

# SULLIVAN BREEN

Peter E. Ralph, KC + Rosellen Sullivan, KC + Erin K. Breen, KC

November 14, 2022

Mass Casualty Commission  
1791 Barrington Street, Suite 310  
Halifax, Nova Scotia B3J-3K9  
Via email: [participation@masscasualtycommission.ca](mailto:participation@masscasualtycommission.ca)

To the Commission:

RE: Final Submission of the Coalition: Avalon Sexual Assault Centre, Wellness Within and Women's Legal Education & Action Fund (LEAF)

I write on behalf of our Coalition comprised of Avalon Sexual Assault Centre, Wellness Within and Women's Legal Education & Action Fund (LEAF) to reply briefly to the written submission of Constable Greg Wiley received on November 9, 2022.

We acknowledge that police can lawfully search for and seize firearms both pursuant to a warrant and without a warrant in accordance with numerous statutory provisions contained within the *Criminal Code*, for example: sections 487, 487.11 and 489 (search and seizure powers for evidence of a *Criminal Code* offence); or powers specific to firearms and other weapons: exigent seizure powers pursuant to section 117.02; seizure from a person without documentation pursuant to section 117.03; and search/seizure upon a reasonable belief of danger to the public (section 117.04, 117.04(2)). Regardless of the provision, the standard for a lawful search is evidence (including hearsay/source information) that provides "reasonable and probable grounds to believe", a threshold interpreted in jurisprudence to mean "when credibly-based probability replaces suspicion" (*Hunter v. Southam* [1984] S.C.C.).

Section 117.04 of the *Criminal Code* authorizes the search of a dwelling house pursuant to a warrant (commonly known as a "public safety warrant"). It requires reasonable grounds to believe "that it is not desirable in the interests of the safety of the person, or of any other person, for the person to possess the weapon". Reasonable grounds to believe the person "possesses a weapon, a prohibited device, ammunition, prohibited ammunition, or an explosive substance in a building, receptacle or place" is the other pre-condition for section 117.04. Possession is defined in section 4(3) of the *Criminal Code*. There is no statutory pre-condition that the person be in lawful possession (i.e. be the holder of a possession and acquisition licence) though the section can apply to a subject who possesses a firearms licence. Section 117.04(2) authorizes a police officer to execute a

search without a warrant if he has the requisite grounds but it is impractical to obtain a warrant due to the imminent danger posed.

Regardless of the theoretically chosen section of the *Criminal Code*, we maintain our position that no meaningful investigation toward the lawful execution of a search for/seizure of firearms occurred. We submit that by May 3, 2011 the police had the requisite reasonable grounds to believe based upon their knowledge of the 2010 incident of the perpetrator's threat to kill his parents, information provided by his father (paragraphs 72-109, *Violence in the Perpetrator's Family of Origin*, COMM00059739) followed by the source tip received by the Truro Police Service which corroborated Paul Wortman's information.

The perpetrator's possession of firearms was no secret. A basic investigation could have corroborated this fact. The degree of detail of the source's May 3, 2011 tip which provided a description and location of the perpetrator's firearms, and report of the perpetrator's statement that "he wants to kill a cop" (paragraphs 207-216, *Perpetrator's Violent Behaviour Towards Others* COMM00059623) supplemented any possible deficiencies regarding the source's indicia of reliability (*R. v. Debot* [1989] S.C.C.). We reiterate that this comprised a missed opportunity for police intervention.

Yours truly,



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Erin K. Breen, KC  
SULLIVAN BREEN  
Counsel: Avalon Sexual Assault Centre, Wellness Within and Women's Legal  
Education & Action Fund (LEAF)