

IN THE MATTER OF A JOINT COMMISSION OF INQUIRY
KNOWN AS THE MASS CASUALTY INQUIRY
Nova Scotia Order in Council Number 2020-293, as Amended
Canada Order in Council 2020-822, As Amended

Submissions of the Attorney General of Nova Scotia
On this 7th day of October, 2022

As per counsel:

Edward A. Gores, KC
Samantha Parris,
Glenn R. Anderson, KC

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PART 1 Introduction

The mandate of this Commission requires examining the details of a horrific series of crimes that have forever changed Nova Scotia. It has required us to collectively plot a future path that

- puts into place measures to improve how our society understands and copes with the circumstances that lead to those crimes,
- reviews and understands the response policing agencies and others took to those crimes, and
- examines closely what we can do to best help victims of those crimes.

In these submissions, the Attorney General of Nova Scotia (the “AGNS” or the “Province”) will, in Part 2, examine the unique role of public inquiries in Canada in the context of the mandate of this Commission. In Part 3, the Province examines certain issues raised during the proceedings, which relate more directly to the statutory responsibilities and obligations of the Province. In that regard, we consider

- services provided by the Department of Justice’s (“DoJ’s”) Victims Services Division in the aftermath of the mass casualty event,
- the mental health response,
- the role of DoJ’s Public Safety and Security Division,
- the Province’s oversight and funding of policing agencies,
- first responder communications systems,
- the services of the Emergency Measures Office and the use of Alert Ready notification program, and
- the Province’s involvement in mitigating the effects and circumstances giving rise to domestic violence.

PART 2 Public Inquiries allow Governments to examine complex issues carefully and fully

By Orders in Council (“OIC”) dated October 21, 2020, the Province and the Government of Canada ordered a joint public inquiry to investigate and review the causes and contexts into the unprecedented events of April 18th and 19th, 2020. The OIC directs the Commission to investigate and make findings of fact on matters related to what happened and to make recommendations to avoid such tragic events in the future. Those matters identified in part (a) of its OIC are:

- (i) The causes, context and circumstances giving rise to the tragedy,
- (ii) The response of police, including both the RCMP and municipal police forces, and
- (iii) The steps taken to inform, support and engage victims, families and affected citizens.

In part (b) of its OIC mandate, the Commission is directed to examine several issues relating to the events of April 18 and 19, including contributing and contextual factors, such as gender -based violence, access to firearms, communications, policing policies, etc.

Public inquiries are an important tool available to governments to examine complex social issues which could not be otherwise be considered by other mechanisms, like courts and administrative bodies. While findings and recommendations made in public inquiries are not binding, public inquiries play an important role in Canadian society.

In the book, “The Law of Public Inquiries in Canada”, author Simon Ruel at pages xxv and xxvi states as follows:

Commissions of inquiry have a long history as an Executive tool for investigating or studying matters of public importance with a view of ascertaining the facts, airing public grievances and making policy recommendations for change. Commissions of inquiry historically owe their existence to an exercise of Royal Prerogative through which the Crown appoints officials to perform duties, temporarily or permanently, on its behalf.

...

In Canada, the first statutory basis for public inquiries was adopted in 1846 in the United Province of Canada – *An Act to empower Commissioners for inquiring into matters connected with the public business, to take evidence on oath*, which contained two sections; one allowing the Governor in Council to appoint an inquiry “into and concerning any matter connected with the good government of Canada, or the conduct of any part of the public business thereof,” which is the same appointing authority as under Part I of the current federal *Inquiries Act*, and a second section including the power to enforce the attendance of witnesses and compel them to give evidence.¹

While governments receive advice from many sources, public inquiries are an important source of advice for government and have played a critical role in changes to the legal, political and social landscape in Canada. Ruel goes on to state, at page 20:

Commissions of inquiry are often portrayed as independent bodies similar to the judiciary and separate and apart from the Executive and legislative branches of government. However, it is important to remember that commissions of inquiry are not courts nor in any way part of the judiciary. They are a creature of the Executive that the Executive appoints to investigate itself or to investigate other matters of public importance.

One of the essential roles of commissions of inquiry is fact-finding. Because they have broad investigative powers in an inquisitorial setting, they are well-suited for uncovering facts that could not otherwise be discovered. The ultimate role, however, is to provide advice to the Executive within the scope of the terms of reference, based on their factual findings.

The public importance of commissions of inquiry is not a source of any special legal status. The existence of a commission of inquiry depends entirely on the Executive, which has the full authority and discretion to create these commissions within the parameters of public inquiry legislation. The Executive names commissioners, establishes their mandates and the framework under which they will operate, including the timing or reporting.²

¹ Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010) at xxv and xxvi.

² Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010) at 20.

PART 3: The MCC's Process & Provincial Entities, Systems & Supports

(A) The Process:

The Commission developed “foundational documents” to share its understanding of key facts and events leading up to and during the April 2020 mass casualty. In total, the Commission shared 31 foundation documents. It also reviewed over 2000 recommendations from 71 other public inquiries that considered topics related to the Commission’s mandate and requisitioned 23 expert and technical reports.

The Commission issued 107 subpoenas and reviewed more than 65,178 documents. It held 13 roundtables and heard direct testimony under oath from 57 witnesses. In total, the Commission has sat for a total of 82 days in Halifax, Truro, and Dartmouth. Individuals, families, advocacy groups, unions, non-profit organizations and governments make up the participants who were granted standing in these proceedings.

The Commission had developed, reviewed and heard information and evidence from numerous individuals and organizations, including the victims, families, experts and front-line workers. Its task is now to make findings of facts, and perhaps, most importantly to make recommendation to prevent events like this one from happening again. As noted above, the Province focusses its evidentiary review on key pieces of the evidence that will assist the Commission in making its findings, communicating lessons learned, and making recommendations to help prevent and respond to similar events. In 2(B), below, the Province examines the evidence surrounding its mandate regarding its involvement with policing oversight, its efforts to support and assist those victimized or harmed, and various communications systems and programs it is involved in supporting and promoting for the safety of Nova Scotians.

(B)Provincial entities, systems & supports:

1. Victim Services

Victim Services is a branch of the Maintenance Enforcement and Victim Services Division of the DoJ. Its mission is to reduce the impacts of crime on Nova Scotians by offering victims of crime, and those who support victims, services and support as their case moves through the criminal justice system.³

Victim Services offers several services and programs to support its mission. Victim Services has four regional offices that offer assistance by:

1. Conducting risk assessments,
2. Assisting with safety planning,
3. Providing victims with referrals,
4. Acting as a liaison between the Crown Prosecutor and victims,
5. Providing regular updates to victims as their case moves through the criminal justice system,
6. Preparing victims to attend court,
7. Assisting with the preparation of victim impact statements,
8. Administering the Victim Impact Fund, which provides travel and accommodations for victims to travel to attend court, and,
9. Assisting victims with applying for Emergency Protection Orders, Early Lease Terminations, and Domestic Violence leave applications.⁴

Victim Services also offers other programs, like the Criminal Injuries Counselling Program, the Independent Legal Advice Program, the Restitution Support Program, the Sexual Offense Legal

³ Victim Services Institutional Report, COMM0051421.

⁴ Victim Services Institutional Report, COMM0051421.

Representation Program, the Occupational Health and Safety Fatalities Counselling program, and the Family Information Liaison Unit which is dedicated to assisting families of missing and murdered Indigenous Women and Girls and provides supports for victims of families of human trafficking and sexual exploitation.⁵

By May 5th, 2020, Victim Services stood up Navigation Centers in two communities, with two other Navigation Centers opening in June. The Navigation Centers were located in Portapique, Debert, Wentworth and Shubenacadie. Victim Services worked with other divisions within the provincial Department of Justice, such as Sheriff Services and Correctional Services, along with the SchoolsPlus program, the Department of Health and Wellness, the Nova Scotia Health Authority, the Department of Community Services and community leaders to design and implement these centers. The purpose of the Navigation Centers was to provide a single place where victims could go to receive in-person support and referrals. The Navigation Centers were opened 6 days per week.⁶

The Navigation Centers were initially set up as a short-term initiative, but based on the communities' use of these centers, the Navigation Centers were extended. All four Navigation Centers opened by June 2020. Two of the centers closed in August 2020 to accommodate the upcoming school year. The communities did not use the Navigation Centers after November 3, 2020, however, Victim Services kept these centers open for two more months, knowing that the holiday season might trigger the community to reach out for supports.⁷ The remaining two centers closed in January 2021, although this service is still available in-person, online and over the telephone.⁸

⁵ Victim Services Institutional Report, COMM0051421 at 2-3.

⁶ Victim Services Institutional Report, COMM0051421 at 2-3 and Transcript of Interview with Dana Bowden, COMM0054246 at 5, 19, 26 and 30-31.

⁷ Transcript of Interview with Dana Bowden, COMM0054246, at 14.

⁸ Victim Services Institutional Report COMM005141 at 4-5 and Transcript of Interview with Dana Bowden, COMM0054246 at 14.

In addition to the Navigation Centers, Victim Services set up a toll-free telephone number and email address to answer any requests for services or referrals for those impacted by the mass casualty. Victim Services offered in-person and consistent support to those attending the Mass Casualty Commission's public hearings.⁹

Victim Services offered all of its usual forms of support to the community, including the Criminal Injuries Counselling Program, providing assistance to each person who requested access to a mental health support for as long as was required, communicating court updates with those most affected, communicating other government information with those most affected, and other tasks that arose.¹⁰ As of March 7, 2022, Victim Services had approved 189 applications for Criminal Injuries Counselling, making \$500,000 available for those who requested counselling through this program.¹¹ As of July 2022, approximately \$136,000 of the \$500,000 available had been utilized by the persons who had requested counselling.¹²

In its work, Victim Services offered its expertise and support in a manner that was both trauma-informed and community-led. As explained by Dana Bowden, Director for Victim Services:

So, I would say I made a lot of decisions based on a ... a lot of decisions based on a trauma-informed approach that were outside of the scope of the Criminal Injuries Counselling Program. So, the Criminal Injuries Counselling Program is legislated through the *Victims Rights and Services Act*. And so, what I would say is that the last time the Criminal Injuries Counselling Program or the *Victims Rights and Services Act* was reviewed, it certainly wasn't set up for a mass casualty.

...

⁹ Victim Services Institutional Report, COMM0051421 at 4 and Transcript of Interview with Dana Bowden, COMM0054246 at 5 and 13.

¹⁰ Victim Services Institutional Report COMM0051421 at 2, 4 and 5 and Transcript of Interview with Dana Bowden, COMM0054246 at 8, 10-12 and 16-17.

¹¹ Transcript of Interview with Dana Bowden, COMM0054246 at 17.

¹² Letter to Mass Casualty Counsel from Samantha Parris, July 13, 2022, COMM0059894 at 2 and Transcript of Interview with Dana Bowden, COMM0054246 at 17.

The way the Criminal Injuries Counselling Program. Counselling Program has been set up, I feel that, you know, it would be beneficial if there was greater flexibility in the program, particularly for the Director.

...

So, with that being said, I looked at, you know, the impact on the communities, who needed support and assistance and look at how you know, we could provide, at the very least, you know, some form of counselling support to them.¹³

In her report entitled “Supporting Survivors and Communities After Mass Shootings”, Dr. Jaclyn Schildkraut, states the following:

Events like mass shootings and other mass casualty incidents provide unique challenges about how best to support not only those who have been impacted, but also the affected community or communities. Despite the growing number of such events, however, there is no recognized set of best practices to guide this process. As a result, decisions about what resources to provide and to whom often fall to the organizations and governmental entities in charge of recovery efforts. This can be a daunting task, especially without knowing where to begin.¹⁴

[Emphasis Added]

As noted by Dr. Schildkraut, there is an absence of a recognized set of best practices for providing community support. In the circumstances here, Victim Services supported the affected communities by ensuring that:

1. All of their services were offered and available to the community at large,
2. The communities could access Victim Services online, in-person, and over the telephone, and;
3. Victim Services ensured that it was consistent and present throughout.

¹³ Transcript of the Interview with Dana Bowden COMM0054246 at 4.

¹⁴ Supporting Survivors and Communities After Mass Shootings, by Dr. Jaclyn Schildkraut, page 1.

Victim Services has acknowledged the need to update policies and procedures so that they are more prepared to support victims of mass casualty events. The evidence points to the fact that any lack of updated policies and procedures did not limit the fulness of the response in the wake of the mass casualty; Victim Services ensured people were given access to counselling, help and information through its programming.

2. Mental Health Supports available in the Province of Nova Scotia

Health services are provided to Nova Scotians through Nova Scotia Health (NSH), IWK Health (IWK) and a multitude of health care professionals - who are not participants in the Mass Casualty Commission proceeding.

The Department of Health and Wellness understands that, in the hours and days following the mass casualty event, NSH and the IWK mobilized to assess the need for support from both an organizational and community perspective and identified several actions for immediate implementation. These actions included mental health support for those impacted by the mass casualty event.

Mental health support was also made available by Victim Services.

Through its Criminal Injuries Counselling Program, Victim Services funded counselling to persons affected by the mass casualty event.¹⁵ As of March 2022, there had been almost 200 people approved for counselling.¹⁶ Dana Bowden, the Director of Victim Services, added in her March 2022 interview that she had reached out to NSH Mental Health and Addictions to identify the need for long-term counselling and how to potentially transition patients to MHA support.¹⁷

¹⁵ Transcript of Interview with Dana Bowden, COMM0054246 at 8 and 16-17.

¹⁶ Transcript of Interview with Dana Bowden, COMM0054246 at 8 and 17.

¹⁷ Transcript of Interview with Dana Bowden, COMM0054246 at 19-21.

Victim Services also provided information, navigation and referrals to mental health services in several ways - including by the Navigation Centers, a toll-free telephone number and email address.¹⁸

Victim Services set up Navigation Centers in the four impacted areas to support families and the communities.¹⁹

In her interview, Tracey Taweel, the Deputy Minister of the Department of Community Services, spoke about accessing the helpline (funded by the Department of Community Services in partnership the Status of Women) through calling 2-1-1 and getting connected into the appropriate helpline - women's, men's or all-genders'. The caller speaks with a trained counsellor who identifies what supports they need and connects them with the appropriate supports at their local level.²⁰

Access to the helplines is also available by visiting the NS211 website. The NS211 website notes that it “offers 24/7 navigational assistance in over 100 languages, connecting Nova Scotians experiencing unmet social or human needs with organizations able to meet those needs.” There is also a 24-hour Provincial Crisis Line at 1-888-429-8167 or 9-1-1.²¹

Victim Services also offered in-person support to those attending the Mass Casualty Commission's public hearings.²²

¹⁸ Transcript of Interview with Dana Bowden, COMM0054246 at 13.

¹⁹ Transcript of Interview with Dana Bowden, COMM0054246 at 5 and 19.

²⁰ Transcript of Interview with Tracey Taweel, COMM0056201 at 7.

²¹ <https://ns.211.ca/contact-us/>

²² Victim Services Institutional Report, COMM0051421 at 4.

Mental health supports were promoted and provided to persons affected by the mass casualty event - commencing in the hours and days following the mass casualty event and continuing to this day. The Province has learned much from the response in this event and will continue to assess and improve its supports to communities whenever needed.

3. Public Safety and Security Division

The Public Safety and Security Division is a division within the Nova Scotia DoJ and its mandate includes responsibility for policing strategy and public safety investigations. Hayley Crichton, Executive Director for the Public Safety and Security Division, described the work of the division at the June 23, 2022, roundtable as follows:

So Public Safety and Security Division with the Department of Justice really has legislative and regulatory oversight over a number of distinct but interrelated areas that support the public safety of Nova Scotians in this Province.

So very briefly, those areas are the provincial firearms program that administers the federal firearm legislation through the Chief Firearms Officer, the private security industry, so we regulate the private security industry and appointment of civil constables through our provincial registrar.

We also do work with Cyberscan, which is the administration of Intimate Images and *Cyber Protection Act*. Our scan unit, which is the *Safer Communities and Neighbourhoods Act*, corporate security, and then more pointedly for this discussion is, of course, our policing strategy section.

So policing strategies and public safety section really works under the authorities of the provincial Nova Scotia *Police Act*. And we work to further, kind of, the authorities of the Minister under that Act. And though that's the most prominent piece of legislation we work with, obviously there's tangential legislation that we also look to support and assist our law enforcement partners for awareness and things like that, including the very recent, you know, *Police Identity Management Act* would be one example.

So all that to say there's a lot of work being done in the division through the various units, but it really supports that overarching system of public safety for Nova Scotians.²³

²³ Hearing Transcript of June 23rd, 2022, COMM0059341 at 45 and 46.

The structure of policing in Nova Scotia is laid out thoroughly in Barry MacKnight's *The Structure of Policing in Nova Scotia* report.²⁴ In short, the Nova Scotia provincial police force is the RCMP through a Provincial Police Service Agreement ("PPSA") between the Nova Scotia Department of Justice and Public Safety Canada. Municipalities are responsible for their own policing and, depending on the size of the population, different options are available to them to fulfill that obligation – the RCMP being one such option. In total, there are 11 municipal police agencies providing front-line policing to Nova Scotians. All policing agencies in the province are subject to and governed by the provincial *Police Act*. The RCMP also delivers certain federal policing services in the Province.

As explained by Ms. Crichton during the roundtable held June 23, 2022:

So as I said previously, oversight of policing in Nova Scotia is a provincial responsibility. But really, the administration of policing is a municipal responsibility under our legislation, and this is kind of speaking to some of Bill's points earlier. So the current organization in Nova Scotia is quite localized, so police are accountable to local boards and local councils, and therefore, they're asked to invest their resources, both human and financial resources, in local priorities. So, you know – and community level concerns as well. So, of course, this is inherently a very good thing. You have a police agency that's responsible – responsive, excuse me, to local needs and responsible to the constituents and the municipal taxpayers as well.²⁵

Included in the Province's police oversight mechanism is the Public Safety and Security Division's development of provincial policing standards. The current Policing Standards were established in 2003. The AGNS acknowledges such standards need to be regularly reviewed and updated. This review process is well underway. As explained by Ms. Crichton:

So one of the most important things we're working on now is a refurbishing or modernization of the provincial policing standards, and I speak about it a lot, but its because it's so far reaching in its effects for assisting to start building collaborative relationships and building capacity towards interoperability. And that is setting a base minimum that

²⁴ Barry MacKnight, *The Structure of Policing in Nova Scotia* (November 2021), COMM0040450.

²⁵ Hearing Transcript of June 23rd, 2022, C0MM0059341 at page 72

police agencies meet collectively across the Province. And so an agency can go to their board and say, “This is the base minimum standard. To meet this standard, I need to invest financial resources, human resources, equipment resources to meet this standard.” And therefore, kind of having the discussion about investments start to broaden outside the town jurisdiction, outside the detachment jurisdiction, and start to be a provincial, holistic, consistent approach to addressing interoperability.²⁶

The process established to update the standards is a collaborative one; all policing partners and other community stakeholders are involved in this process. As explained by Ms. Crichton:

And so the process that we’re moving through is a collaborative process to modernise the policing standards. And standards are developed under the authorities of the Minister and the *Police Act*, so we could have done so as government, presented them to our policing partners and said, “Here. Here is the standards for the province”, you know, “best of luck implementing them.” But we didn’t do that. We chose to move forward with a collaborative framework that includes participation from all of our policing partners, municipal police and RCMP, and also with civilian participation in that process as well.

So we have a person sitting on the steering committee from our police boards of commission and police advisory boards as well. So, they’re actually integral to our process of building a modern policing organization in this Province. And I think its that collaborative approach to setting the framework that’s going to really set us up for success in the end, because we’ve set the expectation that we will get together at a table and we’ll have productive conversation. And when you set that expectation, then everything flows afterwards.

And part of that too is the outcome of formalization of agreements. And I think what agreements get you and what mutual aid agreements get you, and MOUs get you is, yes, you remove role ambiguity. But again, you set the expectation that people need to come to the table to have the discussions, and sometimes very difficult discussions, about roles and responsibilities. What am I responsible for? And then also, in an [exigent] circumstance, what am I not responsible for? Because each of those are equally as important in that discussion.²⁷

²⁶ Hearing Transcript of June 23rd, 2022, COMM0059341 at 73 and 74.

²⁷ Hearing Transcript of June 23rd, 2022, COMM0059341 at 87.

When the standards are finalized, they will be enshrined in regulations.²⁸ The auditing program will also be modernized to reflect the new standards.²⁹ This modernization project will improve uniformity of police practices across the Province, while also enhancing interoperability.³⁰

The AGNS encourages the Commission to make recommendations that will assist the AGNS in its review of the *Police Act*.

4. Funding of Provincial Police in Nova Scotia

Barry MacKnight, in *The Structure of Policing in Nova Scotia* report, explains the PPSA between the federal government and the Province - which sets out the terms for the provision of policing service by RCMP in their contracted role as the provincial police service.³¹

In summary, in Nova Scotia, each municipality must decide whether to have a municipal police force or opt for policing services with the RCMP. The Province contracts with the RCMP as its provincial police force and covers 70% of the actual cost (with the remaining 30% covered by the federal government). The provincial share is recovered from municipalities based on the number of officers each municipal unit has approved. At the September 8, 2022 roundtable, Haley Crichton, the Executive Director of Public Safety and Security Division for the Nova Scotia Department of Justice, explained that municipalities decide on their police service providers and pay for the service:

[T]he decision on service provider for policing in the province of Nova Scotia is made by the municipalities based on the *Police Act* that we have. So municipalities can make a decision on who they prefer to be their service provider.

²⁸ Transcript of Interview with Hayley Crichton, COMM0051428 at 28.

²⁹ Transcript of Interview with Hayley Crichton, COMM0051428 at 29.

³⁰ Hearing Transcript of June 23rd, 2022, COMM0059341 at 79.

³¹ Barry MacKnight, *The Structure of Policing in Nova Scotia* (November 2021), COMM0040450 at 12-24 and 87-137.

So the PPSA is -- there are 40 -- at least 40 municipalities currently under the Provincial Policing Service in Nova Scotia, so that means that there are 40 municipalities that are represented by the province to have the RCMP as their service provider.

So essentially, municipalities under the PPSA delegate their negotiating ability to the province ...

...

... So Nova Scotia is responsible for 70 percent of the cost share of the RCMP as a provincial police and the federal government is responsible for the remaining 30.

...

... So pursuant to the *Nova Scotia Police Act*, policing and the costs associated with policing are the responsibility of the municipality ...

So the RCMP bills the province for their services for our 70 percent cost share. The province then pays the RCMP based on our budget that's allocated, but then we actually go and cost recovery for those services provided to municipalities, and we do that based on how many officers are allocated to that municipality.

And so oversight -- so because policing is a municipal responsibility, and I mean the administration of policing. Obviously, oversight is the responsibility of the province, but the addition or subtraction of officers, the number of officers, must begin with a motion by Council in the municipality and then, after that process has concluded, the province will adjust our billing based on how many officers they add or remove.³²

The Province's support for police includes the Additional Officer Program, which provides \$16 Million annually³³ to directly fund general duty police officers in every police agency in Nova Scotia.³⁴

³² Hearing Transcript of September 8th, 2022, COMM64722 at 16, 22, 24 and 25.

³³ Mark Furey, Subcommittee of the Whole on Supply, March 9, 2020, [Nova Scotia Legislature - Hansard Transcript \(nslegislature.ca\)](https://www.nslegislature.ca/hansard-transcript).

³⁴ For example, see H Division – Additional Officer Program / Safer Communities Positions February 1, 2019, COMM0030516.

Ms. Crichton explained that the Province is unable to suggest a reduction of the number of officers for the sake of costs:

So we're receiving a lot of requests to review policing services, to review costs and, really, one of the only opportunities we have is looking at the number of police officers. However, as the overarching responsibility for adequacy of policing, we're unable to suggest the removal of officers for, you know -- for the sake of costs. We need to balance public safety with the costs of policing.³⁵

Ms. Crichton added that the Department works closely with municipalities and the RCMP regarding police service:

So we work quite closely with our policing partners across the province, so that's both the RCMP as contract management for the PPSA, but also with independent municipal police forces as well ...

...

... We are in constant contact with our municipal partners. We have an RCMP liaison to the Department of Justice who's dedicated to receiving those calls from CAOs, Mayors and other officials in municipalities to discuss their policing services ...

...

And so while, of course, we work very closely with the RCMP and we've been responsive in looking for pathways of flexibility and operational coverage, it does make it more challenging when we're also having to have conversations with municipalities about what flexibility needs to take place in order to ensure coverage.

³⁶

Mark Furey was the Minister of Justice and Attorney General of Nova Scotia from June 2017 to February 2021. In his recorded interview, Mr. Furey emphatically disagreed with RCMP witnesses who said that "H Division has been under-resourced or underfunded by the Province."³⁷ He added that there was a need to better understand the funding of Provincial policing in Nova Scotia -

³⁵ Hearing Transcript of September 8th, 2022, COMM64722 at 25.

³⁶ Hearing Transcript of September 8th, 2022, COMM64722 at 17, 23 and 26.

³⁷ Transcript of Interview with Mark Furey, COMM0065058 at 49.

“there's a need to better understand the substance of the PPSA because that continues to be the fallback for many that ... that the RCMP have been underfunded.”³⁸

Mr. Furey makes it clear. The Province has continuously funded the RCMP as set out in the PPSA:

- “the Province has continuously funded the RCMP, consistent with the expectations and requirements of the PPSA.”
- “People have to understand the RCMP have been funded consistent with the substance and content of the Provincial Police Service Agreement, which is negotiated between Federal Government, the Province and the RCMP.”³⁹

The Province's continuous funding includes funding for additional resources during emergencies and other events pursuant to Article 9 of the PPSA. Article 9.1 states:

ARTICLE 9.0 EMERGENCIES & EVENTS

9.1 If, in the opinion of the Provincial Minister, an Emergency in an area of provincial responsibility exists or is likely to exist in the Province:

- (a) the Provincial Police Services will, at the written request of the Provincial Minister made to the Commanding Officer, be redeployed to such extent as is reasonably necessary to maintain law and order, keep the peace and protect the safety of persons, property or communities; and,
- (b) the Province will pay the costs of redeployment including Salary, transportation and maintenance as follows:
 - i. the Province will pay 70 per cent of such costs to Canada; and
 - ii. after 30 days from the redeployment the Province will pay 100 per cent of such costs to Canada where the Emergency arises as a result of a municipal police strike or dispute, or the disbandment of a municipal police

³⁸ Transcript of Interview with Mark Furey, COMM0065058 at 63.

³⁹ Transcript of Interview with Mark Furey, COMM0065058 at 62-64.

force for an area which is not normally policed by the RCMP.⁴⁰

As the evidence discloses, the Province approved the RCMP's written requests for the deployment of additional RCMP resources following the mass casualty and approved subsequent extension requests made by the RCMP.⁴¹

Both former Minister Furey and Minister Johns regarded the RCMP staffing issue as a matter internal to the RCMP. Minister Johns "pointed out that Commissioner Brenda Lucki told the inquiry that staffing and recruitment is a challenge for the force across the country."⁴² Former Minister Furey noted the inability of the RCMP to manage vacancies - due to its inability to apply a model of vacancy management similar to that available to municipal police departments -- and he pointed to the RCMP's inability to provide the necessary number of cadets to fulfil their contractual obligation.⁴³ These areas of concern must be addressed by the RCMP.

Simply put, the H Division of the RCMP has not been under-resourced or underfunded by the Province. The Province has provided continuous funding to the RCMP for Provincial policing as set out in the PPSA, including for emergencies and other events pursuant to Article 9.

5. TMR2 Radio System

Public Safety and Field Communications is an office within the provincial Department of Service Nova Scotia and Internal Services. This Office is responsible for managing the public safety

⁴⁰ Provincial Police Service Agreement, April 1, 2012, COMM0043270 at 23.

⁴¹ There was an exception - a request to support an RCMP Issues Management Team was denied, Responses to Questions from Mark Furey, COMM0063694 Answers 15-19

⁴² Keith Doucette, "Nova Scotia justice minister dismisses RCMP assertion of chronic underfunding", CBC Nova Scotia, August 24, 2022, <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-justice-minister-dismisses-rcmp-underfunding-1.6561160>.

⁴³ Responses to Questions from Mark Furey, COMM0063694 Answer 11.

communications systems in Nova Scotia, which includes the TMR2 Radio System and the Shubenacadie Dispatch Center.

TMR2 System Overview:

The TMR2 Radio System in Nova Scotia is the subject of a Foundational Document. This Foundational Document provides a high-level overview of how the system was developed and of how the system operates. The TMR2 Radio System is complex and, as such, the Foundational Document represents only a summary of those complexities; the Foundational Document does not delve into the details of the system. For example, the Foundational Document does not touch on the technical details of the network infrastructure and architecture required to connect customer enterprise networks, like the RCMP's network, to the TMR2 System on one side, and to outside networks, the internet for example, on the other. The myriad technical details of this connectivity example, and the background information concerning many other aspects of the system, were not requested by the Commission and do not form a part of the Foundational Document.

As discussed by Matt Boyle, Director of the Public Safety and Field Communications Office, in his interview with Commission staff, a true understanding of the TMR2 System takes a lengthy period of immersive learning.⁴⁴

The Commission heard from some RCMP witnesses about their understanding of how the TMR2 Radio System operates. These witnesses described their difficulties with communication in April 2020 and/or issues with communications more generally. For example, during the testimony of S/Sgt. Jeff West and S/Sgt. Kevin Surrette on May 18, 2022, S/Sgt. West described his difficulty communicating that he was taking command during the early morning hours of April 19, 2020.⁴⁵

⁴⁴ Transcript of Interview with Matthew Boyle and Todd Brown, COMM0053740 at 15.

⁴⁵ Transcript of Public Hearings on May 18, 2022, COMM0058603 at 64.

It is clear from S/Sgt. West's testimony, and from his interview that preceded his testimony, that S/Sgt. West did not understand how the system operated; for example, he indicated that the system was dependent on cell coverage. This is, quite simply, not correct. The evidence of Todd Brown and Matt Boyle is clear: the radio system is an independent network that is not dependant on cell phone coverage. S/Sgt. West's perceptions of the system were shared amongst all RCMP witnesses who spoke about the performance of the radio system in April 2020. The AGNS submits it is reasonable to conclude that these RCMP misunderstandings are both widespread and pervasive.

The consequences for this misunderstanding, at the Critical Incident Command level in particular, could be profound. For example, if a Critical Incident Commander is unaware that the radio network is much more robust than cellphone coverage, they might make poor decisions based on a misperception of a so-called communications difficulty, and fail to use or explore readily available solutions. Critical Incident Commanders must be made aware that of the capabilities of the TMR2 radio network design and capabilities; otherwise, the Commander may unwittingly stand up a command post in a place with marginal radio coverage and no cellphone coverage, which may result in devastating impacts.

The evidence leads one to conclude that it is imperative that Critical Incident Commanders understand at a minimum the basics surrounding the TMR2 radio system in order that they can make good situational decisions with appropriate information.

TMR2 Training:

Having state-of-the-art communication is only helpful if radio users are thoroughly trained and know how to use it to their advantage. RCMP S/Sgt. Jeff West stated that he was not familiar with the sounds coming from his radio on the morning of April 19, 2020.⁴⁶ This too, we have heard, was a widespread and pervasive issue for many of the RCMP witnesses who participated in

⁴⁶ Hearing Transcript of May 18th, 2022, COMM0058603 at 65, lines 8 and 9.

interviews and provided oral testimony. Not being familiar with the sounds can have serious impacts on communication, as misunderstanding the noises may result in a misperception of how reliable the radio system is, especially during critical incidents.

The evidence discloses, for example, pressing the buttons to talk and receiving a noise in return does not mean that the radio system is “overloaded” or is not working as it should. As outlined in the Foundational Document:

147. Commander Glen Byrne noted:

... there's a difference from getting busied out and getting bonged out, and I think that's an education part. Like, if I had a radio here, if I hit my PTT on the radio, I'll get two little bings or two little "ding-ding," and that ... that's my go ahead, so I can talk. Sometimes you'll get a quick bong or busy, but if they let go of that pressel [sic] switch or whatever, like that's basically saying, "Okay, you're next in the queue." So, they may take that as I'm not getting it, I'm not getting through and I'm going to keep hitting it, right. So, I think that's ... I think the majority of that was an ... an education piece on the use of the actual radios themselves, for our members.

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[emphasis added]

The Foundational Document draws upon the expertise of Matt Boyle and Todd Brown, Directors within the Public Safety and Field Communications Office, but it also draws upon others who may have a weaker understanding of the technical capabilities of the system. Although additional information has been added to Paragraph 30, the initial version of paragraph 30 in the Foundational Document lacked significant context, which has led to confusion amongst participants about the capabilities of the system. An example of such confusion arises out of the GPS functions within the TMR2 radios. Many, but not all of the TMR2 radios, have a GPS function, which allows the radio to detect its own location. However, the GPS function could not be simply “turned on” in April 2020 as, at that time, the function was not fully operational. It appears that system requirements concerning network data transmission requires the development of software, a thorough review of cyber security, and a deep understanding of the capacity of the network. Since

⁴⁷ Foundational Document – TMR2 Radio System in Nova Scotia, COMM0058854 at 147.

before 2020, Public Safety and Field Communications and the RCMP have been working collaboratively to better utilize the GPS function. When fully operational, the GPS function on the TMR2 radios will allow the RCMP to essentially “ping” a small number of radios. With such a limited capability, the evidence discloses it cannot be considered or used as a tactical tool.⁴⁸

The TMR2 Radio System, the underlying infrastructure and the technology, is a state-of-the-art and interoperable radio system. Through this single radio network, the RCMP were able to effectively communicate with their counterparts in the neighbouring jurisdiction of New Brunswick, Emergency Health Services, the Department of Lands and Forestry, and others on April 18th and 19th, 2020. This degree of communications interoperability offered by the TMR2 system is not necessarily available in other jurisdictions, where sometimes numerous radio systems are used in relative silos. Throughout witness testimony, and in discussions at roundtables, witnesses and experts have consistently expressed that the TMR2 Radio System is top tier: “aspirational and inspirational”, according to Chris Davis on June 23, 2022⁴⁹; “the best in the world” according to Darryl MacDonald on June 23, 2022⁵⁰; and a “godsend, a godsend”, according to William Moore on June 23, 2022.⁵¹

The Public Safety and Field Communications Office has been working with this radio system for over 20 years in Nova Scotia. That Office has played an integral role in championing the TMR Radio System by building consensus among stakeholders to promote and procure a state-of-the-art radio system in Nova Scotia, and now, throughout Atlantic Canada. The work of the Public Safety and Field Communications Office is instructive in terms of bringing interoperable communications systems on-line, and how silos in communications can be dismantled to improve public safety.

⁴⁸ Hearing Transcript of June 9th, 2022, COMM0058950 at 96.

⁴⁹ Hearing Transcript of June 23rd, 2022, COMM0059341 at 16, line 20.

⁵⁰ Hearing Transcript of June 23rd, 2022, COMM0059341 at 47, line 1.

⁵¹ Hearing Transcript of June 23rd, 2022, COMM0059341 at 18, line 10

The evidence and information support that the TMR2 Radio System operated as it should on April 18th and 19th, 2020. The following evidence should be instructive for the Commissioners:

1. BMR Network Performance Analysis During April 18/19 2020 Nova Scotia Shooting Event COMM0000017.
2. Hearing Transcript of June 9, 2022, COMM0058950.

It is imperative to determine what failures in first responder communications occurred during the events of April 2020. That understanding will lead to future improvements to first responder communications. While the evidence supports that the underlying infrastructure and technology was not in issue, the evidence also supports that there are inherent communications issues with using radios generally. Radio communication allow just one person to communicate at a time. In a critical incident, it is imperative that only clear and concise communication is made. Unnecessary information, or long pauses by radio users, can have negative impact on radio communication as this can lead to another user not being able to communicate their message at the exact time when they need to.⁵² While some users demonstrated good radio etiquette during this event, such as the RCMP ERT, who appear to have been communicating in a clear and concise manner, others, like the RCMP's Risk Managers and Critical Incident Commanders, did not.⁵³ This issue can be corrected with good training, etiquette reminders, feedback, and user practice.

During critical incidents, the Public Safety and Field Communications Office can offer communications assistance that is beyond what may be available to a user organization. For example, the Public Safety and Field Communications Office can offer a site-on-wheels, which if deployed, can enhance coverage and capacity at or near critical incidents or command posts.⁵⁴ Deploying a site such as this may enhance public safety and support the safety of first responders. In addition, the Public Safety and Field Communications Office can monitor, in real-time, the

⁵² Nova Scotia Public Safety Radio Communications User Guide, COMM0001929.

⁵³ Colchester Radio Transcript, COMM0003806.

⁵⁴ Foundational Document - TMR2 Radio Communications System in Nova Scotia, COMM0058854 at 11.

network and traffic, which can offer valuable insights, and therefore possible solutions to emerging issues, especially in times of crisis.⁵⁵

With respect to the TMR2 Radio Communications System in Nova Scotia, the evidence and information available to the Commission supports recommendations that:

1. enhance user training,
2. encourage user practice, and
3. enhance organizational understanding of the radio system and of the dedicated expertise available through the Public Safety and Field Communications Office.

The evidence and information available do not support recommendations which require technical or design changes to the underlying infrastructure or to the technology that supports the TMR2 Radio Communications System.

6. Alert Ready

The Foundational Document entitled “Alert Ready in Nova Scotia” provides a comprehensive overview of how the Alert Ready system was established, how the Alert Ready system was functioning in April 2020, and the enhancements made to the Alert Ready processes post-event.

The Emergency Management Office (“EMO”) adopted the Alert Ready system early and promoted it often.⁵⁶ The Alert Ready System was initially a voluntary partnership with radio providers to

⁵⁵ Transcript of Interview with Matthew Boyle and Todd Brown, COMM0053740 at 14.

⁵⁶ Foundational Document - Alert Ready in Nova Scotia, COMM0057390 at 6 and 7, Transcript of Interview with Paul Mason, COMM0054268 at 16, and PSAP Meeting Minute Notes - COMM0043676 at 7.

provide Nova Scotians with alerts to situations that threaten health and safety.⁵⁷ Today, the Alert Ready system has evolved to include issuing broadcast intrusive and non-broadcast intrusive alerts to Nova Scotians through radio, television and LTE connected mobile phones.

Prior to April 2020, the EMO had developed Standard Operating Procedures,⁵⁸ were conducting regular testing,⁵⁹ and were regularly in contact with a wide variety of stakeholders about the system.⁶⁰ The first use of the Alert Ready System in Nova Scotia was to alert the public of the dangers of Covid-19, on April 10, 2020.

The EMO provides expertise in critical incident planning; EMO is not a policing agency and does not have the situational awareness or the 24/7 staffing of a policing agency. EMO is not positioned to issue alerts on behalf of police.⁶¹ As such, EMO offered law enforcement partners trusted-user status and direct access to the system in 2016, so that they could issue their own alerts.⁶² That offer was declined.

EMO's Provincial Coordination Center had been activated prior to April 18, 2020, due to the Covid-19 pandemic. In the early hours of April 19th, 2020, the EMO's duty officer was contacted to make arrangements to set up a Comfort Center for evacuated residents of Portapique. EMO began receiving concerning status updates from the Department of Health and Wellness, flowing from the lockdown procedure that was initiated at the Colchester East Hants Health Centre. While monitoring status updates, staff were also monitoring social media. After becoming very concerned that the perpetrator was using a replica RCMP car, and out of concern for public safety, EMO staff contacted the RCMP to ask whether Alert Ready could assist. This ask was made even

⁵⁷ Foundational Document – Alert Ready in Nova Scotia, COMM005370 at 2 and Transcript of Interview with Paul Mason, COMM0054268 at 16.

⁵⁸ Standard Operating Procedures, COMM0001001.

⁵⁹ Transcript of Interview with Paul Mason, COMM0054268 at page 16.

⁶⁰ Transcript of Interview with Paul Mason, COMM0054268 at page 16.

⁶¹ Transcript of Interview with Paul Mason COMM0054268 at page 17.

⁶² Presentation to Police Services, COMM0000992.

though the Alert Ready system had not ever been used for an active police matter, and active shooter situations were initially discounted as a potential use for the system.⁶³

The RCMP ultimately accepted EMO's offer to use the system. This marked another significant development in the Alert Ready system, although, in the end, the perpetrator was killed by police before the alert was sent.

Shortly after the event, EMO worked closely with the DoJ, the RCMP, and the Halifax Regional Police (HRP) to develop policies and training for the Alert Ready system. The RCMP and HRP also acquired direct access to the system, so they are now able to use their situational awareness and issue alerts without needing to make further arrangements with the EMO. These developments have enhanced public safety.

As set out in the Foundational Document, the EMO has now updated their Standard Operating Procedures to reflect the new process. The new process was developed so that Alerts can be issued faster, and further safeguards are in place. EMO has, for example, implemented a notification sequence should the EMO Duty Officer not be reachable.⁶⁴

Today, the Alert Ready system is more widely understood and utilized. The wide-spread adoption of this system for active police matters has only served to advance public safety.

7. Domestic Violence

⁶³ Foundational Document – Alert Ready in Nova Scotia, COMM005370 at 14.

⁶⁴ Foundational Document – Alert Ready in Nova Scotia, COMM005370 at 41. See also Current NSEMO Alert Ready Police and Standard Operating Procedure, July 30, 2021, COMM0043572.

The Orders in Council call for an examination of gender-based and intimate partner violence. The following discussion provides some context intended to assist the Commission with this area of its inquiry.

Stephanie MacInnis-Langley, the Executive Director of the Advisory Council on the Status of Women, testified at the Desmond Fatality Inquiry and described in her interview many domestic violence intervention programs and services available in Nova Scotia. Her examples included:

- Leaside Transition House, a shelter for women and children provides:⁶⁵
 - support,
 - counseling,
 - safety planning, and
 - accompaniment to court and other appointments.
- Women's Centres' services include:⁶⁶
 - counseling,
 - provide information,
 - make referrals,
 - provide navigation and advocacy in the system,
 - accompaniment to court,
 - drop-in opportunities,
 - professional and personal development programs, and
 - pre-employment programs
 - programs for women and youth.
- Second-stage housing that provides housing for women for 6 to 12 months and sometimes longer.⁶⁷

⁶⁵ Stephanie MacInnis-Langley Desmond Testimony, September 14, 2021, COMM0059294 at 7-8.

⁶⁶ Transcript of Interview with Stephanie MacInnis-Langley Interview, COMM0053509 at 18.

⁶⁷ Stephanie MacInnis-Langley Desmond Testimony, September 14, 2021, COMM0059294 at 9 and 19-21.

There are programs and services for men and persons who identify as men, including the men's helpline⁶⁸ and six treatment programs supported by the Department of Community Services.⁶⁹

Although programs and services are available throughout the Province, a challenge for persons in rural communities is the issue of confidentiality. Here, access is enhanced by the availability of outreach services, provision of transportation, and the ability to go to any shelter or women's centre.⁷⁰

The on-going work to ensure programs and services are culturally sensitive and appropriate includes community consultation and training. There are working groups for African Nova Scotian, Indigenous, and immigrant women.⁷¹ There is a project called *Communities of Care*, which is looking at violence in the African Nova Scotian community and the urban Indigenous community.⁷² Funding is provided to the Nova Scotia Native Women's Association. Two Mi'kmaw healing centres in Nova Scotia are funded by the federal government.⁷³

In her Desmond Inquiry testimony, Ms. MacInnis-Langley reviewed the results of a 2019 Public Perceptions of Domestic Violence poll and noted that 73% of the respondents answered that they knew where to get outside help, advice, resources, or support about a domestic violence issue. She

⁶⁸ Foundational Document - Intimate Partner Violence, Family Violence, and Gender-based Violence Policies, COMM0059339 at 41.

⁶⁹ Transcript of Interview with Stephanie MacInnis-Langley Interview, COMM0053509 at 4.

⁷⁰ Transcript of Interview with Stephanie MacInnis-Langley Interview, COMM0053509 at 9-10.

⁷¹ Transcript of Interview with Stephanie MacInnis-Langley Interview, COMM0053509 at 8.

⁷² Stephanie MacInnis-Langley Desmond Testimony, September 14, 2021, COMM0059294 at 47.

⁷³ Transcript of Interview with Stephanie MacInnis-Langley Interview, COMM0053509 at 3.

was pleased with that response but added “That still leaves us with a gap of people who need ... we need more information to provide to them.”⁷⁴

The Province’s support for police regarding calls involving intimate partners has included informing of best practices, providing advice, training the trainers, and developing guides and policies.⁷⁵

The Province published the *Intimate Partner Violence Quick Reference Guide for Police and Service Providers* (pocket guide) in 2005, its updated version in 2018⁷⁶ and the *NS Summary of Intimate Partner/Domestic Violence Risk factors* (cheat sheet) in 2019.⁷⁷

The Domestic Violence Court Program is a specialty court program that was first piloted in Provincial Court in Sydney in 2012. The program is now permanent in Sydney and was expanded to the Halifax Regional Municipality in 2018. The program is more responsive to the needs of people affected by domestic violence and offers meaningful interventions at an earlier stage to help protect survivors and their families from future abuse.⁷⁸ A Victim Services Officer is assigned to the court.

The Province has recently established a Domestic Violence Death Review Committee - chaired by Dr. Matthew Bowes, Nova Scotia’s Chief Medical Examiner. With a focus on education and prevention, the goal is to improve public policy. Current collaboration with other jurisdictions,

⁷⁴ Stephanie MacInnis-Langley Desmond Testimony, September 14, 2021, COMM0059294 at 37-43.

⁷⁵ See generally Transcript of Interview with Sharon Flanagan Interview, COMM0051431, Transcript of Interview with Sharon Flanagan, COMM0055662 and Sharon Flanagan Desmond Testimony, March 21 14, 2022, COMM0058940.

⁷⁶ *Intimate Partner Violence Quick Reference Guide for Police and Service Providers*, 2018, COMM0000211.

⁷⁷ Sharon Flanagan Desmond Testimony, March 21 14, 2022, COMM0058940 at 82-90.

⁷⁸ https://www.courts.ns.ca/Provincial_Court/NSPC_domestic_violence_court.htm.

includes the Atlantic Domestic Homicide Review Network and a network of Chairs of Domestic Violence Review Committees.⁷⁹

PART 4 Summary & Concluding Comments

The Province, together with each of the Participants, remains focussed on learning from the horrific events surrounding the mass casualty with a view to improving how our policing agencies and other governmental services fulfill their mandates. Nova Scotians deserve to feel safe in their communities and have the necessary and responsive supports and services they need in times of crisis and loss. The Province looks forward to receiving the Commissions' Final Report and Recommendations, which will guide the work that has already begun to build safer and more resilient communities across our Province.

All of which is respectfully submitted by the Attorney General of Nova Scotia on behalf of the Province of Nova Scotia.

⁷⁹ Transcript of Interview with Stephanie MacInnis-Langley, COMM0053509 at 10-11.

Appendix A

Materials cited but not included in Relativity

1. Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010)

THE LAW OF PUBLIC INQUIRIES IN CANADA

Simon Ruel

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THE LAW OF PUBLIC INQUIRIES IN CANADA

Simon Ruel, B.Sc. (Université Laval), LL.B. (Université de Montréal)
Member of the Barreau du Québec and of the
Law Society of Upper Canada

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INTRODUCTION

Brief history of public inquiries

Commissions of inquiry have a long history as an Executive tool for investigating or studying matters of public importance with a view of ascertaining the facts, airing public grievances and making policy recommendations for change.¹ Commissions of inquiry historically owe their existence to an exercise of Royal Prerogative through which the Crown appoints officials to perform duties, temporarily or permanently, on its behalf.² One of the earliest reported cases of a commission of inquiry is the compilation between 1080 and 1086 of the Domesday survey³ in England by Royal Commissioners appointed by William I, to ascertain the ownership of estates of land in England and its value for the purpose of taxation.⁴ Under the reign of Henry II, an Inquest of Sheriffs was appointed in 1176 where Royal Commissioners inquired into abuses and injustices attributed to sheriffs, bishops and other local officials.⁵

From the mid-17th century until the adoption of the *Tribunals of Inquiry (Evidence) Act, 1921* in the United Kingdom, investigative inquiries into public misconduct were primarily carried out by Select Parliamentary Committees.⁶ The adoption of the *Tribunals of Inquiry (Evidence) Act, 1921* allowed the Executive appointment⁷ of tribunals to inquire "into a definite matter [. . .] of urgent public importance," with the power to enforce the attendance of witnesses and compel the production of documents.⁸

In Canada, the first statutory basis for public inquiries was adopted in 1846 in the United Province of Canada — *An Act to empower Commissions for inquiring into matters connected with the public business, to take evidence on oath*,⁹ which

¹ Hugh McDowall Clokie & J. William Robinson, *Royal Commissions of Inquiry, The Significance of Investigations in British Politics* (Stanford University Press, Oxford University Press, 1937) page 1.

² *Ibid.* at page 26.

³ *Domesday Book*.

⁴ *Supra* note 1 at pages 27, 28.

⁵ *Ibid.* at page 29.

⁶ Report of the Royal Commission on Tribunals of Inquiry under the Chairmanship of the Right Honourable Lord Justice Salmon (United Kingdom), November 1966, page 10.

⁷ Upon Resolution by both Houses of Parliament.

⁸ *Tribunals of Inquiry (Evidence) Act, 1921* (U.K.), 11 & 12, Geo V, c. 7, s. 1.

⁹ *An Act to empower Commissions for inquiring into matters connected with the public business, to take evidence on oath*, 1846, 9 Vict., c. XXXVIII (Prov. of Can.).

Introduction

contained two sections; one allowing the Governor in Council to appoint an inquiry "into and concerning any matter connected with the good government of Canada, or the conduct of any part of the public business thereof," which is the same appointing authority as under Part I of the current federal *Inquiries Act*, and, a second section including the power to enforce the attendance of witnesses and compel them to give evidence.¹⁰

At Confederation, public inquiry legislation was re-enacted¹¹ and became a permanent feature of public life in Canada.¹² The federal legislation was amended in 1889 and 1906, and, in 1912, the legislation became the *Inquiries Act* and was amended to include procedural rights for those against whom charges of misconduct are made — the right to be represented by counsel, the right to a notice and the right to a full opportunity to be heard in person or by counsel.¹³ Other amendments to the *Inquiries Act* were made in 1934 dealing with international commissions and tribunals.¹⁴

The significance of public inquiries in Canada

Public inquiries have historically been a significant part of the public, political and legal life in Canada. A large number of public inquiries have been created, federally and provincially over the years, to inquire into serious public policy matters or following catastrophes, tragedies or scandals with wide public repercussions and where the confidence of the population in government was undermined. Federally, 360 commissions of inquiry were created under Part I of the *Inquiries Act* between 1870 and 2008,¹⁵ for issues ranging from Chinese and Japanese Immigra-

¹⁰ See Law Reform Commission of Canada, *Commissions of Inquiry, A New Act* (Working Paper 17) page 7.

¹¹ See *An Act respecting inquiries concerning Public Matters*, 1868, 31 Vict. c. XXXVIII (Canada); *An Act to repeal Chapter 13, of the Consolidated Statutes of Canada, so far as the same relates to Ontario; — to authorize the publication of an Ontario Gazette, and to make provisions for Inquiries concerning public matters and official notices*, 1868, 31 Vict., c. VI, s. 1, 2 (Ontario); *An Act respecting inquiries concerning public matters*, 1969, 32 Vict. c. VIII (Quebec).

¹² Ontario Law Reform Commission, *Report on Public Inquiries* (1992) page 6.

¹³ See *supra* note 10 at pages 9, 10.

¹⁴ See *ibid.* at page 10.

¹⁵ Commissions of Inquiry under the *Inquiries Act*, Part I, 1870-1996, Privy Council Office, Revised June 1996 (updated 2008); this number excludes inquiries appointed under Part II of the *Inquiries Act* and other commissions appointed under Executive authority outside the scope of the *Inquiries Act*.

F. Legal Nature of Public Inquiries

1. Advisory Bodies Appointed by Governments

Commissions of inquiry are often portrayed as independent bodies similar to the judiciary and separate and apart from the Executive and legislative branches of government.¹²⁹ However, it is important to remember that commissions of inquiry are not courts nor in any way part of the judiciary.¹³⁰ They are a creature of the Executive that the Executive appoints to investigate itself or to investigate other matters of public importance.¹³¹

One of the essential roles of commissions of inquiry is fact-finding.¹³² Because they have broad investigative powers in an inquisitorial setting, they are well-suited for uncovering facts that could not otherwise be discovered.¹³³ The ultimate role, however, is to provide advice to the Executive within the scope of the terms of reference, based on their factual findings.¹³⁴

The public importance of commissions of inquiry is not a source of any special legal status.¹³⁵ The existence of a commission of inquiry depends entirely on the Executive, which has the full authority and discretion to create these commissions within the parameters of public inquiry legislation. The Executive names commissioners, establishes their mandates and the framework under which they will operate, including the timing of reporting. The Executive may, in its discretion, revoke, amend or vary the appointment or the terms of reference of a commission of inquiry.¹³⁶ When not specifically provided in public inquiry legislation,¹³⁷ the Executive's power to revoke, amend or vary derives by necessary implication from the broad power under inquiries legislation to appoint commissions of inquiry.¹³⁸

¹²⁹ See *Dixon*, *supra* note 72 at para. 13 (Fed. C.A.).

¹³⁰ See *supra* note 86 at page 370; *Dixon*, *supra* note 72 at para. 14 (Fed. C.A.); *British Columbia (Attorney General) v. British Columbia (Police Complaints Commissioner)*, *supra* note 67 at para. 43 (B.C. C.A.).

¹³¹ See *supra* note 86 at page 370; *Dixon*, *ibid.* at para. 13 (Fed. C.A.); *British Columbia (Attorney General) v. British Columbia (Police Complaints Commissioner)*, *ibid.*

¹³² *Phillips*, *supra* note 8 at para. 62; *supra* note 55 at para. 52.

¹³³ See *Dixon*, *supra* note 72 at para. 14 (Fed. C.A.).

¹³⁴ *Ibid.*

¹³⁵ *Dixon*, *supra* note 72 at para. 13 (Fed. C.A.).

¹³⁶ *Ibid.* at para. 16 (Fed. C.A.); *British Columbia (Attorney General) v. British Columbia (Police Complaints Commissioner)*, *supra* note 67 at para. 76 (B.C. C.A.).

¹³⁷ See *Newfoundland and Labrador Public Inquiries Act, 2006*, section 3; *Manitoba Evidence Act — Part V Respecting Commissioner Appointed for Public Inquiries*, para. 83(2).

¹³⁸ *Dixon*, *supra* note 72 at para. 16 (Fed. C.A.).