionality of the chair and if it was engaged at the time of the shooting, that is, once the body was removed did it lift to a standing position. ARROWSMITH saw that in the third statement obtained from the SO on September 14, 2015, that the SO stated, "He (the AP) was in a seated position in the chair in the living room and he started to, also I guess, come up out of the chair." "And it's hard for me to say whether he was kind of getting' ready to stand up or just sittin' up – upright in the chair." ARROWSMITH questioned if this aspect was examined, and if the "lift" function had any influence on the movements of the AP and/or the trajectory of the shots fired by the SO during the incident, and if the results were contained in the disclosure provided to ASIRT. ARROWSMITH questioned whether the AP had engaged the "lift" function of the chair and was rising to a standing

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position when the SO fired his sidearm and whether the AP collapsed back into the chair causing the lift mechanism to disengage.

Cpl. BURKE disclosed that Sgt. Chris SAUNDERS (FIS) described the chair as a rocker / recliner and observed the chair both before and after body removal. On April 8, 2016, he spoke with Sgt. SAUNDERS and who advised that the chair was in the seated position at all times during the scene examination. He added that he moved the chair several times and it remained in the seated position. The chair did not lift into the standing position once DUNPHY'S body was removed. The chair was not examined for the purpose of functionality as a "lift chair." Although there is nothing to indicate the chair influenced the movements of the AP during the incident exploring this could serve to eliminate any question.

#### Interview of the SO

Cpl. HENSTRIDGE and Cpl. BURKE did not caution the SO or inform him of the jeopardy he faced. The *Royal Newfoundland Constabulary Regulations* and *Royal Newfoundland Constabulary Act*, unlike the *Province of Alberta Police Act* and *Police Service Regulations* does not have a provision for the designation of a SO that outlines his obligations and protections. Because this was a statutory investigation there was a default to the SO's rights under the Charter.

The investigation was on-going when the SO was interviewed, and it was not yet established if the actions of the SO were culpable or non-culpable. There was evidence at the scene, and disclosed by the SO during recorded conversations with RCMP OCC and RNC CC that a homicide had occurred. There were no independent witnesses or other evidence to support the SO's version in its entirety. The SO was not informed of his charter rights or given the standard police caution. He was not informed of the jeopardy he could face should evidence come to light that indicated culpability. It would have been prudent in this case to caution the SO prior to his interview. There was little introduction by Cpl. HENSTRIDGE or Cpl. BURKE at the beginning of the interview on April 6, 2015, as to the direction or intent of the interview. Cpl. BURKE confirmed that there was no "B" Division investigational guide that specifically dealt with an OIS. The RCMP should consider establishing a Provincial or National guide to address the protocol in investigating an OIS from a statutory investigation perspective, that addresses the circumstances if and when to consider cautioning an SO, and what his rights and obligations are. A guide, similar to the *Alberta Police Act*, would serve to create a consistent approach in dealing with OIS investigations.

Cpl. HENSTRIDGE shared information with the SO during his interview on April 6, 2015. The decision to do so was recorded in the Daily Log and was not hidden. The investigators rational for disclosing this information was to possibly give the SO some "relief." The SO asked whether or not the AP's rifle was loaded. Cpl. HENSTRIDGE told the SO that "there was one in the chamber." The SO added, "If it was loaded then I walk out of here feeling like I have saved my life." HENSTRIDGE told the SO, "You saved your life." Cpl. HENSTRIDGE also told the SO, "And I will say that I don't think you need

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to second guess anything that happened in that room.” “I don't know if I'm supposed to say that or not, Steve, but I think you can leave the room if you feeling that way.”

This was done during the early stages of the MCU investigation and was not delayed till its conclusion. Although ARROWSMITH did not construe this as outright bias to affect the outcome of the investigation, the objectivity used by the investigators in making this decision at such an early juncture in the investigation could be questioned. Barely 24 hours had passed since the incident and key pieces of evidence, in particular the scene and the application of shot location, had not yet been processed. Had the SO become a suspect, this disclosure in and of itself could have compromised the investigation had additional or conflicting evidence arisen that required a subsequent interview of the SO. In fact a second and a third interview with the SO was conducted. The purpose of the first interview was to get the SO's account of the incident. The decision of the MCU investigators to share information with the SO creates the optics that could question the RCMP investigation with respect to transparency, independence, and bias. The appearance of this to the public could create optics causing a question to be raised concerning bias in favor of the SO. During other interviews with witnesses there was reluctance by investigators to share some information with them as the investigation was on-going and they did not want to compromise or taint other potential witnesses. As an example, when Mr. DINN was interviewed by Cpl. HENSTRIDGE, Mr. DINN asked if certain aspects of the incident were true. Cpl. HENSTRIDGE stated that in the interest of maintaining the integrity of the investigation, he could not disclose any information. During the investigation it was evident that the SO shared his account with other police officers, who became witnesses as a result. The sharing of information with the SO could have had the potential of tainting witnesses that the MCU team was concerned with.

During the second interview with Ms. Meghan DUNPHY on April 8, 2015, Sgt. OSMOND disclosed the account of the SO to her. Details of the chain of events, as described by the SO, were presented to Ms. Meghan DUNPHY. This was done during the early stages of the MCU investigation and was not delayed till its conclusion. This had the potential of tainting witnesses that the MCU team had not interviewed yet, or identified as witnesses. A possibility existed, that had the investigation shifted to a criminal allegation, future evidence could have been tainted or hold-back evidence could have been compromised.