

investigation was concluded. If I am reading Ms. Meghan Dunphy's April 8 statement correctly Sgt. Osmond, at the conclusion of the interview, asks her to keep what she has been told confidential.¹³¹

It was my normal practice as an SIU investigator to request both involved police officers and civilian witnesses not to discuss anything about the interview and/or the investigation with any party until the investigation was concluded, including the reasons why. Information being shared may adversely impact the integrity of an investigation, even when done in good faith, as any law enforcement officer knows. While there is little an investigator can do to enforce any such request, should it come to the investigators attention that information has been shared, then that may impact how much weight the investigator gives to the evidence of a particular witness.

In this case, A/Sgt. Smyth shared the information that there was a round in the chamber of the gun found in the room less than 2 hours after leaving the interview, according to his cell phone data.. Sharing information of this kind is not a good thing, from an investigator's perspective, as mentioned above.¹³²

- **Objectivity**

A thorough and objective investigator would not have been as friendly with A/Sgt. Smyth during the interview. He or she would not have given away as much information during the course of the interview as the RCMP investigators did, where the only apparent purpose, as far as I can see, was to provide solace to A/Sgt. Smyth, as opposed to a legitimate investigative purpose. They told him that:

- that the gun found next to Mr. Dunphy was loaded.¹³³
- that there was '*nothing*' in the video cameras located at Mr. Dunphy's property¹³⁴
- that Mr. Dunphy '*had been busted before.*'¹³⁵
- that Mr. Dunphy had smoked '*a lot of pot*'¹³⁶
- that '*nothing else has come to light*' when A/Sgt. Smyth asked about anything else being found in the house, including any other weapons.¹³⁷

¹³¹ Statement of Meghan Dunphy on April 8, 2015, at p91.

¹³² As noted above, the information was released to the public by the RCMP on April 7, 2015.

¹³³ Cpl. Burke stated during his interview with to Commission counsel that while he had never provided a subject of an investigation with critical information at such an early stage of an investigation previously, he did not do so because A/Sgt. Smyth was a police officer (at p307 onward). He also stated, as far as I understand the transcript, that there was no investigative purpose in providing this information (at p315). In contrast, when Ms. Debbie Dunphy asked Cpl. Henstridge if Don had a gun, he declined to answer to ' maintain the integrity of the investigation'. Statement of Ms. Debbie Dunphy, April 5, 2015 at p7

¹³⁴ Interview of A/Sgt. Smyth at p60

¹³⁵ *ibid* at p63

¹³⁶ *ibid*

¹³⁷ *ibid*

- that *'the public doesn't really understand the pressure we are under'* when discussing shooting.¹³⁸ The use of the word *'we'* is itself troubling, from an objectivity perspective.

There is no issue about being empathetic with a witness during an interview, as long as it is done in an objective manner, for a legitimate investigative purpose. However, it is not good investigative practice to share information that may impact the integrity of a homicide investigation with the subject of that investigation, at that stage of an investigation. It gives the subject an opportunity to amend or alter his or her story. It also increases the risk of evidence being shared. The investigators lose control of information, including how it is disseminated and how it is used strategically. That is a bad thing, from an investigators perspective.

It appears that the investigators had formed some kind of conclusion, at least based on my reading of the transcript. An example of this is at page 58 of A/Sgt. Smyth's statement where Cpl. Henstridge, in response to a question about whether the gun was loaded, stated that: *"You saved your life."*

With all due respect to Cpl. Henstridge, this was not an appropriate comment, as Cpl. Burke himself later acknowledged.¹³⁹ It goes beyond telling the officer that the gun was loaded. It implies that Mr. Dunphy was going to use it and that A/Sgt. Smyth's actions were justified.

Words to the effect of, or implying that *'it's a clean shoot'*,¹⁴⁰ should never be said to anyone involved in a situation such as this until the conclusion of an investigation, even if the evidence may be pointing that way. A thorough and objective investigator would not do that, however frustrating it may be on occasion.

Another example of questionable objectivity in the interview is when Cpl. Henstridge tells A/Sgt. Smyth that: *"I will say that I don't think you need to second guess anything that happened in that room. I don't know if I am supposed to say that or not, Steve...."*¹⁴¹

With the greatest of respect to Cpl. Henstridge, a thorough and objective investigator would not have said that, in these circumstances. That he may ultimately have been right is not an excuse, at least in my view.

A/Sgt. Smyth appears to have left the interview feeling that the investigators were on his side. Shortly after the interview concluded, he sent messages from his cellphone, which may suggest that he had been, or felt he had been, given a clean bill of health by the investigators.

¹³⁸ *ibid* at p69

¹³⁹ Cpl. Burke's interview with Commission counsel at p330, though to be fair he also states that it was not said because A/Sgt. Smyth was a police officer.

¹⁴⁰ *'Clean shoot'* is police parlance in Ontario and other jurisdictions for a police shooting where the officer is justified in shooting.

¹⁴¹ Statement of A/Sgt. Smyth at p66

He sent an SMS message about 20 minutes after the interview that read as follows:

“ Thanks Bernie, let anyone know that I just finished my interview with the RCMP who were fully supportive of the action taken” ¹⁴²

At 7 p.m., there were a series of SMS messages between A/Sgt. Smyth to a friend, which read as follows:

Interview go OK?

Yup, veery (sic) well , they were perfect actually and very supportive

Excellent, very glad to hear

Were very complimentary of how I did things. Said I was by the book. Was settling for sure.

A few minutes later A/Sgt. Smyth messaged the same friend, in response to a message he had received from that friend:

Thanks man! Monty confirmed he had a round in the chamber too. Pretty unsettling ¹⁴³

Later that evening he sent another SMS message to someone:

Yeah for sure, the whole thing sucks but its starting to set in that the Fucker Tried to shoot me. Especially when rcmp confirmed he had a round in the chamber.’ ¹⁴⁴

The tone of the interview drew some criticism from Sgt. Osmond. During his interview with Commission counsel, Cpl. Burke advised that Sgt. Osmond told him immediately after the interview that “*we may have been too friendly with Joe Smyth.*”¹⁴⁵ This was not documented anywhere, as noted elsewhere in this report.

To sum up. Perception is crucial. As noted at the beginning of this report, Cpl. Henstridge rightly stated during the interview when discussing public and media perceptions about the shooting:

¹⁴² I do not know who Bernie is.

¹⁴³ The use of Cpl. Henstridge’s first name may raise an eyebrow. Not a big thing, but I cannot imagine any subject officer calling an SIU investigator by his or her first name in these circumstances. That a subject officer feels comfortable enough to do so may feed into the perception of an over-friendly relationship between the investigators and the subject officer.

¹⁴⁴ Cell Phone Data April 6 8.41 pm with 709 589 8463

¹⁴⁵ Interview of Cpl. Burke by Commission counsel at p300

*‘....you are with the RNC and we are with the RCMP so there’s – there’s a big cover up or whatever. That’s what people say.’*¹⁴⁶

A thorough and objective investigator should have recognized that an over-friendly approach be it during an interview or during an investigation, may feed into that perception.

- **Keep control of the process**

To the greatest extent possible, a thorough and objective investigator should keep control of the interviewing process. That includes when and where it takes place, and who is present, how long it lasts for, how it is recorded and so on.

Other than the delay in conducting the interview where, as mentioned above, the RNC Association appear to have been allowed to determine when their member would be interviewed, the investigators did a good job in this respect. Virtually all interviews were audio recorded and A/Sgt. Smyth’s were also videoed, as were his reenactments.

- **Active listening**

It is not unusual for interviewers not to listen to what they are being told. In this case, the interviewers were certainly listening to what A/Sgt. Smyth was saying.

Further interviews

There is nothing wrong with conducting follow-up interviews, as several of the RCMP investigators noted in their interviews with Commission counsel. Generally, the purpose of such interviews is to address inconsistencies and/or seek clarifications, as opposed to rehashing the entire event again.

A/Sgt. Smyth was interviewed on several further occasions, as noted elsewhere in this report. As far as I can see, he was not asked about anything substantively new. For example, I have not found any record of him being interviewed about information found on his cell phone, including the numbers called while he was at the scene.

The reenactments also constitute interviews. I have read the transcript of the second reenactment. A/Sgt. Smyth went into detail about what happened.

A/Sgt. Smyth was interviewed by Saskatoon Police Service officer(s) who conducted an internal investigation on behalf of the RNC in June 2015.

A/Sgt. Smyth was also interviewed on August 11, 2015 to clarify the use of the word ‘couch’ in the April 6 statement, after concerns raised by the Independent Observer. He was also interviewed on September 14, 2015, after clarification was requested by the

¹⁴⁶ Interview of A/Sgt. Smyth April 6 2015 at p71

That said, given the stakes, an investigation into a police shooting has to be of the highest quality. As the ASIRT report also noted, *'These investigations are always sensitive, high-profile, potentially complex and important not just to the individual case but also to the maintenance of public confidence in policing.'*¹⁵⁹ Investigations of allegations of police shootings that are - or appear to be - less than thorough and objective, do no one any favours, even though they may reach a correct result. They leave families distraught and suspicious, the public and media skeptical and the police community defensive.

In many respects this investigation was conducted thoroughly and objectively, at least in my view. There is no evidence that I can see of a deliberate attempt to suppress or destroy evidence that was central to the only issue the RCMP investigators had to investigate - was A/Sgt. Smyth's use of force criminal or not?

However, in some respects the investigative process fell short of meeting the standards expected of a thorough and objective investigation into a police shooting investigation, as outlined above.

In particular, I do not think the investigation gave the appearance of being impartial in several areas. From Cst. X discouraging A/Sgt. Smyth from talking, to unquestioning acceptance of the rationale for the delay in conducting the interview, as well as the failure to probe and the inappropriate sharing of information during the interview when it did occur, the initial reluctance to request the second reenactment and the inappropriate April 7 media release, for example. There is evidence that the investigators were overly empathetic and that they had made up their minds about whether this was a clean shoot, before they had gathered all the evidence.

That said, the investigation did ultimately cover the vast majority of bases. The investigators had the luxury of a very cooperative subject officer, albeit a luxury that they did not take full advantage of. The processing of the scene was thorough, notwithstanding the subsequent issues over scene security, the glasses, the pen and the cartridge that was found. The reenactment was a very good idea. The investigation was reasonably well documented. Family liaison was good. The appointment of an I/O and asking an outside agency to review the investigation were good ideas. The use of experts was good. Many investigative avenues were identified and pursued.

Any flaws in the investigation do not necessarily mean that the investigation came to the wrong conclusion. A flawed investigation can reach the right outcome. However, 'no harm, no foul' is not the standard that a thorough and objective investigator would want to be applied to his or her homicide investigation.

The more thorough and objective an investigation of lethal use of force by police officers, the more faith all involved will have in the outcome. The families can take comfort that the relevant facts have been gathered, as can the public. An officer, if cleared, can then hold their head up high in the community, confident that they have been exonerated as

¹⁵⁹ ASIRT report at p9

