

SUMMARY OF FACTS

1. Facts

On April 5, 2015 Joe Smyth was the Acting Sergeant in charge of the Protective Services Unit. The PSU, a unit of the Royal Newfoundland Constabulary (RNC), was responsible for close protection for the Premier and other elected officials and for intelligence gathering. At the time in question there was one other officer in the PSU and that was Corporal Doug Noel of the RCMP. Corp. Noel was seconded to the unit and Cst. Smyth was his supervisor. In 2013 there had been 4 full-time members in the PSU but that was reduced to 2 members by 2015.

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

The following are references in the transcript to the testimony of Cst. Smyth which might be of assistance to you:

- (1) training, experience, background and mandate of PSU – January 16, 2017 at pp. 25-39 and pp. 71-92;
- (2) steps taken prior to visiting Mr. Dunphy – January 17, 2017 at pp. 2-86;
- (3) cross-examination on these issues – January 23, 2017 at pp. 37-76.

2. Training

Cst. Smyth's CV is contained in Exhibit P-0118.

Cst. Smyth's training for the PSU included training in 2012 with the Ontario Provincial Police (OPP). This training focused on close protection of dignitaries and by that time Cst. Smyth already had some experience in the field.

In addition to the basic training in threat and risk assessment that all police officers receive as part of their police studies, Cst. Smyth completed a two week criminal intelligence course in Nova Scotia in 2009. Cst. Smyth also completed a 5 day course in 2012 taught by Inspector Mark Beaulieu of the Justice Institute of British Columbia entitled 'Managing Targeted Violence' which specifically focused on risk and threat assessment. Cst. Smyth referred to this manual throughout his testimony. The manual is entered into evidence as P-0218.

3. Events of April 3 - 5, 2015

Cst. Smyth's General Occurrence Report which provides an account of the events of April 3-5 is contained in Exhibit P0128. This document was prepared on the morning of April 6 and less than 24 hours after the shooting. Later that day Cst. Smyth gave a lengthy statement to the RCMP in which he outlined in more detail the circumstances surrounding the shooting (Exhibit P 0119). On April 8 and 10 Cst. Smyth engaged in video re-enactments at the scene. The first recording

was lost as a result of equipment malfunction but there is a video recording and transcript of the second re-enactment (Exhibit P0120 is the transcript and the video can be found under the exhibits for January 24, 2017 as P0329).

(a) April 3, 2015 - "Tweet of Concern"

On April 3, 2015 Cst. Smyth received an email from Donna Ivey, a communications assistant in the Premier's office. Part of Ms. Ivey's role was to monitor media and social media. The subject line of Ms. Ivey's email was "Tweet of Concern" and stated simply, "This was posted on the @PremierofNL account by 'Donahue2DonDunphy' (@sculpen)" followed by a copy of the tweet in question posted to social media by Donald Dunphy. Relevant emails are found at Exhibits P-0078, P-0076 and P-0079 respectively and the full chain of tweets can be found at Exhibit P-0009. A full copy of the Dunphy tweets are attached hereto as Schedule "A".

There was no written protocol or policy in place which dictated what information staff in the Premier's office should pass on to the PSU or the process for the providing the information. Instructions from the PSU were that if any staff member felt there were communications from the public which were worrying then staff ought to alert the PSU, even if the meaning or intent of the communication was uncertain. The instructions emphasized that there were that no circumstances too minor to bring to the PSU's attention if it caused staff any concern.

Ms. Ivey testified that she was aware of Donald Dunphy's postings on social media but the tweet of concern exhibited a higher level of frustration and used stronger language. The tone and language was different from what she was used to. It was not Ms. Ivey's role to interpret the tweet but her role was to simply pass it on to the PSU. Ms. Ivey did not take the Tweet of Concern to be a threat but she flagged it for review by the PSU.

(b) Cst. Smyth's Investigation

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

In an attempt to identify and locate the individual behind the tweet, Cst. Smyth contacted Ralph Tucker, chair of Workplace NL - formerly the Worker's Compensation Commission. Tucker put Cst. Smyth in contact with Tom Mahoney, Executive Director of Workplace NL who, among other roles, was responsible for corporate security at Workplace NL.

Mr. Mahoney identified Donald Dunphy as the writer of the Tweet of Concern. Through Workplace NL files Mahoney confirmed the address for Mr. Dunphy.

Mr. Mahoney, who had not seen the Tweet of Concern, advised Cst. Smyth in their discussion that Mr. Dunphy had a long history with Workplace NL, that there were many heated interactions with staff which caused some concern, and that Mr. Dunphy posted a large number of tweets which addressed his grievances with government and Workplace NL. Mr. Mahoney added that Workplace NL had been monitoring Mr. Dunphy's social media for several months prior to the conversation with Cst. Smyth but they did not contact the police.

On Saturday, April 4, 2015 Cst. Smyth conducted a review of Mr. Dunphy's tweets over the previous year which took him about an hour. He found long-standing, unresolved grievances with government and with Workplace NL. He did not note any specific threats or any kind of violence undertaken, although there were tweets suggestive of violent ideation. Cst. Smyth testified that the tweets contained disconcerting comments directed towards elected officials and Workplace NL.

For example, Mr. Dunphy wrote 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, and that injured workers lived worse than wild animals (copies of these tweets can be found in Exhibits P-0085, P-0110). He referred specifically to government cabinet ministers and tweeted that all Newfoundland and Labrador politicians should be tarred and feathered (Exhibit P-0112). Also, there were numerous retweets and on February 16, 2015 he retweeted the following quote: "The most dangerous creation of any society is a man who has nothing to lose." (Exhibit P-0113). In another tweet dated March 3, 2015 Dunphy wrote, "Now they murder us and it's better to shoot yourself" and that injured workers should carry a gun so that they can shoot themselves (Exhibits P-0114, P-0115). Also, several of his tweets in the preceding months were directed at Premier Paul Davis and Deputy Premier Steve Kent (i.e., Exhibit P-0111).

Cst. Smyth testified that he noted suicidal and violent ideation in Mr. Dunphy's tweets but determined there was no immediate concern that Mr. Dunphy would cause harm to himself or others. He also testified that there were elements of Mr. Dunphy's tweets which were not founded in reality or could not be true, such as Workplace NL killing his wife. While Cst. Smyth noted an escalation in Mr. Dunphy's attitude his review did not add much to his threat and risk assessment but he concluded that he needed to do further investigation, including speaking personally to Mr. Dunphy.

With respect to investigation of the Tweet of Concern and similar matters brought to his attention, Cst. Smyth stated that it is the practice of the PSU to err on the side of caution and that officers conduct some level of threat and risk assessment in all cases.

On April 5, 2015 Cst. Smyth called the RNC Communications Center and asked for a motor vehicle registration search to identify Mr. Dunphy and determine his address. Cst. Smyth also contacted the RNC communications centre on April 5, 2015 and requested various background checks on Mr. Dunphy which included a Canadian firearms registry search and a criminal record check, which would disclose warrants, weapons offences and any history of violence – all of which were negative. Within the queries conducted by the person in the communications centre a caution "V" for violence came up but Cst. Smyth was not informed of the same.

As Mr. Dunphy lived in an area policed by the RCMP Cst. Smyth contacted the Holyrood Detachment on his way to Mitchell's Brook on Sunday, April 5. He spoke to Cst. Adrian Cox who offered to go with Cst. Smyth to visit Mr. Dunphy. Cst. Cox also conducted a PROS search which showed that Mr. Dunphy had at one time been charged with uttering threats but the same was dropped after he signed a peace bond. The PROS search for Cst. Smyth also showed that Mr. Dunphy had been convicted of drug offences related to marijuana but he had a permit for medical marijuana use and cultivation.

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

Cst. 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.

When Cst. Smyth arrived at Mr. Dunphy's home he saw a sign which stated that he was living in poverty since 1984 and political officials were not welcome, statements similar to what he had seen on Mr. Dunphy's social media postings. Cst. Smyth knocked on the window and when he looked in he could see a lot deal of garbage. 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. He did, however, begin to have some concerns over potential mental health issues for Dunphy.

Prior to deciding his next step, Cst. Smyth tried to call Mr. Dunphy by telephone but there was no cellular coverage and the calls did not go through. Cst. Smyth then went to visit a neighbouring home which was occupied by Dick and Debbie Dunphy, the brother and sister-in-law of Donald Dunphy. They spoke of family disputes over property, his cats and the state of his home. They did not indicate that Dunphy had any propensity for violence and when asked if Dunphy had a gun they said they did not know but that he was not a hunter.

Cst. Smyth testified that he had not come to any conclusions about Mr. Dunphy other than he should speak to him to help in his interpretation of the tweet of concern and to determine if there was a threat level to members of government. Even with the information provided by Dick and Debbie Dunphy, Cst. Smyth still felt that his personal risk was low.


Cst. 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 Mr 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.


In conclusion, prior to attending Mr. Dunphy's house on Easter Sunday, Cst. Smyth took the following steps:


- (1) He reviewed the full string of tweets sent by Donna Ivey on April 3, 2015 and sent e-mails to various staff members in the Premier's office to determine if they had any information relating to Donald Dunphy;
- (2) On Saturday, April 4 Cst. Smyth spent approximately 1 hour reviewing Mr. Dunphy's Twitter account for the previous year;

- (3) On April 4, 2015 Cst. Smyth conducted ICAN searches trying to locate individuals who could potentially provide him with information about Mr. Dunphy (Ralph Tucker of Workers Compensation and Paddy Daley, a local talk show host). On this same date Cst. Smyth decided to visit Mr. Dunphy the next day;
- (4) On April 5, 2015 (Easter Sunday) Cst. Smyth, on his way to Mitchell's Brook, phoned the RNC Communications Center and asked to have the following searches completed – Motor Vehicle Registration, Canadian Firearms registry, criminal record check. Cst. Smyth was informed that there were no registered firearms and no criminal record;
- (5) Cst. Smyth then phoned the RCMP and, as previously outlined, asked to have a PROS search completed and asked Cst. Cox if he was familiar with Mr. Dunphy;
- (6) When Donald Dunphy was not home Cst. Smyth went to the neighboring home, which happened to be the residence of Dick and Debbie Dunphy;
- (7) Prior to going to Dick and Debbie Dunphy's Cst. Smyth attempted to telephone Donald Dunphy but there was no answer.

CIDDD Exhibit P-0009 Page 1
Tweets Media Favorites

 **Donahue2DonDunphy** @sculpen 3d
@SandyRCollins @PremierOfNL
@ShermanDowney won't mention
names this time,2 prick dead MHAs
might have good family members I
may hurt #nlpoli
1 4

 **Donahue2DonDunphy** @sculpen 3d
@SandyRCollins @PremierOfNL
@ShermanDowney he got them
before they got to enjoy the pension
they didn't deserve,i won't mention
#nlpoli
1

 **Donahue2DonDunphy** @sculpen 3d
@SandyRCollins @PremierOfNL
@ShermanDowney I hope there is a
God,I think I c him work on two
garbage MHAs who laughed at poor
ppl #nlpoli

< Donahue2DonDunphy 27.5K Tweets

CIDDD Exhibit P-0009 Page 2
Tweets Media Favorites



Donahue2DonDunphy @sculpen 3d
@SandyRCollins @PremierOfNL
@ShermanDowney but why would u
care after putting in hard time getting
that poor mans MHA pension,I hope
#nlpoli

1 1




Donahue2DonDunphy @sculpen 3d
@SandyRCollins @PremierOfNL
@ShermanDowney put on sun glasses
& take out the ear plugs u might c &
hear ppl crying for help,but why
#nlpoli

2 1




Donahue2DonDunphy @sculpen 3d
@SandyRCollins @PremierOfNL
@ShermanDowney is that why u can't
c problems of seniors & injured
workers,the sun is in your eyes,put
#nlpoli





Sandy Collins @SandyRCollins


3d

Traveled with @PremierOfNL in his car today...guess what CD was playing? @ShermanDowney The Sun in Your Eyes. #ListenLocal




 11

 26



 Donahue2DonDunphy retweeted



Achim Nowak @AchimNowak

3d

I have no special talents. I am only passionately #curious. - Albert Einstein #passion #inspiration #quotes #success

