

September 2, 2022

By E-Mail

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

Dear Commissioners:

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

Please accept the following submissions, regarding the proceedings to-date, comprising 'Phase II' of the Mass Casualty Commission. We make these submissions on behalf of our clients, the families of the victims of this tragedy and survivors of the mass casualty event, those designated as participants most affected by the mass casualty event.

In the Interim Report of the Mass Casualty Commission, Phase II is described as follows:

In Phase 2, the Mass Casualty Commission continues to build on what we have learned about what happened and to extend that knowledge by seeking answers to the questions about the how and why of the mass casualty. Here, the focus is on broadening our lens and evidentiary foundation by exploring more deeply the causes, context, and circumstances of the mass casualty, including issues set out in our terms of Reference."¹

This work has been separated into three main themes, namely policing, community and violence. We will similarly structure our submissions in this fashion.

At the outset, however, we submit it is necessary to express our concern about some of the content of the Phase II proceedings. While we appreciate the importance of a thorough understanding of the causes, context, and circumstances of the mass casualty event, we and our clients are of the view that the Commission's lens became too broad during Phase II.

¹ Mass Casualty Commission, Interim Report, page 71.

We and our clients are of the view that the Commission's scope was overly broad and effectively led the Commission off course – sometimes completely off course – into areas much removed from the events of April 18 and 19, 2020.

The proceedings in Phase II, at times, had the effect of unmooring the Commission from the tragedy and pain our clients have endured over these past two-and-a-half years, and allowing it to stray deep into socioeconomic and other types of considerations which really do not speak to the facts underlying the mass casualty event. Professor Ed Ratushny, Q.C., a preeminent expert on public inquiries in Canada, in an interview with CTV News in July of 2022, described the Commission's process as a multi-million-dollar "*academic fairyland.*" Respectfully, his sentiment aptly describes what our clients have experienced during Phase II; they felt relegated at times to the role of attendees at a tangential academic conference rather than observing the investigative process they fought for.

We want to stress that we and our clients agree many of the issues raised and explored during Phase II are absolutely important in their own right and deserve the attention of Nova Scotians, Canadians and beyond. However, the Commission has not been the correct forum for them. On many occasions, the inclusion of various topics or presenters/witnesses expanded the scope of the Commission beyond what could reasonably be explored within the timeframe and mandate imposed on the Commission.

The examination of police responses to reports of allegations of not just domestic violence, but violent behaviour in general, particularly perpetrators known to the responding law enforcement, is clearly important subject matter to the mass casualty. To use the words of Pamela Cross, Legal Director of Luke's Place, "*what's gonna help keep you alive is someone keeping an eye,*"²; however, "*keeping an eye*" is of little use if individual or community reports to law enforcement fall on deaf or only partially-interested ears, as we have seen in the present case and others before it (e.g., that of Susie Butlin). To quote from Dr. Jude McCulloch, who responded to a query about whether adequacy of police response was related to funding:

*We thought carefully about that, and the research suggests that the issue is very rarely lack of funding. It's not always poor policy. The issue tends to be not prioritizing gender or private violence in the way that public violence is prioritized...*³

Based on the evidence of what happened leading up to the mass casualty event, violence against the perpetrator's partner or other women is but one facet of the perpetrator's violent behaviour – he was known, or ought to have been known, to family, to clients, to strangers,

² Roundtable: IPV, GBV and Family Violence: Personal and Community Responses, July 21, 2022.

³ Dr. Jude McCulloch, transcript July 13, 2022, p 30, line 25.

and regardless of gender. To the extent that intimate partner violence was a form of violence exhibited by the perpetrator, any examination of it in this Commission cannot be removed from the nature of the relationship involved. Deep discussions about rural considerations, poverty, parenting, and other limitations that might make violence difficult to escape, appear to have been more opportunistic than relevant. In the same way that the mass casualty event ought not have been used as a platform for changes to gun regulation, so too should the mass casualty event not be used as an opportunity distract the Commission from the facts and tragedies actually presented by the mass casualty event.

As we will touch upon in our final submissions, we and our clients feel that the time spent in areas tangentially relevant to the Commission's mandate unduly limited the Commission's resources and compromised a more thorough examination of the evidence directly relevant to the mass casualty event. We and our clients fear that this undue attention to discussions of only marginal relevance to the mass casualty event and the facts giving rise to it – sometimes of no relevance at all – will be mirrored in the Commission's final report and undermine this Commission's ability to create practical and implementable recommendations that will make our communities safer.

We trust that the Commissioners will accept this critique as intended – a reminder that our clients need this Commission to remain on point, focused on what happened on April 18 and 19, 2020, why and how that specific mass casualty event happened and how we can avoid repeating any missteps that allowed it to happen and improve any response to such an event in the future. We and our clients in no way seek to diminish the importance of any of the Phase II discussions in which we have participated in or observed, whether 'on point' or not – however, our clients remain vigilant in their expectation that the Commission return its attention to the task at hand, and ensure that the tragedy that they and their loved ones have endured is not in vain, and is never endured in our communities again.

Relevant Issues

Phase II highlighted the complexity of issues forming the periphery of the mass casualty event. We expect that the diversity of participants in this stage of proceedings will result in much academic discussion of these complexities. Our comments below reflect the issues and perspectives of our clients, those "most affected" by the mass casualty event, and what they wish the Commissioners to keep in mind when crafting their recommendations.

Policing

RCMP Public Communications

Failures in communication by the RCMP on April 18 and 19, 2020 were, respectfully, egregious. Our clients stress that the Commission's recommendations must include easily implementable ways to ensure that this mess of communication "strategy" never be repeated, both the real time communications during an event and the public updates that

follow. Private communications between the RCMP and victims will be dealt with under “Community” below.

Twitter and Alert Ready

Before moving to the nuances of Alert Ready style communications, we must emphasize that the evidence is overwhelming that there is only one reason that the RCMP did not issue an alert – they, inexplicably, did not know one could be issued. Any discussion of 9-1-1 overload or other risks or negatives of public alerts are after the fact justifications for this missed communication opportunity, and not supported by experts or others with actual knowledge and experience with public alerting systems. The RCMP did not consider it and choose not to use it – rather, it was not a tool that the RCMP took the time to put in its toolbox. This may be contrasted with the knowledge that non-RCMP policing agencies appeared to have had about Alert Ready, most recently reflected in the evidence Halifax Regional Police Chief Kinsella on August 25, 2022. There, he expressed that historical usage or protocols aside, he knew there was an emergency alerting system that could reach the general public and that he need only call the Emergency Management Office to initiate it. The RCMP, through all of its witnesses, displayed no such knowledge and in fact displayed only defensiveness about their inattention to this valuable tool in a dire situation.

We further submit that the use of Twitter, a modern social media platform that requires both subscription and following the right Twitter users (not to mention a reliable internet connection) to access, is simply not a sufficient means to warn the public of imminent threats to public safety. This is particularly the case when the content of ‘tweets’ are inaccurate and devoid of appropriate use of social media communication tools like “hashtags,” as the evidence has proven to have been the case over April 18-19, 2020.

On May 11, 2022, the Commission heard from Michael Hallows, managing director at Zefonar and former Emergency Services Commissioner, Victoria, and National Director of Australia’s “Emergency Alert Program”. During his testimony, Mr. Hallows stated:

I -- I'm always very concerned by something called the "paralysis of accuracy", whereby you wait and wait for the perfect situational awareness and you miss telling the public what they need to know right now, "And I'm sorry, if I got it wrong, I'll tell you I got it wrong, and I'll correct it." But waiting for this perfection of the information, it doesn't happen.⁴

Our clients strongly support this concern, and are real life examples of this failure. The most critical aspect of public alerting is to ensure that it happens in the first place. We submit that

⁴ Mr. Michael Hallows, May 11, 2022 Transcript, page 47.

any other aspect of alerting is secondary to the absolute necessity of issuing the alert. The alert must be timely, and it must impress upon recipients the extent of the possible danger with which they are faced.

The Commission has heard much testimony and reflection on what should be contained within an emergency alert, on issues of language and culture. Though important, we caution that these sorts of concerns may cause delay and hesitancy in the user such that important information is not transmitted until too late. When asked about language considerations, Mr. Hallowes responded:

It's a dilemma. And I'm coming from a country where we have multiple languages. And in Australia, it troubled me, too, that we were using just English. But in talking to communities affected, we realized very quickly that they saw the emergency alert capability as a community alerting capability and that there was, by the culture of the way in which Australians have behaved for generations, a shared responsibility. And we found, quite remarkably, that even though we were sending emergency alerts in English, non-English speakers were using Google Translate directly from their device to find out what this message was. And it is -- it has always concerned me about are we discriminating through language and then find that the majority of people actually problem solve for themselves in these environments, plus others around them, in an emergency, start to react and take people with them, so that's really important to understand, that unless you're at home and in isolation that way, people will do things because you've done the community education program that's effectively reached them starting in Australia from children to senior citizens with a website that's in 30 languages. So we've done absolutely everything we could to ensure we covered off the language consideration.

But if I may just finish on that point, if you have to translate everything into multiple languages before you'll send it, you risk not sending it at all and the information is too dated for it to be relevant. So it's often, may I say, best endeavours in the language that is hopefully the dominant one for where you are sending your alert.⁵

The Commission has heard various perspectives on other considerations relevant to the content of alerting, such as age-related or socio-economic considerations. While these are important issues to direct attention to in the future, we submit that to divert too much attention to same is an example of the concern we raised above. We submit that diverting

⁵ Mr. Michael Hallowes, May 11, 2022 Transcript, page 7.

the Commission's energy to consider how to perfect the content of public alerting in the myriad of situations it may be employed inappropriately diverts focus from what went wrong on April 18-19, 2020. On April 18-19, 2020, the most effective means to inform unsuspecting Nova Scotians of the risk driving towards them was neither used nor considered when it ought to have been, and the RCMP's reliance on 'tweets' which did not inform Nova Scotians of the actual risk and how they should avoid it, was an utter failure.

At this juncture we would like to highlight the confounding logic of RCMP personnel in extolling the virtues of Twitter for public alerting in Nova Scotia: throughout these proceedings, we have heard the RCMP defend Twitter as a tool to reach Nova Scotians in an emergency. We have also heard, specifically through the evidence of Lia Scanlan, that, had the RCMP taken advantage of the Alert Ready system during the mass casualty event, it would have reached too many people, and the OCCs would have been overwhelmed and Nova Scotians could have succumbed to hysteria and attacked police. The combined effect of these arguments being that the RCMP prefer Twitter *because* it only reaches some people. Essentially, what we heard was: "*we only reached a few people – and in an untimely manner – which when you think about it, is actually best practice.*"

There will always be ways in which public alerting can be improved and there will always be people who cannot be reached by the system that is set up. We submit, however, that the Commission must highlight that these concerns should not stop those in charge from sending an alert as quickly as possible to as many people as possible, particularly when, as here, very likely fewer lives would have been lost.

Public Updates Following the Mass Casualty

The lack of accurate and timely public updates from the RCMP following the mass casualty events left Nova Scotians afraid, confused, and susceptible to rumour, speculation and conspiracy theories. We submit that the repercussions of same prevails today.

In the view of us and our clients, it appears that the communications from the RCMP after the mass casualty event were carefully crafted to protect the RCMP. Though the RCMP have said multiple times that there was a deep concern for the accuracy of the information being shared, the press releases often did not contain the most accurate and up to date information and were at times misleading or simply incorrect. We understand and accept that there may be times where the information or the current understanding of a situation changes, but the evidence before the Commission has demonstrated that there were multiple instances where the RCMP press briefings knowingly did not reflect the most accurate and up to date information available at the time. The evidence has revealed that there may have been other agendas at work, such as tailoring communications to support gun regulation initiatives of the Federal Government – very clearly unrelated to providing

answers and information to vulnerable Nova Scotians and their loved ones – which only heightens concerns and disappointment with post-event communications.

Public updates should be as fulsome, accurate and timely as possible. We and our clients submit that the evidence before the Commission, and our clients' own experiences, show that anything less than honest communications serves only to aggravate the vulnerability and suffering of those reliant upon them.

Police paraphernalia

The mass casualty event brought to light the true dangers of possession, sale and retention of police paraphernalia. Though the Commission heard perspectives from collectors and former police officers in support of the retention and distribution of these items, we submit that the danger of impersonation far outweighs any desire to retain or collect police paraphernalia for personal purposes. Some of the panelists described a balancing exercise between those advocating for the retention of these items and those advocating against it. Meaghan Daniel, an activist and lawyer, pointed out the need to concern oneself with the power imbalances and historic mistreatment of those being asked to bear the brunt of the desire to retain these objects. Ms. Daniel stated as follows:

Yeah, so I think I fall closer to the comments expressed by Ian in that I wonder about the appropriateness of the weighing exercise, given that what we're talking about, in the sense of what it is we're protecting, in keeping these symbols in circulation and keeping access to them. On the other hand in preventing them from being abused, the types of interests in -- at play, as stacked against each other, leave me to say the exercise is an appropriate potential for actual real physical harm, which is what I think I rather resonated what Julia -- Julie said, sorry. As a mother, I would have to say no.

With a mind to the actual practical harm, while remote, while perhaps the case law that we have available to us doesn't reflect that as being a crime on this -- that is perpetuated often or on that scale, in this instance the actual harm is so great, and we know that the harms are more likely to be visited on those people who don't enjoy any of the advantages of having those symbols in circulation. And so I feel that the weighing exercise or the appropriateness of doing so depends on the standpoint of the person who is asked the question.

And so if I take up the standpoint of the person who tries and fails constantly to think about things from a lens of reconciliation, if I was speaking to — the question I always ask myself, in fact, I always have one particular elder in mind — if I was speaking to an elder, and I said,

"Do the risks here outweigh the benefits?", he would say, "The benefit to who and the risk to who?" And from his mind, it might be a question that he wouldn't engage in once you'd answered that.⁶

While Ms. Daniels presented a valuable perspective on the deeper implications of the symbols proponents sought to preserve, we submit that the mass casualty event has shown that the danger of these symbols of authority and power, in the wrong hands, can have extreme consequences at a very comprehensible level. That police paraphernalia is accessible to those who may wish to use it to cause harm to anybody is a proven risk. On behalf of our clients, we submit that the risk to the general public, the true extent of which was tragically exemplified in real life, must outweigh the benefits of retaining items which present any risk of being more than symbolic or novelty. The need for items of symbolic value or the desire to amass collections of police-themed items, both of which can be fulfilled in other ways, cannot possibly be placed over the value of life, which is irreplaceable.

We respectfully submit that the Commission must direct its focus to further regulation of the distribution and reclamation of surplus paraphernalia or memorabilia. Any items provided to veteran members must be altered in such a way that they cannot be mistaken for the accoutrements of serving members, or perhaps replaced with other items of symbolic or collectable value. Paraphernalia must be accounted for when given to members and it must be reclaimed immediately upon departure, and further reasonable parameters can be imposed upon clothing, equipment and other gear during its issued lifetime.

Police Context

Part of the Phase II mandate includes exploring issues related to police actions, policies and procedures, and training. Three key areas of consideration — which were not expressly addressed during Phase II, but we suggest should be considered under these headings in the Commission's work going forward and informing ultimate recommendations — are: 1) the culture of avoiding blame; 2) understanding police budgeting and fund allocation; and 3) improving the rigour of forensic sciences. We anticipate much of what is highlighted here will be expanded on in our final submissions, as these subjects (at least the first two) form a throughline in the Commission's proceedings to-date.

The Culture of Avoiding Blame

Throughout these proceedings there has been a clear theme in submissions from counsel for the National Police Federation (the "NPF"), the Federal Department of Justice, and many of the high-ranking RCMP personnel: mistakes were not made, or at least they were not made

⁶ Roundtable: Police Paraphernalia and Police Impersonators, April 27, 2022, page 74.

by the RCMP (though Truro Police Service and Halifax Regional Police (“HPD”) have a lot to answer for), and where things did go wrong, it is a funding issue. This theme landed hard when counsel for the NPF mused to Chief Dan Kinsella: “*So no lessons to be learned here.*” This statement – seemingly meant to highlight his lack of contrition in not calling in additional ERT members on April 19, 2020 – stood in ironic juxtaposition to the paucity of similar ownership by RCMP over the past two-and-a-half years.

There was a lot on RCMP culpability in our Phase I submissions, and we will not belabour the point here. But specific to Phase II, though there were no sessions on RCMP culture, we submit that no meaningful changes can be made unless recommendations consider the culture of avoiding blame seemingly pervasive through the RCMP. So long as the agency’s efforts are focussed on not being wrong, there is little hope for growth.

Understanding police budgeting and fund allocation

In terms of expert evidence through Phase II, the Participants would have benefitted from hearing how RCMP funding and budgeting works. For example, we do not know how the province is invoiced. If the RCMP budget for a K9 member, and that position is unfilled, are the province and/or respective municipality still invoiced for that position? This may be subject matter best addressed in Phase III, but we submit that recommendations involving funding must be looked at through a lens of resource allocation, or reallocation, before determining that more funding is needed.

Improving the rigour of forensic sciences

A particularly enlightening Phase II panel was the one on Friday, July 22, 2022, comprised of Drs. Kristy Martire and Tess Neal. In their evidence, Dr. Neal stated of the psychological autopsy prepared by RCMP: “*there is very little information that is provided in this report that would allow me to say, with confidence, that it is scientifically credible.*” Further, Dr. Neal testified that several of the autopsy’s authors were RCMP employees raised “*a red flag for a conflict of interest*”. Overall, their review of this perpetrator’s psychological autopsy called into question the scientific rigour applied by its authors.

Regarding behavioural profiling, Dr. Neal also stated that such investigative tools are typically used to predict a psychological profile of an unknown offender. We know from evidence provided by S/Sgt. Steve Halliday that there was a belief overnight on April 19, 2020 that the perpetrator was “*closure motivated*”. It is submitted that reliance on this behavioural profile was detrimental to the continued search for the perpetrator.

Considering the issues with the provided psychological autopsy and the potentially-detrimental “*closure motivated*” profile, we submit there may be an issue with the rigour applied by the RCMP in their forensic sciences. Based on the evidence of Dr. Neal and Martire, we suggest this Commission should look to whether improvements – and likely

updates – can be made to the RCMPs forensic psychological tools. We suggest that advancing toward more objective science-based metrics can improve policing and help avoid errors that occurred during and after the Mass Casualty Event.

Community

Firearms

The Perpetrator obtained his guns, illegally, in the United States and brought them into Canada, illegally. He had no licence for his weapons and no legal ability to purchase ammunition. He turned to those closest to him to obtain ammunition for him, illegally. Those who supplied him with guns and ammunition did so in breach of Canadian and American laws.

The reality presented by these facts is that the issue at hand is not with the current laws surrounding regulation of firearms – whether the regulation of weapons and ammunition is sufficient – but is instead an issue of enforcement. Policing agencies in Nova Scotia were informed, on multiple occasions, that the perpetrator had guns. It was easily verifiable that he did not have a licence for these weapons. The RCMP, in particular, failed to properly investigate these complaints.

Many of our clients, including women, own guns and feel that possessing them makes them safer, particularly in rural communities. We and our clients respectfully submit that it is critical that the Commission recognize that the examination it must undertake is in the area of enforcement, and not in the existing laws about ownership, possession and acquisition. It is respectfully submitted that any Phase II discussions which strayed into the nature of firearms and paraphernalia to Nova Scotians and Canadians, whether offered to the Commission or invited by the Commission, have not assisted the appropriate goals of the Commission.

Post-Event Support

What our clients needed most in the days and weeks that followed the mass casualty was information – accurate, timely and transparent communication. The RCMP were unable or unwilling to share that information in appropriate and prompt ways, and in so doing, aggravated our clients' suffering and, in some instances, caused further trauma to those "most affected" by being evasive, misleading and insensitive.

This began with a lack of clarity and/or understanding as to how next of kin notifications were to be done. Members should be given specific guidance as to how to treat family members who arrive on scene. We understand that it is unlikely that the official confirmation of death can be completed at the scene but the ability to share as much information as possible about what had happened would have made a significant difference to the families – not only in their quest for information, but in their perception and belief that they were being treated like human beings worthy of compassion and

honesty. Confirmation of details such as the number of deceased found and on what property, or what the RCMP believed likely to be true though not yet confirmed, could have saved hours and even days of trauma to many family members.

We also suggest that funding and enabling other agencies to assist the RCMP in the days that follow a tragedy would have greatly assisted the families. It has become painfully apparent that the RCMP's solution to engaging with victims – a single, untrained family liaison officer whose tasking did not include identifying and dealing with surviving victims of the RCMP's own errors (much less other survivors) – was woefully inadequate. That the loss of Cst. Heidi Stevenson warranted two dedicated officers to her family, in contrast, is at best, hurtful to other victims, and at worst, offensive.

Significantly, the Commission's Phase II work has shown that there is a great deal more that can be done to support victims of crimes, and, in this instance, a great deal more that should have been done. Proper training should have been affected for the family liaison officer role, and regular oversight and evaluation ought to have been undertaken; better acquisition of information and understanding about known victims was required; access to, or at least identification of, the myriad of resources available to support victims ought to have been better facilitated.

We strongly support that it is incumbent upon the Commission to dig deep into the support-related evidence and information that has been shared during Phase II (including the small group sessions with the families of those lost which are yet to take place) with a particular focus on how support fell short for the victims of this mass casualty event. There are of many, many examples of such failures, including: the RCMP's offensive handling received by Nick Beaton; the RCMP's failure to communicate with the families about the deaths of their loved ones (such as the Jenkinsons and the Goulets); the RCMP's troublesome handling of returned property (including vehicles) and crime scenes; the complete neglect of the RCMP's own victims in Darrell Currie and Greg Muise; the failure to ensure support to those left behind in Portapique, such as Mallory Colpitts.

We strongly stress the importance of this area because, respectfully, we and our clients believe that the Commission itself, struck as a result of the vigorous advocacy of our clients, other victims of the mass casualty event and the gracious support of their fellow citizens, is part of the post-event support that has failed to meet its potential for our clients. Throughout the Commission's processes, our clients have felt dismissed or diminished both by the RCMP and by Commission itself.

Our clients have undergone an immense trauma, the likes of which most of us will never be able to relate to. Their reactions to that trauma, and their reactions to the processes which have flowed from it – including this Commission – have been as diverse as they are. Our clients feel that they have had to fight for recognition of both their collective and individual

interests, to actually be heard instead of simply being told they are heard. Their reactions have, at times, resulted in anger. Throughout the Commission, our clients feel they have been criticized for this anger and asked to put aside their own trauma in favour of deep and nuanced understanding of the trauma of others. During the roundtable held on July 14, 2022, Dr. Myrna Lashley acknowledged the following:

Now I'm very cognizant of the fact that if my family, you know, has been subjected to violence, if someone hurts my daughter, I don't know, I would like to think that I would continue being this cogent, but I'm very aware of the fact that if you have been a victim of a crime, or some family member, that this kind of reasoning is not -- it's not what you want to hear, which comes back to what Nikolas just talked about, about blame, and that we need someone to take blame.⁷

We submit that both the RCMP and the Commission itself has asked our clients to rise too far above their trauma and endorse an academic approach that enhances and promotes the “*safety, control and resilience*” of others, including members of the RCMP, at the expense of their own re-traumatization.

We implore the Commission to take our clients as they are and to truly seek to understand their perspectives, however “*disruptive*” those perspectives may appear to be. We trust that the Commission will, as it moves through Phase II and towards its final report and recommendations, ensure that its trauma-informed mandate recognizes what each of our clients have gone through, and continue to go through. We ask that this Commission ensure that our clients interests are given the priority they deserve, as real life victims of *this* mass casualty event (and not some hypothetical event conceived of for academic discussion purposes).

Violence

The story of April 18 and 19, 2020 is one of extreme violence. The extent of this violence has been withheld from the Commission’s public record. Few of the participants been directly exposed to the private records of the carnage wrought by the perpetrator. The perpetrator’s actions were senseless and extreme. We understand the sanitization of the record and proceedings was done for good reason, intended to protect the dignity of those who died and to prevent further trauma to their families and to the public at large. At times, however, this abstraction led to a decentering and diminishing of the violence experienced by those who died, those who were injured and those left to pick up the pieces. The exception to this has been the experience of Lisa Banfield, which has been shared in detail in a manner that she and the Commission chose to invite it forward.

⁷ Roundtable: Prediction and Prevention of Mass Casualty Events, July 14, 2022.

We will never understand why the perpetrator committed his atrocities. While the research presented appears to show a correlation between these past incidents of violence and the perpetration of mass casualty events, it is unable to demonstrate causation. That risk assessments are not able to predict who may come to commit such a senseless act of violence, became readily apparent following the roundtable discussions on July 14, 2022, including the presentation by Dr. George Szumkler:

... Here, we're -- we're looking at human behaviour, and we know that human behaviour encounters a myriad of unexpected events, encounters, losses, good things happening, and so we are very, very limited in the level of sensitivity and specificity. I don't think it can get better than the kind of range that we're looking at. Most of the risk assessment instruments are operating in that sort of range.

So there are going to be an overwhelming problem, especially as -- if we get down to 1-percent of base rate, an overwhelming number of false positives, and if we get down to 1-percent, then the vast majority, I mean, almost all of them, are going to be false positives. So the accuracy or the precision of the risk assessment instrument for a behavioural outcome, rather than biological outcome, for example, is overall very limited.⁸

Given this, prevention of these sorts of violence must be undertaken for its own sake and not as a method of preventing mass casualty events. This Commission cannot, by its recommendations, solve the issues of childhood abuse and trauma, gender-based violence, intimate partner violence and coercive control. It can, instead, focus on the prevention of and response to events that may turn to mass casualties – focus on what indicators were present in this instance, what opportunities to change the perpetrator's course of behaviour, and respond accordingly. We submit that it is far more useful to focus recommendations on the ways in which our police and other governmental agencies respond to reports of violent behaviour in a meaningful way. More specifically, we submit that the Commission must focus on how those tasked to protect the public can, in future, avoid overlooking or dismissing multiple complaints about serious threats or acts of violence by someone like the perpetrator, so that opportunities to assess an actual, identified risk are acted upon with the gravity that they deserve.

Conclusion

At its heart, this Commission is a “comprehensive public inquiry [launched] to determine what happened [on April 18 and 19, 2020] and to make recommendations to avoid such tragic events in

⁸ Roundtable: Prediction and Prevention of Mass Casualty Events, July 14, 2022.

the future."⁹ We reiterate our concern that, throughout Phase II of the Commission's proceeding, the events of April 18-19, 2020 have not remained at the heart of the Commission's activities and too much time and resources have been extended to subject matter that is far removed from the facts of what happened prior to and during the mass casualty event. However important those issues may be, respectfully, the Commission cannot fail to meet its mandate, and serve those it was struck to serve, by allowing academic dialogue about complexities of socioeconomic issues such as gender-based and intimate partner violence to overshadow the facts of this particular tragedy, the facts of particular individuals and circumstances involved, and the particular victims and their suffering. On behalf of our clients, we submit that to allow the final report to mirror the peripheral discourse that has characterized much of the Commission's Phase 2 activities will adversely affect not only the utility of the Commission's work, but also its value in the eyes of the public.

It warrants remembering that that the "event" to which the Orders in Council refers is the "mass shooting that took place on April 18 and 19, 2022 [that] took the lives of 22 innocent victims and forever changed the lives of countless others."¹⁰ We understand that the Orders in Council direct this Commission to examine many issues related to the tragedy, but the focus must remain on the mass casualty event – a determination of what happened, and why, and a list of recommendations to avoid the mistakes that contributed to or allowed the mass casualty event to occur in the future.

Robert Wright, MSW, RSW and Acting Executive Director of the African Nova Scotian Justice Institute, expressed concern that with enthusiasm to make positive change comes the risk of an exaggerated response with unforeseen repercussions (in his context, to vulnerable persons). Here, we would suggest that the Commission's enthusiasm to dig into so many tangential issues runs the risk of addressing societal concerns that would not really have influenced the occurrence of the mass casualty event. We suggest that, for somewhat different reasons, he is very correct to say that in the Commission's response to the mass casualty event, it "need[s] to make sure that [its] response is really targeting where the problem is,"¹¹ which here means focusing on what actually happened with respect to the "event," as defined, and addressing those problems.

In Commission proceedings on July 14, 2022, Nikolas Rose, sociologist formerly of Kings College London, said the following:

So I would say one needs to, in certain limited ways, retain the idea of individual culpability [...] whilst recognizing that all the

⁹ Order in Council.

¹⁰ Order in Council.

¹¹ Roundtable: Prediction and Prevention of Mass Casualty Events, July 14, 2022, page 63, line 12.

*circumstances that led up to that are probably outside the individual's control. I think that is rather central to our moral order, and I think if we abandon that idea of individual culpability, much as I think there are problems in all the responsabilizing ways in which we say, "It's your fault if you drink too much; it's your fault if you smoke too much; it's your fault if you eat too much saturated fat," I think there are really problems with that. **But I think a limited notion of culpability for certain kinds of events is really rather crucial for restoring the moral order.***

We may say it's merely symbolic, but I'd want to cross out the idea of "merely". Restoring moral order is rather important, I think, to the way in which we can continue as a relatively civilized society. And restoring the idea that actions do have consequences and that therefore people need to realize that actions have consequences, even if those actions are determined by all sorts of other things.¹²

[emphasis added]

The Commission must of course, do its work without expressing any conclusion or recommendation regarding civil or criminal liability. It must examine and understand the causes, contexts and circumstances of the mass casualty event. Most importantly, however, it must determine the actions that were taken, or not taken in those thirteen hours and the months and years leading up to it, even if identifying shortcomings has an air of "blame" about it. It must also determine the consequences of those actions and inactions, again, even if a recommendation is suggestive of unspoken "blame." This exercise cannot be overshadowed by discussions and studies about issues that only marginally touch upon the mass casualty event.

To reuse Mr. Rose's words, we, and our clients, well understand and appreciate that those actions and inactions are determined by "*all sorts of other things*," but so too must the Commission recognize and identify that they remain actions with consequences and they cannot be overshadowed by the "*other things*."

This Commission serves a practical purpose, but it is also symbolic in its work. Its purpose is restorative and it must be seen to restore some semblance of order to Nova Scotia. We submit that the Commission must remain grounded in the events it seeks to avoid. In order to do so, we submit that the Commission must not become distracted by study of other important issues and allow itself to shy away from a lens of culpability in its work.

¹² Roundtable: Prediction and Prevention of Mass Casualty Events, July 14, 2022, page 56, line 7.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of September, 2022.

Respectfully,



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