

July 8, 2022

By E-Mail

Mass Casualty Commission
310-1791 Barrington Street
Halifax, NS B3J 3K9

Dear Commissioners:

**Submissions on Phase I
Our File Number: 4203561**

Please accept the following submissions, regarding the proceedings to-date comprising 'Phase I' of the Mass Casualty Commission's Public Inquiry, on behalf of our clients, the families of the victims of this tragedy and those most affected.

At the outset, we would speak to a concerning thread in some of the evidence elicited from RCMP witnesses, in submissions made by counsel for the Federal Department of Justice ("Canada DOJ") and the National Police Federation ("NPF"), and in public statements made by representatives for the NPF. It has been frequently conveyed by these sources, publicly, that the actions of the RCMP during its response to the mass casualty event and afterwards were as good as they could have been under the circumstances – in some cases, above reproach – but to the extent that there may have been shortcomings, such issues can be remedied by increasing resources flowing to the RCMP.

In submissions to the Commissioners on April 14, 2022, counsel for the NPF, Ms. Nasha Nijhawan argued:

The NPF is confident that the record shows that all of our members called for service in response to the murders [on April 18-19, 2020] acted to the best of their abilities, in accordance with their training and their oath to serve and protect the public without once hesitating in the face of grave personal danger.

...

The NPF is open to constructive discussions about how the RCMP can do better and how our members can do better. But we remind the Commission and the public, in order for them to do better, they need support, funding, resources.

That same day, Patricia MacPhee, counsel for the Canada DOJ described the RCMP's response on April 18-19, 2020 as: *"a dedicated, a highly competent, a highly trained, and an admirable response from the RCMP members."* However, in those same submissions, Ms. MacPhee allowed, in referencing those items for which additional funding could be provided:

We've talked about GPS tracking; we've talked about various methods or technologies for situational awareness such as ATAK. We've talked about night vision goggles. We agree these are all important issues.

As another example, it is known that on April 19, 2020, the RCMP opened fire on Emergency Management Officer David Westlake and the Onslow Belmont Fire Brigade Hall (the "Fire Hall"), volleying carbine rounds into the truck bay and side of the building, leaving the building's occupants unaware of what happened for almost an hour during which time their mental health deteriorated and their lives changed forever. In an interview with Global News on April 11, 2022, President of the NPF, Brian Sauvé, said *"as far as the incident at the Onslow Fire Hall...couldn't have seen anything being done better."* In-keeping with statements made by counsel for the NPF and DOJ, Mr. Sauvé prefaced his comment by allowing that recommendations may be made *"with respect to training, and all that."*

Our clients submit that these positions, conveyed both on and off the Commission's record, fail to recognize the very real deficiencies in the RCMP's response to the mass casualty event which have become increasingly apparent over the course of the Commission's Phase 1 proceedings. These deficiencies are, by and large, not sourced in a lack of funding or resources, but rather a lack of foresight, organization, information-sharing, and communication.

These deficiencies cannot be hidden or excused by pointing to the RCMP's budget or, more significantly, by characterizing the mass casualty event as *"unprecedented,"* a descriptor which has been frequently applied. While, cumulatively, the mass casualty event may indeed have been like no other event before it, we submit that all the deficiencies of the RCMP's response which have been revealed represent fundamental expectations of how the RCMP should carry out its duties on a day-to-day basis. By failing to execute basic expectations of its role, the RCMP failed to recognize the true extent of the perpetrator's threat and failed to put measures in place to stop him as early as possible. Furthermore, by failing to execute basic expectations of its role, the RCMP provided inadequate and inaccurate information to the public, including the victims of the mass casualty event and

their loved ones, both during the mass casualty event and afterwards, thereby exacerbating the effects of the tragedy.

In identifying the RCMP's deficiencies, we submit there are several headings under which same may be organized, which follow in these submissions. Critically, we submit that few of these deficiencies, if any, would be remedied by a recommendation for further funding of the RCMP.

We would further submit that, if additional resources are needed, and if the Commission's report will include recommendations on increasing the RCMP's budget, that such recommendations cannot responsibly be made without a fulsome audit of how existing resources are being used.

Breakdown in communications

As the narrative of what happened over those deadly hours on April 18-19, 2020, has been unveiled, a trend has emerged in the RCMP response not of a singular breakdown in communications between members and other regional police, but of a series of 'dropped balls' that hindered members' ability to stop the perpetrator.

Overnight in Portapique: Silos and Incuriosity

There were points in the hours between 10:00 p.m. on April 18th and approximately 9:30 a.m. on April 19th when improved communications between members, shifts, and ranks could have fundamentally altered the RCMP's response. In our submissions, we highlight some of the most concerning examples.

There was no containment point to the east of Portapique Beach Road until after midnight. There was a second road (the "Blueberry Field Road") just east of Portapique Beach Road. As acknowledged by S/Sgt. Addie McCallum in his evidence to the Commission on June 8, 2022 – during cross-examination by participants' counsel – had these two facts been known, it would have changed how commanding officers considered containment overnight. Likewise, S/Sgt. Allan Carroll, when asked while under oath on May 26, 2022, whether knowledge of the Blueberry Field Road would have been useful to him on April 18th, he responded: *"It sure would have."* It is our submission that these two facts *were* known, or at least knowable, had the RCMP taken advantage of all sources of information to understand the community of Portapique.

Other facts relevant to this failure in information-sharing and communication include:

- The apparent ignorance, on part of all RCMP members, of Cst. Vicki Colford's communication at 10:48 p.m. on April 18th, much less the significance of same: *"Mill Brook, if you guys want to have a look at the map we're being told there's a road,*

*kind of a road that someone could come out, before here. Ah, if they know the roads well.”*¹

- The apparent failure to access improved mapping tools at the RCMP’s disposal, namely Pictometry (discussed elsewhere herein) – more specifically, under this heading, for any RCMP member to communicate with any other member about it;
- The apparent lack of consideration of the invaluable information the residents of the Portapique community who could possibly inform about the area, including exits from the community (and information about the perpetrator and his replica RCMP cruiser), and failure of members to ask (or instruct members to ask);
- The apparent lack of consideration of seeking any information from other first responders, such as Emergency Health Services personnel on scene and knowledgeable about the area, including Melanie Lowe and Jeff Aucoin, who knew about the blueberry field.²

That containment was ineffectively informed is not the outcome of insufficient resources, but, we submit, of incuriosity within the critical incident command. In his testimony before the Commission on May 18, 2022, during cross-examination by participants’ counsel, Critical Incident Commander (“CIC”) S/Sgt. Jeff West stated that he did not know when the containment point east of Portapique was established, nor did he inquire into this before taking command.

When asked if he was familiar with the geography of Portapique, S/Sgt. West said he was not. S/Sgt. Kevin Surette, during cross-examination by participants’ counsel, stated that local members are relied upon to know the geography, to set up containment points; neither he nor S/Sgt. West could recall what knowledge the local members had of the geography. They did not ask Portapique residents available to them how many roads out there were.

Andrew and Kate MacDonald were the last persons able to report seeing the perpetrator on April 18, 2020, and each reported to RCMP that there was another road out of Portapique. Again, S/Sgts. West and Surette were unaware until the next morning that the MacDonalds had encountered the perpetrator. They were not aware that Andrew MacDonald was shot. They were unaware that Kate MacDonald had told members at the end of Portapique Beach road that there was potentially another road out of Portapique. In fact, inexplicably, until getting an update from S/Sgt. Halliday around 6:25 a.m. on April 19th, S/Sgts. West and

¹ P-000054 (COMM0003806), lines 423-524

² June 13, 2022, Small Group Session: “Emergency Health Services First Responders”

Surette were completely unaware of the MacDonalds' existence or their encounter with the perpetrator³.

Whether the issue was that the ranks were siloed, such that what was known to the IARD team and to Cst. Colford could not reach the CICs, that they failed to receive instructions to communicate critical information to their commanding officers, or that the CICs and other officers were incurious and failed to ask, "*when was the last time the perpetrator was seen and by whom,*" the outcome was the same: breakdowns in communication resulted in critical information not being acted upon.

When S/Sgt. Halliday relayed the interview with Andrew MacDonald to the CICs, the message had somehow morphed to confirm that there was no other was out of Portapique.⁴ It is not apparent that there was any attempt around this time to confirm Ms. MacDonald's information to Cst. Colford of an alternate route out of Portapique.

At this juncture, we would stress that we cannot possibly recount all the breakdowns in communications overnight in and around Portapique. However, the Andrew and Kate MacDonald debacle provides an example of those communications breakdowns occurring during the RCMP's response to the mass casualty event: those in command knew nothing of these witnesses and victims during a critical period, and when they did learn of Andrew MacDonald, the information relayed was hours late and important facts were wrong. Further, the RCMP's unawareness of an alternate route out of Portapique cannot be dismissed or understated as immaterial.

At the end of S/Sgts. West and Surette's testimony, the Commissioners put to the S/Sgts. they may have been better able to inform themselves of what was happening in Portapique if they had drivers. In response, S/Sgt. Surette provided: "*If they were going to provide me with a driver, I'd come out of retirement.*" We would point out, however, during cross-examination by participants' counsel, S/Sgt. Surette stated that he felt fully apprised of the situation in Portapique as was, based on listening to radio chatter and having two brief phone calls with S/Sgt. West.

The suggestion that things could have gone better if the CICs had chauffeurs exemplifies the type of conclusion our clients fear will be made during this inquiry—the type that finds direct recommendations to increase resources for the RCMP unnecessarily, or which can be used to lobby for additional funding later.

Drivers were not required for the CICs to ask locals if there was a second road; technology was not needed for someone to request a containment point to the east of Portapique Beach

³ P-000376 (COMM0003901)—Member's typed notes of Jeff West-OCC incident commander

⁴ P-000161 (COMM0010697)—Member report of S/Sgt. Steve Halliday

Road before midnight. Additional resources cannot be provided in place of simply making appropriate efforts to ensure members were sharing critical information such as *“we’re being told there’s a road, kind of a road that someone could come out, before here...”*⁵ As is thematic throughout these submissions, we ask the Commission to be cautious in recommending additional resources, and at all points ask the question: *“is this an issue of not having enough money?”* We submit the answer will most likely be ‘no’.”

Confusion and Disarray

As the mass casualty event unfolded there were many moments of confusion and disarray in the RCMP response. These had life altering and at times fatal impacts on our clients and others of those most affected.

One such moment was the chaos surrounding Cpl. Peterson’s sighting of the perpetrator. We understand that the Commission anticipates further evidence on this issue, but what is known to date is concerning. Following Cpl. Peterson’s sighting, there was a delay in him turning around that caused him to lose sight of the perpetrator. While out of sight, the perpetrator was able to slip into the Fishers’ driveway, victimizing two of our clients. As other members tried to respond, they were apparently confused by Cpl. Peterson’s location, as well as the (easily found by Google Maps) location of the Fishers’ home. The entire RCMP response mustered nearly two kilometers away while the Fishers hid, loaded guns, and sent final messages to their loved ones. In the meantime, the perpetrator left, but the RCMP continued to believe the perpetrator was *“pinned down.”*⁶ This escape was aided by lack of communication between members and inconsistent use of mapping technology not by an under equipped RCMP response.

By the time the RCMP realized their mistake and descended on the Fishers’ residence, the perpetrator was travelling through Debert, actively continuing his deadly rampage, shooting and killing Heather O’Brien and Kristen Beaton, who was pregnant at the time of her death.

Continuing the examination of this timeline evidences further confusion and disarray. When the first 9-1-1 calls were made from the scenes of Heather O’Brien and Kristen Beaton’s murders, the call takers thought there were reports of a car accident and sent EHS and the fire services into danger. The confusion at these scenes is readily apparent from the evidentiary record, not the least of which is the evidence of the RCMP members responding to Heather O’Brien.

We have records and testimony from multiple members who responded to the scene of Heather O’Brien’s murder. All recount physical contact with Ms. O’Brien in the moments

⁵ P-000054 (COMM0003806), lines 423-425

⁶ P-001926 (COMM0001659)

surrounding her death. Each of these members recall checking Ms. O'Brien's pulse, though each account differs as to when, whether and if the other responding members provided similar vitals checks. Crucially, there are discrepancies between the members accounts and the physical evidence found at the scene.

The regular duty members report having one of them stationed at the vehicle actively attending to Ms. O'Brien when the EMRT members arrived, the EMRT members dispute this. Further, Cpl. Ivany of EMRT reports that his partner Cst. Mahar had to break a window in order to reach Ms. O'Brien. This is refuted by the physical evidence, namely a photograph taken of the roadway where Ms. O'Brien encountered the perpetrator shows Ms. O'Brien's driver and passenger windows were shattered by bullets on Plains Road before her Jetta rolled into the ditch.⁷

An additional aspect of the Plains Road chaos was Cpl. Ivany's concern as to whether other officers had responded to Kristen Beaton's vehicle. Though other medically trained RCMP members had already declared Kristen Beaton dead, Cpl. Ivany reports that while responding to Ms. O'Brien he was worried that no one had treated the woman in the other car. Many further moments of confusion and disarray both preceded and followed the events of Plains Road. These include, but are not limited to:

- confusion on the radio caused by Sgt. O'Brien's intercessions (whom, it is to be noted, was instructed by S/Sgt. Carroll to not come into work, and who surprised S/Sgt. Carroll by doing so anyway and potentially breached command structure in doing so);⁸
- the apparent inability to determine in a timely manner whether Lisa McCully and Lisa Banfield were the same person; and
- a lack of clarity in who could and should be conveying and recording important information.

None of these issues are matters of funding or increased budgets. These are failures of effective communication, a fundamental skill that the RCMP relies upon day in, day out, and which the public expects them to employ.

We submit that this theme of confusion and disarray continued into the RCMP's contact with the families of the victims and the public at large – however, given the volume factual evidence to come with respect to same, we reserve those submissions until Phase II is complete.

⁷ P-000431 (COMM0003764) – Debert, Plains Road, Heather O'Brien (photograph).

⁸ Such as was discussed by S/Sgt. Carroll in his testimony given at public proceedings on May 26, 2022; and by Cst. Dorrington in his testimony given June 20, 2022.

More than two hours for a Tweet; Inaccurate Information

There has been much discussion about whether Twitter was the appropriate medium for informing residents of Portapique, Colchester County, and the wider province of the tragedy which was unfolding during mass casualty event.

The first Tweet sent by the RCMP on April 18th occurred at 11:32 p.m., and read:

#RCMPNS is responding to a firearms complaint in the #Portapique area. Portapique Beach Rd, Bay Shore Rd and Five Houses Rd.) the public is asked to avoid the area and stay in their homes with doors locked at this time

This warning woefully understated what was happening in Portapique – “firearms complaint” did not equate with the multiple murders, structure fires, and widespread carnage and destruction known to RCMP at that time. Any reasonable interpretation of this Tweet would have only raised caution in those active on Twitter and in Portapique, or planning to attend the Portapique area, after 11:32 p.m. that night. Beyond the limited information provided in those early correspondences, however, the timeliness of releasing crucial information the following morning was inexplicable and likely deadly.

It was shortly after 8:00a.m. on April 19th that RCMP in Portapique knew that the perpetrator’s replica RCMP cruiser was not among those burned on-scene. In his evidence before the Commission on June 8, 2022, during cross-examination by participants’ counsel, S/Sgt. Addie MacCallum stated he confirmed this with Director Lia Scanlan sometime around 8:35a.m. After that, he assumed the public was notified about the replica RCMP cruiser and that a Tweet with a photo of same was disseminated.

However, the Strategic Communications Unit did not publicly share a photo of the Replica Cruiser until 10:17 a.m., more than two hours after it knew of the replica RCMP cruiser and knew that it was not found within Portapique. For more than two hours, the RCMP was aware of the risk travelling within the province disguised as one of their own, and this information was not shared with the public. During that time, more unaware people fell victim to the perpetrator, including Kristen Beaton, who was known to be actively monitoring social media immediately prior to her death, including sharing warnings within her social media network⁹.

It may be that the breakdown in timely information sharing was partly due to the chaotic events of that morning, and to some tragic miscommunications (i.e., Ms. Scanlan believing that S/Sgt. MacCallum was her contact in the field, and S/Sgt. MacCallum understanding his role with the Strategic Communications Unit ended after his call with Ms. Scanlan at

⁹ As is set out in the Plains Road, Debert Foundational Document, paragraphs 58-65

approximately 8:35 a.m.).¹⁰ However, the sequence of errors that morning and the overall reluctance to share information throughout the Mass Casualty warrants a closer look at what has proven to be a culture of guarding information and of a communications structure that prioritized the comfort secured through bureaucratic sign-off over timely dissemination when the latter mattered most.

As is repeated throughout these submissions, these issues are not fixed with more money or more bodies, but by addressing the culture that allowed these items of misinformation and miscommunication to occur.

Regional Police

The failure of RCMP to inform and involve the Truro Police Service (“TPS”) may be less a breakdown in communication and more symptomatic of the aforementioned culture of guarding information.

The foundational document “Truro Police Service” provides the narrative that information provided to TPS overnight during the Mass Casualty was sparse, with some coming by happenstance (namely, Sgt. Hickox encountering two members near the Truro Fire Hall between 2:15-2:45 a.m. on April 19, 2020).¹¹

Sgt. Hickox, who was the TPS supervisor overnight on April 18-19, 2020, stated in his interview with the Commission that he could have mustered up to ten officers to assist, all carbine trained with hard body armour. However, information known to RCMP was not shared, such that the TPS did not know the extent of the threat nor of the advisability to ready its resources. Even if the RCMP did not wish to involve the TPS or other services in the active pursuit of the perpetrator, such resources could have been effectively deployed to create roadblocks or provide overflow police response for non-Portapique related calls.

At 9:50 a.m. on April 19, 2022, TPS Chief Dave MacNeil emailed Chief Supt. Chris Leather and Asst. Commissioner Lee Bergerman specifically to offer support from the TPS, to which Chief Supt. Leather responded: “[...]it sounds like we may [have] the suspect pinned down in Wentworth. Will be in touch.”¹²

Chief Supt. did not, in fact, provide an update thereafter, and during the time the perpetrator was driving through downtown Truro (approximately 10:15 a.m.-10:19 a.m.),

¹⁰ As discussed by Ms. Scanlan and S/Sgt. MacCallum in their testimony given at public proceedings on June 8, 2022.

¹¹ We understand one of these members to have been Cst. Fahie, who, relevant to other comments we have made herein with respect to use of resources, was lost en route to his intended destination; see COMM00018358/P-412.

¹² P-001926 (COMM0001659)

the most-recent information the TPS had from the RCMP was that the perpetrator was likely pinned down in Wentworth. At this time, significant facts were known to the RCMP, including the absence of the perpetrator's replica RCMP cruiser at the Fishers' residence and that, shortly after 10:00 a.m., homicides were committed in Debert (in the direction of Truro relative to Glenholme). That such facts were known to the RCMP and still no communication was made to the TPS cannot be ignored.

Even if the RCMP had no desire to make use of the services offered by the TPS, it owed them knowledge of the extreme threat occurring just outside, and later within, the jurisdiction of the TPS. The fact that no casualties occurred there cannot make light of the RCMP's failure to communicate its knowledge of the deadly threat to the TPS.

Quite clearly, this lack of communication has no relevance whatsoever to the RCMP's funding or budgeting considerations. At best, this was an oversight, another 'ball drop,' failing to recognize that the perpetrator's known path was potentially leading him into TPS jurisdiction and that TPS could and should be looked to for support. At worst, whether this was a deliberate choice to leave TPS in the relative dark.

Failure to Use What They Had

Technology

One of the most glaring oversights from April 18-19, 2020, was the RCMP not taking advantage of the Emergency Management Office's "Alert Ready" public alerting system. The reasons given vary from: the system being insufficient, or that it was not in the CIC "tool box" at the time, or, in representations from multiple members of the RCMP, that it was completely unknown to them. However, regardless of what reasons the RCMP have given for not taking advantage of the system, we submit that the following has become clear through Phase I proceedings: the use of Alert Ready could have saved lives, and additional resources are not required to rectify this issue in the future.

As TPS Chief MacNeil provided in his interview with the Mass Casualty Commission, that the chiefs of the regional forces in Nova Scotia were content with the Alert Ready system as it was on April 18-19, 2020. He described the process of issuing an alert as working very well, despite what he described as RCMP pushing for TPS to adopt the narrative that the system did not work.¹³

¹³ P-001032 (COMM0003767) – Transcript of Recorded Interview (Redacted) of Chief David MacNeil, Truro Police.

In his evidence before the Commission, S/Sgt. West stated that Alert Ready was not a “*tool in our toolbox at that time.*” In his interview with the Mass Casualty Commission¹⁴, S/Sgt. West similarly provided: “*It’s not a tool that was in our toolbox at the time...*” It has not gone unnoticed that this same sentiment (“*was not in the CIC ‘tool box’*”)¹⁵ is expressed in a document titled “Talking Points,”¹⁶ emailed by then-Inspector Derek Santosuosso to Lia Scanlan on May 20, 2020.¹⁷

Whether it was “*in our toolbox*” at the time or not, it is apparent that key players were completely unaware of the existence of Alert Ready, despite RCMP members having been at many meetings concerning Alert Ready including PSAP manager meetings, DEPO executive meetings, and NS EMO agency representatives committee meetings, the minutes of which are exhibited before the Commission. The testimony of Paul Mason, Executive Director of the Emergency Management Office (EMO) made abundantly clear that, though Glenn Byrne, OCC Commander, the RCMP was fully apprised of Alert Ready, that EMO’s view was that it could be used in the case of “mass shootings,” and that the RCMP were invited to have direct access (authorized user status) of Alert Ready.¹⁸ In spite of this, even Superintendent Dustine Rodier and Cpl. Jennifer Clarke, who occupied roles centred on communication at the time of the mass casualty event, indicated in their testimony before the Commission that they had never even heard of “Alert Ready.”¹⁹

It may be true that the CICs in charge during the RCMP’s response to the mass casualty event and the RCMP Strategic Communications Unit had not turned their minds to using Alert Ready for mass shooting events, or that they singularly believed the system was not sufficient at the time, but regardless of the reasons for not taking advantage of this system, the solution that it was available, could have/should have been used, and that it might have saved lives does not require additional resources. All that is required is awareness of what is available, how to engage it and, critically, the presence of mind to use it. The latter, of course, requires overcoming beliefs that have been proven to be unfounded and easily

¹⁴ P-001442 (COMM0035916)—Mass Casualty Commission – Investigations – Transcript of Recorded Interview of Jeff West.

¹⁵ A slightly different iteration of this phrase, “It simply wasn’t in our playbook” was employed by S/Sgt Steve Halliday in his testimony on May 17, 2022.

¹⁶ P-002684 (COMM0027940)—Talking points

¹⁷ P-002683 (COMM0027939)—Media Talking points

¹⁸ As discussed by Mr. Mason in his testimony given at public proceedings on May 10, 2022.

¹⁹ As discussed by Cpl. Clarke and Supt. Rodier in their testimony given at public proceedings on June 7, 2022.

mitigated against by increased knowledge and familiarity with emergency alerting, such as the ‘panic myth’ discussed by Professor Michael Hallowes and others.²⁰

Returning to the incident at the Onslow Belmont Fire Hall, we learned that it could have been avoided had Csts. Terry Brown or David Melanson used the radio technology available to them—specifically, had Cst. Melanson taken advantage of the emergency request to talk (“ERTT”) button on his portable radio, he could have confirmed that it was Cst. Gagnon parked in front of the Fire Hall, not the perpetrator.

In his evidence before the Commission from May 5, 2022, Cst. Melanson stated that shortly after he and Cst. Brown arrived at the Fire Hall, his focus was on his radio and trying to get a message out. He further provided that he could not do so, as the radio had “bonged out”, meaning multiple persons were trying to get on the channel at one time. However, he acknowledged that there was the ERTT button on his portable radio, but that he “*did not register that in [his] mind to press that*”. After not radioing to confirm who was in front of the building, Csts. Brown and Melanson opened fire wildly on Mr. Westlake, Cst. Gagnon, and the building in which Darrell Currie, Greg Muise, and Richard Ellison were sheltering as a comfort station.

Again, this is not an instance in which additional training to technology was needed, but where the members involved needed to take advantage of what resources they had available to them.

We have already referenced above the existence of mapping tools, namely Pictometry, which went unused by the RCMP during the mass casualty event. Pictometry is clearly a superior mapping tool which was available for use by members of the RCMP.²¹ The difficulties described by S/Sgt. MacCallum, who knew of the software but could not find a computer through which to access it, are not funding or budget problems – this is a lack of organization and prioritization of use of valuable technological tools by the RCMP. The benefit this software could have provided was well described by S/Sgt. MacCallum in his testimony before the Commission:²²

Yes, it was late on Sunday, and I forget how long I’d been up for. And we were having a debrief, and Major Crime had brought in -- it was just something for us to look at, and it was a print-off of Pictometry of the Portapique/Bass River area. And even though it was in black and white, the detail was significant. And along a hedge row on the east

²⁰ As discussed by Prof. Hallowes in his testimony given at public proceedings on May 11, 2022, and subsequent roundtable discussions on public alerting.

²¹ P-001546 (COMM0056422) - Supplementary Report regarding Analysis of Pictometry.

²² As discussed by S/Sgt. MacCallum in his testimony given at public proceedings on June 8, 2022.

side of the community, there was obviously some sort of trail that ran down close from -- I call it the Bay of Fundy, Cobequid Bay, up north to -- close to -- it looked like it went towards Brown's Loop. I couldn't really see because it was a black and white, but it was -- there was obviously something there that I had not noticed before

One of perhaps the most glaring examples of failing to take advantage of technological resources is the widespread failure of members across ranks to properly use GPS technology available to the RCMP, including the onboard computers, or Mobile Work Stations ("MWS"), installed in RCMP cruisers. While it is a separate issue that individual members were not able to be located by GPS in real time in April 2020 (despite that capability already being built in to their TMR2 portable radios), they were able to be tracked while inside their cruisers, provided they are logged in to the MWS. Members can also access mapping on their MWS, again, provided they are logged in. Cst. Rodney MacDonald was not logged in to his MWS when Csts. Brown and Melanson misidentified him as the perpetrator on Highway 4 near Glenholme, resulting in a near-miss blue-on-blue incident.²³

The MWS is also the way in which members can access information logged in the RCMP's CAD software, CIIDS. Members can use the SAMM or CADView applications on the MWS to access information which has been logged to a particular matter in CIIDS, including by other frontline members and dispatchers. It is apparent that members across ranks lacked discipline when it came to using the tools on their workstations to log information, and so key information was not pushed out to all members as it became available – a missed opportunity to share, for example, the existence of survivors Andrew and Kate MacDonald, something Csts. Colford or Jamieson may have done while holding containment for several hours at the head of Portapique Beach Road.

The Commission heard from S/Sgt. Carroll in his testimony that he is not even able to use any of the technological systems about which he was asked, including CIIDS (from either a dispatch workstation or via SAMM or CADView on an MWS), Pictometry, Google Maps, and Google Earth.²⁴ This is all despite S/Sgt. Carroll having been an alternate Risk Manager within the OCC. The fact that a senior member could have a complete inability to use key software tools is unacceptable, particularly given his high level of responsibility within the RCMP in general, and during the mass casualty event in particular. To suggest that such a senior member could remain untrained as a result of a lack of resources is absurd; we submit that it is another clear indicator of a lack of discipline regarding use of technology within the RCMP.

²³ P-000409 (COMM0015898) – Transcript of Recorded Interview – Rodney MacDonald

²⁴ As discussed by S/Sgt. Carroll in his testimony given at public proceedings on May 26, 2022.

Human resources

Again, the facts as provided in Phase I demonstrate that the human resources available to the RCMP during the mass casualty event were not fully utilized. As previously stated, the TPS was not actively engaged by the RCMP, even after Chief Dave MacNeil reached out to Chief Supt. Leather offering to help.

In his evidence before the Commission, S/Sgt. West acknowledged that the Halifax Regional Police (“HRP”) had trained Critical Incident Commanders, but that RCMP did not reach out to HRP for assistance during the mass casualty event.²⁵

Though it will be discussed further in these submissions, we note that throughout the morning of April 19, 2020, commanding officers in Portapique collected evidence that the perpetrator was no longer in Portapique: he was last seen driving a fully-marked RCMP vehicle, he had loaded that vehicle with guns, that it was believed that he intended to go to Dartmouth to encounter Lisa Banfield’s sister, and it was determined the cars burned-out in Portapique were not the Mock Cruiser. However, despite all of this evidence to the contrary, until sometime after Mary-Ann Jay called 911 to state that Lillian Campbell had been murdered in Wentworth, many members remained tied-up in or around Portapique on the belief (or perhaps, we submit, the hope) that the perpetrator was still there. RCMP members who could have been elsewhere tasked in pursuit of the perpetrator, including ERT members, remained at Portapique.

Human resources is not confined to RCMP members. Without repeating the foregoing, a key example of the RCMP’s failure to use available human resources is found in the knowledge that paramedics Jeff Aucoin and Melanie Lowe had about Portapique – specifically, the blueberry field, which they suspected at the time could have facilitated the perpetrator’s escape from Portapique, as was touched upon during the small group session held on June 13, 2022.²⁶ Conversations were ongoing amongst EHS and RCMP regarding safe staging locations near Portapique, of which the intersection of Highway 2, East Montrose Road and Brown Loop was assessed as not being safe due to its proximity to the open blueberry field. Ms. Lowe in particular was in personal contact with an RCMP member in the area who was her friend, yet this information was not sought from Ms. Lowe. Similarly, in the small group session held on June 13, 2022, Paramedic Jesse Brine even saw an RCMP cruiser that driving slowly away from Portapique near Great Village,

²⁵ As discussed by S/Sgt. West in his testimony given at public proceedings on May 18, 2022.

²⁶ We acknowledge that Commission Counsel has communicated that the information shared at small group sessions is not rightly considered “evidence” before the Commission. However, we trust that if that is the Commission’s views of the knowledge shared by Mr. Aucoin and Ms. Lowe, the Commission is taking steps to secure this highly relevant information in a format that can be considered by the Commissioners during their deliberations. Given this, we reference those factual items communicated to the Commission by Mr. Aucoin and Ms. Lowe.

which may well have been the perpetrator's replica RCMP cruiser.²⁷ At the time, knowledge of the perpetrator's replica RCMP cruiser had been reported by multiple witnesses but not shared among RCMP members or other first responders, as will be discussed further below.

Other Portapique residents, including those who evacuated and those who may have been reached by a more timely and thorough canvass of the community, including Harlan Rushton, Richard Ellison, Bjorn Merzbach, Debra Thibeault and other nearby residents, could similarly have provided invaluable information about the community, about the perpetrator and about his mock RCMP cruiser, but appear not to have been canvassed in a manner which would have informed the RCMP's response, or, in most cases, not canvassed at all.

The failure to talk to people who had knowledge which would have vastly benefited the RCMP's understanding of the threat and the environment in which it was taking place is not to be overlooked. We submit that asking questions of first responders, community residents or any other citizen who was encountered during the mass casualty response is hardly a question of funding – it is exactly the type of 'ball' the public would expect the RCMP to carry with ease, and not repeatedly 'drop.'

Red flags

In oral submissions to the Commission on April 14, 2022, counsel for the NPF described the perpetrator as "... a man with a busy professional and social life, with friends, neighbours, colleagues, family..." Respectfully, we submit this is an inaccurate depiction of the individual known to police and the criminal justice system prior to April of 2020.

We recognize the Commission will release foundational documents in the coming weeks detailing the perpetrator's violence toward others, and we will address this further in our Phase II submissions. At this preliminary stage, we simply identify that as with the technological and human resources available to the RCMP at the time of the mass casualty event, there was also information available to authorities that was not acted upon in the months and years leading to April of 2020.

Among the information available, which will shortly be revealed in detail by the Commission, was that the perpetrator was convicted of assaulting a minor in 2001; that the perpetrator's uncle complained to police in 2010 that the perpetrator threatened to kill his

²⁷ Please see footnote immediately above, which we reiterate in the case of the factual information shared with the Commission by Mr. Brine.

parents and may have access to guns; and that a source in 2011 indicated the perpetrator wanted to kill a police officer and had access to firearms.²⁸ Much will be discussed about

²⁸ P-002563 (COMM0017348) – Profile – Additional Information

the information brought to the RCMP from Brenda Forbes,²⁹ and what was – or more accurately, was not – done with it. There is also some indication that the perpetrator was flagged by either RCMP or Border Services Canada for “*smuggling*” in 2010, based on what appears to be an RCMP-generated infographic,³⁰ but this has not been confirmed by the Commission or RCMP. The perpetrator also engaged in what was described by S/Sgt. Briers as “*bizarre behaviour. One normal human doesn’t do that, and a businessperson type of thing*” when the perpetrator angrily confronted HRP officers in a parking lot next to his denture clinic in Dartmouth in February 2020.³¹

We submit that the above-noted represents a failure on part of the RCMP to make use of its own intelligence which had long been in the possession of the RCMP. We expect that upcoming public proceedings will clarify the extent to which the RCMP had prior knowledge of the perpetrator, above and beyond the information shared by Cst. Dorrington during his testimony on June 20, 2020, and identify the extent to which prior intelligence in the RCMP’s possession was not effectively relied upon, if accessed at all. Whether the RCMP made note of this intelligence during the mass casualty event, or failed to, amounts to a failure to make use of intelligence long within the RCMP’s possession.

Tunnel Vision and Attempting to Prove a Negative

From a review of the exhibits and testimony given before the Commission, there appear to have been two beliefs held by RCMP overnight on April 18-19, 2020 which limited its containment efforts and hampered its ability or inclination to actively locate the perpetrator: that the perpetrator was not driving a fully-marked RCMP cruiser and that the perpetrator did not escape Portapique.

Replica RCMP Cruiser

Jamie Blair described the replica RCMP cruiser as “*a police car... it’s decked and labelled RCMP*” in her 911 call at 10:01 p.m.³² The Blair and McCully children, in a 911 call placed at 10:16 p.m., described the replica RCMP cruiser as being just like a police car³³; they warned that the perpetrator would blend in with other members because he had a cop car, and that it had lights and “*the cop symbol on it.*”³⁴ Speaking with S/Sgt. Brian Rehill at approximately 10:30 p.m., Kate MacDonald described the perpetrator as being in a cop car, and that she

²⁹ We anticipate that information from Ms. Forbes will be shared in a forthcoming Foundational Document as well as her live testimony; however, see the May 22, 2020 reporting by Global News entitled “She witnessed the N.S. mass shooter’s violence. She’s still struggling to be heard.” which can be found here: <https://globalnews.ca/news/6967657/shooting-domestic-violence/>

³⁰ P-001122 (COMM0028097) – Border Crossing Report 2020493913_FINAL

³¹ As discussed by S/Sgt. Briers in his testimony given at public proceedings on May 25, 2022.

³² P-000069 (COMM0003870) – Transcript of Recorded 911 Calls of Jamie Blair.

³³ Foundational Document “Confirmation or Replica RCMP Cruiser”, at para 29.

³⁴ P000042 (COMM0002884) – 911 audio transcript of call from AD

thought it had stripes on it. Despite this information, S/Sgt. Rehill and other commanding officers and members concluded that the perpetrator was not in a fully-marked cruiser, considering instead that it could be a decommissioned police car, a white car, or a rental car. Some RCMP members, such as in the case of Cst. Dorrington, appeared to base this assumption off of prior information or experience³⁵ but, in most instances, such as was described by S/Sgt. Halliday of himself during his testimony,³⁶ responding members appear to have been unable to fathom the idea that the perpetrator could have donned such an elaborate mask and concluded, therefore, that it must be something less than that.

These remarks are not to downplay the chaos RCMP encountered that evening and the remarkable nature of an armed perpetrator unaccounted for in a fully-marked RCMP cruiser, but we submit that the RCMP apparently concluding that the perpetrator could not possibly be in a fully-marked cruiser inappropriately limited its investigation and, more concernedly, prevented it from alerting the public of the potential danger and to contain or locate the perpetrator.

We submit that this is especially true, as the Commission has a reasonable basis to conclude that multiple members may have driven past the replica cruiser as it drove away from Portapique³⁷. Those members were fortunate enough to pass the perpetrator unharmed. Victims such as Lillian Campbell and Kristen Beaton were not so fortunate and became his 17th and 18th victims. One cannot but be deeply affected by the knowledge that the last words of the perpetrator's 19th victim, Heather O'Brien, were her report of hearing gun shots, then seeing a police car.³⁸

Attempting to prove a negative

It is our submission that absence of evidence that the perpetrator was in Portapique should have been acted upon by the RCMP as evidence of his absence. Throughout the overnight hours and into the morning of April 19, 2020, the evidence supports that that there was good reason to believe the perpetrator was no longer in the community. This, again, would have been especially true had commanding members identified the existence of the Blueberry Field Road earlier, and recognized that the highway east of Portapique was entirely uncontained until 12:01 a.m. on April 19th.³⁹ But as evidence mounted, RCMP members appear to have remained entrenched in, we submit, their belief that the perpetrator was still in Portapique.

³⁵ As discussed by Cst. Dorrington in his testimony given at public proceedings on June 20, 2022.

³⁶ As discussed by S/Sgt. Halliday in his testimony given at public proceedings on May 17, 2022.

³⁷ Foundational Documents "First Responder Actions in Portapique" at Fig 16; "Overnight in Debert" at para 13.

³⁸ P-000423 (COMM0002861) – 911 audio transcript of call from Leona Allen. Dated 2020-04-19.

³⁹ Foundational Document "Containment Points in and Around Portapique" at para 26.

It was only when ERT advised, at or around 8:00 a.m. on April 19th,⁴⁰ that the burned out Ford Taurus at 200 Portapique Beach Road was not a fully marked RCMP cruiser, that the RCMP appears to have begun to allow that the perpetrator might have escaped Portapique.⁴¹ In spite of this, no meaningful action was taken to act upon this burgeoning idea. It was only one and a half hours later when the report came in that Lillian Campbell was murdered, and that an RCMP car was seen leaving the location, did members leave Portapique. When asked during cross-examination whether they needed proof he was somewhere else before they would believe he was no longer in Portapique, the response from both S/Sgts. West and Surette when testifying before that Commission was something to the effect of “*well, where would we send them?*”⁴² Such a remark clearly fails to appreciate that as each hour passed during which they did not act on the possibility the perpetrator had escaped, the radius of his possible location and the viable grid for a manhunt grew.

By the morning of April 19, 2020, then, we submit that the RCMP's response to the mass casualty event reached a point where multiple identified shortcomings have converged: the RCMP would apparently not commence a manhunt unless they had a specific place to send members. Most critically, the most likely individuals to spot the perpetrator, and thereby provide the RCMP with a specific place to go, were the members of the Nova Scotia public. However, we know that the RCMP made no effort to meaningfully communicate with the public to provide the information the public needed to help the RCMP (much less to help themselves). And, during that period of time of apparent waiting, the perpetrator took the lives of Sean McLeod, Alana Jenkins and Thomas Bagley, then freely carried on his murderous rampage. That he may well have passed by observant residents like Reginald Jay and Joe Rushton⁴³ who were moving around in the same area is a reality that cannot be overlooked

Guarding information from other agencies and the public and becoming entrenched in beliefs to the detriment of the investigation are shortcomings and errors that must be corrected, but significantly, they are not shortcomings and errors which are remedied by bolstering the RCMP's budget. Defeating the deficiency of failing to acknowledge the expanding evidence supporting the perpetrator's escape from Portapique is achieved by changing the culture and way of thinking and focusing on the ordinary responsibilities that the RCMP is meant to fulfill during every response and investigation.

⁴⁰ P-000098 (COMM0006368) – Transcript – 911 calls – H-Strong, beginning at line 11209.

⁴¹ Foundational Document “RCMP Command Post, Operational Communications Centre, and Command Decisions” at paras 459-469.

⁴² As discussed by S/Sgts. West and Surette in their testimony given at public proceedings on May 18, 2022.

⁴³ Foundational Document “2328 Hunter Road”; and P-000290 (COMM0004212) – Statement transcript of statement given by Joe Rushton

Conclusion

In his evidence to the Commission, S/Sgt. Addie MacCallum said, when asked whether he had opinions to share with the Commissioners to aid in forming their recommendations: *“we really don’t need any more police officers; we really don’t need any more money.”* We strongly echo S/Sgt. MacCallum’s remarks – it is clear that the RCMP’s response to the mass casualty event lacked, in large part, owing to the RCMP’s own short-sightedness, disorganization and failure to communicate effectively, all day-to-day expectations of the RCMP’s fulfillment of its job. Simply put, there were too many of those everyday basic expectations that went unfulfilled during the RCMP’s response to the mass casualty event. The totality of what occurred may have been “unprecedented,” but the individual ‘balls’ which were ‘dropped’ by the RCMP were very much within the RCMP’s expected capabilities.

It may be that there are limited funding-related items that could have assisted the RCMP’s response to the mass casualty event, such as night vision goggles. To the extent that there are funds required to rectify the deficiencies exposed on April 18-19, 2020, we maintain that this cannot be done without first assessing whether RCMP are already efficiently utilizing the resources they have. This exercise should first be looked at as one of *re*-allocation and, more significantly, one of introspection and evaluation of the specific parts of the RCMP’s day-to-day responsibilities.

The Commission has made clear that the goal of its work is not to lay blame or determine liability. However, we suggest the Commission’s findings and recommendations cannot gloss over, or turn a blind eye to, the clear errors and omissions that were made by the RCMP in responding to the horrific events of April 18-19, 2020. Failing to acknowledge these mistakes is a disservice to the rural communities sought to be protected and impoverishes what has become a referendum of sorts on provincial policing.

As with everything done through this Commission – the Commission which was fought for by our clients – the experience and expectations of the families of the victims and those most affected must innervate findings and recommendations. This Commission, though not a court, must nevertheless provide a sense of justice to those individuals who will forever suffer as a result the mass casualty event, and to Nova Scotia and beyond, thereby providing assurance that the Commission has achieved its goal of preventing such tragedy from ever befalling our province again.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of July, 2022.

Respectfully,



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