

October 28, 2022

By E-Mail

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

Dear Commissioners:

**Reply Submissions
Our File Number: 4203561**

Please accept the following reply submissions on behalf of our clients, survivors and families of the victims, those designated as participants most affected by the mass casualty event. Our reply submissions are brief as, by and large, much of what our clients might be inclined to state by way of reply would amount to re-stating portions of our earlier oral and written submissions and/or the submissions the Commissioners have heard directly from those among our client group, such as during the various small group or participant consultation sessions.

While we have further submissions to make in respect of document disclosure released and exhibited subsequent to close of public proceedings on September 23, 2022, as directed by Commission Counsel's letter of October 20, 2022 those submissions will be deferred to our filing on November 14th.

Reply Submissions Regarding Events in Portapique

It has troubled members of our client group that other participants have made submissions regarding the timeline of events in Portapique, and which victims succumbed to the perpetrator's actions and when, without reference to particular items of evidence relevant to same.

As we have previously submitted, the Commission must acknowledge the evidence which supports that Joanne Thomas was alive, and that she and John Zahl were seemingly undisturbed, as late as 10:26 p.m. on April 18, 2020 – same is supported by two text message

exchanges between Mrs. Thomas and friends of hers.¹ Mrs. Thomas' final text message was sent at the same time as Cst. Stuart Beselt arrived in Portapique, 10:25:57 p.m., he being the first RCMP member to attend the community in response to Jamie Blair's 911 call.² He was shortly thereafter joined by Csts. Adam Merchant, Vicki Colford and Aaron Patton. Csts. Beselt and Merchant entered Portapique on foot together, "walking down [Portapique Beach] road" at 10:33:50 p.m., according to Colchester Radio communications records.³ Cst. Patton proceeded on foot after them, uniting after 10:40 p.m., by which time all three had passed (or reached, in the case of Cst. Patton) the perpetrator's cottage at 200 Portapique Beach Road.

They continued in the direction of 293 Portapique Beach Road.⁴ In each of their interviews before the Mass Casualty Commission, Cst. Beselt and Merchant indicated they did not observe any structure fires, or anything suggestive of concern, south of 200 Portapique Beach Road, toward Faris Lane.⁵

During his testimony before the Mass Casualty Commission on March 28, 2022, Cst. Beselt, confirmed that he and Csts. Merchant and Patton had a "good opportunity" to observe the home of John Zahl and Joanne Thomas confirmed during their testimony that everything appeared to be "in order:"

CST STUART BESELT: ... We got around that corner and we checked those two houses. From a distance it didn't look, like I said, anything was going on with them, and then we started working our way back towards the first house and Aaron came around the corner there. So -- yeah. And then we together made the decision, "Well, let's just cut through the woods because it looks like there's another structure fire and maybe that's where the sounds are coming from."

MR. ROBERT PINEO: Okay. So just before you headed into the woods you had a good look at the Zahl residence and we've confirmed that it was not on fire. Did you notice anything else about it, any movement, anybody walking around, a car ---

CST STUART BESELT: No.

MR. ROBERT PINEO: --- anything at all?

¹ Source 1, COMM0064762/P-005560, which has a final text sent by Mrs. Thomas at 10:23 p.m. and Source 2, COMM0064763/P-005392, which shows a final text sent by Mrs. Thomas at 10:26 p.m.

² "First Responder Actions in Portapique Foundational Document, COMM000050894/P-000005, ¶ 51

³ Colchester Radio, COMM0003806/P-00054, line 242

⁴ "First Responder Actions in Portapique Foundational Document, COMM000050894/P-000005, ¶ 73, 75

⁵ Mass Casualty Commission interview of Cst. Beselt, COMM0015529/P-00054, pages 9, 36; Mass Casualty Commission interview of Cst. Merchant, COMM0001644/P-00054, page 67

*CST STUART BESELT: Nothing at all. We -- we had a good opportunity to look at it. We were looking at it for probably about a couple of minutes, and everything looked to be in order, so we started coming back then.*⁶

Later during testimony, Cst. Beselt again stated that during his initial presence in the area, he “*saw the Zahl’s place. It wasn’t on fire. It didn’t look like there was any motion or movement around there.*” Colchester Radio records confirm that Csts. Beselt, Merchant and Patton departed the area of the Zahl/Thomas home into the woods after uniting with one another, arriving in the area of the perpetrator’s warehouse on Orchard Beach Drive at 10:46:30 p.m.⁷

By contrast, when Cst. Beselt next observed the Zahl/Thomas home, he stated that he and Csts. Merchant and Patton “*actually went behind it, like, we went all the way down, and because it was so bright from the fire, we tried to stay to the trees, went behind it, and then went to the Faris Lane.*”⁸ Colchester Radio records confirm that Csts. Beselt, Merchant and Patton returned to the area of 200 Portapique Beach Road at or around 11:45 p.m., at which time a “*new fire ahead of us*” could be seen to the south, which would have been the Zahl/Thomas home.⁹ Our clients are not aware if the Commission has attempted to glean an explanation for why the Zahl/Thomas home was not on fire when Csts. Beselt, Merchant and Patton were first in the area, in spite of the Commission hypothesizing that the perpetrator had been there, inflicted harm, and gone by that time.

These facts (or the absence of facts) have been detailed at length because, for members of our client group, it is critical that the Commission not fall victim to the inclination to assume the time of deaths of victims which cannot be known, such as the time of death of John Zahl and Joanne Thomas. This assumption is seen in broad statements from other participants, as well as by members of the Commission at various stages during public proceedings, which describe the perpetrator having murdered thirteen people and left Portapique in the early moments of the RCMP’s response. While there is little question that thirteen people were harmed by the perpetrator, to import knowledge that all were beyond saving is a misapprehension of the evidence.

It has not been overlooked by members of our client group that the RCMP had the opportunity to know what happened to John Zahl and Joanne Thomas – if, indeed, *anything* had happened to them between 10:26 p.m. and approximately 10:40 p.m., which is simply not known. The RCMP moved about in the vicinity of the Zahl/Thomas home at a critical time and made a choice to do no more than “*look at it*” for a few minutes before moving on.

⁶ Mass Casualty Commission Public Proceedings Transcript, March 28, 2022, page 146, lines 6-20

⁷ Colchester Radio, COMM0003806/P-00054, line 394

⁸ Mass Casualty Commission Public Proceedings Transcript, March 28, 2022, page 155, line 27 through page 156, line 3

⁹ Colchester Radio, COMM0003806/P-00054, line 242

This was a choice that the RCMP made in spite of having knowledge (from Andrew MacDonald and David Faulkner) that the perpetrator had travelled south down Portapique Beach Road. For the families of John Zahl and Joanne Thomas, they believe that this choice is every bit as much the reason that John Zahl and Joanne Thomas are not with us today. At a minimum, it is incumbent upon the Commission to acknowledge that this opportunity to learn what happened at the Zahl/Thomas home was not seized, and so no statements about what happened to John Zahl and Joanne Thomas, and when they died, can be made.

To the extent that the apparent timeline of what took place at the Zahl/Thomas home cannot be determined, or conflicts with the overall hypotheses of what happened in Portapique the evening of April 18, 2020, we urge same to be recognised by the Commissioners in their final report. Our clients have long urged the Commissioners not to dismiss other conflicting evidence which does not fit with the timelines of events in Portapique the Commission has hypothesized in its Foundational Documents, such as the evidence of Autumn Doucette and Dean Dillman, the latter of whom was present on Brown Loop at precisely the timeframe that the perpetrator is hypothesized to have passed this area as he exited Portapique, yet Mr. Dillman saw nothing of the perpetrator,¹⁰ or the alleged video surveillance footage which falls woefully short of confirming that the perpetrator passed through Great Village at all, much less at 10:51 p.m.¹¹ The victims of the mass casualty event, including John Zahl and Joanne Thomas, deserve the Commission's acknowledgment of what is not known, and where evidence does not support what some may perceive to be likely scenarios.

The families of John Zahl and Joanne Thomas implore the Commission to not overlook these critical considerations and merely dismiss their deaths as two among thirteen for whom nothing could have been done in Portapique on April 18, 2020. Further, on behalf of other members of our client group, we similarly implore the Commission not to overlook or fail to acknowledge what it cannot know, like when the lives of other victims, such as Frank Gulenchyn and Dawn Madsen, were irrevocably lost.

To properly honour the memories of all lives taken by the perpetrator, including those whose encounters with the perpetrator will never be fully understood, the Commission cannot dismiss the possibility that anything could have been done to save their lives simply because it seems implausible, or perhaps that one might wish that to be true. Rather, the Commission must own what it cannot know just as clearly as what it finds to be indisputable, and ensure that same is clearly acknowledged in its final report.

¹⁰ "Portapique: April 18-19, 2020" Foundational Document, ¶ 171-178, COMM000050893/P-000003; "Portapique: April 18-19, 2020: Foundational Document Addendum and Erratum," ¶ 3

¹¹¹ "Overnight in Debert" Foundational Document, COMM000051979/P-000214, ¶ 7

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of October, 2022.

Respectfully,

A handwritten signature in blue ink, appearing to read "Sandra L. McCulloch".

Sandra L. McCulloch Degrees

smcculloch@pattersonlaw.ca

Tel: 902.896.6114

SLM

c. Patterson Law Legal Team
Clients