

July 14, 2022

Decision regarding July 11, 2022 Participant Motion

1. Participant counsel (Patterson Law) filed a motion dated July 11, 2022 on behalf of their clients requesting:
 - Detailed reasons for our decisions with respect to the manner in which the evidence of Lisa Banfield and Cpl. Rodney Peterson will be received;
 - An opportunity to present oral submissions concerning Ms. Banfield and Cpl. Peterson during the public proceedings prior to Ms. Banfield's appearance, which is scheduled for this coming Friday, July 15;
 - The recall of Lia Scanlan to provide evidence regarding her attendance at a meeting on April 28, 2020 with Commissioner Lucki and matters arising therefrom.
2. We will provide our ruling on the various aspects of this motion in four parts, namely:
 - A. Oral Submissions
 - B. Reasons
 - C. Recall of Ms. Scanlan
 - D. Conclusion

A. ORAL SUBMISSIONS

3. We dismiss the motion to permit oral submissions about the manner in which the evidence of Ms. Banfield and Cpl. Peterson will be received prior to Ms. Banfield's appearance on Friday.
4. The request to make oral submissions with respect to Ms. Banfield is impractical given that her testimony is to be heard on Friday and in light of our very

compressed hearing schedule. The request with respect to Cpl. Peterson is premature, as we will explain.

5. In any event, oral submissions are in our view unnecessary given the detailed written submissions provided by Patterson Law and in light of all of the background and particularly of our previous rulings on related points, as we will describe below.

B. REASONS

Ms. Banfield

6. Patterson Law's assertion that we have offered "no basis to justify the decision to prevent questioning by Participants' counsel" is incorrect. Our communication to Participants dated June 28, 2022 sets out in detail our rationale for directing Commission counsel to conduct the examination of Ms. Banfield. A copy is appended to this decision.
7. We would add the following:
 - a. Commission counsel invited Participants to provide questions to be asked of Ms. Banfield during five interviews by the Commission. Several Participants submitted questions and in some cases, long lists of detailed questions. The substance of all of them was canvassed during the five lengthy interviews of Ms. Banfield on behalf of the Commission. Although Patterson Law highlighted some areas of questioning that their clients believed should be addressed by Ms. Banfield, they specifically declined to provide further input as to the questions to be asked of her in their letter of March 28, 2022
 - b. In our letter of June 28 to Participants, we directed Participants to provide any questions for Ms. Banfield to the attention of Commission counsel so that they could be included in the questions asked of Ms. Banfield on July 15. Additionally, Patterson Law, in common with all other counsel representing Participants will again have the opportunity to propose questions for Ms. Banfield via Commission counsel during her appearance on July 15. By the time her testimony has concluded, there will have been ample opportunity to canvas with the witness all relevant and appropriate matters that Participants wish to address.

8. We also note that we have discussed considerations relevant to this motion in our earlier rulings.
9. In our Decision of May 24, 2022 Regarding Rule 43 Accommodation Requests we noted the special role of Commission counsel in a public inquiry. The nature of this role is an important consideration in our decision to have Commission counsel conduct the examination of Ms. Banfield. We wrote:

A final note, to assist people with an understanding of the role of Commission counsel in a public inquiry. We rely on Commission counsel to examine the masses of document disclosure, interview witnesses and present the evidence in a fair and impartial manner to serve the public interest. In serving the public interest, Commission counsel are instructed to engage in an objective and tenacious pursuit of the truth. As we have stated many times, a public inquiry is inquisitorial and not adversarial. Therefore, Commission counsel are not opposing counsel to Participant counsel. They must be impartial and thorough in exploring all significant evidence relevant to the issues to be explored during the Inquiry. Their role is to represent the public interest and to support the Commission's forward-looking mandate.

10. In our June 17, 2022 Decision regarding Participant requests to question witnesses, we discussed at length why the manner in which evidence is presented to the Commission is a matter for our discretion, to be exercised in light of the purposes and nature of commissions of inquiry and of this Commission with its broad mandate in particular. We will not reproduce everything that we wrote in that Decision, but would highlight paragraphs 16 – 27 as being particularly pertinent to our consideration of this motion. We will reproduce only what we wrote in paragraphs 25 – 26:

25. Our mandate directs us to unravel the complicated facts surrounding the perpetrator's horrendous 13-hour rampage. In doing so, we are not limited to the conventional adversarial process utilized in court proceedings. There, the parties find themselves pitted against each other, with each side attacking the other's position and with all witnesses subjected to cross-examination.

26. Public inquiries are inquisitorial as opposed to adversarial in nature. This allows commissioners the flexibility to establish the facts in a variety of creative ways. They engage in an inquisitorial process that serves to make recommendations for the formulation of sound public policy, rather than making determinations of civil or criminal liability among adversarial parties. Indeed, our Orders in Council explicitly require us to inquire with a view toward reporting lessons learned and generating recommendations to help prevent similar situations in the future.

11. To conclude on this point, we considered a multitude of factors, including those set out in our June 28 direction and the matters just referred to in deciding to exercise our discretion to direct that Commission counsel should conduct the examination of Ms. Banfield. Participants have had the opportunity to have their questions explored during the extensive interviews of Ms. Banfield and have the opportunity to propose additional questions via Commission counsel in advance of and during Ms. Banfield's appearance on July 15. And of course, if Commission counsel and Participants' counsel have any difference of view concerning the appropriateness or necessity for particular questions proposed by Participants' counsel, we will rule on those matters at the appropriate time.

Cpl. Peterson

12. The motion with respect to Cpl. Peterson is premature. We have directed that Commission counsel obtain his evidence in affidavit form, with input from Participants as to the matters to be addressed. If upon review of that affidavit it appears that additional evidence is required of this witness, we will consider the manner in which such additional evidence should be obtained.

C. RECALL OF MS. SCANLAN

13. Once again, this motion is premature. The April 28th 2020 meeting to which Ms. Scanlan's letter refers has become a matter of broad public interest. We note that we will be hearing in the coming weeks from senior participants in that meeting including Supt. Campbell and Commissioner Lucki. Any decision about whether to hear further from Ms. Scanlan, and if so how, should be taken in the light of that testimony.

14. We must, however, correct the facts as set out in the Patterson Law submissions in relation to Ms. Scanlan. The submissions suggest that the Commission "obscured" Ms. Scanlan's knowledge of and involvement in the April 28 meeting. This is neither accurate nor fair. The Patterson Law submission states that Ms. Scanlan's letter to Commissioner Lucki, written a year after the meeting to which it refers, was "unhelpfully identified only as "Letter regarding meeting request". This is not correct. What the submission fails to note is that the Disclosure Letter dated June 2nd, (and thus prior to Ms. Scanlan's testimony on June 8) sent to all Participants identifies as item 15(d) "Lia Scanlan, Director of Strategic Communications with the NS RCMP, along with a letter authored by Lia Scanlan to Commissioner Lucki" (emphasis added). There is nothing obscure about that description.

D. CONCLUSION

15. The motion is dismissed. We have been clear from the beginning that this is not an adversarial, trial-like proceeding. In light of our extensive rulings and explanations of this fundamental point, there can be no expectation, legitimate or otherwise, that we would exercise our broad procedural discretion to conduct this process in the adversarial, trial-like model on which the motion is premised.

Appendix



The Joint Federal/Provincial Commission into
the April 2020 Nova Scotia Mass Casualty
MassCasualtyCommission.ca

Commission fédérale-provinciale sur les événements
d'avril 2020 en Nouvelle-Écosse
CommissionDesPertesMassives.ca

Privileged and Confidential

June 28, 2022

Dear Participants,

Re: Testimony of Lisa Banfield

In our March 9, 2022, [decision](#), we indicated that we would hear from Ms. Lisa Banfield, the perpetrator's common law spouse, at a later date. Up to that point, the Commission had been unable to interview her because she was in legal jeopardy facing charges related to the acquisition of ammunition. As such, the Commission at that time had only the interviews she had provided to the RCMP during and immediately following the mass casualty.

The charges against Ms. Banfield have since been referred by the Crown to the Nova Scotia Restorative Justice Program, resulting in her March trial dates being vacated. Ms. Banfield has now participated in five interviews with the Commission and voluntarily shared evidence requisite to the Commission's independent investigation.

Ms. Banfield is both a fact witness and an individual directly affected as one of the few people to have survived an encounter with the perpetrator on April 18-19, 2020. She is uniquely positioned as one of those most affected by the mass casualty with firsthand knowledge of the events in Portapique. As one of those most affected, she was automatically deemed to be a Participant under the Orders in Council.

The Commission has a mandate to:

- “make findings on matters related [to the mass casualty], including the causes, context, and circumstances giving rise to the tragedy”,
- to “examine related issues” including “contributing and contextual factors, including the role of gender-based and intimate partner violence” and

- “to be guided by restorative principles in order to do no further harm, be trauma-informed and be attentive to the needs of and impacts on those most directly affected and harmed”.

In our inquisitorial role, we have reviewed the interviews provided by Ms. Banfield, which will be marked as exhibits and made public the week of July 11, 2022. The interviews provide a great deal of information on a wide variety of subjects, including the violence, coercion and control she experienced during her long relationship with the perpetrator and her experiences as the first target of his violence on April 18, 2020.

Ms. Banfield has been cooperative with the Commission’s investigation by offering detailed answers regarding all aspects of her lengthy involvement with the perpetrator. However, we are of the view that, given her unique situation as both a factual witness to the events and among those most affected, it is necessary to hear from her directly in the proceedings.

As with all other witnesses who provide oral evidence, the Commission has subpoenaed Ms. Banfield to address remaining questions relevant to its mandate. She is scheduled to appear in person on July 15, 2022. Her sisters, Maureen Banfield and Janice Banfield, may accompany her during her testimony for support.

By virtue of her unique position, Ms. Banfield is being subpoenaed in relation to the factual evidence she can provide. The Commission has considered her unique position and sought to balance her role as a fact witness with important knowledge about the events in Portapique with a consideration for her needs.

According to the Commission’s [Rules of Practice and Procedure](#), in the ordinary course, Commission counsel call and question witnesses. Commission counsel represent the public interest; they do not advocate for a particular point of view, but rather they inquire into the matter at hand in an impartial and objective way. Given Ms. Banfield’s situation as a survivor of the perpetrator’s violence, as one of those most affected, and in light of the quality and quantity of information she has already provided to the Commission, we direct that all questions for Ms. Banfield from Participants will be asked by Commission counsel, who will solicit Participants about their areas of interest in advance.

To that end, we direct Participants to provide any questions for Ms. Banfield to the attention of Commission counsel via the “participation” email address participation@masscasualtycommission.ca by Tuesday, July 5. On July 15, Participant counsel will also have opportunities to identify and bring forward further questions following and during Ms. Banfield’s questioning during two meetings (known in the proceedings so far as “caucuses”) with Commission counsel, before Ms. Banfield is excused as a witness.

This approach is consistent with the authority granted to us in our mandate to “adopt any procedures...that [we] may consider expedient for the proper and efficient conduct of the Joint Public Inquiry”. In our view, it also represents the most effective way to gather Ms. Banfield’s best evidence.

Yours truly,

Hon. J. Michael MacDonald, Chair
Leanne J. Fitch (Ret. Police Chief, M.O.M.)
Dr. Kim Stanton