

Manitoba Ombudsman

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July 28, 2023

The Honourable Ryan Rolston
Chief Judge
Provincial Court of Manitoba
5th Floor – 408 York Avenue
Winnipeg, MB R3C 0P9
Email: Ryan.Rolston@mbpc-cpmb.ca

**RE: Inquest into the death of Haki Sefa
Inquest into the death of Mark DiCesare**

Dear Chief Judge Rolston:

Since 1985, Manitoba Ombudsman has been responsible for following up with provincial public bodies that are the subject of inquest recommendations made under the Fatality Inquiries Act. This responsibility arises from an agreement between Manitoba Ombudsman, the Chief Medical Examiner, and the Chief Judge of the Provincial Court. Through our follow-up, we determine what action has been taken to give effect to inquest recommendations and then report the outcome to the Chief Judge.

This report is to advise you of the results of my office's inquiries into implementation of the recommendations made by Judge Lindy Choy in her Inquest into the deaths of Haki Sefa and Mark DiCesare, issued on October 4, 2019.

BACKGROUND

On the evening of September 20, 2015, Haki Sefa's family members contacted the Winnipeg Police Service to conduct a well-being check on him. He was not located at his home, and did not answer his cell phone when officers attempted to contact him. Officers had Mr. Sefa's phone pinged twice, and searched the general vicinity of the ping locations but were unable to find him.

Later that night, officers learned Mr. Sefa left notes with a family member indicating an intent to kill himself, and that he recently purchased a firearm and intended to kill a person whom he believed committed a criminal offence against one of his family members. This escalated the investigation from a well-being check to following up on someone who was actively suicidal and homicidal. Mr. Sefa's phone was pinged again and he was located driving a white van. Mr. Sefa led officers on a lengthy low speed pursuit, eventually being pinned to a stop by members of the

Winnipeg Police Service's Tactical Team, north of Winnipeg. Shortly after, officers observed Mr. Sefa point a silver handgun at one of their members and he was shot dead by police.

On November 6, 2015, Mark DiCesare slowly drove past a police officer, pointed a firearm at her, and drove away erratically at high speed. Mr. DiCesare was located while driving his vehicle and pursued by multiple members of the Winnipeg Police Service. Police stopped the vehicle in a field, where a standoff occurred. Mr. DiCesare entered and exited his vehicle expressing suicidal ideation and pointing his firearm at himself. He then pointed the firearm at officers while apologizing for forcing them to shoot him. He was shot dead by police. At the time of the shooting, the firearm was believed to be an Uzi sub-machine gun. It was later examined and determined to be an imitation or replica firearm.

Both deaths were determined to be "suicide by cop". This term refers to situations where a distressed individual deliberately engages in dangerous life-threatening behaviour to provoke law enforcement officers to use lethal force in self-defense or to protect members of the public.

FOLLOW-UP ON INQUEST RECOMMENDATION

In the inquest report, Judge Linda Choy made one recommendation. We contacted Manitoba Justice on August 18, 2020, January 18, 2021, and August 22, 2022 to determine what steps had been taken towards the implementation of the recommendation. The department's responses are reflected below.

Recommendation

That the Province of Manitoba consider enacting legislation regulating the acquisition and possession of imitation firearms to reduce the risk of harm to the person possessing the imitation firearm, members of the public and law enforcement officials.

We assess this recommendation as complete.

Manitoba Justice provided our office with the following response to the recommendation in January 2021:

This recommendation is not being implemented as prescribed at the present time, but is still being considered. Manitoba believes regulation of imitation firearms should be undertaken by the federal government, in consultation with provinces and territories, to ensure meaningful and consistent legislative requirements throughout the country.

The Canadian Association of Chiefs of Police, the National Weapons Enforcement Support Team and other law enforcement organizations have expressed similar concerns regarding perceived gaps in the regulation of air guns, replica firearms, and imitation firearms. These concerns are centered around the fact that police are trained to respond to incidents involving imitation firearms in the same way that they would if an assailant possessed an authentic firearm, meaning that the risk of lethal encounters increases. Moreover, the accessibility of imitation firearms means that individuals can use these faux weapons in the commission of various criminal offences.

Manitoba's ability to regulate imitation firearms is questionable, given that the regulation of the purchase and possession of firearms in Canada is the jurisdiction of the federal government under the Firearms Act and the Criminal Code. While replica firearms are classified as prohibited devices in Canada, the possession of imitation firearms, is currently not prohibited¹. Furthermore, any attempt by Manitoba to regulate the acquisition and possession of imitation firearms must consider the fact that imitation firearms are currently available throughout most of Canada and the United States without regulation.

The issue of the regulation of imitation firearms has also emerged as an issue in other Canadian jurisdictions. Ontario inquest reports into the officer-involved shooting deaths of Ian Glendon Price, Daniel Nickolas, and John Caleb Ross included recommendations regarding the regulation of imitation firearms. In response to media inquiries about the recommendations contained in the reports, the federal Attorney General committed to work with the Minister of Public Safety to examine the recommendations. However, the federal government has not released further information regarding this matter.

To address this recommendation in a meaningful manner requires a coordinated approach amongst Federal, Provincial, and Territorial (FPT) jurisdictions and Manitoba will be working with its FPT colleagues to examine this issue further.

Through our various inquiries, Departmental officials advised us that the recommendation was considered, and maintain that legislating and regulating firearms is a well-established federal responsibility the province is not prepared to deviate from at this time. We did see evidence that

¹ According to the Government of Canada, a replica firearm is a device that is not a real firearm, but one that was designed to look exactly, or almost exactly, like a real firearm. Replica firearms are prohibited devices in Canada. To be prohibited as a replica firearm, a device must closely resemble an existing make and model of firearm.

Possessing or acquiring replica firearms is subject to the following: Individuals may keep any replicas that they owned on December 1, 1998. However, individuals cannot acquire, make or import a replica firearm. If an individual takes a replica firearm out of Canada, it cannot be brought back in (source: [Specific types of firearms | Royal Canadian Mounted Police \(rcmp-grc.gc.ca\)](https://www.rcmp-grc.gc.ca))

An imitation firearm is anything that imitates a firearm and includes replica and certain non-powder weapons, such as those that use compressed air, gasses, spring or electricity to fire. Use of an imitation firearm may be subject to criminal code penalties if used in commission of a crime.

the province continues to actively engage on related matters, including active involvement in federal/provincial/territorial tables tasked with public safety matters, which has included contributing feedback on Bill C-21: An Act to amend certain Acts and to make certain consequential amendments (firearms).

In March 2021, the province created an advisory group to review and provide feedback on how this Bill affects Manitobans. The advisory group's report, submitted to the Ministers of Justice and Agriculture & Resource Development in May 2021, did not include feedback on the replica firearms provisions contained in the Bill.

We also heard from the department that, in Manitoba, there is a higher level of public interest in legal and illegal firearms as a public safety concern, versus imitation or replica firearms. This was supported by the comments provided to the province through its advisory group, which helped inform the province's feedback on federal Bill C-21: An Act to amend certain Acts and to make certain consequential amendments (firearms).

Our office noted that in May 2022, the Government of Canada gave first reading to Bill C-21, which includes measures to further regulate and tighten controls over certain replica firearms. Bill received third reading in May 2023. At the time of this report, the Bill had not received Royal Assent.

This new federal Bill C-21, if implemented into law, will prohibit air guns that closely resemble a real firearm (replica), and that meet certain technical specifications, including discharging a projectile velocity between approximately 366 and 500 feet per second². The Government of Canada indicated these air guns could no longer be imported, exported, transferred or sold. However, current owners could continue to possess and use their existing air guns. The Bill deems certain replica firearms as prohibited devices in certain circumstances, even when the muzzle velocity or muzzle energy does not exceed those included in the definition of replica firearm. This includes if the replica firearm is used in the commission of a crime. The Government of Canada has indicated in public releases that it intends to work with stakeholders including law enforcement and industry, to ensure the practical implementation of this initiative.

We noted that the judge's recommendation refers to 'imitation firearms' as an all-encompassing term to include both replica and other non-powder imitation firearms. The judge identified in the inquest the need for public safety outweighing access to imitation firearms for sport and entertainment. However, as noted above, federal Bill C-21 does not affect imitation firearms such as those mid-velocity air guns used for sport and entertainment, or other generic or non-powder imitation firearms sold in retail stores that do not closely resemble a real firearm. As such, the broad scope of the definition of an imitation firearm referenced in the inquest judge's recommendation is unlikely to be fully addressed by Bill C-21.

² <https://www.publicsafety.gc.ca/cnt/cntrng-crm/frms/c21-en.aspx>

CONCLUSION

An inquest report may contain recommendations to change programs, policies and practices of provincial government, agencies or institutions that in the opinion of the inquest judge would help prevent the likelihood of death in similar circumstances. The recommendation in this case does not speak to any specific changes needed but encourages the Province of Manitoba to consider enacting legislation regulating the acquisition and possession of imitation firearms.

The province has provided evidence of its consideration of the recommendation and has reasonably identified the recommendation falls within both provincial and federal jurisdiction. As the province has reviewed its jurisdiction, engaged an advisory group and continues to participate in dialogue with the federal government on Bill C-21 and public safety matters, it is our view they have implemented this recommendation.

However, if the federal Bill C-21 does not become law and there is further public interest in imitation firearms being a concern of public safety, our office will re-engage our monitoring efforts on this matter.

This concludes our follow-up at this time. A copy of our report to you will be posted on the Manitoba Ombudsman website: www.ombudsman.mb.ca.

Yours truly,



Jill Perron
Manitoba Ombudsman

cc: Jeremy Akerstream, Deputy Minister, Manitoba Justice
Dr. John Younes, Chief Medical Examiner, Manitoba Justice