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VIA EMAIL

Dear Commissioners:

Re: Reply submissions on behalf of the National Police Federation

1. Thank you for offering the National Police Federation (“NPF”) the opportunity to reply to the submissions of other participants, as well as to offer submissions with respect to documents disclosed by the Commission after the close of public proceedings on September 23, 2022.
2. The NPF’s submissions will address (a) the Commission’s newly expressed interest in examining “the role of oversight bodies such as SiRT...in order to understand and comment on policing in Nova Scotia”, as set out in correspondence from Commission counsel dated October 20, 2022; and (b) participant submissions seeking recommendations about the reform of police oversight and accountability mechanisms.¹
3. The NPF respectfully submits that it would be inappropriate for the Commission to make recommendations regarding police oversight and accountability mechanisms. These matters fall outside the scope of the Commission’s mandate as defined in its Orders in Council. The Commission also does not have a sufficient evidentiary record to inform recommendations on these complex issues, and did not engage on this topic with stakeholders with expertise and involvement in police discipline during its inquiry. The NPF addresses each of these issues in turn below.

A. Police oversight, police discipline and SiRT are not within the Commission’s mandate

4. The NPF submits, respectfully, that the Commission’s Orders in Council direct it to examine aspects of policing only “as they relate” to the tragedy in Nova Scotia on April

¹ E.g., Submissions of the BCCLA/ECPJS, p. 16-22; Submissions of Lenehan Musgrave LLP, p. 37.

18 and 19, 2020”.² The Commission’s mandate is not to inquire into “policing in Nova Scotia” more generally, or to examine issues of police oversight, discipline, or the Serious Incident Response Team (“SiRT”), unrelated to the mass casualty.³ The NPF disagrees that Commission counsel has offered a fair or sustainable interpretation of the Orders in Council in this regard in their correspondence of October 20, 2022.

5. The Orders in Council make no mention of police oversight and accountability, including the role of SiRT. By contrast, the Orders in Council identify a number of policing matters directly relevant to the mass casualty, including:
 - a. interactions between the perpetrator and the RCMP;⁴
 - b. police actions in response to April 18-19, 2020, including operational tactics, response, decision-making, and supervision;⁵
 - c. police policies, procedures, and training in respect of gender-based and intimate partner violence,⁶ active shooter situations,⁷ the disposal of police vehicles and equipment,⁸ and reports of the possession of prohibited firearms;⁹ and
 - d. communications by within police agencies,¹⁰ the public,¹¹ and other agencies.¹²
6. The NPF urges the Commission to craft recommendations that are grounded in its core mandate to examine the causes, context, and circumstances giving rise to the April 18-19, 2020 mass casualty event,¹³ including in relation to the policing matters listed in the Orders in Council, and designed to “help prevent and respond to similar incidents in the future”.¹⁴ The Commission should not entertain the request of the BCCLA and ECPJS, in

² Order in Council, PC 2020-822 [“OIC”], (b)(iii), (iv), (v), (vi), (vii), (viii), (ix), (x) [emphasis added].

³ In this regard, the NPF agrees with the submissions of the Department of Justice dated October 21, 2022, COM0065726 [exhibit number not yet available].

⁴ OIC, (b)(iii).

⁵ OIC, (b)(iv).

⁶ OIC, (b)(vii).

⁷ OIC, (b)(viii).

⁸ OIC, (b)(ix).

⁹ OIC, (b)(x).

¹⁰ OIC, (b)(vi).

¹¹ OIC, (b)(v).

¹² OIC, (b)(vi).

¹³ OIC, (a)(i).

¹⁴ OIC, (c).

particular, to “transform the police governance framework in Nova Scotia”¹⁵ and to replace existing oversight bodies,¹⁶ which are far removed from the Commission’s mandate.

B. The Commission does not have an adequate record to consider or comment on police disciplinary processes

7. Given the Commission’s mandate, it is not surprising that the Commission did not meaningfully explore mechanisms for police oversight, accountability, and discipline during its investigation or public hearings. The Commission accordingly does not have the benefit of the necessary factual foundation upon which to make substantive findings or recommendations on “the role of oversight bodies such as SiRT”.¹⁷
8. Commission counsel did not tender any foundational document or commissioned report addressing the structure, role, or history of SiRT in Nova Scotia, or similar bodies in other Canadian jurisdictions.
9. The Commission also has not engaged in any substantive analysis of existing police disciplinary regimes, or their history or evolution. Relevant regimes include:
 - a. Under the Nova Scotia *Police Act*,¹⁸ the professional standards investigations by municipal agencies, the work of the Nova Scotia Police Complaints Commissioner, and the Police Review Board; and
 - b. Under the federal *Royal Canadian Mounted Police Act*,¹⁹ the RCMP conduct process, the role of the RCMP Civilian Review and Complaints Commission, and the RCMP External Review Committee.

The MacKnight Report only identifies the existence and basic premise of these statutory regimes, in a two-page summary which appears at the end of the report.²⁰ The roundtable on Police Oversight, Supervision, and Accountability – held during the last week of the evidentiary phase of the Commission’s proceedings – provided a helpful introduction to a range of issues related to police governance, oversight, and accountability, but only at

¹⁵ Submissions of the BCCLA/ECPJS, Recommendation 4.4, p. 16ff.

¹⁶ Submissions of the BCCLA/ECPJS, Recommendation 4.5.2, p. 21-22.

¹⁷ Letter from Commission counsel to participants, October 20, 2022.

¹⁸ SNS 2004, c 31.

¹⁹ RSC 1985, c R-10

²⁰ B. MacKnight, “The Structure of Policing in Nova Scotia in April 2020”, November 30, 2021, COMM0040450, P-000001, p 84-86.

a very high level. This evidence can be characterized, at best, as a general background or context.

10. The NPF submits further that, in some Commission discussions, disciplinary and SiRT processes have been improperly conflated with *board of police commissioners* and *police advisory board* structures, which represent a different kind of police “oversight bodies”.
11. To the extent that either police disciplinary processes or SiRT investigations actually arose from the mass casualty event, the Commission did not include these processes in the evidence it called, including by avoiding these topics when the subject officers were questioned (even though the processes were complete).
12. The minimal evidentiary record before the Commission related to police oversight and accountability mechanisms, including SiRT or police discipline, can be contrasted with the extensive record on other aspects of policing falling squarely within the Commission’s mandate. For example:
 - a. On the question of whether critical incident preparedness, decision-making, and response can be improved, the Commission has the benefit of several relevant foundational documents, including the 311-page foundational document on the *RCMP Command Post, Operational Communications Centre, and Command Decisions*;²¹ two commissioned reports;²² *viva voce* evidence from more than sixteen witnesses;²³ dozens more witness interviews; and two days of roundtable discussions with 377 associated articles, reports, and other documents.
 - b. On the topic of emergency communications within and among police agencies and interoperability, the Commission has the benefit of two foundational

²¹ COMM0061298, Exhibit P-001461.

²² Bjørn Ivar Kruke, “Police and First-Responder Decision-Making During Mass Casualty Events”, COMM0058374, Exhibit P-001912; Laurence Alison, “Critical Incident Decision Making: Challenges of Managing Unique and High-Consequence Events”, COMM0057772, Exhibit P-001872.

²³ E.g., Cst. Stuart Beselt, Cst. Adam Merchant, Cst. Aaron Patton, Cst. Craig Huley, Cst. Ben MacLeod, Cpl. Duane Ivany, Ret. Cpl. Tim Mills, Cpl. Trent Milton, S/Sgt. Steve Halliday, S/Sgt. Jeff West, S/Sgt. Kevin Surette, S/Sgt. Bruce Briers, S/Sgt. Al Carroll, S/Sgt. Brian Rehill, S/Sgt. Addie Maccallum, Sgt. Andy O’Brien.

- documents,²⁴ three Investigations Supplementary Reports,²⁵ two commissioned reports,²⁶ viva voce evidence from eight witnesses,²⁷ numerous witness interviews, and a roundtable panel.
- c. On the question of police communications with the public related to a critical incident, the Commission has the benefit of two foundational documents, a commissioned report,²⁸ a legislative brief,²⁹ viva voce evidence from more than eleven witnesses,³⁰ numerous witness interviews, and a roundtable panel.
- d. On the question of access to and disposal of police vehicles and paraphernalia, the Commission has the benefit of a foundational document,³¹ a legislative brief,³²

²⁴ *911 Call-Taking and Dispatch Foundational Document*, COMM0058853, Exhibit P-002075; *TMR2 Radio Communications System in Nova Scotia Foundational Document*, COMM0058854, Exhibit P-002076.

²⁵ "Rejected Radio Transmissions – Onslow", April 27, 2022, COMM0056435, Exhibit P-001128; "Review of J Division ERT ATAK being operational and in use on April 19, 2020", COMM0058517, Exhibit P-005119; "BOLO and Dispatch Process", June 21, 2021, COMM0015483, Exhibit P-001065.

²⁶ Chris Davis, Cheryl McNeil & Peter Gamble, "Communications Interoperability and the Alert Ready System", COMM0055672, Exhibit P-001363; Curt Taylor Griffiths, "Interagency Communication, Collaboration, and Interoperability within Police Services and between Police Services and Other Emergency Services", COMM0058936, Exhibit P-002324.

²⁷ E.g., Darryl MacDonald, Michael Hallows, Trevor MacLeod, Matthew Boyle, Christian Gallant, Todd Brown, Kirsten Baglee, Bryan Green.

²⁸ Chris Davis et. al., "Communications Interoperability and the Alert Ready System", COMM0055672, Exhibit P-001363.

²⁹ *Legislative Brief – Alert System Foundational Document*, November 23, 2021, COMM0034780, Exhibit P-001253.

³⁰ E.g., Paul Mason, Rodney Legge, Michael Hallows, Cpl. Jennifer Clarke, Glenn Mason, Supt. Dustine Rodier, S/Sgt. Brian Rehill, S/Sgt. Jeff West, S/Sgt. Kevin Surette, Chief Dave MacNeil, Chief Dan Kinsella.

³¹ *Police Paraphernalia Foundational Document*, COMM0055715, Exhibit P-00808.

³² *Legislative Brief - Police Impersonation and Paraphernalia (Amended) Foundational Document*, October 1, 2021, COMM0009543, Exhibit P-001027.

four Investigations Supplementary Reports,³³ a case summary,³⁴ viva voce evidence from two witnesses,³⁵ numerous witness interviews, and a roundtable panel.

13. The NPF notes, in particular, that the Commission lacks a meaningful evidentiary record on key aspects of police oversight and accountability mechanisms, such as the frequency, nature and outcomes of police conduct complaints in Nova Scotia or in the RCMP; the distinction between internal or public conduct complaints processes; the content of the Code of Conduct for police officers; and current challenges or salient issues in the law of police discipline.
14. Police discipline, including criminal investigations into the on or off-duty conduct of police officers, is a complex and robust area of law and policy. It engages administrative tribunals, civilian review bodies, and highly specialized branches of police agencies which the Commission has not investigated and on which the Commission has received limited, if any, expert evidence. The level of attention paid to this important issue during the Commission's inquiry is not sufficient to inform substantive recommendations. The Commission should resist the invitation by some participants to extrapolate patterns or draw systemic conclusions from individual cases or anecdotal evidence, in the absence of a comprehensive factual record.
15. In particular, the Commission's recent interest in the handling of a particular third-party referral to SiRT, concerning conduct that pre-dated the mass casualty event by unnamed officers of an unnamed agency, cannot ground findings of fact or recommendations which extend beyond the handling of that specific complaint. It would be a grave error to extrapolate or assume anything from a redacted record of a single complaint.
16. At most, it is open to the Commission to identify police discipline and criminal investigations into police conduct as an area for further study.

C. Participants with expertise and involvement in police discipline have not been engaged

17. In light of the lack of focus of the Commission's work on police discipline or SiRT investigations throughout the proceedings, NPF and other stakeholders with deep

³³ "The Perpetrators Access, Use and Knowledge of Radios and Scanners", July 6, 2022, COMM0061747, Exhibit P-005133; "Handcuffs Recovered", May 18, 2021, COMM0015908, Exhibit P-000636; "Examination of the Replica RCMP Cruiser's Interior", July 18, 2022, COMM0059920, Exhibit P-004391; "RCMP Exhibit PE446 – Handcuffs Located at Shubenacadie Scene", September 21, 2022, COMM0065073, [exhibit number not yet available].

³⁴ *Police Impersonation Case Summary*, COMM0055721, Exhibit P-001039.

³⁵ E.g., Max Libertoire, Corps Sgt. Major Alan McCambridge.

relevant expertise in these areas had no notice that the Commission viewed them as part of its mandate, until the letter from Commission Counsel of October 20, 2022. In the absence of the benefit of such perspectives, it would not be appropriate for the Commission to make substantive recommendations regarding the reform of existing oversight, accountability, and discipline regimes.

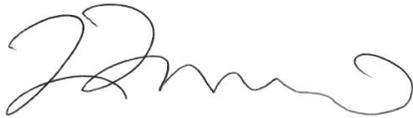
18. The NPF has significant expertise and a direct interest in police discipline regimes, including Nova Scotia's SiRT. The Commission will be aware that the NPF was certified on July 12, 2019 as the sole bargaining agent for employees of the RCMP (excluding officers and civilian Members) and Reservists. The NPF represents approximately 20,000 regular RCMP Members and Reservists below the rank of Inspector, including more than 900 front-line Members in Nova Scotia. As part of its representative mandate, the NPF provides legal representation and union assistance to Members involved in complaints or disciplinary processes under the RCMP Code of Conduct pursuant to the *RCMP Act*. The NPF also assists Members in obtaining legal representation in respect of criminal investigations referred to SiRT, which are often co-extensive with the Conduct process.
19. The Commission's process has not offered the NPF or other relevant stakeholders sufficient opportunity to offer submissions on the strengths and weaknesses of existing systems for police accountability and discipline, or possible alternatives. It is notable that participants do not have an opportunity to question roundtable participants, and roundtables do not address the events of April 18-19, 2020. Moreover, much of the evidence before the Commission touching on issues of police oversight and accountability was disclosed to participants after the close of public proceedings and, in some cases, on or after the deadline for participants' final submissions.

Conclusion

20. Issues of police oversight and accountability are complex. A robust evidentiary record is required to support recommendations that are informed, responsive to the needs of all stakeholders, and implementable. The Commission should accordingly refrain from making substantive recommendations in this area, beyond identifying police discipline and criminal investigations into police conduct as an area for further study.

21. The NPF reserves the right to provide further submissions on recently disclosed documents, including with respect to the issue of police oversight and accountability, by the November 14, 2022 deadline.

Yours truly,
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c. Client