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Via email

October 28, 2022

The Mass Casualty Commission  
1791 Barrington Street, Suite 310  
Halifax, Nova Scotia  
B3J 3K9

Dear Commissioners:

**Re: "Closing Submissions on Behalf of Lisa Banfield"**

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The Public Prosecution Service been provided with the "Closing Submissions on Behalf of Lisa Banfield" written by James Lockyer and Jessica Zita. Therein they propose as an issue, "*What can be learned from the conduct of the police and the prosecutors in Lisa Banfield's case?*" The submissions impugn the conduct of the prosecution and rely upon inaccurate information. As none of the investigative RCMP Command triangle or prosecution team were witnesses before the MCC, in the interests of the fair administration of the Commission's mandate, the following submissions should be considered as a reply to Ms. Banfield's closing submissions.

### Introduction

During the course of the investigation, four statements were taken from Ms. Banfield by the RCMP. Two themes emerge from Ms. Banfield's submissions regarding the investigation: (1) that these statements were obtained through police trickery, supported by the Crown, and (2) that a decision to charge was made by police and Crown prior to the gathering of all of the evidence, which motivated how the evidence was obtained. Both suggestions are false.

### Statements of Lisa Banfield

Ms. Banfield asserts at page 5:

*"Police investigated Ms. Banfield for 8 months before laying charges in December 2020 against her for transferring ammunition. Until then, Ms. Banfield had every reason to believe that investigators saw her as a victim of the perpetrator, and their interviews of her were in this context only."*

This is not accurate. As early as April 28, 2020, the police explicitly told Ms. Banfield that **she may be charged** with offences depending on what evidence is gathered (see e.g., lines 3043 and 3051 of the April 28, 2020 interview). She was cautioned about the potential jeopardy she faced and was repeatedly advised that the choice to speak with the police was hers (see generally lines 2930-3070). Similar cautions were provided to Lisa Banfield on July 28, 2020 (see e.g., lines 211-311).

The portrayal by Lisa Banfield that she “had every reason” to believe that the police only saw her as victim and not a possible suspect is belied by a thorough review of the transcripts.

Ms. Banfield further asserts, at page 6, the following regarding the so-called “timeline”:

*Sometime Between April 19 and July 28, 2020: The RCMP investigative team - primary investigator Corporal Gerry Rose-Berthiaume, file coordinator Constable Shawn Stanton, and team commander Sergeant Glenn Bonvie -together with Crown Attorneys Shauna MacDonald and Mark Heerema made a decision to charge Ms. Banfield, Brian Brewster and James Banfield with transferring ammunition to the perpetrator. To make their case, the RCMP set up strategies for re-interviewing the three of them. They found ways in advance to avoid having to advise them of their right to counsel under s. 10(b) of the Charter by ensuring that the interviewing officers at each interview assured the three in advance that they were not detained and could leave at any time during the interview. Since the 10(b) right to counsel only crystallizes on detention or arrest, they thereby avoided giving them this right. By neither arresting nor detaining them, they were also able to avoid having to give them their 10(a) right to be informed promptly of the reason for their arrest/detention.*

Regarding police interview tactics, to the extent that the paragraph suggests that the Crown was involved in developing an interview plan specifically designed to avoid the provision of *Charter* rights, this is untrue. These statements were not requested or taken on the direction of Crown counsel, nor was Crown counsel involved in the provision of advice regarding interview tactics. Claims to the contrary are false.

Furthermore, the propriety of when the police decide to arrest or detain, and the *Charter* implications in deciding either way, can only sensibly be litigated through a hearing based upon evidence and a thorough review of the applicable caselaw. (We note parenthetically that the recent decision of *R. v. Tessier* 2022 SCC 35 from the Supreme Court of Canada arguably supports the conduct of the police in this case). The MCC has not been equipped with the required evidence or submissions to accept Ms. Banfield’s conclusory statements as valid. It is submitted the Commissioners ought to reject Ms. Banfield’s submissions in these regards.

A similar suggestion of alleged misconduct is made on page 7:

*During the interview on July 28, 2020 in which Ms. Banfield incriminated herself, she was not cautioned that she was under investigation for transferring ammunition to the perpetrator, nor was she cautioned on her right against self-incrimination, nor was she given her right to counsel nor hers. 10 (a) rights... She did not know of the police (and Crown) intentions until she was charged in December and, once charged, on counsel's advice she was silenced from that time forward.*

The provision of rights to Ms. Banfield on July 28, 2020 was discussed above.

It is unclear what is being alleged or referred to in the rather ambiguous reference to the Crown having “intentions” on July 28, 2020. If Ms. Banfield is implying that the Crown had predetermined the viability of a prosecution or conspired in tricking Ms. Banfield to incriminate herself, it is unfounded and irresponsibly levelled.

### **The Decision to Charge**

Ms. Banfield also claims, in the timeline paragraph at page 6, that the Crown and the RCMP made a decision to charge between April 19 and July 28, 2020. This is false.

The evidence of Supt. Campbell on July 26, 2022 is that the RCMP's decision to charge was made in November 2020. There is no evidence to contradict this statement. The Crown did not make a decision to charge Ms. Banfield, such decision-making authority rests with police

The notion that the decision was jointly made by the Crown and the RCMP is an inaccurate portrayal of the role of the Crown in this case. The Crown does not, and did not in this case, decide to charge individuals. The decision to lay charges always rested with the RCMP, as accurately pointed out in the testimony of Supt. Darren Campbell. Unlike some other jurisdictions, Nova Scotia is not a charge approval jurisdiction.

Police can lay charges if they believe on reasonable and probable grounds that an offence has been committed. The Crown standard to proceed with a prosecution in Nova Scotia is whether a realistic prospect of conviction exists and that a prosecution is in the public interest.

As touched upon in his testimony before the Commission, RCMP Supt. Campbell acknowledged the RCMP received pre-charge advice from the Crown (see, for example, pages 157-161, July 26, 2022, transcript of Cross-examination before the MCC). The parties' respective roles were appropriately maintained at all times with respect to Ms. Banfield.

To the extent that Ms. Banfield suggests that Supt. Campbell's testimony asserts that the Crown was involved in the *decision* to 'charge', that is an inaccurate description of the testimony. Her submission fails to appreciate the related, but separate, roles held by investigative authorities and prosecuting authorities in the Province of Nova Scotia.

### **Conclusion**

Serious allegations have been levelled against the Crown by Ms. Banfield. Crown Counsel have not been called upon to address these issues thus far in the process. The allegations relating to the conduct of the Prosecution Service, as set out in Ms. Banfield's submissions, are without foundation or merit and ought to be rejected by the Commissioners.

Respectfully,



Denise C. Smith KC  
Deputy Director of Public Prosecutions