

RULES OF PRACTICE AND PROCEDURE

GENERAL

1. By Order in Council 2020-0822 and Order in Council 2020-293, the Government of Canada and the Government of Nova Scotia established an independent public inquiry to examine the April 18-19, 2020 mass casualty in Nova Scotia and to provide meaningful recommendations to help protect Canadians in the future (the “Mass Casualty Commission”, the “Commission”, or the “Inquiry”). Subject to the Orders in Council, the federal *Inquiries Act*, RSC, 1985, c I-11 and the Nova Scotia *Public Inquiries Act* RSNS 1989 c 372, the Commission has the power to control its own processes and make rules governing its practice and procedure.
2. These Rules of Practice and Procedure (the “Rules”) apply to the Mass Casualty Commission. The Commission process will utilize a range of activities and provide various opportunities for public engagement. These Rules however are designed to guide the public proceedings of the Inquiry.
3. In the Ruling on Participation released on May 13, 2021 and the addendum released on June 25, 2021, the Commissioners identified those who can participate in the proceedings of the Commission (the “Participants”). On June 16, 2021, the Commissioners provided the Participants with copies of the draft Rules of Practice and Procedure and invited them to provide written comments on the draft Rules by July 5, 2021.
4. After considering the Participants’ comments and suggestions, the Commissioners finalized the Rules of Practice and Procedure and made them public by posting them on the Commission’s website.

5. All Participants, witnesses, and their lawyers or representatives are bound by the Rules of Practice and Procedure, and may raise any issues of non-compliance they cannot first resolve in consultation with Commission Counsel with the Commissioners.
6. The Commissioners may deal with non-compliance with the Rules of Practice and Procedure as they deem appropriate.
7. The Commissioners may amend, supplement, vary, or depart from any rule as they deem necessary to ensure the Commission is thorough, fair, and timely.
8. The Commissioners may make such orders or give such directions as they consider proper to maintain order and to prevent the abuse of the Commission's process.
9. In these Rules, "persons" refers to individuals, groups, governments, agencies, institutions or other entities.
10. The Commission encourages anyone who may have information helpful to the Mass Casualty Commission, including documents and the names of witnesses, to provide this information as soon as possible to Commission Counsel.
11. The Commission will utilize a range of proceedings in order to fulfill its mandate. Public proceedings may include community meetings, expert, institutional or policy roundtables, witness panels, or hearings.
12. The Commission will publish the times, dates and locations of the public proceedings.
13. Public proceedings will be webcast. A webcast of all public proceedings will be posted to the Commission website and public hearings will be transcribed. As

required by the Orders in Council, public proceedings will be accessible simultaneously in both official languages.

14. The use of television cameras or other electronic or photographic equipment in the room during public proceedings will be permitted at the discretion of the Commissioners.

DOCUMENT

15. The term “documents” is intended to have a broad meaning and includes the following: written, electronic, audio, video, or digital productions; photographs; maps; graphs; and any data and information recorded or stored by means of any device.

Production

16. Copies of all relevant documents are to be produced to the Commission by all Participants at the earliest opportunity and shall certify in writing that this obligation has been complied with. Production to the Commission will not be treated as a waiver of any claim to privilege that a Participant may wish to assert. Participants are, however, requested to identify to the Commission, within a reasonable time period, any documents over which they intend to assert a claim of privilege.
17. Originals of relevant documents are to be provided to Commission Counsel upon request.
18. Documents received from a Participant, or any other entity or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioners otherwise declare. This does not preclude the Commission from producing a document to a proposed witness prior to the witness giving her or his testimony, as part of the investigation being

conducted or to Participants upon them signing an undertaking as set out in Rule 20.

Privilege

19. Where a Participant objects to the production of any document on the grounds of privilege, a true copy of the document will be produced in an unedited form to Commission Counsel who will review and determine the validity of the privilege claim. In the event the Participant claiming privilege disagrees with Commission Counsel's determination, the Commissioners, on application, may inspect the impugned document(s) and make a ruling.

Disclosure

20. Lawyers for Participants, self-represented Participants and witnesses will be provided access to documents and information, including statements of anticipated evidence, only upon providing a written undertaking that all such documents or information will be used solely for the purpose of the Commission. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. No such information or documents shall be made public until entered as evidence at the Commission.
21. Lawyers are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon clients entering into written undertakings to the same effect.
22. The Commission orders that each person who has entered into a written undertaking as set out in Rule 20 and 21 comply with its terms. Failure to do so will be a breach of an order of the Commission.

23. The Commission may, upon application, release any Participant in whole or in part from the provisions of the undertaking in respect of any particular document or other information.

24. These undertakings will be of no force or effect once the documents or information are entered into the public record.

EVIDENCE

Admissibility of Evidence

25. The Commissioners can receive any evidence they consider to be relevant and helpful in fulfilling the mandate of the Inquiry.

Foundational Documentation

26. Commission Counsel may prepare Foundational Documentation to facilitate streamlining of the Commission's oral proceedings.

27. Foundational Documentation may contain core or background facts, together with their sources. Foundational Documentation objectively summarizes a large volume of documents to allow facts to be placed in evidence without requiring each document to be presented orally by a witness during a public hearing. Foundational Documentation may be presented by various methods, including audiovisual presentation. Foundational Documentation may include, for example, affidavits, maps, timelines, policies, procedures and documents from relevant past proceedings.

28. In advance of the filing of Foundational Documentation as evidence, Commission Counsel will provide an opportunity to the Participants, to the extent of their interest as determined by the Commissioners, to comment on the accuracy of the Foundational Documentation. Commission Counsel may modify

the Foundational Documentation in response. To the extent of their interest as determined by the Commissioners, Participants may also propose witnesses to support, challenge, comment on, or supplement the Foundational Documentation in ways that are likely to significantly contribute to an understanding of the issues relevant to the mandate of the Commission.

29. Once final, Foundational Documentation can be entered into evidence without the necessity of being introduced into evidence through oral testimony of a witness.
30. After entered into evidence, Foundational Documentation will be posted on the Commission website.

Affidavits

31. Commission Counsel and a witness or their lawyer may prepare an affidavit of the witness' evidence. At the Commissioners' discretion, the affidavit can be admitted into evidence in place of part or all of the individual's oral testimony.

COMMISSION PROCEEDINGS

32. Anyone interviewed by or on behalf of Commission Counsel is entitled, but not required, to have their lawyer present for the interview to represent his or her interests.
33. Participants are encouraged to provide to Commission Counsel the names and addresses of persons having information relevant to the mandate of the Commission, and to provide to Commission Counsel copies of all relevant documentation at the earliest opportunity.
34. Persons may participate in more than one public proceeding.

35. If special arrangements are desired by a person in order to facilitate their participation in a public proceeding, a request for accommodation shall be made to the Commission sufficiently in advance of the person's participation. While the Commission will make reasonable efforts to accommodate such requests, the Commissioners retain the discretion to determine whether, and to what extent, such requests will be accommodated.

Witnesses in Hearings

36. Commission Counsel have the discretion to refuse to call or present evidence.

37. After Commission Counsel indicate to the Participants the witnesses they intend to call in relation to a particular issue, a Participant may apply to the Commissioners for leave to call other witnesses whom the Participant believes has evidence relevant to that issue. If the Commissioners are satisfied that the evidence of the witness is needed, Commission Counsel shall call that witness.

38. The Commission will hear evidence from each witness pursuant to a subpoena.

39. Witnesses will give their evidence under oath or a promise to tell the truth which may be accompanied by another form of conscience binding symbol.

40. Witnesses may be called more than once.

41. Witnesses who are not represented by a lawyer for Participants are entitled to be represented by their lawyer while they testify.

42. The Commission will rely, whenever possible, on representative witnesses on behalf of institutions. A representative witness is typically a senior official of an institution, and/or an expert in the subject area and procedures, designated to appear on behalf of their institution.

43. If special arrangements are desired by a witness in order to facilitate their testimony, a request for accommodation shall be made to the Commission

sufficiently in advance of the witness' scheduled appearance to reasonably facilitate such requests. While the Commission will make reasonable efforts to accommodate such requests, the Commissioners retain the ultimate discretion as to whether, and to what extent, such requests will be accommodated.

44. The Commissioners, in their discretion and in appropriate circumstances, may conduct proceedings in private (“*in camera*”). The Commissioners may do so when they are of the opinion that matters may be disclosed (for example, matters regarding public security, or of an intimate personal nature), that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the proceedings should be open to the public. A summary of *in camera* proceedings will form part of the Commission record.

Documents in Proceedings

45. Commission Counsel will provide relevant documents for public proceedings in advance to Participants. Participants will have the opportunity to provide additional relevant documents to Commission Counsel.

Documents in Hearings

46. In advance of a witness's testimony, Commission Counsel shall provide the Participants with reasonable notice of a list of the documents associated with the witness's anticipated evidence in chief. Where possible, in advance of a witness's testimony, Commission Counsel shall provide the Participants with an anticipated evidence statement or witness interview summary.

47. Neither Participants nor Commission Counsel will be entitled to question a witness on any anticipated evidence statement or witness interview summary that may be provided, except with leave of the Commissioners. Participants shall at the earliest opportunity provide Commission Counsel with any

documents that they intend to file as exhibits or otherwise refer to during the proceedings, and in any event shall provide such documents no later than the day before the document will be referred to or filed.

48. For the purpose of these Rules, the Commissioners will have discretion to determine what constitutes “reasonable notice” or “at the earliest opportunity” in all of the circumstances.

49. The Commissioners may grant Commission Counsel or a lawyer for a Participant or witness leave to introduce a document to the witness at any point during the proceeding upon such terms as are just and fair.

Order of Examination in Hearings

50. In the ordinary course, Commission Counsel will call and question witnesses who give evidence at Commission hearings. Except as otherwise directed by the Commissioners, Commission Counsel may adduce evidence by way of leading and non-leading questions.

51. Commission Counsel has the right to re-examine any witness at the conclusion of their evidence.

52. Participants may have an opportunity to question the witnesses, to the extent of their interest as determined by the Commissioners. Subject to direction from the Commissioners, Commission Counsel will determine the order of questioning. The Commissioners have the discretion to restrict the scope or manner of questioning.

53. A lawyer for a Participant may apply to the Commissioners to examine a particular witness in chief.

54. In advance of a witness’s testimony, Participants who are permitted to lead a witness’s evidence in chief shall provide the Participants and Commission

Counsel with reasonable notice of the areas to be covered in the witness's anticipated evidence in chief and a list of the documents associated with that evidence.

55. A lawyer for a witness, regardless of whether or not the lawyer is also representing a Participant, will examine after the other Participants have concluded their questioning, unless they have adduced the evidence of the witness in chief, in which case there will be a right by that lawyer to re-examine the witness. However, if a lawyer for the witness intends to adduce evidence in chief not adduced by Commission Counsel, the lawyer for the witness will examine the witness immediately following Commission Counsel, and then will have a right to re-examine the witness following questioning by the other Participants.

Access to evidence

56. All evidence shall be categorized and marked P for public proceedings and, if necessary, C for *in camera* proceedings. Unless the Commission otherwise orders, a copy of the P transcript of evidence, a list of P exhibits of the public proceedings and a summary of the C proceedings will be available on the Commission website.

57. Only those persons authorized by the Commission in writing shall have access to C transcripts and evidence.

Anonymity

58. A witness may apply to be granted anonymity.

59. A witness who is granted anonymity will not be identified in the public records and transcripts of the proceeding except by non-identifying initials, and, if the Commissioners so rule, may testify before the Commission *in camera*. Any

Commission publications, including on its website, will use non-identifying initials only. No photograph or other reproduction of the witness shall be made during the witness' testimony or upon their entering and leaving the site of the Inquiry.

60. To give effect to this rule, the Commissioners may direct that a person's identity not be published.

61. Any witness who is granted anonymity will reveal their name to the Commissioners and lawyers participating in the Inquiry in order that the Commission and lawyers can prepare to question the witness. The Commission and the lawyers shall maintain confidentiality of the names revealed to them. No such information shall be used for any other purpose either during or after the completion of the Commission's mandate.

62. Any witness granted anonymity may either give their evidence under oath or a promise to tell the truth which may be accompanied by another form of conscience binding symbol using the non-identifying initials for the purpose of the witness's testimony.

63. All Participants, their lawyers and media representatives shall be deemed to undertake to adhere to the rules respecting anonymity. A breach of these rules shall be dealt with by the Commissioners as they see fit.

Notice to Persons

64. In accordance with section 13 of the *Public Inquiries Act*, RSC 1985, c I-11, if the Commissioners anticipate they may comment adversely upon a person's conduct in the final report, the person will have reasonable notice of the allegation and will be allowed a full opportunity to be heard.

65. Such notice will be delivered on a confidential basis to the person.

66. Supplementary notices may be delivered from time to time by the Commission as warranted by the information or evidence before it.

Expert Panels, Research, and Policy Papers

67. The Commission may use a range of processes to develop its recommendations, including, but not limited to:

- a) Writing or commissioning research and policy papers; the structure and format of the research and policy papers may vary but will generally include a description of current practices, historical developments, an analysis of relevant issues, and potential policy options (if applicable). Research and policy papers will be designed to inform the Commissioners' deliberations on systemic issues. Research and policy papers will be posted on the Commission's website;
- b) Written and/or oral submissions that may be sought from Participants and the public about matters relevant to the mandate, including the research and policy papers;
- c) Meetings or symposia (the format of which may vary) that may be convened to discuss issues raised by the Inquiry at which Participants and members of the public may be invited to participate; and
- d) Evidence that may be received at any stage of the Inquiry from one or more panels of expert witnesses. The Commissioners may modify the Rules as appropriate for the disclosure of documents and the questioning of expert panelists by the Participants.

PUBLIC AND CLOSING SUBMISSIONS

68. Any interested person may make a public submission in writing to the Commission in response to any matter raised in the course of the Commission's work.

69. The Commission will publish on its website a deadline by which all public submissions must be received.

70. Participants will be given the opportunity to provide closing submissions. The Commission will determine if closing submissions will be made orally or in writing and will set and publish on its website a deadline by which all Participants' submissions must be received.