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Getting it all wrong: Executor, administrator or primary next of kin?

by Michel W. Drapeau & Joshua M. Juneau

Corporal Stuart Langridge committed suicide in a barracks room at CFB Edmonton on March 15, 2008, two weeks shy of his 29th birthday. Stuart was a veteran of both the Afghanistan and Bosnian conflicts, and had served honourably with the Lord Strathcona’s Horse, Royal Canadians (LdSH) Regiment.

At the time of his death, Stuart was single and had ceased cohabitation with his ex-girlfriend more than one month prior to his passing. Nonetheless, his prior relationship continued to be regarded by the Canadian Forces as being “common law” in nature, despite that it failed to meet the essential conditions laid out under Alberta law, which regulates conjugal relationships in that province. This wrongful designation of “common law” caused the CF to incorrectly name Stuart’s ex-girlfriend as his next of kin (NOK), resulting in a dramatic trickle-down effect, referred to by one investigator as the “first domino.”

This article is Part Two of a four-part series examining testimony before the Fynes Public Interest Inquiry by the Military Police Complaints Commission (MPCC) into Stuart Langridge’s death. The authors acted as lawyers for Stuart’s parents, Mr. and Mrs. Fynes, throughout these hearings.

Part One of this four-part series considered failures of a 2008 sudden death investigation conducted by the National Investigation Service (NIS). This article considers the improper designation of NOK status to Stuart’s ex-girlfriend. Part Three will examine the failure of the NIS to investigate allegations of criminal wrongdoings. Finally, Part Four will conclude by examining broader and troubling issues that have come to light through testimony at the MPCC.

NEXT OF KIN DESIGNATION

The term next of kin is a legal term which designates someone the right to plan the funeral for a deceased, and may have other rights if a decedent dies intestate — meaning without having made a valid will. Of note, a decedent who has executed a will would normally have appointed a separate person to act as trustee, executor and/or administrator who, in most jurisdictions, would have the duty and responsibility to look after that person’s funeral and burial arrangements.

Normally, NOK is the person or persons most closely related by blood to a decedent; for married persons, the NOK is normally their spouse. However, as Stuart Langridge’s case demonstrates, these definitions, at law, become cloudy when dealing with the assumed, or otherwise, presence of a common law relationship.
In the case at hand, what is even cloudier is that the CF had adopted a definition of the terms *common law* and *next of kin* that are asynchronous with existing provincial law.

**THE LAW**

Section 3(1) of Alberta’s Adult Interdependent Relationships Act outlines that to be considered in a common law relationship, the two persons must either be living together continuously for a period of no less than three years, or if there is a child born of the relationship, for a period of “some permanence.”

Obviously, Cpl Langridge’s relationship did not fit squarely into either of these definitions. As a result, he was never — repeat, never — in a provincially recognized (legal) common law relationship!

Yet, under CF Administrative Order (CFAO) 19.41 — Common Law Relationships — Stuart was allowed to declare his alleged common law status to his commanding officer and, *presto*, the latter recognized it as a *fait accompli*.

This obviously begs a skill-testing question: In cases where there is conflict between a provincial statute and a CF policy, which interpretation should be adopted? Simple. In our view, to determine which definition of common law should be applied, one has to look no further than the Constitution, the supreme law of Canada. Under Canada’s Constitution Act, which indisputably applies wholesale to the CF, the designation of common law status falls within the power of the provincial legislatures, and is not within the purview of federal institutions, such as the Department of National Defence, the Canadian Forces, or the Department of Veterans Affairs.

Therefore, under Alberta law and in accordance with Canada’s Constitution, the common law declaration made by Stuart Langridge to his commanding officer, assuming he was of sound mind at that time, should have been considered to have no force or effect. Under Alberta law, his girlfriend could not possibly have been considered his common law spouse because their interdependent relationship did not meet the letter of the law; let alone the fact that more than one month prior to his death, Stuart and his girlfriend ceased cohabitating, sharing expenses and moved the totality of his furniture and effects to the base, where it was stored under the care of the regimental quartermaster. During this time, Stuart lived in quarters within unit lines.

**THE UTILITY OF A PEN FORM**

The Personal Emergency Notification (PEN) form, which CF members are asked to complete at various times during their careers, is the only form or document in the military that mentions NOK. Indeed, the form itself permits that member to designate a NOK. Not surprisingly, Stuart Langridge named his father, Mr. Fynes, as his NOK. However, at the MPCC hearings, astonishingly, the lead NIS investigator opined that a PEN form provides no evidential value in determining the wishes of a member on such a matter, and that it only serves to determine who to notify in cases of crisis. By his interpretation, the NIS’s lead investigator, therefore, relied on two definitions of NOK: one for notification purposes, and one for everything else. This is false.

In contrast to the NIS’s lead investigator’s opinion, interpreta-

Cpl Stuart Langridge, who enrolled in the Regular force in 2000 with the Lord Strathcona’s Horse (Royal Canadians) at the age of 21, served with distinction in Bosnia in 2001 and Afghanistan in 2005. Two years later he was diagnosed with PTSD. On March 15, 2008 he committed suicide in a barrack room at CFB Edmonton. (SHEILA FYNES)

tion of the meaning and purpose of the PEN form can be found under a Defence Administrative Order and Directive (DAOD) 7011-0 — Service Estates and Personal Belongings — as to both “identify a primary and secondary NOK and a personal emergency notification contact” [our emphasis]. By insisting that the PEN form only serves the utility of notification, we believe that the NIS’s lead investigator displayed a prevalent misunderstanding of that DAOD.

**GIRLFRIEND APPOINTED PRIMARY NOK**

After Stuart’s death, the regiment appointed Stuart’s former girlfriend as his primary NOK. This decision was made by the regimental commanding officer on the advice of the casualty coordination meeting held a mere two days after Stuart’s death. This meeting was chaired by the regimental deputy commanding officer.

The NIS was charged to investigate whether the designation of Stuart’s ex-girlfriend as his NOK at this casualty coordination meeting was lawful. Unfortunately, in our opinion, such a police investigation never really took place. Instead, in a strange turn of logic, the lead NIS investigator concluded that, after over 16 months of “investigating,” in reality, Stuart himself had designated his own NOK based on a concept to be known as the “customs of our society.” Hum!

**NIS-MADE LAW: “CUSTOMS OF OUR SOCIETY”**

At the MPCC hearings, the lead NIS investigator testified that there was never a regimental decision, *per se*, made about appointing the primary NOK (PNOK). Instead, he insisted that the decision re-

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garding the appointment of the PNOK was made by Stuart himself when he signed a common law declaration in December 2007.

The basis of the lead investigator's inferences were his reliance on a heretofore unheard of concept referred to as the “customs of our society.” When asked to define what he meant, the lead investigator could not provide a genesis. Instead, he proclaimed himself an expert on this topic, stating that the definition of NOK is dependent on the deceased’s definition of “family.” He testified that “in 99 per cent of societies within Canada, [PNOK is] ... the spouse.” When asked to further explain, he hastened to opine that the definition of the PNOK is malleable, and based on the culture of the deceased. The lead investigator stated under oath that:

“If your society is primarily Anglo-Saxon Catholic and Christian it’s very well defined. You have your spouse, your parents, brothers, sisters, step-sisters, step-brothers, et cetera, et cetera. In-laws extend your family. In some other cultures that exist in our nation now, they might have a different relationship or a different idea of defining family structure and next of kin. For instance, in some societies that exist in Canada, next of kin can only be a male. A female cannot be next of kin. So it depends on how the community of a specific individual identifies the issues of family and heirs.”

As they say in the movies, often reality is stranger than fiction. It is as if an NIS investigator would have to conduct a background investigation into a deceased person’s belief system, as well as his cultural and religious values, before investigating the designation of his PNOK. That is not our understanding of the role of a police investigator, at least not in our society.

What does this all mean in real terms?
Mr. and Mrs. Fynes suffered unnecessary and irreversible pain. How? First, they played a secondary role in the planning of their son’s funeral. Second, the Canadian flag adorning this veteran’s coffin was inappropriately presented to his former girlfriend. Third, Stuart’s former girlfriend planned the post-funeral reception with the regiment. Fourth, the Department of Veterans Affairs Canada were wrongfully notified by the regiment of his former girlfriend’s status as his common law spouse. This has since been corrected to show that, in concurrence with the proper provincial legislation, Stuart was single at the time of his death.

CONCLUSION
In investigating the designation of Stuart Largridge’s ex-girlfriend as his NOK, the NIS lead investigator relied on a unique and unheard of interpretation of law that he coined as the “customs of our society.” Maybe the worst part is that his chain of command permitted him to rely on what appears to be a homemade, nonchalant concept.

Currently, the validity of the 2009 NIS’s lead investigator’s decisions, the quality of the NIS’s investigative techniques and supervisory process is being considered by the MPCC. Our opinion on the quality of the NIS’s lead investigator’s investigation has been made known through our written representations.

To sum up, we are of the opinion that it was fatally flawed, and may be seen as an attempt to exonerate the LdSH chain of command from all responsibility.

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