

MASS CASUALTY COMMISSION

CLOSING SUBMISSIONS ON BEHALF OF LISA BANFIELD

The RCMP did not protect the people of Nova Scotia from the perpetrator because its officers failed to follow-up on allegations of violence and firearms possession many times, dating back several years. If officers had properly investigated him on one or more of these occasions, he would have been taken before the courts and dealt with. His firearms could have been located and seized, and appropriate charges laid. In addition, he could have been on police radar when his behaviour became more erratic in the months leading up to the mass casualty event.

Lisa Banfield's experience leading up to and following the mass casualty event reveals that RCMP attitudes to domestic violence are unsatisfactory. Their practice and procedures for dealing with domestic violence are inadequate, outdated, and fail to take into account well-known realities of abusive relationships.

Gendered domestic violence lies at the core of this mass casualty event. We ask the Commission to consider the following issues in its Final Report:

- i. **How should complaints of domestic violence be addressed by the authorities?**
- ii. **What can be learned from the conduct of the police and prosecutors in Lisa Banfield's case?**

i. How should complaints of domestic violence be addressed by the authorities?

a. State Treatment of Domestic Violence Victims

For a victim of domestic violence to ask the police for help will often be a difficult decision. Victims may be reluctant and ambivalent towards involving the authorities. Relationship issues may be present, children involved, and there may be continuing fear of the abuser. They may be subject to coercive control and normalize their abuse. Police officers need to better understand the dynamics in violent domestic relationships, and have insight into victim behaviour. Victims should never fear their own criminalization and other state harms to disincentivize them from coming forward to report abuse¹, but the treatment of Ms. Banfield suggests that they have reason to.

In his report on Ms. Banfield for the defence of her criminal charges, Dr. Peter Jaffe references the different forms of control that can be exerted by a male over his partner. One of these is coercive control.² Coercive control involves a pattern of behaviours by an abuser to gain control over his domestic partner by making use of his resources and power, controlling her everyday life, isolating her from sources of support, and thereby depriving her of independence, resistance and escape. Coercive control typically involves the perpetrator using multiple forms of abuse such as threats, economic control, isolation, and male privilege as means to establish power within the relationship. This is intended to, and does, undermine the victim's autonomy and access to outside support. Ms. Banfield was undoubtedly subject to coercive control by the perpetrator.

¹ Avalon Report, Sept 15 2022 at PDF 13

² Psychological Assessment of Dr. Peter Jaffe, PDF 4

Coercive control is now recognized in amendments to the Divorce Act³ that describes family violence to include a pattern of coercive and controlling behaviour that causes a family member to fear for her safety or the safety of another.⁴ Coercive control is believed to be “the most serious type of violence” in the family context due to its continuous and insidious nature.⁵

The more isolated a victim has become, the less likely a third party will witness the abuse and its aftermath. Isolation reinforces an abused victim’s reliance on her abuser, including his rationale for the abuse. Police need to comprehend the dynamics in these relationships. They should be educated on coercive control and its manifestations. Recognizing the signs of a domestic violence situation, combined with proper risk assessment, will solve some of the failings in current police investigation practices. This will better equip them to spot domestic abuse, even where the violence is unseen.

³ Legislative Background: *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act* (Bill C-78 in the 42nd Parliament): <https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/c78/03.html#secB>

⁴ See <https://www.justice.gc.ca/eng/fl-df/fsdfv-fidvf.html#s1> [Background on Divorce Act Amendments]

⁵ Canada, Department of Justice, *Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems* Report of the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence, vol I (Ottawa: Department of Justice, 2013); Background on Divorce Act Amendments, *supra*.

b. Police Risk Assessment & Monitoring

Victims of domestic violence must be treated by the authorities with more respect and dignity than they typically get at present, and state actors, including police, must aim to empower the victims. Nova Scotia police has a protocol for responding to domestic violence, the High-Risk Case Coordination Protocol. This was to have been implemented across the province, but it has not been. It was not observed by officers when they dealt with the perpetrator in the years prior to the massacre. Yet, he represented a high-risk individual who needed to be fully investigated, flagged, charged with criminal offences and monitored thereafter on an ongoing basis. A single charge of assault pressed by a young man whom the perpetrator assaulted in a non-domestic context was not good enough.

There is a need for a provincial audit to ensure that the high-risk protocols are known to all officers and they are trained to recognize high-risk situations which demand a full investigation through all available sources of information. The protocol should be updated to add the lessons learned from the Inquiry. Training should include a history of the RCMP's failings in addressing the perpetrator's violence and firearms possession and the consequences of the police failings – 22 dead, and more injured.

There should be oversight of these investigations by the Nova Scotia Departments of Justice and Community Services.

ii. What can be learned from the conduct of the police and prosecutors in Lisa Banfield's case?

a. RCMP conduct towards Ms. Banfield

Police investigated Ms. Banfield for 8 months before laying charges in December 2020 against her for transferring ammunition. Until then, Ms. Banfield had every reason to believe that investigators saw her as a victim of the perpetrator, and their interviews of her were in this context only.

A Timeline

April 19, 2020

49 minutes

(6:58 a.m. to 7:47 a.m.)

Ms. Banfield was first interviewed by Cst. Brown in the back of an ambulance having recently emerged from the forest where she hid overnight. She was barefoot and was in distress.

April 20, 2020

2 hours 24 minutes

(1:02 p.m. to 3:26 p.m.)

Ms. Banfield was interviewed on this date by Staff Sgt. Vardy and Cst. Shaw while still in the hospital. She was fully cooperative, as also was to prove to be the case for other family members.

Staff Sgt. Vardy seemed to develop a kinship with Ms. Banfield and her sister, Maureen, who was with her throughout the interviews. Phone numbers were exchanged, and they texted each other thereafter. Sgt. Vardy encouraged this as updates arose.

April 21, 2020

Mr. Lockyer and Ms. Banfield spoke for the first time. Ms. Banfield was still in the hospital. She told Mr. Lockyer that Sgt. Vardy wished to interview her again. Mr. Lockyer and Sgt. Vardy spoke. Mr. Lockyer advised him that Ms. Banfield wanted to give the police investigators all the help she could, and he was encouraging her to do this. He expressed some concern that Ms. Banfield might be a subject/target of the investigation. Sgt. Vardy told Mr. Lockyer that she was a "victim" and "in no jeopardy" and if in the future there was thought of wrongdoing on her part, she would be given all her rights, and immediate access to counsel. Sgt. Vardy advised Mr. Lockyer, "we are looking at Wortman and his crimes; we aren't looking at her at all."

Later, it came to be known that Sgt. Vardy made no notes of this conversation with Mr. Lockyer, as he should have. It seems that he forgot that the conversation occurred.

Sometime Between

April 19 and July 28, 2020:

The RCMP investigative team – primary investigator Corporal Gerry Rose-Berthiaume, file coordinator Constable Shawn Stanton, and team commander Sergeant Glenn Bonvie – together with Crown Attorneys Shauna MacDonald and Mark Heerema made a decision to charge Ms. Banfield, Brian Brewster and James Banfield with transferring ammunition to the perpetrator.⁶ To make their case, the RCMP set up strategies for re-interviewing the three of them. They found ways in advance to avoid having to advise them of their right to counsel under s. 10(b) of the *Charter* by ensuring that the interviewing officers at each interview assured the three in advance that they were not detained and could leave at any time during the interview. Since the 10(b) right to counsel only crystallizes on detention or arrest, they thereby avoided giving them this right. By neither arresting nor detaining them, they were also able to avoid having to give them their 10(a) right to be informed promptly of the reason for their arrest/detention.

April 28, 2020

6 hours 7 minutes

(12:16 p.m. to 6:23 p.m.)

Ms. Banfield had her third interview with Staff Sgt. Vardy. Sgt. Firth was also present. By this time, James Banfield and Brian Brewster had told the police about their purchases of ammunition for the perpetrator. Nevertheless, no questions were asked of Ms. Banfield about helping the perpetrator acquire ammunition. During the interview, she asked if she needed a lawyer, to which Sgt. Vardy told her she did not. Perhaps it was this exchange that caused Sgt. Vardy not to ask about the ammunition.

July 28, 2020

1 hour

(8:51 a.m. to 9:51 a.m.)

This was Ms. Banfield's last interview with Staff Sgt. Vardy, and the one in which she provided an inculpatory statement about helping the perpetrator acquire more ammunition. Sgt. Vardy followed through with the plan that enabled him to avoid giving Ms. Banfield her rights. The other officers who interviewed Mr. Brewster and James Banfield on April 19 and June 30⁷ had done the same.

⁶ [EN_20220726_PublicHearings_Transcript.pdf](#) at p. 155/6-25; p. 158/1-15

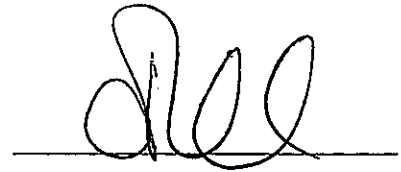
⁷ Staff Sgt. Vardy was also involved in James Banfield's interview on June 30.

Neither Ms. Banfield, Mr. Brewster nor James Banfield would have understood the police design, nor how their rights were being by-passed in such a premeditated manner.

During the interview on July 28, 2020 in which Ms. Banfield incriminated herself, she was not cautioned that she was under investigation for transferring ammunition to the perpetrator, nor was she cautioned on her right against self-incrimination, nor was she given her right to counsel nor her s. 10(a) rights. She was at no point in the interview advised of the change in her criminal jeopardy. This is the antithesis of how victims of domestic violence should be handled by the authorities. She was re-victimized by the authorities. She already had extreme feelings of guilt and the charges magnified them. She did not know of the police (and Crown) intentions until she was charged in December and, once charged, on counsel's advice she was silenced from that time forward.

It is disturbing that by the time Ms. Banfield carried out the distressing re-enactment of her night in the woods in October 2020, unbeknownst to her a decision had already been made to charge her and she had already been "tricked" into giving a statement without being provided her rights. This type of police conduct disincentivizes victims of domestic violence from coming forward. The charges brought her unnecessary public vilification and gave rise to baseless theories that she was somehow involved in the perpetrator's actions. Victims need to feel safe in coming forward to the authorities and engaging with the criminal justice system; not become subjected to these kinds of consequences.

By engaging in the re-enactment, Ms. Banfield showed the trust and faith she had in the police investigation, a trust and faith that they already betrayed months before, as she was to find out when she was charged in December 2020. Once charged, she became unable to assist the Inquiry until she knew that her charges were going to be withdrawn more than a year later. Her immediate and continuing cooperation thereafter is indicative of how she always wanted to help the Inquiry. Her testimony, for which she is to be commended, provided a compelling and necessary backdrop for the issues that face this Inquiry.

A handwritten signature in black ink, appearing to read 'JLZ', is written over a horizontal line.

James Lockyer
Jessica Zita

LOCKYER ZADUK ZEEH

Counsel to Lisa Banfield