

OUTLINE OF FACTS IN RELATION TO CST JOE SMYTH'S THREAT AND RISK ASSESSMENT

Cst Joe Smyth's CV is Exh P-0118.

At the time of the shooting Smyth was the acting Sgt in charge of the Protective Services Unit (PSU). There was one other officer in the PSU, Cpl Doug Noel of the RCMP, who had been seconded to the unit and Smyth was his supervisor. Smyth was the only officer working during the Easter weekend (3 to 5 April 2015). Smyth's immediate supervisor was Insp Joe Gullage of the Criminal Intelligence Unit (CIU). The RNC Chief of Police, Bill Janes, also had direct contact with the Premier's Office mostly with respect to the protective detail.

The RNC's policy with respect to the PSU is Exh P-0031. Smyth assisted in drafting this policy.

Smyth's training specific to the PSU included training in 2012 with the OPP with an emphasis on bodyguard protection; and by then he had had some experience with close protection.

Conflict resolution and mediation was covered in his supervisory and mental health training.

With regard to threat assessment, in addition to the regular training all police officers receive, he did a two week course in Nova Scotia in 2009 for criminal intelligence. In 2012 in St. John's, NL he did a course put on by the Judicial Institute of British Columbia called Managing Targeted Violence.

Also attached is Smyth's occurrence report covering 3 to 5 April although in his numerous statements and evidence he expanded upon it (Exh P-0378).

On 3 April 2015 Smyth received what has been referred to as "the tweet of concern" from Donna Ivy, the media relations person in the premier's office. Part of her role was to monitor media and social media. Her supervisor was Donna MacLean, an assistant deputy minister.

The tweet of concern is found in emails 1 to 3 (Exhs P-0078, P-0076 and P-0079 respectively); the full chain of tweets is in Exh P-0009. Smyth did not see the full chain until after the shooting.

There is no written protocol or policy with respect to when anyone from the premier's office should pass information on to the PSU. Her instructions from the PSU were that if she ever felt there was a tweet of concern that she should pass it on even if she is uncertain as to its meaning or how serious it might be; and that no circumstance is too small to bring to the PSU's attention.

Her communication with Smyth that day is found in emails 1 to 3 as are some of Smyth's other attempts to obtain more information.

She testified that she was aware of Donald Dunphy's postings in social media but in the tweet of concern she felt she saw a higher level of frustration. That it is not her job to interpret but to pass on. If the Premier is named or tagged, she is to bring the matter to the Premier's attention. She

did not take the tweet of concern as a threat. She was merely flagging something for review by the PSU. The tone and language was different from what she was used to.

Smyth did not see the tweet of concern as a threat but he felt that it warranted further investigation.

In an attempt to identify Donald Dunphy and find an address, Smyth contacted a Mr. Ralph Tucker, chair of Workplace NL - formerly the Worker's Compensation Commission and he put Smyth in contact with Tom Mahoney, an Executive Director with Workplace NL who worked in security (see emails 4 Exh# unknown – will keep looking) and 5 Exh P-0090).

Mr. Mahoney was able to identify who the Donald Dunphy was through Workplace NL files and provided an address but Smyth had already found out this information from motor vehicle registration.

Mr. Mahoney, who had not seen the tweet of concern, advised Smyth in a discussion that Dunphy had a long history with Workplace NL, that there were many interactions with staff which caused some concern, and he had posted a very large number of tweets. He added that Workplace NL had been monitoring Dunphy's social media for some time but had not taken any action.

Smyth did a cursory review of hundreds of Dunphy's tweets for about an hour. He found a long standing unresolved grievance or grievances but no specific threats or any kind of violence undertaken although there were tweets suggestive of violent ideation; and while he did see an escalation in Dunphy's attitude, this review did not add much to his threat and risk assessment. Dunphy did, however, name individuals which implied possible targeting and the tweets did show disconcerting comments directed towards elected officials.

Dunphy had indicated in some of his tweets that Workplace NL was responsible for his wife's death; that he hoped that everyone who worked for Workplace NL would die; that injured workers lived worse than wild animals in caves; he referenced other cabinet ministers not in the tweet of concern; that all Newfoundland and Labrador politicians should be tarred and feathered; and in one tweet there was the following quote: "the most dangerous creation of any society is a man who has nothing to lose." In another tweet Dunphy says "now they murder us and it's better to shoot yourself".

Smyth saw some suicidal and violent ideation in Dunphy's tweets but that it was not enough for him to believe there was an immediate concern for Dunphy to cause harm to himself but it was part of the reason he went to see Dunphy. He also found some elements which were not founded in reality or could not be true (such as Workplace NL killing his wife).

Smyth contacted the RNC communications centre and requested, essentially, a cursory background check on Mr. Dunphy which included police interactions, Canadian firearms registry, fingerprints, a criminal record check, a warrants check, any weapons and any history of violence – all of which were negative.

Smyth checked motor vehicle registration and did a driver's licence check.

Within the queries by the person in the communications center a caution "V" for violence came up but this was not passed onto Smyth nor was any criminal history. There is an issue before the Commission regarding why the person at the communications centre did not pass on the caution for violence and drugs nor that he was charged with uttering threats (dropped and replaced by a peace bond), but that is not an issue for you.

With respect to pursuing tweets of concern and similar such matters brought to his attention, Smyth indicated that it is their practice (PSU) to err on the side of caution and that some form of threat and risk assessment is conducted in all cases.

Mr. Dunphy lives in the area policed by the RCMP and so Smyth contacted them and spoke to a Cst. Cox. Cox offered to go with Smyth or meet him at Dunphy's home and indicated to him, based on his PROS search, that Dunphy had been charged with uttering threats with respect to a family incident and that the charge was dropped when Donald Dunphy agreed and signed a peace bond; and that he had been convicted of drug offences related to marijuana although he did have a permit for medical marijuana use and cultivation.

Smyth declined Cox's offer to accompany him and decided to go out and visit Dunphy since that was, in his opinion, the best if not the only way to interpret the tweet of concern and ascertain Dunphy's intentions. He did not think it necessary for his own safety to have a second officer and he felt that a uniformed police officer in a marked police car may not help him with his interactions with Dunphy.

Smyth went to Mitchell's Brook in an unmarked police vehicle (black SUV), wore plain clothes and carried his sidearm under his jacket and out of sight as required by policy.

Smyth had attempted to contact Dunphy by phone but the calls did not go through.

When Smyth arrived at Dunphy's home, he saw a sign which stated that he was living in poverty since 1984 and political officials were not welcome, statements somewhat similar to what he had seen on Dunphy's social media postings. Smyth knocked on the window and looked in. He could see in the house and there was a great deal of garbage and many cats. He indicated that while this gave him some heightened awareness in terms of his concern for this person, it did not change anything regarding his threat and risk assessment. Smyth always felt that there was a low risk to him personally and he saw no change in that upon seeing Dunphy's home. He did, however, begin to have some concerns over potential mental health issues for Dunphy.

Smyth went to visit a neighbouring home which was occupied by Dick and Debbie Dunphy, Donald Dunphy's brother and sister-in-law. They spoke of family disputes over property, his cats and the state of his home. They did not indicate any propensity for violence and when asked if Dunphy had a gun, said no and that he was not a hunter.

Smyth concluded that he had not identified anything that caused him to believe Dunphy was on a pathway to violence both with respect to his own safety and the named government officials in the tweet.

Smyth had not come to any conclusions about Dunphy other than he should speak to him to help in his interpretation of the tweet of concern and what the threat and risk level was to any members of government. With respect to the family relationships, he felt that they are always open to interpretation and he needed much more information before he could come to any conclusions regarding those issues. He still felt, notwithstanding everything that he had learned, that the risk to him was low.

Smyth did not have his notebook with him and admitted that he did not make appropriate notes on the matter at the time. He indicated that he was still in the early stages of his threat and risk assessment when he went to see Dunphy and that is why much of the information had not been documented up to that point nor had he reached the point of finalizing any threat or risk assessment. He would, however, have entered this information as a narrative summary at a later time