

**REPORT INTO THE FATAL SHOOTING  
OF DONALD DUNPHY  
AT MITCHELL'S BROOK,  
NEWFOUNDLAND AND LABRADOR  
January 11, 2016**

**By: The Honourable David G. Riche  
Independent Observer**

**DECISION OF RICHE, HON. DAVID**  
**INDEPENDENT OBSERVER**

The facts of the case as presented to me in ten volumes of documents and other materials prepared by the RCMP were given to me for review. I also had an opportunity to visit the site of the shooting and did so on three different occasions so that a video could be taken of it, and one with Meghan Dunphy and her legal counsel, Erin Breen. Before proceeding with my review of the evidence, my findings and conclusions, I wish to compliment the RCMP for their thorough investigation in this matter. And in particular, I was impressed with the work of Constable Nippard in his interviews of witnesses. I was also impressed with the work and preparation given to me by Corporal Steve Burke who I worked with very well throughout. That is not to say that in the end my conclusions and findings may not be exactly the same as those determined by the RCMP.

My job as independent observer requires me to review the evidence and to make my conclusions and my interpretations of what has been presented.

I will start at the beginning which brought this matter about, ending up with Donald Dunphy being shot four times by an RNC officer attached to the Premier's detail. As there were no witnesses to the event other than the statement given by Joseph Smyth, who was the shooter in this case, I have to rely on what he said together with what I found from other evidence at the scene and obtained from other people who were familiar with the deceased and Smyth.

The problems for Donald Dunphy commenced around 1984 when he was injured in an industrial accident. He was crushed between two machines. This started his dealings with Workers' Compensation which continued on and off for a period of 30 years. It appears from the evidence that he was given different directions to take and was subject to a number of promises. This resulted in considerable frustration for Dunphy and he got angry with the government.

In order to explain this, I will now go to the statement obtained from the Minister of Health and Deputy Premier when he was questioned by Constable Nippard of the RCMP.

Dunphy had contacted Minister Steve Kent on many occasions. In 2014 he signed a consent to allow Minister Kent's office to make inquiries at the Workers' Compensation Commission on his behalf. This lasted for some six to nine months.

In the latter months, Dunphy became hostile online, feeling as though he wasn't getting any help from anybody. Minister Kent eventually blocked him from Twitter due to hostility and threatening tone of his posts. Dunphy's compensation claim was decades old and very difficult to assist. So therefore, it was taking a long time.

Minister Kent would not send anybody from his office to visit Dunphy because his correspondence showed hostility. Minister Kent stated it was clear that Dunphy wasn't well and needed help. Minister Kent was trying to get him help from Workers' Compensation.

In the interview with Minister Kent he acknowledged Joe Smyth was known to him for about 20 years. Although they never socialized, they were friends during school years. Minister Kent felt that Dunphy had been harassing him for months. He stated he could never recall speaking to Smyth about Dunphy before or after the shooting.

In December 2012, Dunphy's matter was referred to Workers' Compensation. Dunphy felt he was getting the runaround. It was suggested that he be given retraining; however, Dunphy complained that his pay assistance he was getting was not enough and he was in a poor financial condition. Then in December 2012, Dunphy came to the conclusion that Minister Kent was giving him the runaround and not giving him the answers even though Minister Kent was Deputy Premier. In a tweet he sent to Minister Kent, Dunphy stated that Minister Kent was giving him just another runaround and not helping him at all. He was told a month before that Minister Kent had asked a person by the name of Connolly to call Dunphy.

Then as late as January 7, 2015, Dunphy sent a tweet to Minister Kent and stated that Minister Kent had lied again and that he had been lied to by politicians for over 30 years. Minister Kent asked Connolly to follow up.

The matter was then referred to a Mr. Rob Stead who contacted Dunphy because Dunphy had been sending a spiteful twitter. This was the first time he had a runaround for a year. Ms. Connolly replied to Minister Kent that she was trying to contact Mr. Stead without success.

Then on February 11, Mr. Stead contacted Dunphy and told him there was little information available for his work service with respect to his claim against the Department of Transportation. Ms. Connolly didn't feel anything could be

done. Mr. Stead recognized Dunphy's problem pre-dated his WST claim. Mr. Stead spoke with Dunphy that morning advising that he would need more information regarding the 1984 injury. Dunphy's reply was that the bulk of the information was with his union representative, the UFCW. An appointment was made for February 20, 2015. Then to cause further delay, Mr. Stead was informed on the 19th that he had been terminated and was no longer with Workers' Compensation. The meeting with Dunphy was therefore cancelled. As a result, Dunphy was completely frustrated. A month before, Dunphy had sent a message to Kent stating that the Workers' Compensation were just giving him a runaround and they were delaying this caused by the government until a new government takes over. "They will do nothing but talk about injured workers but never get this cruelty changed because they have too much business people in the government who won't help injured workers."

Dunphy's file was then dealt with by a Melvin Strong who sent a note to the Minister's assistant and advised that he had discussed the file with the worker advisor and they both agreed Dunphy's case was unique. It required action 30 years ago. He was prepared to contact the Executive Director and present this case, and would advise of the outcome. Dunphy was then set up for another meeting with a Ms. Bernie Coffey who would submit his request to Workers' Compensation on his behalf if it reached the appeal stage. The file was then passed on to Strong. Dunphy then complained of getting the runaround again in his message dated November 24, 2014.

Then there was a lengthy exchange of messages from Dunphy to the office of the Deputy Premier and the people at Workers Compensation and no decision made by anyone. He kept saying that they were going to meet with him or do something for him but nothing materialized. No sound from Workers' Compensation as of the end of November, 2014. Dunphy kept trying to make contact and receive replies from Workers' Compensation but there was nothing up to the end of that year. Then, as I have stated, in February he was advised that the Workers' Compensation had met with the union representative and they were trying to find particulars and parts of his file. This was dated February 11, 2015.

Sometime in February 2015, Dunphy had to go to the hospital for some surgery and after he came out he was looking after his daughter's house on the Salmonier Line while she and her common-law husband went on a holiday. They came back on the Wednesday before Good Friday and then he returned to his house. While they were gone, he was back and forth between the two houses. They were about five or six miles apart.

It was at this time that Dunphy placed a message over Twitter where he referred to Minister Sandy Collins and Sherman Downey, and made the statement: "Won't mention names this time two prick dead MHA's might have good family members I may hurt NLPOLI". The next twitter says: "Sandy Collins Premier of Newfoundland Sherman Downey he got them before. They got to enjoy the pension they didn't deserve. I won't mention NLPOLI". And then the third one was "Sandy Collins@Premier of Newfoundland@Sherman Downey I hope there is a God. I think I see him work on 2 at Sandy Collins but why would you care after putting in hard time trying to get that poor man's MHA pension. I hope". The next twitter is "they should take out the earplugs, you may hear people crying for help". Then he adds another which says "Sandy Collins@Premier of Newfoundland@ Sherman Downey is that why you can't see problems of seniors and injured".

When this twitter was posted, it was seen by one Donna Ivey who was special assistant to Communications Director with the Office of the Premier. She believed that this message was threatening and she then referred it to the police who were part of the Premier's detail. This detail was composed of some members of RCMP and some members of the RNC. This file was taken by Smyth. She said that part of her duties were to monitor social media and posts made to the government page, and the Premier's page. It was on Good Friday that she saw this when she was at home browsing through the media tweets and in particular one composed by Dunphy. The tweets were in response to a tweet by Minister Collins but did not appear related to his initial tweet. There were six or seven more but they did not appear to be threatening in any way, just showing dissatisfaction with Workers' Compensation. She was aware of Dunphy's posts and he had posted others in the past expressing the same question of hurting family members. She felt that the hurt may have been a physical threat and forwarded the message to Smyth. This was not a unique occurrence and it was not uncommon for staff to forward letters and tweets to the Protective Services for assessment. Later that afternoon Smyth called her for some context regarding Dunphy. She explained that she did not have a lot of information other than he was an injured worker who was disgruntled. She suggested that he call Workers' Compensation who might be able to provide more information.

Tom Mahoney, the Executive Director for Workers' Services at Workers' Compensation was contacted and he stated that the last call he had in respect of this matter was on the 4th of April, 2015 from a Mr. Tucker who is chairman of the Board requesting information on Donald Dunphy. He did not say what the

information requested was and did not tell Tucker that he did not have the authority to be told this information, but he would provide it to the police. He directed Tucker to Sergeant Smyth and for him to contact him directly. He then spoke with Craig Noseworthy of Workers' Compensation to provide a contact for Dunphy and he called Smyth to provide the information. He was told that there had been no threats but he was aware of Dunphy because two weeks before this he was made aware of some things that Dunphy had been posting about an employee by the name of Phillips and how he handled his claim years ago. There was nothing threatening in that tweet but he did forward it to the legal department as an employee's name was given. He also directed that his staff monitor the person's tweets in the event something else came up. He was aware of no threats that Dunphy had ever made towards anybody in Workers' Compensation. He advised that there had been disparaging statements but not threatening. Smyth told Mahoney that he was going to pay Dunphy a visit. The phone call between Mahoney and Smyth was very brief, less than five minutes.

From this point Sergeant Smyth undertook to do an investigation on his own without assistance from anyone else including the RCMP in Holyrood, which was the closest detachment, only 20 minutes away. They had offered to go with Smyth. It was Smyth who made the decision to go see Dunphy on his own. He was completely armed with a pistol and pepper spray used to restrain persons by the police. Smyth thought he was better off assessing the matter without having a uniformed officer. He then went to Mitchel's Brook and eventually found the house. He noted that there was nobody at home at the time. That was at about 13:22. There was a sign on the house advising that no political people were welcome or those from Workers' Compensation. He knocked on the window and found no sign of anyone there. He then went to the house next door and found out this property was owned and occupied by Dunphy's brother. He asked them if there were any firearms in the house and they said no. Smyth says he was there talking to them for some 20 to 25 minutes.

After Smyth left Dunphy's brother's house he then went back to Dunphy's. This was some 25 minutes later and found a vehicle parked in the driveway. He then entered the driveway and drove up behind that vehicle and left it there with the motor running. He walked to the door and knocked on the window. A person then came out and Smyth says that he identified himself by name and said he was a policeman and he said he showed his badge. Smyth said that Dunphy let him in and he entered and noted that there was a lot of garbage around and cats on the property. The two had some discussion in the entranceway of the house.

Dunphy asked Smyth why he was there as this was RCMP territory. Smyth told him that he was there because of the tweets that Dunphy had sent to the government. Smyth then refused to sit down and began examining the place. And when Dunphy confronted him and advised Smyth that he could say what he liked on the internet, when asked about what he had put on the tweet, he said he was entitled to say that, and he laughed it off. Smyth then advised that he had been sent there and only wanted to talk about the comments. Dunphy then told Smyth that he was just an arm of government and told him that no one sent him there, and he said "who sent you here anyway?" and that Smyth was just a puppet.

In order to appreciate this situation, you have to consider certain things in the background of both individuals. Smyth himself said, when giving his statement, that he got mad at Dunphy.

When Dunphy's daughter was asked concerning this incident she stated that the only way "Dad would have threatened him if he didn't know that he was a cop. If someone came in the house down there and confronted him and said something, Dad would have said to him 'get the fuck out of here or I will do this or I will beat the head off you'. I do whatever he had, he not know that he was a cop. If he was a cop then went in this RNC officer any of you that he went in there and said that he was a cop and Dad went after him with anything, I can promise you that he is lying. 100% without a doubt, I know my father more than anyone and I know what makes him flighty and what can send him off his head quite easily, but he would not risk himself with a cop."

I believe at this stage I should make an analysis of the two individuals who were involved in the shooting. We only have the statement given by Smyth and we have to consider that in relation to all the other evidence which is given concerning these two individuals who met on Easter Sunday at Dunphy's house.

The RCMP obtained a number of statements from individuals who knew Dunphy and from that I can assess as to what he was actually like. When the interview was made by the RCMP Constable Nippard to Debbie Dunphy, a sister-in-law who lived next door, who did not like Dunphy at all, but she did state in her statement that when she knew Smyth was on an investigation of Dunphy "he was so, you know, have such a temper and stuff. We said 'oh my gosh, I know how it will be. There's going to be a confrontation but we didn't know what it would be. He is violent, you know."

Then in the statement from Dunphy's daughter, Meghan, she states: "You know, the first thing my dad would do is if buddy kept repeating himself saying 'you threatened the premier or you done this', Dad would feel he didn't feel that he had done that and it would set him off his head. He would really get up in arms and eventually tell buddy [meaning Smyth] to get the fuck out of the house." She stated that she would never believe that her father hauled out a gun and pointed it at a cop. She said his life was getting better and he as he turned 60. At that time he was going to receive an extra \$600 per month.

In her statement, Meghan also said to the RCMP officers: "What was Smyth writing down?" And she wanted to see it so she could see what they were talking about. She inquired if her father took out a gun, then she would like to know why it happened. She then added that Smyth wouldn't be writing because he wouldn't be able to hear his ears because her father was so loud. She stated he was hot-headed and his words and everything like that. I note further in the disposition taken from the RCMP that when Meghan asked about her being questioned some five hours after the event and yet Smyth was given a whole day to give his statement. It was then that Sergeant Osmond of the RCMP stated that to her. In fact, he said Smyth didn't even have to talk to them. I found that reply rather unusual when there was no charge laid against Smyth and he was not considered an accused.

I do not know of any restriction on Smyth being questioned concerning the events of that day. He was not given a caution nor was there any suggestion that he was being charged. It is my belief that it was his obligation as a police officer to give a full account of what took place. He was the only witness and hopefully the answers to any questions put to him would be truthful. Osmond replied he was not drilling Meghan Dunphy but it does appear to me that she was subject to considerable questioning and a number of suggestions were made to her that were persuasive in explaining Osmond's view of what may have happened. Then Osmond states at page 53 of the disposition that Smyth in the execution of his duties has an obligation to report his actions. Osmond goes on to say Smyth just could not say 'go figure it out for yourself'.

When considering the character of Smyth in this case, we don't have the thorough background on him that we had on Dunphy. We do, however, have information concerning his conduct while he was a police officer. About ten years ago he was involved in an altercation while on a holiday in the Caribbean. We don't have any information on Smyth as to his history of conduct while he was a ski instructor in western Canada and before he joined the police force. All we

appear to have is that in May of 2005, after somebody had robbed him down in the Caribbean, he while intoxicated went somewhat beserk causing damage to four cars in the area. He pleaded guilty and paid a fine of \$10,000 for restitution and court fees. Our local Constabulary found him in breach of s. 7(1)(p) which is conduct unbecoming of a police officer. The RNC reported that since 2010 up to the time of the Dunphy incident Smyth had no issues.

I will now turn to the point when Smyth, after visiting Dick Dunphy's house next door, went back and saw that Dunphy had parked his car in the driveway. He gathered that Dunphy had returned home. He entered the driveway and we found out afterwards that his vehicle was parked behind Dunphy's with the motor running. This essentially blocked Dunphy from leaving the place by motor vehicle. He then walked to the door and knocked on the window. He says that he identified himself by name and said he was a policeman and that he showed him his badge. Smyth said Dunphy let him in and he entered and noted that there was a lot of garbage and cats on the property. I later learned that there was a discussion at the entrance and in the hallway prior to them going in to the living room. Smyth told Dunphy that he was visiting him because of tweets that Dunphy had posted to the government. Smyth refused to sit down and stayed standing and said it was because it was dirty there. In his statement then Dunphy confronted Smyth and advised him he could say what he liked on the internet. And when he was asked about what he put on tweet, he said he was entitled to say that and laughed it off. Smyth then said that he was sent to talk to him about these comments. Dunphy then advised Smyth that he was just an arm of government and told him that no one sent him there and he said, "who sent you here anyway?" He also said to Smyth that he was just a puppet.

Smyth does not admit to becoming angry himself and even though he was not arresting Dunphy. Dunphy became agitated when Smyth started looking around the house and the condition of it. This upset Dunphy who kept asking him what he was looking for. Smyth later, when speaking to one of the RNC officers, stated that during this event he was mad at Dunphy.

Considering the information about Dunphy and the information about Smyth, even though it is not that extensive, I believe that in Dunphy's house that day there were two angry men facing one another. I can't believe that Smyth did not become upset himself by the shouting and insulting statements made by Dunphy to him. I do not believe that it was in Smyth's character to lay back and just take this stuff on the chin without reaction.

I now come to Smyth's evidence. First of all, Smyth stated that Dunphy never left the chair after he came into the room. That, however, is contrary to the evidence given in other statements where there was a suggestion that Dunphy was in the chair all the time. Corporal Noel, as it was related to him by Smyth, said that when Smyth looked back after the shooting, Dunphy was on the floor or fell back in the chair, sat back in the chair and I think he felt he was dead then. And then he said that Dunphy was up and down during the time when he became agitated during that argument with Smyth.

I now turn to the evidence relating to the events which led to the actual shooting at Dunphy's residence whereby he was killed from four shots fired by Smyth.

The following is a commentary that I make concerning the forensic report prepared by Mr. Darryl Barr, who is a bullet proof forensic consultant. His report was received by me on January 8, 2016. When I received that document, I then studied it to determine what effect it would have on the preparation of my final report.

Much of what was found in that report I was already aware of from other evidence which had been produced. Mr. Barr determined that there were four bullets fired by Sergeant Smyth by a pistol. This is a semi-automatic firearm which means that one fired cartridge case is ejected from the firearm for every bullet that is fired. Therefore, the recovery of four fired cartridge cases and four fired bullets indicate that four gunshots were fired. One bullet had entered the west wall of the living room in a southwest direction about 40 degrees parallel to the west wall. The bullet impact in the west wall to the point on the north wall was approximately 1.16 metres from the east wall.

The bullet from the chair in which Dunphy was located had been recovered in the filler material of that chair. This showed that the bullet had struck an intermediary target prior to impacting the chair.

There was also one wound to the right side of the head of Dunphy described as an exit wound. The bullet recovered from the chair was located in the top area of the chair. Three bullets and their impact damage have been accounted for. The bullet that exited the right side of the head of Dunphy is likely the same bullet that was recovered from the inside of the chair with the head of Dunphy acting as the intermediary target to the chair. This showed that the total number of gunshots based on impact damage and wounds were four in number.

If Dunphy was seated or nearly seated in the chair in the living room at the time of the shots that caused the wounds, then these gunshots were fired in a southwest direction.

There were no gunshot residue around the wounds and that showed that the gunshot that struck Dunphy in the upper left chest was fired from a distance of greater than 76 centimeters or 30.5 inches. It could have been longer than that but it was approximately two and a half feet away. The fireplace mantel was approximately 3.9 metres away or, as I had estimated, approximately 10 feet.

In his conclusions, Mr. Barr states that the account given by Smyth is supported by the physical evidence in that the number of shots fired correspond and that there was a bullet directly into the west wall of the living room, fired from within an area that includes some of the area between the fireplace and the living room entrance, which supports Smyth's account of where the shots were fired. In fact, I remember that Smyth said he fired his first shot when he got by the coffee table.

Mr. Barr also concluded that the location of the exit wound on the right side of the head impacted the top of the chair and the condition of the bullet supports what Smyth said that Dunphy was seated at that time. Mr. Barr then confirmed that the shots by Smyth at Dunphy were fired in a southwest direction if Dunphy was seated in the chair at the time. The distance between the muzzle of the pistol and Dunphy is consistent with having been greater than 76 centimetres at the time of discharge. He refers to the shot that hit Dunphy in the upper left chest based on the fact that no gunshot residue were found on his clothes. It also supported the account by Smyth that he was at the mantle piece when he began firing the first of two shots intended for the center mass of Dunphy's body as Smyth was moving there to the exit to the living room.

Having read the report of Mr. Barr, I find that there were no surprises in what he found. His evidence seems to be consistent with the evidence found by the police which showed the direction of the shots fired by Smyth and where the bullets were found. It also confirms the distance at which Smyth had taken these shots which I had already determined had been in the range of 10 feet or less down to probably four feet when he fired his last shot on exiting the room.

Mr. Barr leaves us with a qualification that there is often more than one scenario that the physical evidence may support. It is not the intent of this report to offer a definitive scenario of the events relating to the shooting death of Dunphy.

This report is intended only as a comparison of the physical evidence to one scenario provided and should not be interpreted as the only possible scenario.

I came to the conclusion that there was a confrontation between Smyth and Dunphy as Smyth admitted that Dunphy was questioning him and he didn't like it. Also Dunphy got upset because Smyth was moving stuff around the floor and checking out the house.

Then there was a question as to where Dunphy had the 22 rifle. Smyth, in his statement, said that he did not see Dunphy's rifle until the last minute when he saw it being brought up from the right-hand side of the chair that Dunphy was in. When this happened Smyth then started to move towards the doorway of the room and in the meantime started firing his pistol by firing shots at what he referred to as Dunphy's body mass, which presumably was his body, and kept going, firing the next two shots at Dunphy's head. The last one he was at very close range to Dunphy and shot him in the side of the head. Dunphy fired no shots. In fact, there was some question as to whether that gun could be fired anyway. An examination of the photographs show that it was a bolt action rifle and the bolt action was open and therefore not in a firing position. In order for that gun to be fired, if it could be fired, one would have to close the bolt action that would put the 22 bullet into the chamber. That was not the case as the bullet was still in the rifle and the bolt action was still open. This occurred at about 15 minutes after Smyth's arrival. The minutes before that presumably were taken up in the argument which occurred between Smyth and Dunphy.

It probably will not affect the final result of this case but the location of that rifle was last seen by Meghan Dunphy laying on the floor behind the couch. Smyth says it came from the side of the chair. It should be pointed out that Meghan Dunphy was down there with her father the day before and was cutting his hair. She feels that if the gun had been by the chair she would have seen it. In fact, in one of Smyth's statements he said that the gun was by the couch but then when questioned by the RCMP about this, what I considered to be a statement confirming the location of the gun, Smyth then changed his statement and said that was a mistake and really the gun was first seen by the chair. Colin Dinn, a friend of Dunphy's, was at Dunphy's house Monday or Tuesday before the shooting. He did not see the 22 rifle.

Smyth also, in his statement, suggested that even after he had shot Dunphy in the body, Dunphy was still following him with the rifle. On that point I feel that Mr. Smyth must have been mistaken because it is extremely unlikely that a person

who is shot with a fatal shot would have kept holding the rifle after two shots were fired, one which may have missed and the other which struck him in the side of his chest and resulted in his death. Smyth said he did not touch the gun afterwards but when it was found, it was found in front of Dunphy, actually pointed towards him and not away from him as was suggested by Smyth. The gun, if it was being held by Dunphy when he was shot, would have likely fell out of his hands and fell to the floor.

During this event, Smyth also stated that Dunphy remained in his chair throughout. That seems inconsistent with his statement that Dunphy kept coming with the rifle pointed towards him.

I first thought that maybe Dunphy had been made aware of the fact that the police vehicle was there near his house. He would have had to pass Smyth's vehicle on the way to his house as it was parked next door. Smyth was of the view, however, that Dunphy was surprised to see him and he did not believe that he had been tipped off of Smyth's coming. The police may be inclined to give Smyth the benefit of the doubt and refer to the chair as a couch. I do not believe that such an inference must be made. We must take the words given by the person giving the statement and then put whatever interpretation we should on its context.

Smyth admitted in his statement that the media will find it hard to see as to why he fired four shots. He explained that he fired these shots in one and a half seconds. Then he said that he wasn't sure if he hit him in the head.

We know from the evidence obtained from the forensic pathologist Dr. Avis that the shot to Dunphy's body is what killed him. The shots to the head were not necessary to render him incapable of causing any harm. Why Smyth continued firing, especially the last shot which was very close to Dunphy's head and Dunphy was not moving, makes me wonder why this was done. Smyth says he was on automatic because that comes out of their training. If, however, it is not necessary for further shooting once the person who is causing the danger is rendered helpless, the extra shots really make sure that he is unlikely to survive. If it is not necessary to kill someone, why would a person need to fire extra shots that would ensure that person's death rather than to see whether some assistance could be given to them so they may survive.

The RCMP expert states Dunphy could have continued moving after he was shot in the chest. He does not deal with the 22 being on the floor which I believe

fell from Dunphy's hands after the first two shots. The danger to Smyth was then over.

As I said earlier, it does not really matter to the conclusion in this case that the rifle came from the chair or the couch because the shot fired by Smyth took place when he saw the gun which was obviously in the possession of Dunphy and that body shot is what killed him. The mounties are inclined to believe that the statement of Smyth was accurate that the gun came from the side of the chair but I find that difficult to accept because the last time the gun was seen was behind the couch on the floor. There is nothing in the evidence to suggest as to why the gun would be moved, especially a gun which may not be of any use. The only thing that was brought forward was the fact that Dunphy had said to one of his friends that after he posted his comments on Twitter he admitted that they would probably come for him then. I really can't see the benefit of that gun being moved from the couch from January because later that month Dunphy had to go to hospital and some time after that he was back and forth looking after his daughter's place. Then, of course, we have her evidence that she was there the day before and there was no sign of the gun by the chair.

I conclude that there was no way anyone can determine where that 22 rifle was located on Easter Sunday when Dunphy was shot. Only Smyth would know. He was a witness and he is the one who was there throughout. He is the one who said that it came from the side of the chair but these circumstances could exist only if Dunphy had moved the gun between Saturday and Sunday afternoon from the couch to the chair. When one considers the known evidence it seems that the gun was either moved to that place or another circumstance took place following which I would refer to as the argument between Dunphy and Smyth. I also considered the fact that Dunphy was out on Easter Sunday with his daughter having brunch at a restaurant.

I have not any detailed evidence as to the demeanour of Smyth during the 15 minute period he says he was with Dunphy in the house and had received considerable insults. He said he made notes. No notes were produced. What took place between Dunphy and Smyth is impossible to tell. I do note from the evidence that was presented that Dunphy was an angry man and was hateful of the government and some of those there. There was also no doubt that he sent those tweets which could be considered as being threats against individuals.

The RCMP unfortunately have not provided me with the details of what Smyth did or how he felt during the confrontation between himself and Dunphy. I

don't know whether or not there was any physical handling of Dunphy. The only thing I found was that the glasses he was wearing were, even though in poor condition, had been damaged as he had used them that morning at lunch. Further, I would have liked to have had a polygraph done on Smyth to determine what his answers would be to certain questions as to exactly what had taken place between himself and Dunphy. The police, however, said that this would be of no use in this case. It is difficult for me to make any determination as to whether or not there was any physical confrontation between Dunphy and Smyth. The autopsy does not show any bruising or any other indication of a physical nature other than the bullet wounds inflicted by Smyth.

From all of the evidence, I am satisfied that these two men were probably angry, especially Dunphy, and Smyth had been insulted. It seems as though Dunphy, when he took up the 22 rifle, wanted to threaten Smyth and get him out of the house. How this was done and when it was done, I don't know. But I do know that Smyth was looking around the house, checking for things out in the hallway.

I further conclude that the last shot fired by Smyth indicates that he intended to fatally injure Dunphy. When I think of his statement concerning his last shot in the side of Dunphy's head, one must realize that he was extremely close to Dunphy at the time, which I would estimate as being about four or five feet. Also, added to that is that Smyth said he is an accurate shot and after having already fired three shots at Dunphy he adds a fourth when Dunphy was probably motionless.

I also take into consideration that there is no evidence that Smyth made any effort to try to revive Dunphy and it seems from what he said that he pretty well knew that he had killed him. That close shot in the side of Dunphy's head surely would prove that Dunphy had been killed.

During the investigation the RCMP, particularly an officer by the name of Henstridge, who interviewed Joseph Smyth, who was the shooter in this matter, looked into the provisions of the Criminal Code of Canada which stated:

87. (1) Every person commits an offence who, without lawful excuse, points a firearm at another person, whether the firearm is loaded or unloaded.

Further, he refers to s. 25(1) which says:

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law ...

(b) as a peace officer or public officer,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

- (3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

I also note from the RNC Guidelines that following the shooting, a victim is to be attended to and given prompt medical attention. Further the RNC states that all reportable deaths shall be treated as criminal until determined to be otherwise by the major case manager.

The Criminal Code also provides that police officers are justified in doing what they are required to do and in using as much force as is necessary for that purpose. However, police officers are not justified in using excessive force and will be held criminally responsible for use of force that is considered to be excessive.

I note that Smyth was equipped with his pistol and was also equipped with OC spray which may be used to incapacitate a subject so they can be controlled with the minimal of physical contact.

I have pondered this case almost every day since April of last year. I ask myself why this happened. I found a statement from the mayor of Mt. Carmel, next door to where Dunphy had been killed where he stated: "Why did someone attend alone? Secondly, why was this done on Easter Sunday? Not a phone call to deal with a matter versus an RNC member attending. Then why not use less lethal form of intervention, for example, a taser. Why the RNC from the Premier's detail?" He could not understand how this incident happened.

Constable Cox of the RCMP was the first person to arrive at the house after they got the call of the shooting by Smyth. Earlier that day, Smyth had called the RCMP in Holyrood and told them that he was going down to see Dunphy. Cox offered to go with him to make the call on Dunphy but Smyth said that he felt it was better if he went alone and in an unmarked car. He felt that two police cars

coming might cause some difficulty. But they could have gone in Smyth's car to avoid this issue

As I have already stated, there are a number of things that are unable to be accounted for because there is no witnesses other than Smyth to the event. One main point which has not been fully answered is what was Smyth doing for the 30 to 40 minutes from the time he killed Dunphy until the time RCMP Constable Cox arrived? He did, however, admit to examining the house during that period but that probably would not have taken very long because it's a fairly small house. What he did the rest of the time, I don't know. He was not questioned in detail on the whole of his time from beginning to end while at Dunphy's house.

A lady by the name of Rochelle Nolan gave a statement to the RCMP in which she advised that there was a black SUV parked on the road in front of her home with a male occupant. Her son saw it and he said that the person was an undercover cop. The vehicle was parked there for five to seven minutes between 1:20 and 1:30 p.m. on April 5. The vehicle was observing Dunphy's house. They said the driver didn't get out while they were looking. There was nothing else that came to their attention until the police cars from the RCMP arrived some hour later at 2:47.

I will next deal with the actual shooting and the place where it occurred. Reading from Smyth's statement, he states that he was situate near the fireplace, I would think about ten feet or so in front of Dunphy who he says was seated in the chair. When he saw the gun or rifle that Dunphy had, Smyth then started to take out his pistol and move towards the entrance to that room out to the hallway. He says he fired his first shot when he got near the coffee table in front of the fireplace and that would have been the longest shot that he made. The next shot he took while moving quickly from that spot towards the door, then firing his second shot. Both of the first two shots were aimed at Dunphy's body. He then continued moving quickly across this distance, which I estimate to be not more than 10 feet or so, and then fired a shot at Dunphy's head. It appears from his drawing that that shot and the other two were all on an angle towards the left side of Dunphy's body. By the time he got near the entrance he was only about four or five feet from Dunphy who was in the chair and that is when he fired the fourth shot at close range, probably four to five feet and struck Dunphy in the side of the head. He then carried on out into the hallway. He felt that his shots had made good, especially the last one because he saw Dunphy's head wobble when he was shot in the side of the head.

Smyth thought one of his shots may have missed as there was one found in the chair that Dunphy was sitting in. The second shot could have been the one that entered Dunphy's body and caused his death, entering his left side and then damaging his internal organs including the aorta. Dr. Avis found his insides were full of blood.

The third shot appears to be one that struck Dunphy in the top of the head and the fourth is the one that struck him in the side of the head. This drawing must be compared with the forensic examination made by the RCMP.

Considering these factors, I come to the conclusion that the 22 rifle was behind the couch up to the time the shooting took place between Smyth and Dunphy.

There is no way for anyone to determine where that 22 rifle was located on Easter Sunday. Smyth says he took it up from by the side of his chair but he is the only one who has given any evidence that the rifle was located in that area. The only way that such a circumstance could exist is if Dunphy had moved the gun between Saturday and Sunday afternoon from the couch to the chair. When one considers the known evidence, it seems as though that the gun was either moved to that place or that another circumstance took place following what I would refer to as the argument between Dunphy and Smyth.

I have no evidence as to the demeanour of Smyth during this 15 minute period he says took place at Dunphy's house where he received considerable insults from Dunphy but only made notes. None of these notes have been produced. What took place between Dunphy and Smyth is impossible to tell. I do know from the evidence that was presented, Dunphy was an angry man and was hateful of the government and some of those there. There was also no doubt that he sent these twitters which could be considered as being threats against individuals.

Then, of course, we have the demeanour of Acting Sergeant Smyth. The only evidence we got concerning him is that most of the people who worked with him seemed to like him. However, we do have the evidence that he was charged and convicted of an offense while on holidays where he seems to have lost control and caused some damage following which he pleaded guilty. This leads me to a conclusion that maybe Smyth is capable of becoming angry and capable of reacting rather forcefully in certain situations. In this case the RCMP has not provided me with details as to what Smyth did or how he felt or whether he

physically handled Dunphy during this time. Further, I was disappointed that the RCMP felt that they should not try a polygraph on Smyth to determine what his answers would be to certain questions as to exactly what had taken place between him and Dunphy. From what has been presented, I cannot make any determination as to whether or not there was any physical confrontation between Dunphy and Smyth other than the evidence of Dunphy's glasses which are found on the table in a broken condition. The autopsy, however, does not show any bruising other than the bullet wounds inflicted by Smyth.

If Dunphy had the gun where Smyth said it was located, it seems to me that somebody must have told Dunphy that the police were down there looking around and he could have moved the gun from the couch to the chair.

Another scenario could be that Smyth and Dunphy got into an argument, which I am sure they did, and Dunphy wanted him and ordered him out of his house. He could have then, if Smyth refused, gone to the couch and took up the 22 to threaten Smyth so as to get him out of his house. This could have probably been done while Smyth was looking around the house checking things out down the hallway.

There seems to be no doubt that Dunphy was probably shot in the area of the chair where he was found. The first bullet, however, according to Smyth was shot at his body and the angle of that shot seems to indicate that Smyth was probably somewhere in the vicinity of the door or opening whereby you exit the living room. The forensic pathologists indicates that the bullet entered on Dunphy's left side and then went across his body and damaged his aorta and killed him.

My conclusion on the remainder of the shooting indicates to me that Smyth intended to fatally injure Dunphy. When I think of his statement concerning his last shot in the side of Dunphy's head, one must realize that he was extremely close to Dunphy at the time which I would estimate as being about four or five feet. Also added to that is the fact that Smyth says he is an accurate shot and having already fired three shots at Dunphy and then adds a fourth.

I have considered the expert report which says that Dunphy could have continued moving the rifle after he had been shot in the body. However, my conclusion was that the shot which struck Dunphy in the body was when he lost control of the rifle and it fell to the floor in front of him. That would have ended the threat to Smyth.

On the issue of whether or not the 22 was usable, it was found by the forensic lab of the RCMP that this rifle could have been used as they tested it and fired a shot from it. The only difference was that in this particular case the gun as found showed the 22 bolt action open and in that condition could not have been shot. In order for anyone, especially Dunphy, to make a use of that gun, he would have had to close the action and then it would be ready for shooting. There is no evidence to say that the 22 rifle no matter where it was, was there with the bolt closed and ready for shooting. So I conclude that it was not.

### **RCMP Use of Force RNC Report – December 10, 2015**

In the RCMP Use of Force RNC Report on December 10, 2015, the Report gives the opinion that Smyth had to use lethal force when Dunphy pointed rifle. I am satisfied that when the rifle was presented, Smyth had the right to protect himself. He was no doubt surprised and scared by this.

The Report states Smyth kept shooting until the threat was over. It also stated that Dunphy could still move if shot in the body. It may take 10 – 15 seconds to die. The Report does not deal with the effect of shock on Dunphy being shot in the body. This is when I believe he dropped the rifle found in front of him. If he followed Smyth to the exit when the fourth shot was made, the rifle would probably fall on the left side of the chair and not in front. Smyth was only about four feet from Dunphy and the near exit when the fourth shot was fired. There is no evidence from Smyth to say when the rifle left Dunphy's hands.

It also speaks of confrontation. This is the first admission of a confrontation. I was also surprised that the Report refers to lawful commands made to Dunphy. I did not see any evidence of commands before the rifle and shooting came into play.

This Report shows some support to Smyth so that what he did is supported by the law. The Report should not put in evidence what is not there. It also accepts all that Smyth said as truth of what happened.

As I said before, Dunphy was killed when shot in the body. After that the rest does not matter except as Smyth said he was concerned as to public perception. The Report does suggest that the writer has experience in cases where people are shot and the effect. To be an expert you must have studied the matter

and you must have experience with it. Unfortunately, I do not get to question the RCMP use of Force RNC report or the person who did it. To be an expert you must have training and experience. That is the definition of an expert. Experts are not infallible. They can be mistaken and in error. The writer of the report does not say he has experience in seeing people shot in the body nor does he give us the results. He only tells what he has read and was involved with in other cases. The expert evidence that would be of use to me would be evidence from a person who saw persons fatally shot and what reaction they had, if any. Were they still functioning as before? An expert requires experience himself

Smyth only saw the rifle on the floor after he re-entered the room after the shooting was over. He did not see it fall from Dunphy's hands.

On page 9 of RCMP Use of Force Report, it gives an example of an unarmed 90 year old woman threatens to slap police officer. His response could be a punch or kick or physical control hard. This response caused me much concern that such excessive force would be used in this case. Surely an able bodied police officer could easily control a 75 to 90 year old person. It even suggests that a tazer or baton may be used. This suggestion for dealing with the elderly would, in my opinion, alarm the general public. A police officer is a peace officer. This example does not strike me as being the action of a peace officer. Their actions must stand the test of reasonableness.

## CONCLUSION

I have considered the evidence which has been provided by the RCMP which I must say was very extensive. One must remember that the RCMP is a police agency and I feel that there is some question on some of those findings based on their experience in dealing with force of arms situations. But generally speaking I found the evidence to be good. There are however gaps, as I have pointed out in the evidence, as to what took place between Dunphy and Smyth on Smyth entering the property. We only have Smyth's evidence that he was invited in and how he got in the house I don't know. I do know that there was some argument between them and I doubt very much if Dunphy just sat back in the chair when I consider the evidence of his daughter that he would be up and angry at Smyth.

My conclusion in this matter is that there is a series of mistakes because I believe that this killing should probably have never happened.

1. Had Smyth taken the opportunity of bringing RCMP Officer Cox from Holyrood with him, then we would have a complete picture of what happened and would not have to rely just on what Smyth said.
2. Second, if this was a threat made by Dunphy, then maybe Smyth should have just gone to Mitchell's Brook and arrested him and charged him with uttering threats. This did not happen. Was it that urgent to see Dunphy on Easter Sunday?
3. The RCMP could have asked Dunphy to drop into the RCMP office in Holyrood to explain what he meant by raising or sending these items on twitter.
4. Smyth could have seen Meghan on the way down to her father's house. The RCMP say that Smyth did not check this out.
5. I believe that the confrontation between Smyth and Dunphy during that 15 minute period when Smyth was in that room is what caused the issue of guns being brought into play. Smyth was not prepared for what he was going to meet.

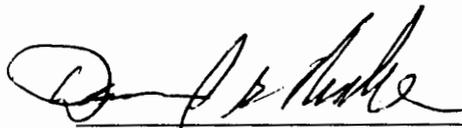
Unfortunately there is no real way of undoing what has been done. The diagrams and where the bullets were found show that the shots came from the direction as suggested by Smyth. I am satisfied that in all probability Smyth was faced with Dunphy producing the 22 rifle and there would be no way of him knowing whether or not the action was closed or open and whether it could be fired. This situation would naturally cause Smyth to be in fear of his being harmed or killed as a result of being shot. He reacted as is suggested by his training that he fire his pistol or some other defensive item in order to eliminate the danger. Dunphy was only trying to get Smyth out of the house, he was not trying to hurt him. In this particular case, which took only a few seconds, caused Smyth to fire shots at Dunphy's body, one of which killed him. As Smyth said, the other two shots were sort of automatic, although, from his evidence, I can't believe that he did not know that Dunphy had been incapacitated when he fired that fourth shot. In the totality of the case, however, it seems that Dunphy was killed by the body shot and Smyth had the right under the Criminal Code to fire such a shot in order to protect himself. When he fired that shot, he had no way of knowing that that shot would have killed Dunphy. The fact that it did renders the other shots rather

superfluous and really play no other part than to show how the police react to a situation.

Some of these actions I find to be rather excessive and unnecessary. In this case, however, where Dunphy was killed, was a shot which Smyth was entitled to take when that pretty well ends the matter as this is not an inquiry as to how police forces should react in certain situations. Their use of force must be reasonable considering the circumstances and they are entitled to use lethal force in order to protect their life.

There is no doubt that this matter could have been handled differently but Smyth made the mistake of taking this matter on and deciding that he did not want assistance from anyone and that he would do it alone. I find it strange that he didn't make some inquiry as to the whereabouts of Dunphy when he passed Dunphy's daughter's house which is only about five or six miles from Dunphy's place, and he had to pass it on the way to Dunphy's. Why he didn't stop and ask where her father might be, I don't know. It seems to me that he may have wanted his visit to Dunphy to be somewhat of a surprise or that he was afraid that maybe Dunphy would have left the scene. I don't know. The other thing is this, there would be no way of Smyth knowing whether or not Dunphy was still at his daughter's house. That was a point that I found unusual for somebody who said he properly worked up the matter before he headed to Mitchell's Brook.

These are my views in respect of this matter and unfortunately I do not have all the evidence, only the evidence of what the RCMP have found. Neither did I have any opportunity to question any of the witnesses and any of the RCMP officers, especially Sergeant Smyth who did the shooting. No doubt, when an inquiry is called, these people will have to comply with and be subject to questioning and cross-examination which, to my mind, is a good way or certainly, the usual way, to look for the truth as to what actually happened here.



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