

November 14, 2022

**By E-Mail**

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

Dear Commissioners:

**Submissions Regarding Post September 23, 2022 Disclosure  
Our File Number: 4203561**

Please accept these submissions in respect of document disclosure released and exhibited after the close of public proceedings on September 23, 2022. We offer the below submissions on behalf of our clients, the survivors and families of victims, those designated as participants most affected by the mass casualty event.

**Disclosure Issues**

The provision of timely and complete disclosure has been a significant issue from the outset of the Commission's process. Beyond the tangible impact this has had on the Commission's ability to fulfill its mandate, these issues have marginalized our clients and undermined their ability to participate in a matter that is of central importance to them. In some instances, the opportunity to identify relevant witnesses was missed due to late disclosure. In many instances, the opportunity to effectively question witnesses that were called to testify was lost because relevant information was not disclosed until after the witness had already left the stand. Were this an isolated incident, it would be a source of concern. The frequency with which critical information was received beyond the point of usefulness, however, gives rise to two significant issues that should be of utmost concern to the Commissioners:

1. These issues directly impact the accuracy/completeness of the factual record upon which the Commission will assess *the causes, context and circumstances giving rise to the April 2020 mass casualty*. Without a credible foundation of facts to rely on, the Commission's final recommendations will struggle to find the public support they require for implementation;



2. It undermines public confidence in the Commission's assurances of a transparent, independent and inquisitorial process. Disclosure issues of the kind seen in this inquiry will be viewed by many -rightly or wrongly- as intentional obstruction. The Commission's failure to adequately address those issues, will be viewed by many as deference to the interests of the Attorney General of Canada ("AGC") and other institutional participants.

Disclosure issues in this matter have been largely attributable to the AGC, which has repeatedly failed to meet its disclosure obligations. Despite the Commission's awareness of those issues, little action appears to have been taken to properly address the AGC's *reactive rather than proactive*, approach to disclosure.

### **Post-Proceeding Disclosure**

Among the disclosure issues our clients have endured throughout the past year, none surpasses our having received in excess of 700 documents - after the close of public proceedings on September 23, 2022.

It should be uncontroversial that the purpose of disclosure is largely defeated when it is provided after proceedings have already ended. Putting aside the sheer volume of late disclosure, the obvious relevance of these materials is significant and would have been of great assistance in the examination of witnesses throughout public proceedings.

Absent the ability to use disclosure in the course of public proceedings, our having been invited to "provide written submissions" on them is little more than a gesture. Our clients will have no opportunity to put these documents to witnesses, to ask questions, to seek clarification, or to identify issues and address inconsistencies. Instead, this disclosure appears destined to be considered by the Commission behind closed doors, to the exclusion of the public and Participants. While we recognize that the current situation is not entirely of the Commission's making, our clients are nonetheless marginalized as a result.

We fully appreciate that public inquiries are not civil or criminal trials, that they are a flexible process, an iterative process, a process that requires ongoing disclosure as relevant areas of inquiry are uncovered in the course proceedings. Those acknowledgments in no way excuse the AGC's failure to discharge its disclosure obligations, or the Commission's failure to take meaningful action to prevent it.

The AGC has, on several occasions, answered criticisms about disclosure issues by directing attention to the large volume of documents that *have* been disclosed. The Commissioners should be unmoved by such deflections; transparency is the measure of what has been withheld, not what is disclosed.



### **April 28, 2020 Meeting**

The meeting between RCMP H-Division managers and RCMP National Headquarters (“NHQ”) on April 28, 2020 offers important insight into the RCMP’s early response to the mass casualty event, including:

1. A lack of effective communication between H-Division and NHQ;
2. Ineffective leadership support from NHQ;
3. Attempted political interference with H-Division’s criminal investigation and/or inappropriate consideration of legislative objectives unrelated to the mass casualty event; and
4. Unnecessary focus on RCMP public relations interests and over-involvement of “Strategic Communications” personnel in policing matters;

Efforts to address the April 28, 2020 meeting and related issues have been severely hampered by disclosure issues. At best, it can be said that valuable hearing time was wasted in trying to piece together what happened without the benefit of information that could have been, and should have been, provided by the AGC at an earlier stage.

That a partial recording of the April 28<sup>th</sup> 2020 meeting and other relevant materials were disclosed after the close of public proceedings, is particularly problematic. The evidentiary value of that recording has largely been lost as a result of our not being able to ask questions and seek clarification about its content from the various witnesses who were called to testify. Despite Department of Justice Counsel having advised Commission Counsel of a potential recording as early as July 8, 2022<sup>1</sup>, we are unaware of any efforts by the Commission to follow up with the AGC or to call Dan Brien as a witness to obtain his evidence directly.

The October 22, 2022 affidavit of RCMP Supt. Jeffrey Beaulac<sup>2</sup> answers few of the questions that arise from the late disclosure of Dan Brien’s April 28, 2020 audio recordings. Among those questions:

1. Why do we have an affidavit from Supt. Beaulac and not Mr. Brien?
2. What value is there in an affidavit comprised primarily of hearsay?

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<sup>1</sup> July 8, 2022 Ltr. L.Ward to T.Cromwell - COMM0059783

<sup>2</sup> October 22, 2022 Affidavit of RCMP Supt. Jeffrey Beaulac - COMM0065727



3. Why have we not been afforded an opportunity to cross examine Supt. Beaulac on the substance of his affidavit?
4. How are we expected to reconcile para. 4 of Supt. Beaulac's affidavit, in which it is suggested that Mr. Brien' recording of the meeting "*was done in error and it was not his common practice to record meetings...*", with Ms. Ward's letter of July 8, 2022<sup>3</sup>, which suggests that Mr. Brien would sometimes "*...record interviews that the Commissioner gave so he would have a record of what was actually said*"?
5. Mr. Brien has offered conflicting accounts about his phone having been stolen, no longer having possession of his phone, having the phone but possibly having erased the recording and the recording having been saved to a personal device, or possibly a work device. Supt. Beaulac's affidavit offers nothing to address these issues and without the opportunity to question Mr. Brien, there is no ability to secure meaningful answers;
6. What Application was used by Mr. Brien to make the recording?
7. If the recording was, in fact, made accidentally, when did Mr. Brien become aware of it and what did he do with it?
8. The recording appears to be comprised of three non-contiguous files. Is this the result of the device being turned on and off several times, or is it the product of the way in which the software generates electronic files?
9. To the extent that the three audio files are not contiguous, are they in order? what is the relative gap between each file?
10. Supt. Beaulac's affidavit (at para. 12) suggests that the three audio files disclosed "*are a complete capture of the DFS extracted from Mr. Brien's phone*" but no effort appears to have been made to determine whether additional segments were recorded and later deleted or lost. If they were lost, how were they lost? If they were deleted, why were they deleted?

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<sup>3</sup> July 8, 2022 Ltr. L.Ward to T.Cromwell - COMM0059783



## Onslow Belmont Firehall

SiRT's investigation into the Onslow Belmont firehall shooting included the commission of a Use of Force report prepared by retired Vancouver police officer Joel Johnston, and presented to SiRT Director, Felix Cacchione, in December 2020.

We now know that in January 2021, Director Cacchione received a memorandum from HOIT Team Commander Sgt. Bobbie Haynes<sup>4</sup>, in which the latter raises serious concerns about Mr. Johnston's report. Sgt. Haynes warns that:

*A review of the Use of Force report by the HOIT identified inaccuracies and omissions within the report which the HOIT believe bear relevance on the investigation of this incident.*

It remains unclear who sent Sgt. Haynes' memo to the SiRT Director and why. The propriety of the RCMP injecting itself directly into the independent investigation of two of its own Members, is dubious. In Mr. Cacchione's September 9, 2022 interview with the Mass Casualty Commission<sup>5</sup> the former SiRT Director was asked:

*During your tenure, was it your practice, normal practice to get memos like this from HOIT or any other branch of the RCMP during an investigation?*

To which Mr. Cacchione confirmed he had "*never received something like that before.*"

It is similarly unclear how Sgt. Haynes, in January 2021, was able to access a confidential report that had been tendered to SiRT in relation to an investigation that was not yet concluded.

Further issues arise in relation to a January 21, 2021 meeting between Sgt. Haynes, Director Cacchione, Supt. John Robbin and other RCMP Members.<sup>6</sup> It is clear, however, that Sgt. Haynes' concerns about the Johnston Use of Force Report were again raised.

In the context of an active SiRT investigation involving the actions of two RCMP Members, the degree of contact and communication that occurred between RCMP and SiRT – specifically about the matter being investigated by SiRT-- is worthy of the Commission's consideration.

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<sup>4</sup> January 18, 2021 HOIT Memo - COMM0017903

<sup>5</sup> September 9, 2022 Statement, F.Cacchione – COMM0064899

<sup>6</sup> Notes of Supt. J.Robbin – COMM0063685



Similarly concerning is SiRT's apparent disregard for the detailed accounting of inaccuracies and deficiencies in the Johnson Use of Force Report, that was laid out in Sgt. Haynes' memo. In his September 9, 2022 interview with the Mass Casualty Commission<sup>7</sup>, Mr. Cacchione himself, appears to acknowledge the obvious failings in the Use of Force Report submitted as part of the SiRT investigation:

*I can tell you that I had real concerns with Joel Johnston and that we never retained him after that, because the report, his report I found to be kind of one sided...*

But Mr. Cacchione goes on to say:

*...But I did not base my report on what Joel Johnston had to say; I based it on the totality of everything that I reviewed.*

It is to be expected –in this instance or any other— that SiRT's decision would be “based on the totality of everything [SiRT] reviewed”. However, Mr. Cacchione's comments fail to address the fact that the impugned Use of Force Report was part of the “totality” of evidence at issue. If SiRT ultimately chose to disregard the Use of Force report authored by Joel Johnston, no mention of it appears in the final decision<sup>8</sup>. Similarly, it does not appear that any effort was made to secure a second, more credible opinion on Use of Force.

In the case of the Onslow SiRT investigation, use of force was the central issue. Director Cacchione's Investigative Summary<sup>9</sup>, correctly identifies the relevant legal issues as:

1. Did the Subject Officers use their firearms in a careless manner?
2. Did the Subject Officers have a lawful excuse for discharging their firearms?

In the context of an investigation primarily focused on police use of force, it seems unlikely that SiRT would rely on an opinion found to be “kind of one-sided”. There is, however, little consolation in the alternative proposition: that SiRT rendered a decision on police use of force without the aid of an objective assessment about the Members' use of force.

### **July 2020 SiRT Referral**

The July 2020 SiRT referral related to Supt. Dimopoulos' July 10, 2020 SitRep<sup>10</sup>, is relevant to the Commission's mandate to examine issues as they relate to police actions, including

<sup>7</sup> September 9, 2022 Statement, F.Cacchione – COMM0064899

<sup>8</sup> SiRT Investigative Summary, Onslow Belmont Firehall Shooting - COMM0065523

<sup>9</sup> supra

<sup>10</sup> C.Dimopoulos SitRep, July 10, 2020 – COMM0064752

operational tactics, response, decision making and supervision and communications between and within the RCMP, municipal police forces, the Canada Border Services Agency, the Criminal Intelligence Service Nova Scotia, the Canadian Firearms Program and the Alert Ready program.

From what little information has actually been disclosed to Participants, it appears that the July 2020 SiRT referral pertains to serious allegations of police corruption and alleged criminal activity related to the Truro Police Service. COMMs: 0065153-65160, 0065176, 0065177, 0065179-65187, 65193, and 65197-65202, allude to RCMP awareness of potential Criminal Code and Police Act violations by senior officers, including “*serious criminal behaviour*”, a “*sexual relationship*”, “*diversion of source payment monies*”, and “*predatory behaviours*”<sup>11</sup>.

Cpl. Jaime Lutz’ updated SitRep of October 29, 2020<sup>12</sup> connects the information underlying the SiRT referral to section 1(b)(6) of the Mass Casualty Commission’s Orders in Council. The matter is clearly relevant enough to have prompted a supplementary interview of C/Supt. Leather on September 23, 2022<sup>13</sup> – in which he confirms, at pg. 23, that this matter:

*“...should be of concern to anybody reading this material... The matter screams for a proper and thorough investigation, to be clear”.*

These “allegations” -whatever they may be- were significant enough to warrant being addressed at the highest levels of management within H-Division and RCMP National Headquarters. That notwithstanding, the referral was inexplicably rejected by SiRT<sup>14</sup> and it appears that no further investigation was done. Redactions in the documents disclosed to Participants make it impossible to reconcile SiRT’s refusal with the information submitted by the RCMP. The issue is further confused by conflicting accounts provided by Director Cacchione and C/Supt. Leather. Mr. Cacchione appears to suggest that the SiRT referral was refused because it was outside of SiRT’s mandate, but C/Supt. Leather’s evidence is that the issue was one of SiRT’s limited resources. Public comments made recently by the interim SiRT Director, John Scott, suggests that the July 2020 SiRT referral was investigated and subsequently determined to be of no merit, which conflicts with the evidence of both Mr. Cacchione and C/Supt. Leather. In response to those public comments, the retired RCMP Superintendent who authored the July 2020 SiRT referral, Costa Dimopoulos, sent an email to the Interim Director of SiRT on October 28, 2022:

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<sup>11</sup> COMM0065136 at pages 1-2

<sup>12</sup> J.Lutz SitRep, October 29, 2020 - COMM0065200

<sup>13</sup> C.Leach Sup Interview, September 23, 2022 – COMM0065199

<sup>14</sup> F.Cacchione email, October 26, 2020 – COMM0065154

Mr. John Scott

*I am the author of the referral to SIRT regarding criminal allegations committed by a police service in Nova Scotia. I have since retired.*

*Today I read the quote in the media attributed to you about the information you released in reference to the referral to SIRT. I collected the information provided to me in a neutral and pure version manner, and feel confident that I have discharged my obligations to witnesses involved. My report was very thorough and provided significant detail from people with direct knowledge.*

*For you to say that "there was nothing to investigate and it did not meet our mandate" is quite a bold statement to make considering the level of detail in the report and audio recording that I disclosed. The contents of my report along with pages upon pages of my notes were vetted out and not disclosed to the MCC, however, SIRT has all the unvetted material I prepared.*

...

*Additionally, I read the statement provide to the MCC by Mr Felix Cacchione. The position adopted by SIRT that the complaints were second hand information, not worthy of investigation and were attributed to an ongoing turf war, is quite frankly misleading and an insult to the victims, and the families of the Portapique massacre. While the report is not directly related to the incident in Portapique, it does speak to the historical broken policing relationships in Nova Scotia dating back at least 25 years. It also speaks to significant historical allegations of a criminal nature made by very credible witnesses.*

...

*Regardless, there are victims out there, and the lack of an official credible and disclosable review by SIRT does a disservice to the witnesses who came forward, the credibility of SIRT as a review body, and the policing profession as a whole in Nova Scotia, but most of all it is a disservice to the those who perished and their families.*

Best Regards

Costa Dimopoulos



A combination of late disclosure and unnecessary redactions have all but deprived us of the opportunity to understand issues surrounding the July 2020 SiRT referral. Despite several requests, the Commission has refused to provide even basic information. To the extent that we were able to confirm the involvement of the Truro Police Service, it was from watching the evening news. It appears that SiRT was able to provide better information to the media than the Commission was willing to share with Participants.

Vague allusion to the protection of “possible future investigations” is no justification for withholding basic information from Participants. The contrary assumes that Participant access to information from more than two years ago would impede an investigation that’s primary relevance is found in the fact that there has been no investigation.

If the Commission’s public proceedings have made anything clear, it is this: the circumstances in which information must be withheld to preserve the integrity of an investigation are specific and limited. It is, however, regularly deployed by policing agencies to excuse their reflexive tendency toward secrecy. That the Commission would resort to the same tropes does not bode well for expectations that the endemic culture of secrecy within the RCMP will be addressed by the Commissioners. Our clients remain stubbornly hopeful, nevertheless.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of November 2022.

Respectfully,



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Clients

