



September 14, 2016

William J. Janes
Chief of Police
Royal Newfoundland Constabulary
1 Fort Townshend
St. John's, NL
A1C 2G2

Dear Chief Janes:

Re: Internal Investigation of the Actions of Constable Smyth

The following report is submitted in response to your April 16, 2015 *Request for Internal Investigation*. This report was completed by Detective Sergeant Grant Little of the Saskatoon Police Service Major Crime Section.

Background:

Constable Joseph Smyth Reg. # 610 has been a member of the Royal Newfoundland Constabulary since June 2002. At the time of the incident Constable Smyth was assigned to the Protective Services Unit and was a member of the Premier's protection detail.

On Sunday, April 5, 2015, Constable Smyth travelled to Mitchell's Brook, a community within the Town of Mount Carmel, NL to conduct a threat assessment regarding a Twitter posting made by Mr. Donald Dunphy. Constable Smyth was alone with Mr. Dunphy in Mr. Dunphy's residence when he discharged his service pistol causing the death of Mr. Dunphy.

A criminal investigation into the death was undertaken by the Royal Canadian Mounted Police (RCMP) as they are the policing agency for the geographical area.

Further to the investigation conducted by the RCMP, it was requested that the Saskatoon Police Service conduct an internal investigation, the scope of the investigation to be as follows:

1. Did Constable Smyth comply with the policies of the Royal Newfoundland Constabulary?
2. Did Constable Smyth's actions breach the *Royal Newfoundland Constabulary Regulations*?

Investigation:

To assist in the investigation the writer was provided copies of the following chapters from the Royal Newfoundland Constabulary Policy and Procedure Manual:

- Protective Services Unit(PSU),
- Criminal Investigation Division,
- Criminal Intelligence Unit,
- Dress and Deportment,
- Firearms,

- Assistance to Outside Agencies,
- Use of Force,
- Deaths,
- Information Management and Technology,
- Batons and Restraints,
- Discipline.

The writer was also provided copies of the following:

- Routine Order 2014-010 Subject: Firearms and Use of Force Equipment carried by Specific Officers,
- Routine Order 2013-030 Subject: Jurisdictional Call Response,
- Training records of Joseph Smyth,
- *Royal Newfoundland Constabulary Regulations*,
- Audio recordings of calls to Communications made by Constable Smyth with corresponding transcripts.

The writer travelled to St. John's, NL and conducted interviews June 16 thru 18, 2015. Interviews were conducted with:

- Superintendent Jason Sheppard, OIC Criminal Investigations Division,
- Inspector Suzanne Bill, OIC Professional Standards Section,
- Acting Inspector Joseph Gullage, OIC Intelligence/Organized Crime,
- Sergeant Bill James, Use of Force Unit,
- Constable Joseph Smyth, Subject Officer.

Additionally, as follow-up to the interviews, the writer was provided copies of emails related Constable Smyth's initial investigation as well as training records and equipment information from Sergeant Bill James.

While in St. John's the writer met with Corporal Steve Burke at the RCMP Headquarters. Corporal Burke is the lead investigator on the RCMP use of force criminal investigation. Corporal Burke advised that he would be able to provide confirmation on facts where our two investigations overlap.

Copies of all of the above noted materials, copies of the recorded interview of Constable Smyth and transcript and the investigators notes can be found on the accompanying thumb drive.

Findings:

Protective Services Unit (PSU) Policy

Section 3.2 defines as part of the **Mandate** of the unit *"To gather intelligence on persons and groups of interest, demonstrations and any other matter that could potentially cause direct or indirect harm to the Premier or the Office of the Premier or any other elected Government Official."*

Section 4.1(d) defines as part of the **Function and Responsibilities** of the unit *"conduct investigations, in conjunction with the applicable unit in the RNC Criminal Investigation Division, into people or groups who pose a potential threat to the Premier or the Office of the Premier or other elected Government Official."*

Based on the statement of Constable Smyth; he was conducting an investigation in response to a concern raised by the Premier's communications officer, Donna Ivey, in an email titled 'Tweet of

concern'. Constable Smyth initiated the investigation by identifying the person responsible for the 'Tweet of concern'. He did background checks of that person on police data bases which included; RNC ICAN system, CPIC/CNI/CFRO systems, driver's license/vehicle systems and RCMP PROS system. This was followed by Smyth going to interview the person who made the 'Tweet of concern', Donald Dunphy. Smyth was alone when he went to interview Mr. Dunphy which was normal practice based on the circumstances and Smyth was the only PSU officer working that day.

The statement of Constable Smyth is corroborated by email records, officer notes, audio recordings, descriptions of Constable Smyth's duties provided by his supervisor, Acting Inspector Joseph Gullage and the RCMP investigation.

Section 6.1 defines as part of the **Training and Qualifications** for the unit *"Officers being assigned to the Protective Services Unit must be able to: a. complete all modules of Use of Force; b. pass the PARE test; and c. pass a 2.4 km run within 12 minutes (subject operational requirements)."*

Section 6.2 defines as part of the **Training and Qualifications** for the unit *"Protective Services Unit officers shall successfully complete: a. firearms annual re-qualification; and b. any other training deemed pertinent to the Unit."*

Based on the statement of Constable Smyth; he had completed all modules of Use of Force and if required can readily pass the PARE test and complete the 2.4 km run within the required time. At the time of the incident he had passed his annual re-qualification and had taken the pertinent training for the PSU which included Dignitary/Judicial Protection Course, Managing Targeted Violence (Threat Assessment) and Criminal Intelligence Training. The writer noted that Criminal Intelligence Training did not appear in Constable Joseph Smyth's training "Courses:" Smyth stated that he had completed the two week training course. The training was from Criminal Intelligence Services Canada and he travelled to Nova Scotia for that training.

The statement of Constable Smyth is corroborated by training records, re-qualification records, information provided by Sergeant Bill James of the Use of Force Unit, and the description of Constable Smyth's qualifications provided by his supervisor, Acting Inspector Joseph Gullage.

Section 7.1 defines as part of **Dress and Deportment** for the unit *"These guidelines represent a clear expectation for all officers performing operations with the Protective Services Unit. The expectations parallel what is outlined in RNC Policy and Procedure. There is however a higher expectation on officers assigned to Protective Services due to the nature of their duties."*

Section 7.1(h) defines as part of **Dress and Deportment** for the unit *"dress in business attire unless a specific operation dictates otherwise; suits should be conservative in nature and not stand out; and all items of clothing should be professional and not show obvious signs of age or wear;"*

Based on the statement of Constable Smyth; the clothing he wore while working in the Protective Services Unit was dependent on the duties of the day. On the day in question he was not required to perform close protection and therefore was dressed in business casual which was the accepted norm.

The statement of Constable Smyth is corroborated by the description of Constable Smyth's dress and deportment expectations provided by his supervisor, Acting Inspector Joseph Gullage.

The writer finds that Constable Smyth was in compliance with the applicable sections of the Protective Services Unit (PSU) policy.

Criminal Investigation Division Policy

Section 8 defines as part of **Weekend Supervisory Duties** *"The senior N.C.O. assigned to day shift on weekends will be responsible for the overall supervision of the C.I.D.,"*

Based on the statement of Constable Smyth; while the Protective Services Unit is considered part of C.I.D in the general sense, they work out of the Confederation Building and operate autonomously from the rest of C.I.D. As such they would not report to the supervisor of C.I.D. on weekends. Additionally there would be no expectation for them to report to the watch commander or duty officer.

The statement of Constable Smyth is corroborated by the description of Constable Smyth's duties provided by his supervisor, Acting Inspector Joseph Gullage.

The writer finds that Constable Smyth was in compliance with the Criminal Investigation Division policy.

Criminal Intelligence Unit Policy

The writer has reviewed the Criminal Intelligence Unit policy of the RNC and notes there is no specific section the writer views as applicable to this investigation.

Dress and Deportment Policy

Section 7.4 defines as part of **Firearms** (in reference to concealment): *"c. Officers shall also refer to Firearms policy."*

Based on the statement of Constable Smyth; his firearm was carried concealed by his leather jacket and was carried in his issued Safariland holster.

The statement of Constable Smyth is corroborated by the RCMP investigation.

Section 7.5(b) defines as part of the **Order of Dress** *"Officers assigned to CID shall wear their issued soft body armour when involved in making a planned arrest or execution of a search warrant, when it has been determined after a risk assessment that there is a potential for violence and /or weapons involved."*

Based on the statement of Constable Smyth; there was no indication of violence or weapons related to Mr. Dunphy when the data base checks were made. Additionally, Smyth was not going to be arresting Mr. Dunphy or executing a warrant.

The statement of Constable Smyth is corroborated by officer notes and audio recordings of Smyth doing background checks and the RCMP investigation.

Section 7.7(b)(2) defines as part of **Plain Clothes Officers** *"Business attire shall be worn by officers assigned to: Economic Crime unit, Investigation Interviewing and Polygraph Unit, Crime analysis Unit, CISNL, Corrections Liaison, Sex Offender registry and Protective Services Unit."*

Based on the statement of Constable Smyth; the clothing he wore while working in the Protective Services Unit was dependent on the duties of the day. On the day in question he was not required to perform close protection and therefore was dressed in business casual which was the accepted norm.

The statement of Constable Smyth is corroborated by the description of Constable Smyth's dress and deportment expectations provided by his supervisor, Acting Inspector Joseph Gullage.

The writer finds that Constable Smyth was in compliance with the applicable sections of the Dress and Department Policy.

Firearms Policy & Routine Order 2014-010

Section 3.6 defines as part of **Civilian Clothes** *"An officer on duty wearing civilian clothes must: a. conceal their firearm from public view; and b. keep their firearm on their person in an approved holster."*

Routine Order 2014-010 defines as part of **Plainclothes Operations and Forensic Identification** *"Members assigned to Plainclothes Operations and Forensic Identification will, immediately upon reporting for duty, equip their person with the following authorized use of force options; their issue firearm, with a minimum of 2 magazines of ammunition (one mag in the weapon and the second mag will be carries in the combination magazine/handcuff pouch) and OC spray. The issued baton and third magazine of ammunition can remain stored in their assigned firearms locker during routine duties. However, a plainclothes member must carry all their use of force equipment and wear their issued body armour when participating in a planned arrest or execution of a search warrant, where based upon a risk assessment it has been determined there is a potential for violence."*

Routine Order 2014-010 defines as part of **Concealment of issued firearms** *"(Already exists in Dress & Department Policy, section 7.4) During the period of June 1st to Sept 14th, CID members will be permitted to carry their issued firearm unconcealed, provided that their badge is worn clearly visible next to their weapon."* (The writer has previously noted that Section 7.4(c) of the Dress and Department Policy refers officers to the firearms policy.)

Section 4.1 defines as part of **Type of Weapon/Ammunition** *"Where the Chief of Police, or his designate, authorizes an officer to carry a firearm, only the firearm that is issued specifically to that officer may be carried."*

Section 4.2 defines as part of **Type of Weapon/Ammunition** *"An officer shall carry the service firearm in a holster approved by the Chief of Police."*

Section 4.3 defines as part of **Type of Weapon/Ammunition** *"When carrying their service firearm on duty, officers shall ensure their firearm is loaded."*

Section 8.2 defines as part of **Handling of Firearms** *"Officers will use the loading/unloading ports located at the RNC facilities. Approved range facilities may also be used for this purpose."*

Section 10.1 defines as part of **Use of Firearms** *"The use of a service firearm will be in accordance with the approved Use of Force Continuum."*

Section 10.3 defines as part of **Use of Firearms** *"An officer shall not discharge a service firearm in the performance of their duty except: a. in defense of their life of the life of another;"*

Section 13.0 defines the duties of RNC members in regards to **Shooting Incidents** and is not applicable to the subject officer in terms of expectations. The writer notes that this section is applicable when the incident occurs in RNC jurisdiction and the RNC would be involved in the investigation. This incident occurred in RCMP jurisdiction and other than the subject officer no other RNC officers were involved; as such it is not applicable.

Based on the statement of Constable Smyth; his firearm was carried concealed by his leather jacket and was carried in his issued Safariland holster. Also concealed and worn close to his holster was his police

badge. The firearm carried was his issued Sig Sauer 40 cal. Model P226 and was loaded with issue ammunition. He also carried a second magazine on his belt in the combination magazine/handcuff pouch as well as his issue OC spray. Smyth was not wearing issue body armour, nor was he carrying his collapsible baton at the time of the incident. Smyth stated that he worked out of the Confederation building, but would start and end his day at the RNC headquarters which is where he loaded and unloaded his firearm. Smyth stated that he discharged his firearm in response Mr. Donald Dunphy pointing a rifle at him and would therefore be in defense of his life.

The statement of Constable Smyth is corroborated by Sergeant Bill James of the Use of Force Unit and the RCMP investigation.

The writer finds that Constable Smyth was in compliance with the applicable sections of the Firearms Policy & Routine Order 2014-010.

Assistance to Outside Agencies Policy & Routine Order 2013-030

Section 7.a. defines as part of **Advice to RCMP** *"The RNC has an obligation and responsibility to ensure that information regarding serious/violent crime and dangerous wanted persons is promptly communicated to the RCMP."*

Based on the statement of Constable Smyth; Donald Dunphy was not considered to be a serious/violent criminal nor was he a dangerous wanted person. Constable Smyth did however, as a courtesy and to glean additional information, contact the RCMP prior to travelling to Mitchell's Brook.

The statement of Constable Smyth is corroborated by Acting Inspector Joseph Gullage and the RCMP investigation.

The writer has reviewed Routine Order 2013-030 and notes there are no specific sections the writer views as applicable to this investigation.

The writer finds that Constable Smyth was in compliance with the applicable section of the Assistance to Outside Agencies Policy.

Use of Force Policy

Section 1.1 defines as part of **General** "Legislation governing the use of force is found in the Criminal Code of Canada sections 25 to 27. Under this legislation, police officers are justified in doing what they are required to do and in using **as much force as 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."

Based on the statement of Constable Smyth; he had a reasonable belief that Mr. Donald Dunphy posed an imminent danger of death or grievous bodily harm to himself (Smyth) when Dunphy pointed a rifle at him. Constable Smyth responded with lethal force when he discharged his service pistol.

The statement of Constable Smyth is corroborated by the criminal investigation conducted by the RCMP. The RCMP investigation was reviewed by the Alberta Serious Incident Response Team (ASIRT). The conclusion of the ASIRT review was that the RCMP investigation was thorough and unbiased. The investigation determined the use of force was not excessive.

Section 5.1 defines as part of **Qualification** *"Police officers who are issued firearms are required to meet firearms qualification standards each calendar year."*

Based on the statement of Constable Smyth he believes he had re-qualified in the fall of 2014 and he was up to date in his module training.

The statement of Constable Smyth is corroborated by Sergeant Bill James of the Use of Force Unit and the re-qualification training records (sign-in sheets), the writer notes that Smyth re-qualified and did his Module 1 training in fall of 2013 and April of 2014.

Section 7.3 defines as part of **Oleoresin Capsicum Spray** *"A police officer will carry only OC Spray issued by the RNC. No other aerosols may be substituted."*

Based on the statement of Constable Smyth he carried issue OC Spray in an issued pouch on his belt.

The statement of Constable Smyth is corroborated by Sergeant Bill James of the Use of Force Unit and the RCMP investigation.

Section 7.7 defines as part of **Oleoresin Capsicum Spray** *"OC Spray is designed to be used on individuals exhibiting active resistance where verbal commands and pain compliance techniques have failed or are likely to fail. An "actively resisting subject" is defined as a subject who actively resists in a defensive manner and moves to avoid physical control."*

Based on the statement of Constable Smyth he was confronted with a firearm which is not considered 'active resistance'.

The writer finds that Constable Smyth was in compliance with the applicable sections of the Use of Force Policy.

Deaths Policy

Section 6.1 defines as part of **Police Shooting** *"If death occurs as a result of a police shooting it shall be investigated in accordance with the Shooting Incidents section in the Firearms chapter."*

The writer notes that the section in the Firearms policy is applicable when the incident occurs in RNC jurisdiction and the RNC would be involved in the investigation. This incident occurred in RCMP jurisdiction and other than the subject officer no other RNC officers were involved. As such the writer finds that the Deaths policy is not applicable to this incident.

Batons and Restraints Policy

Section 3.1 defines as part of **Handcuffs** *"On duty officers shall only carry issued handcuffs and handcuff keys on their person."*

Based on the statement of Constable Smyth; at the time of the incident he was carrying his issued handcuffs in the combination magazine/handcuff pouch. He was not carrying a Collapsible Baton at the time of the incident.

The statement of Constable Smyth is corroborated by the RCMP investigation.

The writer finds that Constable Smyth was in compliance with the applicable section of the Batons and Restraints Policy.

Information Management and Technology Policy

Section 4.6 defines as part of **Appropriate Use of Information Resources** “The following conditions are unacceptable and will result in discipline up to and including dismissal. a. Users must not:

(3) use the Employer’s equipment for personal purposes.

(12) circulate e-mail to large audiences unless it is business related without proper approval (especially RNC or Government wide distribution)”

Based on the statement of Constable Smyth; he was uncertain as to the specifics of the RNC policy regarding internal emails, but felt that policy prohibiting certain email may exist. Constable Smyth stated that in the days following the incident he was in an emotional state with mixed feelings about the fact that he was removed from PSU and no longer a supervisor. He was contacted by many friends and co-workers who while supportive advised him not to pay attention to the media coverage. As a result he became aware of some of the information in the public forum. On the Thursday following the incident he reached the conclusion that something should be said to everyone who worked at the RNC, sworn and non-sworn. It was his opinion that he was the best person to convey the message of what he felt needed to be said. Constable Smyth stated when he found out his internal message was leaked to the media he felt ‘sick to the stomach’. Constable Smyth stated that he is aware of what was in the CBC report and that the full email message was printed.

The statement of Constable Smyth as it relates to the media report is corroborated by the CBC report itself. In that report the quoted email starts with “*Friends and Colleagues – It is with a heavy heart I write this message, however, I feel it necessary that you hear my sentiments on Sunday’s tragedy –*”. The writer notes that while the email is in regards to an incident that was work related, the email itself is for personal purposes. Additionally, the email was sent without proper approval.

The writer finds that Constable Smyth was not in compliance with the applicable sections of the Information Management and Technology Policy.

Discipline Policy

Section 2.b. defines as part of **Principles of Police Discipline**: “Discipline is the practice by which the employer ensures that each employee’s conduct conforms to standards set by the employer. These standards are generally found in written orders which include the Policy and Procedure Manual, General Orders, Routine Orders and Memorandums. The standards also include verbal instructions given by persons in authority.”

Section 2.e. defines as part of **Principles of Police Discipline**: “Discipline should be applied in steps of progressive severity for subsequent breaches. It is appropriate to apply coaching and counselling when breaches of the rules result from ignorance of what is required, is of a minor nature, and lacks the element of neglect or intent. If the breach is repeated, the supervisor is expected to apply the next level, informal warning, oral or written reprimand and subsequent reporting to higher authority.”

Section 4.a. defines as part of **Internal Investigations**: “An internal investigation is an investigation, not governed by the *RNC Public Complaints Regulations*, of a complaint of alleged misconduct or performance deficiency which is initiated and investigated internally.”

Section 4.c. defines as part of **Internal Investigations**: "Offences under the RNC Regulations considered to be minor by the police officer's supervisor may be disposed of by the police officer's supervisor under section 8, who may: (1) Discuss the matter with the offending police officer and dispose of the matter by oral reprimand, if the facts and circumstances warrant; and (2) If the facts and circumstances do not warrant an oral admonition, record the nature of the offences and the time when it occurred in the personnel file of the police officer and provide notice to the police officer in accordance with the collective agreement."

Section 4.d. defines as part of **Internal Investigations**: "Before imposing discipline under Section 8 of the *RNC Regulations*, the supervisor shall: 1. Review the members personnel file; and 2. Consult their respective Divisional or District Commander."

Royal Newfoundland Constabulary Regulations

Section 7.(1) defines as part of **Officer's Conduct** "A police officer shall not (p) *engage in conduct unbecoming a police officer and liable to bring discredit upon the constabulary*;"

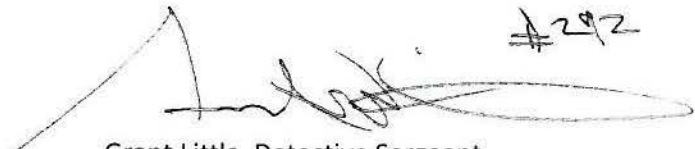
Section 8.(1) defines as part of **Discipline** "Offences against these regulations considered to be minor by the police officer's supervisor may be disposed of by the police officer's supervisor who may (a) discuss the matter with the offending officer and dispose of the matter by oral admonition, if the facts and circumstances warrant; and (b) if the facts and circumstances do not warrant an oral admonition, record the nature of the offence and the time when it occurred in the personnel file of the police officer and provides notice to the police officer in accordance with the collective agreement."

Conclusion:

There is only one policy violation identified by the writer, Constable Smyth's noncompliance with the Information Management and Technology policy. While the unauthorized email did end up in the hands of the CBC, it was not by Constable Smyth's doing. Constable Smyth did not intentionally breach policy, but he should have ascertained what the policy was prior to sending the email. Failing to comply with RNC policy would be considered an offence against the *Royal Newfoundland Constabulary Regulations* under Officer's Conduct Section 7.(1) (p). The writer finds that the breach of the Information Management and Technology policy by Constable Smyth is 'minor' and falls under Section 8.(1) of Discipline. The writer is not privy to Constable Smyth's discipline records and as such writes this report based on the belief that there have been no prior discipline issues that should be taken into account.

Respectfully submitted by

#292



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