

Via Email: [participation@masscasualtycommission.ca](mailto:participation@masscasualtycommission.ca)

July 8, 2022  
Our File No.: 208120

Commission Counsel  
Mass Casualty Commission  
1791 Barrington St., Suite 310  
Halifax, NS B3J 3K9

Dear Commission Counsel:

**Re: *Phase 1 submissions, due July 8, 2022***



PO Box 1128  
710 Prince Street  
Truro, Nova Scotia  
Canada B2N 5H1

Telephone: 902 895 1561  
Facsimile: 902 895 7709  
Toll Free: 1 800 565 1200 (NS)

[www.burchellmacdougall.com](http://www.burchellmacdougall.com)

We write on behalf of our clients, the family of Lillian Campbell and the Oliver/Tuck family, to advise that we have chosen not to make a full end of Phase 1 submission due to funding constraints. We believe it is more important to ensure that we have sufficient funding remaining to adequately represent our clients' interests at the remaining in person sessions of significance to them as well as preserve sufficient hours to prepare a thorough and comprehensive final submission to the Commission. Therefore, we will not use time for a full interim submission.

Our submission will be brief and limited to the area of process to date that have and continue to concern our clients. We do not make these comments lightly nor are they meant to detract from the important and difficult task that the Commission is engaged in. Nor do we doubt the deep commitment of the Commissioners and Commission Counsel to the work of the Mass Casualty Commission public inquiry.

#### PROCESS OF THE MASS CASUALTY COMMISSION

That said, our clients, like many other Participants, do have a significant level of dissatisfaction with certain aspects of the processes of the Mass Casualty Commission (MCC) which we, and our clients believe have shortchanged them, other participants, persons most affected, as well as the people of Nova Scotia generally and for the matter, all Canadians. The initial satisfaction of many people affected by the mass casualty with the success of the push back against a "review" which led to the Federal and Nova Scotian governments striking a joint federal and provincial public inquiry has been tempered by the MCC's application of some of its Rules and Procedures, processes implemented during the course of the proceedings and decisions which directly affected the hearing of evidence by the MCC and by extension, the effective and meaningful participation of counsel for those most affected.

The result is a real concern for the credibility of the MCC and the report and recommendations to come at the end of this important inquiry.

Specifically, our clients are disappointed with the overall approach to the role of participants counsel in the formal proceedings. An example is the practice of participant counsel having to caucus with Commission Counsel following Commission Counsel's direct examination of witness to identify, justify, and seek permission to ask questions directly of the witness, rather than the default procedure of commission counsel speaking the questions for them. This practice served to marginalize the role of participants' counsel, was ineffective, was awkward and we believe, procedurally unfair.

Fortunately, the inefficiency of conveying more than one or two simple questions to Commission Counsel to ask on someone else's behalf seems to have been acknowledged by Commission Counsel such that during caucus sessions it became a given that Commission Counsel accepted that Participant Counsel, or representatives of them arranged amongst themselves, would ask their questions directly of the witness. So, when permitted, the direct questioning of witnesses by Participant Counsel has in the end been satisfactory.

What has not been satisfactory to us or our clients, is the denial of the opportunity for Participant Counsel to directly question all witnesses who have testified at the inquiry. In the case of S/Sgt Rehill and Sgt O'Brien, Participant Counsel were not permitted to ask questions directly, only able to submit them to Commission Counsel prior to or during caucus the day they testified. It is difficult to explain, and it seems, for it to be appreciated, how this limitation was distressful to family participants. Our clients, reluctantly, preferred for us to take part in this unusual process, not because they agreed with it but because it was better than not having our questions posed at all.

It was hoped that after those RCMP witnesses, none of the witnesses scheduled after them would be dealt with in the same manner. We now know that is not the case as Participant Counsel will not be allowed to ask questions of Ms. Banfield directly. While our team's approach has been more low key than some, we and our clients are just as disappointed and dissatisfied with that decision. It has been important from the beginning for everyone involved that the inquiry hear from Ms. Banfield. It is disheartening that the Commissioners and/or Commission Counsel do not have confidence in Participant Counsel to question Ms. Banfield on behalf of their clients in an appropriate and respectful manner


about the events of April 18<sup>th</sup> and 19<sup>th</sup>, 2020 and the time leading up to this tragedy. In the event any counsel's questions or manner of questioning became concerning, the Chief Commissioner can always intervene. We are very concerned that the decision that only Commission Counsel will pose questions to Ms. Banfield has or will cause serious damage to the faith of families and the public in the outcome of the inquiry. And that will be regrettable.

We provide these comments in respect of the processes used in Phase 1 to ensure our views on these points are known. As the inquiry moves through the final months of its work there are still some very key witnesses to be heard from, including senior members of the RCMP and we do hope there will be full participation of Participant Counsel in the questioning of those witnesses.

We do appreciate the difficult and critical role of balancing all the competing interests and conducting the inquiry from the mandated trauma informed approach, but the mandate of fact finding, the requirements for procedural fairness and the trust of the public in the inquiry's process are also critical to the result of the inquiry's work.

Respectfully submitted,

BURCHELL MACDOUGALL LLP

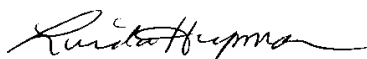


**Stephen J. Topshoe**

[stopshee@burchellmacdougall.com](mailto:stopshee@burchellmacdougall.com)

Direct Line: 902-896-7558

Direct Fax: 888-496-3140

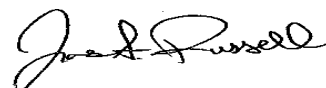


**Linda R. Hupman**

[lhupman@burchellmacdougall.com](mailto:lhupman@burchellmacdougall.com)

Direct Line: 902-896-7566

Direct Fax: 866-774-1072



**James A. Russell**

[jrussell@burchellmacdougall.com](mailto:jrussell@burchellmacdougall.com)

Direct Line: 902-896-7550

Direct Fax: 902-895-7709