

Public Hearing

Audience publique

Commissioners / Commissaires

The Honourable / L'honorable J. Michael MacDonald,
Chair / Président

Leanne J. Fitch (Ret. Police Chief, M.O.M)

Dr. Kim Stanton

VOLUME 5

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II Appearances / Comparutions

Ms. Emily Hill	Commission Counsel / Conseillère de la commission
Ms. Sandra McCulloch	Counsel / Conseillère
Mr. Joshua Bryson	Counsel / Conseiller
Ms. Linda Hupman	Counsel / Conseillère
Ms. Tara Miller	Counsel / Conseillère
Ms. Anastacia Merrigan	Counsel / Conseillère
Mr. Craig Zeeh	Counsel / Conseiller
Ms. Linda Hupman	Counsel / Conseillère
Ms. Nasha Nijhawan	Counsel / Conseillère
Ms. Lori Ward	Counsel / Conseillère

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Halifax, Nova Scotia

--- Upon commencing on Wednesday, March 2, 2022 at 9:36 a.m.

REGISTRAR DARLENE SUTHERLAND: Good morning. The proceedings of the Mass Casualty Commission are now in session with Chief Commissioner Michael MacDonald, Commissioner Leanne Fitch, and Commissioner Kim Stanton presiding.

COMMISSIONER MacDONALD: Well, good morning everyone. We join you from Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. And today, like every day in this inquiry, we begin by remembering those whose lives were taken or were harmed, their families, and all those affected by the April 2020 mass casualty in Nova Scotia.

Well, members of the public have now had an opportunity to see the Commission's work and consultation, and with the assistance of the Participants, our work in trying to make sense of the tens of thousands of documents and various interviews, and our investigation to come up with what we understand to be the facts so far as they apply to the horrible events in Portapique in April 18th and 19th, and they are contained in comprehensive Foundational Documents, which have now been exhibited, and of course with the assistance of Mr. Roger Burrill, have been presented. Of course, the presentation is a subset of the larger documents.

And I will, with that background, set the context for what we hope to accomplish today. And for those of you who are here every day, I know I have said in my opening remarks what I'm about to say, but because this is a public inquiry and we do not presume to think that every Nova Scotian, every Canadian has an opportunity to follow us every day, it's important to make sure that we set the context before every -- in every day before we begin the activities proper.

So as I've said, we've now exhibited the Foundational Documents, and in preparing these Foundational Documents we sought the input from Participants on these points, both in writing and through comprehensive working meetings in the fall.

1 And as a result of the input of the Participants, which was very helpful, in our further
2 investigations we made significant revisions to the Foundational Documents, and we
3 shared the revised Foundational Documents with the public now and we will continue to
4 hear from the Participants. That's important. This is an iterative process. The
5 Foundational Documents, although tendered as exhibits, of course can be the subject of
6 change because they are what we know about the facts to date. And pursuant to our
7 Rules, which I will address in a minute, Participants have an opportunity to comment,
8 and this is essentially what we will be doing today.

9 So the purpose of today is to hear from Participants as to whether
10 they think oral evidence is needed, according to criteria, which we have shared with the
11 Participants, the following criteria, is oral evidence needed to clarify a dispute in the
12 evidence that will be material to the Commission's work in Phase 2 and 3? And you will
13 understand that you will recall that this is Phase 1, the "What happened?" phase, and
14 therefore, what evidence is needed to clarify a dispute in the evidence that will be
15 material to the Commission's work in Phases 2 and 3 to fill a material gap in the
16 evidence and to provide important context?

17 And this is reflected in our Rules, which we issued in August. They
18 were circulated to the Participants in draft form and so -- and feedback was sought. So
19 Rule 28 provides:

20 "In advance of the filing of Foundational [Documents]
21 as evidence, Commission Counsel will provide an
22 opportunity to the Participants, to the extent of their
23 interest as determined by the Commissioners, to
24 comment on the accuracy of the Foundational
25 Documentation."

26 And of course, as I've said, this is what we've done:

27 "...Counsel may modify the Foundational
28 Documentation in response."

1 This is exactly what we've done:

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

9 And of course, as I said in my opening remarks, the Phase 1
10 process that we're now in is to -- is to provide us with a factual foundation upon which
11 we can build, upon which we can find out why things unfolded the way they unfolded in
12 those horrible hours of April 18th and 19th, 2020, and finding out why then sets the
13 table for making recommendations. And of course, in finding the -- in creating the
14 factual foundation our role is not to -- in fact, we're prevented expressly in our Orders in
15 Council from finding criminal or civil liability. Our target or our object is not to blame, our
16 object is to obviously determine accountability and responsibility, particularly from an
17 institutional perspective. And...

18 So that, ladies and gentlemen, is the context for today. We are
19 anxious to hear from Counsel on the -- regarding their submissions on what further
20 witnesses ought to be heard from in terms of the -- what I will refer to as the Portapique
21 documents. And our Commission Counsel, Ms. Emily Hill, has kindly arranged for us to
22 hear from the various witnesses, I understand in consultation with Participant Counsel,
23 in order that you can perhaps explain to us, Ms. Hill, and we can get started. Thank you
24 all very much.

25 **MS. EMILY HILL:** Good morning, Commissioners. As you said,
26 the schedule today is to hear from Counsel for Participants about gaps that exist in the
27 records and the witnesses they propose to fill those gaps. These applications are made
28 pursuant to Rule 37.

1 I have just one housekeeping matter with regard to exhibits. I just
2 want to advise you, Commissioners, and also Participants and others who may be
3 viewing the proceedings that the Source Documents for all of the three Foundational
4 Documents that have been marked, have been marked now as Exhibits 7 through 207.

5 We understand today that counsel will be referring to documents
6 that have previously been entered as exhibit, and I just wanted to explain that they may
7 use the prefix "COMM", COMM, and then a number that follows. That allows us to
8 identify the documents that we're speaking about. COMM is, of course -- stands for
9 "Commission".

10 **COMMISSIONER MacDONALD:** Thank you.

11 **MS. EMILY HILL:** There are two documents that may be referred
12 to today that have not yet been made exhibits, and so when those documents are first
13 referred to, counsel will ask Madam Registrar to mark those as exhibits and they will
14 eventually be available on the website, although not immediately.

15 We have organized today and tomorrow to hear from counsel
16 together who wish to hear from a particular witness and then hear from counsel for the
17 witness and any other Participant with an interest who's asked to be heard.

18 There has also been an application to rely on expert evidence
19 made by the NPF. That application relates to the request to hear from certain RCMP
20 members.

21 In order to give everyone time to respond, we plan to start today
22 hearing about requests for civilian non-RCMP witnesses. After that, we'll ask to hear
23 everyone's views on the admission of the expert report and that will let us plan our time
24 on Thursday when we will discuss the expert and hear from Participants' Counsel about
25 witnesses they propose from the RCMP.

26 **COMMISSIONER MacDONALD:** Thank you.

27 **MS. EMILY HILL:** For all the witnesses you'll be hearing about
28 today, Commission's Counsel view is the record has been established through the

1 admission of the Foundational Documents, their source material and the witnesses --
2 the witness that we heard from yesterday, so we're not of the view that additional
3 evidence is required in order for the Commission to establish the record it needs to fulfil
4 its mandate. Thus, we will not be speaking to the applications other than to indicate
5 whether there's information about the witness that would be helpful for you to know as
6 you make your decision or if, in our view, the need to hear from a particular witness
7 should be considered at a different point in our proceedings. In this case, we will advise
8 that we think the application is premature and could be raised again once additional
9 Foundational Documents have been entered into evidence.

10 We will begin today by hearing from counsel who wish to hear from
11 Lisa Banfield, the common-law spouse of the perpetrator.

12 We propose to hear first from Ms. McCulloch, then Mr. Bryson, Ms.
13 Hupman and Ms. Miller. We understand that Ms. Miller may be referring to documents
14 which have previously been made exhibits in these proceedings.

15 We will hear then from two counsel in response.

16 Commissioners, we had a request this morning for counsel for a
17 Participant in these proceedings, a coalition made up of the Coalition of Transition
18 House Association of Nova Scotia, Women's Shelter Canada and Be the Peace
19 Institute, who indicated that they would wish to speak to this matter. We've advised
20 them that given their interest in their role in the Commission that it would be appropriate
21 for them to address you with -- on about five minutes -- for about five minutes and then
22 we will hear from Mr. Zeeh, who is counsel for Ms. Banfield.

23 **COMMISSIONER MacDONALD:** Sorry, Ms. Hill. The counsel for
24 Ms. Banfield?

25 **MS. EMILY HILL:** Is Mr. Zeeh, Z-e-e-h, and he'll be attending by
26 Zoom.

27 **COMMISSIONER MacDONALD:** Thank you.

28 **MS. EMILY HILL:** So I think with that, I would invite Ms.

1 McCulloch.

2 **COMMISSIONER MacDONALD:** Ms. McCulloch.

3 **--- SUBMISSIONS BY MS. SANDRA McCULLOCH:**

4 **MS. SANDRA McCULLOCH:** Good morning, Commissioners. I
5 wanted to begin -- before I speak to Ms. Banfield specifically, I wanted to comment that
6 we very much appreciated hearing from Commissioner MacDonald your comments
7 earlier this week describing what today was going to be about, that we would have an
8 opportunity to address gaps and errors and missing information, to address meaningful
9 factual disputes, and we were very encouraged by this, as were our clients.

10 But I have to say that we were deeply discouraged yesterday at
11 end of day when we found out that today was going to proceed quite a bit differently
12 than what we anticipated, that, in fact, rather than having a robust opportunity to speak
13 to gaps and errors and factual disputes as was described to us and presented to the
14 public earlier this week is that, in fact, we would be limited to speaking this morning
15 specifically only to our submissions about Ms. Banfield and why we believe she should
16 be included as a witness in these proceedings. And I will speak about that momentarily,
17 but I feel that it -- on behalf of our clients, of whom you'll know our firm represents a
18 significant number of the Participants most affected as defined by the participation
19 decision, it's incumbent upon me to state that in standing up during this narrow window
20 to speak on behalf of our clients, our clients do not endorse the Foundational
21 Documents that have been presented to the Commissioners in the last few days.

22 Absolutely, we participated in the working meetings and we made
23 contributions toward those preliminary draft Foundational Documents. Those
24 Foundational Documents that have been presented have been substantially altered.
25 They bear limited resemblance to the documents that we participated in in speaking to.
26 In two instances, two of them have doubled in size. In one instance, one of them has
27 been halved for reasons we don't fully appreciate.

28 There has been a significant volume of disclosure that has come to

1 us and to Participants after the working meetings, more than 16,000 documents, a
2 number of them which are directly relevant to the material that has been discussed in
3 these -- in the Foundational Documents and in the presentations we've seen in the last
4 two days.

5 In terms of those revised Foundational Documents, on behalf of our
6 clients we feel that it is necessary to ensure that the Commissioners understand that
7 we, on behalf of our clients, disagree with the presentation of the information in some
8 instances. More significantly, we disagree with some of the assumptions and
9 conclusions drawn and we feel that we are not able, we are not positioned to speak and
10 to comment meaningfully on them where the Foundational Documents rely on future
11 materials such as future Foundational Documents which we can only presume are
12 going to be substantially revised in the manner that we have seen of the first -- of the
13 first few.

14 In hearing from Commission Counsel yesterday at end of
15 proceedings that today we would be advancing submissions in the manner that,
16 Commissioner MacDonald, you had described earlier this week that our submissions
17 would be narrowly confined to speaking to an order in respect of the witnesses that
18 various Participants' Counsel have advanced, that, in fact, we would not have a more
19 fulsome opportunity to speak to some of the issues that we have, we feel that with that -
20 - those limitations which were imposed upon us by Commission Counsel yesterday we
21 no longer have an opportunity to raise what we feel are very serious concerns,
22 particularly about the timeline which has been presented in the Portapique Foundational
23 Documents, including our concerns about how the evidence pertaining to the Wilson's
24 Gas Stop footage and the conclusions that we disagree with that have been drawn from
25 that.

26 We don't feel we now have an opportunity to speak to the frailties in
27 the evidence of some of the civilian witnesses such as Dean Dillman and Autumn
28 Doucette and the broad timeline that their combined information presents that suggests

1 that, in fact, 10:45 is not really a marker that can be drawn from their evidence.

2 The same may be said of the Zimmerman family, who present a
3 wide timeframe within which the perpetrator's vehicle may have passed their view.

4 In spite of that, the Foundational Documents and, as we have seen
5 in Mr. Burrill's presentation, a more precise timeline has been deduced by Commission
6 Counsel and presented to the public, but we don't have an opportunity to speak to that.

7 Further to that, we don't have an opportunity to speak to the
8 omission of the fact of Clinton Ellison's presence on Orchard Beach Drive at about the
9 same time that the perpetrator would have been passing down Orchard Beach Drive
10 were he to be exiting the community as Commission Counsel is suggesting to your -- to
11 the Commissioners, to yourselves.

12 We've made submissions about that before and they were not
13 addressed in the revised Foundational Documents, and we're quite concerned by some
14 of these pieces and deeply concerned on behalf of our clients that we do not appear to
15 have the window of opportunity that we thought we were going to have to speak to that.

16 **COMMISSIONER MacDONALD:** I wonder if I could just -- if you
17 could help me a little bit, please.

18 We indicated that we -- early on in my opening remarks that we
19 wanted to hear from Participants about gaps and witnesses they may want to submit to
20 us we should hear from, the first one being Lisa Banfield.

21 And your -- you have submitted to us a list of witnesses to fill in
22 those gaps; have you not? And the first one is Linda Banfield -- Lisa Banfield?

23 **MS. SANDRA McCULLOCH:** Lisa Banfield. Yes. And I will offer
24 some more specific remarks ---

25 **COMMISSIONER MacDONALD:** Of course. Yeah.

26 **MS. SANDRA McCULLOCH:** --- with respect to her.

27 **COMMISSIONER MacDONALD:** That's -- but and we also
28 indicated at the end of Phase 1, you could make submissions about the -- you know, we

1 have an iterative process and when the Foundational Documents are tendered, they're
2 all tendered, you can have an opportunity to make submissions on those. Were you --
3 right?

4 **MS. SANDRA McCULLOCH:** Yes, well we're aware of that.

5 **COMMISSIONER MacDONALD:** You're aware of that?

6 **MS. SANDRA McCULLOCH:** We're aware of that. The concern is
7 that ---

8 **COMMISSIONER MacDONALD:** Okay. But you wanted to do this
9 this morning instead of at the end of Phase 1?

10 **MS. SANDRA McCULLOCH:** Well we're highlighting for the
11 Commissioners that we don't believe what we're hearing, we're going to have by way of
12 an opportunity is what is actually being provided to our clients for meaningful
13 participation in the process. The opportunity to speak specifically to Lisa Banfield
14 doesn't lend the opportunity to speak to the issues with the other witnesses, such as
15 those that I've mentioned. That period is already passing us by and we will go well
16 beyond that piece of the story. It's going to rest in the public and the public will have
17 this narrative and we won't have an opportunity to speak to it in a timely manner.

18 Waiting -- it's our submission that waiting weeks, if not months, to
19 speak to that is not appropriate and it's not effective participation for our clients.

20 **COMMISSIONER MacDONALD:** Okay. So your point is not that
21 you won't have an opportunity to speak to it, it's that you have to wait too long to speak
22 to it? Is that your point?

23 **MS. SANDRA McCULLOCH:** It could be that, but also, we're not
24 confident about what opportunities are going to be afforded to our clients. That
25 information hasn't been clearly laid out to us.

26 **COMMISSIONER MacDONALD:** Then the two witnesses you're
27 talking about, were they on your list to discuss in the next two days that we should hear
28 more from?

1 **MS. SANDRA McCULLOCH:** No, Commissioners, we have
2 outlined in our submissions these various concerns that we have about the
3 Foundational Documents.

4 **COMMISSIONER MacDONALD:** Right.

5 **MS. SANDRA McCULLOCH:** It doesn't necessarily require, for
6 example, calling Mr. Dillman as a witness in order to deal with this. The concern that
7 we have right now is this information is being handled as if there's definitive information
8 and definitive conclusions that can be drawn from the information that they've been
9 provided. It's not necessarily that Mr. Dillman needs to be here to say what he's already
10 said again, but ---

11 **COMMISSIONER MacDONALD:** Okay.

12 **MS. SANDRA McCULLOCH:** --- we take issue with how it's been
13 present.

14 **COMMISSIONER MacDONALD:** All right. So you don't need Mr.
15 Dillman here, if I understand it, and you're concerned that it was presented in a
16 definitive way.

17 In my opening remarks and just about every time I spoke publicly, I
18 indicated, you will recall, that this is not definitive. In fact, we want to hear from you.
19 We want to hear from you about any further witnesses you have. So if you wanted to
20 hear from the Zimmermans, if you think we should hear from the Zimmermans, you
21 could have put them on the list.

22 So just help me understand. You don't think we need to hear from
23 the Zimmermans? Yes, or no?

24 **MS. SANDRA McCULLOCH:** No.

25 **COMMISSIONER MacDONALD:** Okay.

26 **MS. SANDRA McCULLOCH:** I don't believe that they have further
27 to offer. It's a question of how that information has been presented to you, the
28 Commissioners, and to the public, ---

1 **COMMISSIONER MacDONALD:** Okay.

2 **MS. SANDRA McCULLOCH:** --- with which we disagree.

3 **COMMISSIONER MacDONALD:** Because there was -- as we
4 indicated, it's iterative. It's -- you know, the investigation continues. The documents
5 keep rolling in. And are you saying you felt rushed in the process?

6 **MS. SANDRA McCULLOCH:** I'm not. No, sir. I'm not saying that.
7 I'm concerned with the presentation of material in the Foundational Documents and the
8 conclusions that Commission Counsel is urging you, Commissioner -- forgive me,
9 Commissioners, is urging you to draw from that information. We don't believe that the
10 conclusions that agree being drawn, or the assumptions being drawn, such as the
11 timeline of the perpetrator's movements in the community are accurately reflected in the
12 Foundational Documents and in Mr. Burrill's presentation.

13 **COMMISSIONER MacDONALD:** Well thank you so much. I
14 appreciate that. I guess I can simply reiterate to the best of my ability that they aren't
15 conclusions. They aren't factual conclusions.

16 As I indicated in my opening remarks, the public has a right to know
17 what we know so far. And we have indicated that all these documents have a caveat
18 that say, "it's a work in progress." And we are anxious to hear from you about what's
19 missing, what witnesses we ought to hear from. We have a list from you and from
20 others and we're very happy to hear from you about that and we will, obviously, give
21 directions accordingly. And we have set aside time for -- after Phase 1, for you to raise
22 any concerns you have about any of the Foundational Documents. You indicated that --
23 well, we're only at three out of about 30. You indicated that, you know, that they are --
24 it's difficult now for you because they aren't all laid out, but you've had them all. You've
25 seen them all; have you not?

26 **MS. SANDRA McCULLOCH:** The preliminary drafts, yes.

27 **COMMISSIONER MacDONALD:** Yeah. And you've commented
28 on them all?

1 **MS. SANDRA McCULLOCH:** Yes.

2 **COMMISSIONER MacDONALD:** Yeah. And that was helpful for
3 us.

4 So thank you for your -- putting this on the record. It's helpful. But
5 just want to make sure I understand that -- there are no conclusions made yet. This is
6 iterative. We want to hear from you about any potential witnesses that could fill in gaps
7 in these three foundational documents. You've given those and we'll start with Lisa
8 Banfield this morning. And we'll give you an opportunity, and we've given -- set aside
9 time to discuss the various -- after all the Foundational Documents are in *vis a vie* the
10 timeline, to raise any concerns you have.

11 So thank you for putting that on the record and we'd be happy to
12 hear any further submissions you might have on the Banfield matter.

13 **MS. SANDRA McCULLOCH:** Thank you, Commissioner. And I
14 hear you and I thank you for that assurance that we will have a meaningful opportunity
15 to address these concerns at a later date.

16 **COMMISSIONER MacDONALD:** Were you not aware that we put
17 that in the timeline?

18 **MS. SANDRA McCULLOCH:** Yes. Yes, Commissioner. The
19 concern is that we don't have any assurance about what that meaningful opportunity is
20 going to be.

21 **COMMISSIONER MacDONALD:** Okay.

22 **MS. SANDRA McCULLOCH:** Yeah.

23 **COMMISSIONER MacDONALD:** We'll ---

24 **MS. SANDRA McCULLOCH:** I hear what you've said now.

25 **COMMISSIONER MacDONALD:** I will ask our counsel to give you
26 assurances as to what that opportunity might be, but thank you. But you understood it
27 wasn't for this morning?

28 **MS. SANDRA McCULLOCH:** Again, our concern is that the

1 messages that we're receiving are being inconsistent and what we were of the
2 impression we would have the opportunity to speak to today was significantly curtailed
3 at end of day yesterday, in our view. And I appreciate that you may not agree with that,
4 but that's our view of the matter. And we feel it's important that we have the opportunity
5 to make sure that you Commissioners are aware of our concerns ---

6 **COMMISSIONER MacDONALD:** Yeah.

7 **MS. SANDRA McCULLOCH:** --- on behalf of our clients.

8 **COMMISSIONER MacDONALD:** Of course. Absolutely. Thank
9 you.

10 **MS. SANDRA McCULLOCH:** Thank you. In relation to Ms.
11 Banfield, Commissioners, we -- it is our respectful submission on behalf of our clients,
12 Ms. Banfield is a critical witness. It, in our view, would be unfathomable for the
13 Commission to proceed without a fulsome exploration of Ms. Banfield's account,
14 including a proper testing of that evidence. We feel that to do so otherwise would result
15 in fact finding which is simply deficient. We submit that there's a great lack of highly
16 pertinent detail with respect to Ms. Banfield's experience, which is not only not
17 incorporated properly into the Foundational Documents, but there's also issues in the
18 source materials themselves in terms of that lack of detail. And again, we would refer,
19 as Mr. Burrill has described, that is derived from statements given by Ms. Banfield to the
20 RCMP interviews for purposes distinct and apart from the mandate of the Commission.

21 The Orders in Council tasked the Commission to: "fully examine the
22 terrible tragedy," to uncover the "causes, context, and circumstances which gave rise to
23 the mass casualty event." And it's plain and obvious that there is no witness more
24 critical to assisting with fulfilling that mandate than Ms. Banfield.

25 Ms. Banfield was the only individual that we know to have been
26 with the perpetrator prior to the rampage. There's a lack of clarity around the
27 anniversary drive that has been referenced by Mr. Burrill, which among other things,
28 implicated some victims in ways that weren't further explanation -- investigation,

1 particularly investigation from the lens of the Commission's mandate, which we submit
2 will naturally learn more of the information that we're lacking.

3 We submit that there is a lack of clarity in the information presently
4 available with respect to Ms. Banfield's evidence, a lack of clarity as to what took place
5 prior to the commencement of the perpetrator's rampage, ---

6 **COMMISSIONER MacDONALD:** My apologies, Ms. McCulloch.
7 Commissioner Fitch just mentioned she's not hearing everything as easily as we had
8 hoped.

9 **MS. SANDRA McCULLOCH:** If I speak up, will that make a
10 difference?

11 **COMMISSIONER MacDONALD:** Or I was just going to get the
12 technicians to ---

13 **MS. SANDRA McCULLOCH:** Yeah, sure. 1102. Thank you very
14 much.

15 **COMMISSIONER MacDONALD:** Thank you so much. Sorry
16 about that.

17 **MS. SANDRA McCULLOCH:** No problem. Thank you. Can you,
18 can you hear me now? Thank you.

19 As I was saying, that there is a lack of clarity in the information we
20 presently have available from Ms. Banfield as to what took place prior to the
21 perpetrator's rampage, what preceded his change in countenance and behaviour. And -
22 - and as a side note, I -- I would pre-emptively endorse comments that I expect will be
23 made by other participant's counsel in relation to Sean Conloque and Angel Patterson,
24 witnesses that other counsel have -- will be speaking to later, submitting that that is one
25 of the few opportunities that the Commission will have to corroborate Ms. Banfield's
26 account.

27 There's a lack of clarity in the information presently available from
28 Ms. Banfield as to what took place between her and the perpetrator. It won't surprise

1 the Commissioners to hear that we, on behalf of our clients and with the endorsement of
2 our clients, have significant concerns about areas of Ms. Banfield's account reflected in
3 her statements to the RCMP, which leave, in our submission, much unsaid, including
4 her account of a brief escape from the perpetrator by shedding her coat while at the
5 same time being bound by the wrist and constrained, her account of her travel through
6 the woods on ---

7 **COMMISSIONER MacDONALD:** Sorry, did you say her great
8 escape? Is that what you said?

9 **MS. SANDRA McCULLOCH:** Brief ---

10 **COMMISSIONER MacDONALD:** Brief escape.

11 **MS. SANDRA McCULLOCH:** --- escape. Her count -- her account
12 of her travel through the woods on frozen ground without footwear, including being
13 compelled by the perpetrator and also fleeing the perpetrator with, in our view, without
14 evidence of injuries which might be consistent with that; her account of her exposure to
15 gunshots inside of the warehouse, again, without any injury, which would seem to be
16 consistent with that sort of exposure; her account of the perpetrator's use or attempted
17 use, depending on the statement, of handcuffs upon her; and also, her escape from the
18 replica RCMP cruiser by way of the silent patrolman, in spite of both of these things
19 being designed to defeat escape, and again, without injuries which would potentially be
20 expected in respect of same; and also, information about her survival for more than
21 eight hours overnight below freezing temperatures and without protection from the
22 elements.

23 Furthermore, and perhaps more -- equally as significant to the
24 Commission's mandate is the lack of information about any observations that Ms.
25 Banfield may have made during her overnight in Portapique. Based on what Ms.
26 Banfield's location overnight was purported to be -- and to this I refer to the re-
27 enactment video guided by the RCMP. That's the com number 13731. If -- if her -- her
28 location is understood to be correct, she was critically located to potentially enable her

1 to observe a great deal of the activity that took place in Portapique overnight, including
2 both -- both community members and of RCMP members in the community, both on
3 foot and in vehicles, which may assist significantly with the timeline. We won't know
4 until those questions are asked of her.

5 I do want to stress that it is readily understood that the
6 Commission's work is in pursuit of its mandate for the benefit of not only those who
7 suffered at the hands of the perpetrator, but for the public at large. In order to do that,
8 however, we would remind the Commission that it's -- that it must fully examine the
9 causes, context and circumstances giving rise to that tragedy, and, of course, Ms.
10 Banfield is a significant piece of that.

11 Our clients are steadfast in their view that the Commission cannot
12 possibly treat -- create a trustworthy evidentiary foundation for its work in the absence of
13 testimony from Ms. Banfield, tested evidence from Ms. Banfield. We submit that the
14 inclusions of her account in the Foundational Documents at present are woefully
15 inadequate to any semblance of a completed narrative in that respect. We submit that
16 that -- what is included is based upon incomplete and untested statements given to the
17 RCMP for purposes distinct from the Commission's mandate. We submit that the
18 Commission has seen fit to reinterview a number of witnesses which have been -- which
19 have been interviewed by the RCMP previously, and while we are aware that the
20 Commission's trauma-informed mandate, we would submit there is no reason that Ms.
21 Banfield should be treated differently than those other witnesses who've been through
22 more than one interview process, given the significant ---

23 **COMMISSIONER MacDONALD:** Sorry to interrupt, Ms.
24 McCulloch, I just wonder if you could help me there then. If I understand your
25 submission, you are suggesting that the Commission, as we did with other witnesses,
26 interview her ourselves as a Commission. Is that what I understand your submission to
27 be, as with other witnesses?

28 **MS. SANDRA McCULLOCH:** As -- no, we -- it's our submission

1 that she should be brought forward to give sworn evidence ---

2 **COMMISSIONER MacDONALD:** Oh, I understand that.

3 **MS. SANDRA McCULLOCH:** --- to the Commission.

4 **COMMISSIONER MacDONALD:** I understand that. But just your
5 submission after that was that the, as I understood it at least, the Commission has
6 interviewed, reinterviewed, I think was your word ---

7 **MS. SANDRA McCULLOCH:** Yeah.

8 **COMMISSIONER MacDONALD:** --- the RCMP did interviews and
9 we reinterviewed. And I understood your submission to be that we should reinterview
10 Lisa Banfield; am I correct on that? That's your submission?

11 **MS. SANDRA McCULLOCH:** And perhaps I should have -- I
12 should have been more careful about the word reinterview.

13 **COMMISSIONER MacDONALD:** Well, just ---

14 **MS. SANDRA McCULLOCH:** It's that her -- that her evidence
15 needs to be re-examined by the Commission. That we ---

16 **COMMISSIONER MacDONALD:** Exactly.

17 **MS. SANDRA McCULLOCH:** --- we can't simply, you know, rest
18 on the statements that she's given to the RCMP ---

19 **COMMISSIONER MacDONALD:** Right.

20 **MS. SANDRA McCULLOCH:** --- that that information needs to be
21 examined more fully by the Commission.

22 **COMMISSIONER MacDONALD:** And that's very helpful. So
23 would you agree with me that our power to subpoena is just that, a power to subpoena?

24 **MS. SANDRA McCULLOCH:** It is.

25 **COMMISSIONER MacDONALD:** And we don't have the right to
26 force her to meet with us; do you agree with me?

27 **MS. SANDRA McCULLOCH:** I understand.

28 **COMMISSIONER MacDONALD:** And you understand her counsel

1 has indicated that because she's in jeopardy, she refuses to meet with us?

2 **MS. SANDRA McCULLOCH:** Yes.

3 **COMMISSIONER MacDONALD:** So how do you propose we
4 interview her then?

5 **MS. SANDRA McCULLOCH:** Well, again, I -- you've indicated that
6 you have the power of subpoena. I appreciate that it may be opposed by Ms. Banfield's
7 counsel were the Commission to proceed in that light, to subpoena Ms. Banfield to give
8 evidence. It may be opposed, and that's something that the Commission will have to
9 deal with, but it's our -- our submission that the -- that the Commission should take
10 whatever steps are reasonable to make sure that it hears from Ms. Banfield and fills out
11 her account of what happened in Portapique and what she observed of what happened
12 in Portapique, and that not be -- not be overlooked as -- as the proceeding moves
13 forward.

14 **COMMISSIONER MacDONALD:** Sure. I understand that. And
15 you're saying we should take whatever steps are available. The only step that I'm
16 aware of now that's available is to subpoena her, not to reinterview her because we are
17 told we don't have the power to compel her to our office and speak to us. We have the
18 power to subpoena her, and my question is not, at this time, about the suggestion that
19 we subpoena her. My question is about your comment that we should have interviewed
20 her. And I just need your help in understanding how we could have done that.

21 **MS. SANDRA McCULLOCH:** Right. And I -- I guess I -- again, I
22 apologize. I shouldn't have been careless with my words. I -- I -- you know, it -- we
23 weren't aware until a very short time ago that the Commission had even attempted to --
24 to interview Ms. Banfield. But regardless, absolutely, we understand that, you know,
25 short of exercising the ability to subpoena her, that's the only way that you can compel
26 her, and we -- I -- I guess what I'm trying to say is that we're encouraging you to -- to do
27 that, to not shy away from doing that ---

28 **COMMISSIONER MacDONALD:** Sure.

1 **MS. SANDRA McCULLOCH:** --- and -- and ensure that Ms.
2 Banfield's evidence comes before the Commission in a tested format.

3 **COMMISSIONER MacDONALD:** Right. Thank you. And do you
4 have any submissions as to, as we understand it, her criminal matter is coming forward,
5 do you have any, you know -- under the heading of consistency, we should treat her like
6 every other witness. Every other witness who we would subpoena, we would try to
7 interview. So can you help me in terms of should we just subpoena her right away
8 without having a chance to interview her before her criminal matter, or should we wait
9 until her criminal matter is up and then try to meet with her, and then, if appropriate,
10 subpoena her? What would your submission be there?

11 **MS. SANDRA McCULLOCH:** Sure, well, I mean, ultimately, that's
12 a decision for the Commission to make is, you know, when and how Ms. Banfield's
13 evidence comes before it. You know, I -- I think it's fair to say that, you know, if there's
14 any concern that subpoenaing her now would somehow fetter the Commission's ability
15 to hear from her, then that's -- that's a judgment call that, you know, the Commission
16 needs to balance. Our concern first and foremost and primarily is that the Commission
17 hear from her in a -- in a tested format, that her evidence be received, and that the --
18 that which is lacking in her narrative thus far be fully explored by the Commission, so
19 that we have a full understanding of what happened in Portapique. You know, with the -
20 - I think beyond that is in terms of when and exactly how that happens. I understand
21 that perhaps some strategic decisions may have to be made, but it's -- you know, I
22 guess at the end of the day, it's most important and our priority that the Commission
23 understands that our clients see this as a non-starter, that the Commission has to hear
24 from Ms. Banfield in a sworn format.

25 **COMMISSIONER MacDONALD:** Thank you. That's helpful.

26 **MS. SANDRA McCULLOCH:** And thank you for your time,
27 Commissioners. Those are my submissions.

28 **COMMISSIONER MacDONALD:** Thank you, Ms. McCulloch.

1 **--- SUBMISSIONS BY MR. JOSHUA BRYSON:**

2 **MR. JOSHUA BRYSON:** Thank you, Commissioners, for the
3 opportunity to address you.

4 I represent Peter and Joy Bond. They resided at 46 Cobequid
5 Court, and they were killed the evening of April 18th.

6 In regards to Ms. Banfield, Ms. Banfield is the first survivor of this
7 tragedy. She had prolonged contact with the perpetrator, we know, on April 18th, April
8 19th -- sorry, April 18th and April 19th.

9 Her evidence can inform the timeline. The timeline's a big issue,
10 specifically for the Bonds. Up until roughly, I'm going to estimate, a month ago, it was
11 hypothesized that the Bonds were actually killed after Mr. Ellison after 10:39. That has
12 since changed. The theory is now that they were actually killed before Mr. Ellison. The
13 timeline is in a state of flux.

14 In regards to Ms. Banfield, we know that Ms. Banfield fled into the
15 woods, where she remained overnight. Her evidence can likely offer assistance in
16 understanding the timeline, perhaps, on what she observed, what she heard. We also
17 now have the benefit of roughly, I'm going to estimate, a half a million pages of
18 disclosure that is available to us to ask questions of Ms. Banfield in regards to the
19 timeline, and that will assist the Commission's work in understanding the causes, the
20 circumstances of this mass casualty.

21 During the time Ms. Banfield remained in the woods, there were 13
22 people in Portapique that were killed in various areas, so what did she hear, what did
23 she see?

24 I am aware of the fact that she did give prior statements to police.
25 She participated in a police re-enactment.

26 At that time, certainly there wasn't a half a million pages of
27 disclosure that was available to ask the most pertinent questions, the most relevant
28 questions using maps, other guides, tools to assist in that examination. We now have

1 that, and we do not have any sworn evidence yet from Ms. Banfield.

2 I believe the Commission's work would benefit from hearing from
3 this first survivor of this tragedy.

4 I'm going to try not to be repetitive. Ms. McCulloch has identified a
5 lot of the issues that we share.

6 In addition, there is some evidence of Ms. Banfield travelling with
7 the perpetrator the day before and covering a geographic location, in part, that has
8 some relevance to the work of this Commission in terms of, ultimately, some of the
9 route that was travelled by the perpetrator the following day.

10 That's not to suggest that Ms. Banfield had, obviously, any insight
11 or knowledge of what was going to take place, but the questions are, what was the
12 perpetrator's familiarity with the route, and this can help, again, inform the timeline for
13 the 18th and 19th.

14 In identifying the gaps and errors, it's also important that we also --
15 we supplement the evidence we do know. Again, it's very important, I believe, for the
16 residents of Portapique to hear from Ms. Banfield to, again, help inform the Commission
17 as to what she, in fact, did hear and see with, again, all the aids and tools we have
18 available to us. And that's essentially the gap that we have for my submissions.

19 **COMMISSIONER MacDONALD:** Thank you so much.

20 **MR. JOSHUA BRYSON:** Thank you.

21 **REGISTRAR DARLENE SUTHERLAND:** Ms. Hill, would you mind
22 introducing counsel as they come up so -- for the benefit of the public?

23 **MS. EMILY HILL:** Thank you, yes.

24 **REGISTRAR DARLENE SUTHERLAND:** Thank you.

25 **MS. EMILY HILL:** Thank you, Mr. Bryson.

26 Next we'll be hearing from Ms. Hupman.

27 **--- SUBMISSIONS BY MS. LINDA HUPMAN:**

28 **MS. LINDA HUPMAN:** Good morning, Commissioners, and thank

1 you for the opportunity to speak to you this morning on our desire on behalf of our
2 clients, which include the Oliver, Tuck families and the family of Lillian Campbell, for
3 Lisa Banfield to be called before the Commission to give evidence of -- to better expand
4 upon and supplement the information that's currently available through the initial
5 statements taken by police.

6 We feel that she is at the very core of the fact-finding mandate of
7 the Commission in terms of her relationship with the perpetrator, her involvement with
8 him that day and her experiences that night and early in the morning of the 19th. The
9 information from her to date is, in our view, not 100 percent complete. There's certainly
10 areas where there needs to be further, exploration, further delving down into her
11 experience, her movements that night, what happened to her, where she was during the
12 night.

13 And I don't -- I hope I'm not totally repeating what has already been
14 said. It's -- I certainly want to keep things efficient and moving forward, but it is our
15 belief and our submission to you, Commissioners, that this proceeding really can do --
16 can have no final report without hearing directly from Ms. Banfield. Whether it has to be
17 delayed because of her current proceedings, that is out of our hands.

18 I would submit that there are, obviously, the tool of the subpoena.
19 There may be, along with subpoenaing Ms. Banfield, perhaps a limitation on the
20 questions that can be put to her in excluding anything to do with her -- with the -- as I
21 understand, her charges that she is facing. I believe the subject matter of those can
22 well be left aside to get at the details that the Commissioners really need to focus on
23 and which, as counsel for families and other Participants, that we would like explored.

24 So I would encourage the Commission to consider those --
25 whatever options are available to you to do that.

26 I know that -- and I don't -- I'm not prepared here this morning to
27 really cite chapter and verse, but certainly this would not be the first inquiry, public
28 inquiry, held where potential witnesses were also, at the same time, facing criminal

1 charges and were in jeopardy, and I believe there were answers to that and that
2 testimony was still available to those inquiries from those witnesses. So I would
3 encourage the Commissioners to -- and their Commission Counsel to pursue all of
4 those avenues in the approach to having Ms. Banfield come before the Commission.

5 And I think anything else I would add would already have been
6 covered by my two co-counsel, and I certainly endorse their rationale and their reasons
7 for seeking Ms. Banfield.

8 Thank you, Commissioners.

9 **COMMISSIONER MacDONALD:** Thank you so much, Ms.
10 Hupman.

11 **MS. EMILY HILL:** Thank you.

12 Next, Ms. Miller will address you, Commissioners.

13 **--- SUBMISSIONS BY MS. TARA MILLER:**

14 **MS. TARA MILLER:** Good morning, Commissioners.

15 My name is Tara Miller and with my colleague, Alex Digout, we
16 represent family members of Kristen Beaton and Aaron Tuck.

17 We appreciate the ongoing collaboration with the Commission and
18 Commission MacDonald's initiation for us to all work together to make the factual
19 foundation even better as we go forward.

20 We also appreciate the Commission and Mr. Burrill's
21 acknowledgement that there are still gaps and, of course, unanswered questions. And
22 we are committed to working with the Commission to ensure that these factual gaps are
23 closed and questions answered as best as can be.

24 The work to close these gaps, Commissioners, and answer
25 questions is very meaningful for the families. While it will never heal the gaps in their
26 hearts and lives left by the murders of their loved ones, it is critical for them that they
27 have as much information as possible to understand what happened on April 18th and
28 19th, and the causes, context, and circumstances which led to the mass casualty, which

1 fits exactly within the Commissioners' mandate.

2 I share my friend's comments previously and I won't retread that
3 ground. However, I'm more focused on Lisa Banfield, Angel Patterson, and Shawn
4 Conlogue and how those three witnesses intercept to help provide, and can help
5 provide, specific detail about a period of time which is really quite lacking right now.
6 And that period of time, Commissioners, is of course the period of time on April 18th
7 leading up to the time when Ms. Banfield and the perpetrator are in the warehouse. So
8 I'll take you through our analysis of that.

9 Other than Ms. Banfield, of course, and certainly for those listening,
10 Angel Patterson and Shawn Conlogue were very good friends of both Ms. Banfield and
11 the perpetrator. We understand that from the statements that have been provided.
12 They were also, along with Ms. Banfield, the last two individuals known to interact with
13 the perpetrator before he embarked on the rampage.

14 They have a very unique perspective, I would suggest, given their
15 close friendship. They described Ms. Banfield and the perpetrator as family. They had
16 travelled from the U.S. to attend the perpetrator's surprise birthday party in July of 2018.
17 Ms. Banfield and the perpetrator had actually gone to the U.S. to take care of Mr.
18 Conlogue when he was recovering from surgery, closing their workplace. They stayed
19 with him whenever they were in the U.S., and in early March of the year this tragedy
20 happened, they were actually scheduled to come visit the perpetrator and Ms. Banfield
21 in Nova Scotia, but that didn't happen because of COVID.

22 So as these last three people very close to the perpetrator and
23 those who had contact with him through the 18th, that sets the background for where I'll
24 go next.

25 I'll start with Ms. Banfield. While she has definitely provided various
26 statements to the RCMP, there are gaps, and we believe errors, in the timeline and
27 detail about what Ms. Banfield and the perpetrator did during the day on April 18th. And
28 that's not included in the Foundational Document "Portapique: April 18-19". This

1 includes information about how they spent the day, where they went, and what they did.
2 My friends have alluded to that, but I'll be a bit more specific in my submissions.

3 I also believe that this dovetails with submissions we have seen, at
4 least in writing, from the Coalition from Women's Shelters about there's nothing in these
5 Foundational Documents to help make sense of whether the victims were specifically
6 targeted by the perpetrator. And I think that does play into the evidence around what
7 the perpetrator did during the day on the 18th. And like Mr. Bryson, I want to make it
8 clear there's no evidence to suggest that Ms. Banfield had any awareness of that, but
9 she was with him and she's the only one who can give us that clear detail about what
10 they did, where they went, what was said.

11 And we believe the gaps in this timeline will be key to ensuring the
12 Commissioners have a fulsome understanding of the events that led up to the carnage
13 that then was unleashed later that night.

14 There are also what could be perceived as inconsistencies from
15 these three witnesses in terms of what happened that day, which do need to be
16 addressed. And I will go through what those are as well.

17 Ms. Banfield's statements provide us with the following information
18 if you look at them cumulatively. I'm going to go at a very high level here.

19 She had breakfast. She went for an hour walk. They decided to go
20 for a drive to celebrate their anniversary. She packed a lunch and they went on a drive
21 where they visited a penitentiary, or drove by a penitentiary. They went to the Debert
22 Bunker, which is, of course, where we know the perpetrator overnighted later that night
23 and into the early morning of the 19th. They travelled to the bunker by going by way of
24 Great Village and Plains Road, which is what we understand was the location that was
25 subsequently travelled by the perpetrator. They visited a dentist for an extended
26 period of time in Amherst. And then the statements talk about coming home, washing
27 the Jeep, and then going to the warehouse for drinks and to call friends, and those
28 friends being Angel Patterson and Sean Conlogue.

1 Buried in a statement, and in response to a specific question about,
2 and this would be in COMM04070 at line 17291734, there is a question asked to Ms.
3 Banfield about:

4 "What do you know about Gina Goulet?" (As read)

5 And it is at that point that Ms. Banfield offers that during the day,
6 they actually drove by her cottage and the perpetrator identified her cottage. But that is
7 the type of detail that seems to come out just in response to a specific question that
8 really didn't get covered and never gets covered in any other detail that she provides in
9 the detail of the day.

10 Her most extensive statement is the April 18th statement, it's the
11 124 pages long. And this is the statement I just referenced, where she's asked about:

12 "What do you know about Gina Goulet?" (As read)

13 At page 57.

14 And the detail about the day before the perpetrator and Ms.
15 Banfield are in the warehouse is largely found at page 6 and 7. There isn't a lot of
16 detail, is my point.

17 The investigator returns to the subject of what happened earlier in
18 the day at page 85, line 2639 to page 86. But that focuses solely on the visit to the
19 bunker and the path through Great Village to Plains Road. Nothing else.

20 But we know from Ms. Patterson's statement and Mr. Conlogue's
21 statement that there were other events that day.

22 I'll start with Ms. Patterson. Her statement, COMM12711, given on
23 May 20th, 2020, she talks about having a number of contacts, certainly with Ms.
24 Banfield, during April 18th. She indicates that at around 2:33 p.m. her time, which I
25 understand to be 3:30/4:00 o'clock Nova Scotia time, her fiancé, Mr. Conlogue, which is
26 a friend of hers, and herself, they were all at Mr. Conlogue's house, and that they had
27 some sort of a call, whether it was a Facetime call or a call, with the perpetrator and Ms.
28 Banfield, and they were advised that they were -- at that point they were in a vehicle

1 and they were told that they had been out all day cutting brush. And the brush, as I
2 understand it when I read it, was in relation to a trail. And Ms. Patterson had some
3 familiarity with this trail, having been at the cottage and the warehouse for Mr. -- the
4 perpetrator's birthday.

5 So this trail and the work to clear this trail was never mentioned in
6 Ms. Banfield's statement. And it begs the question of what trail were they clearing?
7 Was this the trail in respect to 287 -- Lot 287 that Mr. Burrill showed us in the earlier
8 Foundational Document presentation? Again, this may just be something that was
9 never really drilled down in with Ms. Banfield, but it is a clear piece of information that I
10 suggest has relevance and is important in terms of the Commission's wholesome fact
11 finding.

12 Also in this earlier call, Ms. Patterson says that she and Ms.
13 Banfield talked about the commitment ceremony, that they had a conversation at that
14 point, where Ms. Patterson shared some of her thoughts about the validity of that and
15 why would you do that.

16 They indicate it was a relatively short conversation and that the
17 perpetrator and Ms. Banfield were going to call them back after they'd got cleaned up,
18 because they had been cleaning and clearing this trail.

19 Then later in her statement, Ms. Patterson says that she's back and
20 forth with calls with Ms. Banfield, not quite sure of the detail of that. And again, this
21 speaks to my collective submissions about Ms. Banfield, Ms. Patterson, and Mr.
22 Conlogue, all three of them, I believe, will be able to help the Commission by clearing
23 up some of these gaps and inconsistencies and filling in this timeline, which is deficient
24 up until the warehouse events.

25 Ms. Patterson gives information that she hangs up finally around
26 7:41 p.m., which is 8:41 Nova Scotia time, but prior to that call and during that call, the
27 perpetrator and Ms. Banfield are in the warehouse and she is on this call alone, but with
28 her niece and her niece's husband, and it is that point where they are shown this mock

1 replica police car. She doesn't have a lot of detail about that, but she also -- this is a --
2 the conversation she has when she says some comments about not believing in
3 marriage, which we heard in the Foundational Documents is something that
4 Ms. Banfield gets upset about, and that's the end of that call.

5 Moving now to Mr. Conlogue, we have a statement of his, and I
6 understand it has not yet been entered into evidence yet but it will be at a later date, but
7 I will refer to it, the COMM number is 10421. And the only reason it hasn't been entered
8 into evidence is just we haven't arrived at a point in the Foundational Documents where
9 it would be. But Mr. Conlogue, at line 949, verifies that earlier in the day there was a
10 call at his home with Ms. Patterson and Ms. Banfield. He says he was working in the
11 yard, he didn't have the time, but then they all left, Ms. Patterson and her fiancé left his
12 home. So this, of course, the call that Ms. Patterson, I assume, references where
13 they're talk to the perpetrator and Ms. Banfield about clearing the trail. No mention
14 about having been out for a drive.

15 The next reference for Mr. Conlogue is at -- it's a -- it's a timestamp
16 in this document, so it's at 11:53:58 in -- at the document number 10417. He says that
17 he talked to both the perpetrator and Ms. Banfield on FaceTime, just he alone. The
18 phone appeared to have been propped up in the warehouse on the bar. He says
19 nothing about seeing the mock replica police car, but it's not clear if he was asked about
20 that, and he says that they talked at about 5:30 his time, which would be 6:30 Nova
21 Scotia time, and they talked for about 15 to 20 minutes. He didn't see anything out of
22 the ordinary during that conversation.

23 So I've taken some time, Commissioners, to go through this in this
24 detail because these are the gaps and inconsistencies in a timeline that really doesn't
25 exist in any robust way, which I believe the Commission and our clients believe the
26 Commission can make a material difference in filling in and clearing up any
27 inconsistencies and gaps by calling each of these three witnesses to give evidence,
28 specifically with respect to that timeline. Now, I focussed, as I said, my comments on

1 that period of time, again, endorsing what my friends have said about Ms. Banfield
2 globally as the -- as the person who had the most prolonged contact with the
3 perpetrator.

4 And I also believe that having this robust timeline will be of value to
5 experts that the Commission is also calling. We know that you're intending to have a
6 report from Alexander Simpson, Predicting the Risk of Committing Mass Casualty
7 Events from Psychiatric Evidence, and I would suggest and submit that having a
8 complete understanding of what they did that day, where they travelled, who they talked
9 to will be material in terms of this witness, that expert witness, in making sure that he
10 has the most foundational robust platform in which to make his expert report meaningful
11 for the inquiry.

12 Those are my submissions, Commissioners, unless you have any
13 questions for me.

14 **COMMISSIONER MacDONALD:** Just one question, and it ---

15 **MS. TARA MILLER:** Yeah.

16 **COMMISSIONER MacDONALD:** --- and it's a practical one, but
17 would very much appreciate your advice on it ---

18 **MS. TARA MILLER:** Yeah.

19 **COMMISSIONER MacDONALD:** --- or your submissions on.

20 As you know, the -- Ms. Patterson and Mr. Conlogue are in the
21 United States ---

22 **MS. TARA MILLER:** Yeah.

23 **COMMISSIONER MacDONALD:** --- and there is a challenge with
24 us subpoenaing outside of the country. Not saying it's impossible ---

25 **MS. TARA MILLER:** Yeah.

26 **COMMISSIONER MacDONALD:** --- but it's a potential challenge.

27 **MS. TARA MILLER:** Yeah.

28 **COMMISSIONER MacDONALD:** If we were to -- obviously, as

1 discussed earlier, we can't command Ms. Banfield to come to an interview, but if we
2 were able to, you know, get further information, the further information you're
3 suggesting, would it be wise to start there and then see where that takes us and then
4 assess whether or not we would need the two witnesses from the United States, or is it
5 your submission that we need them anyway?

6 **MS. TARA MILLER:** Without knowing what they may say in terms
7 of the Commission contacting them for, as I understand, you're suggesting an interview,
8 it's difficult to give you a response to that, Commissioner MacDonald. What I would say
9 is that we know there are inconsistencies in the information we have, which suggests to
10 me that being able to test their evidence under oath versus that of what we understand
11 of Ms. Banfield's would be critical for the families and Canadians to really have faith in
12 understanding that what happened that day is accurate.

13 Now, I appreciate the restriction with subpoena; however, one of
14 the beautiful things about a Commission is that we can be creative. We're not the
15 traditional court. And certainly in *Public Inquiries in Canada: Law and Practice*, Ronda
16 Bessner and Susan Lightstone, there's a chapter authored by the Honourable Denise
17 Bellamy, and she led the inquiries in the Toronto Computer Leasing and Toronto
18 External Contract inquiries, and she actually talks about compelling the attendance of
19 witness and the challenges with subpoenas. And in that case, she was not able to
20 subpoenas outside of Ontario, but they had some creative ways they went about trying
21 to get around that.

22 And you know, there has been no indication that I can see that
23 Mr. Patterson and Mr. Conlogue haven't fully cooperated when they've been contacted
24 before. So you know, I think subpoena is a tool but it is not the only tool, thankfully, that
25 the Commission has when working with bringing witnesses, and certainly in this age of
26 virtual technology there ways I think that, creative ways, the Commission could work
27 with both of those individuals to ensure that Nova Scotians and Canadians hear their
28 sworn evidence about what they recall that day and to build on that timeline. If that

1 helps.

2 **COMMISSIONER MacDONALD:** Yes, thank you. Thank you so
3 much.

4 **MS. TARA MILLER:** Thank you.

5 **MS. EMILY HILL:** Commissioners, there are two counsel who
6 would like to respond the request that you've heard so far. I'm in your hands whether it
7 would be wise to take a break now or to move to hear from those two individuals.

8 **COMMISSIONER MacDONALD:** Let's take a break? I think we
9 should carry on if that's okay.

10 **MS. EMILY HILL:** Certainly. So I believe the next witness, sorry,
11 the next counsel who will be addressing you is Ms. Merrigan, who will be attending by
12 Zoom.

13 **MS. ANASTACIA MERRIGAN:** Yes, thank you.

14 **MS. EMILY HILL:** Yeah, thank you.

15 **COMMISSIONER MacDONALD:** Good morning.

16 **--- SUBMISSIONS BY MS. ANASTACIA MERRIGAN:**

17 **MS. ANASTACIA MERRIGAN:** Good morning. Thank you for this
18 opportunity. I'm speaking on behalf of the Coalition for the Participants, the Transition
19 Houses Association of Nova Scotia, Be the Peace Institute, and Women's Shelters
20 Canada.

21 The Coalition has asked me to represent them today to reiterate
22 their position that at this time it is neither appropriate trauma informed to require
23 Ms. Banfield to be called as a witness, as is being suggested, for the following reasons:

24 First, she has given several interviews, she's given significant
25 evidence. Second, and I believe that her Counsel will speak to this, she is facing
26 criminal charges and has jeopardy issues associated. But more importantly to our
27 Coalition, requiring Ms. Banfield to relive this trauma and to face the criticism and the
28 sort of detailed testing of evidence, as suggested by Counsel this morning, causes other

1 victims of intimate partner and gender-based violence to fear the reporting process. We
2 already have some suggestions in the evidence, certainly in the disclosed evidence to
3 date, that there was this fear on Ms. Banfield's part of reporting what was going on, and
4 we think that subjecting Ms. Banfield at this point to that so early in these proceedings
5 will send a message to victims of intimate partner violence that they could be subject to
6 the same thing.

7 It's the Coalition's submissions that there are several gaps, that
8 there is a lack of evidence on the relationships in Portapique, that there is a lack of
9 evidence about many things that span, not just April 18th, but for much prior to that
10 about the relationships between the perpetrator and his partners, the perpetrator and
11 the community, and violence. However, we've been told repeatedly that Phase 1, this
12 phase, is about what happened April 18th to 19th, and so in terms of the evidence that
13 Ms. Banfield can provide, it's our submission that there are no huge gaps in that
14 evidence and that her -- the remaining evidence she would give would be more
15 appropriate for Phase 2.

16 The Coalition has also asked me to express some concerns about
17 the treatment in the Foundational Documents as they were presented on Monday by
18 Mr. Burrill, specifically about the experience of violence by Lisa Banfield. And the
19 issues are -- with that are two-fold:

20 First, when discussing the documents and getting to the point of
21 123 Orchard Beach Drive, Mr. Burrill specifically states that, "This is where the mayhem
22 starts.", and that, "This is where the violence really commenced." And in terms of Lisa
23 Banfield's experience, an experience of intimate partner violence; this is a problematic
24 and troubling statement coming from Commission Counsel, in terms of the treatment of
25 partner violence and whether this is part of the entire experience of violence for
26 predominantly women but those experiencing gender and race violence.

27 We also, later in this presentation, Commission Counsel,
28 distinguishing piece of Lisa Banfield's evidence as being evidence that's just provided

1 by Lisa says, and those sorts of statements aren't made by any other lay -- about the
2 evidence of any other lay witnesses.

3 So these remarks distinguish the violence that Ms. Banfield has
4 experienced, and by extension, the violence experienced by any victim of intimate
5 partner violence because it suggests that that violence isn't real and it suggests that the
6 victim is not an innocent party.

7 And those statements, I think, cause us concern about further
8 inquiries into the evidence that has already been given by Lisa Banfield. We support
9 her counsel's submissions regarding her not being compelled to give further evidence at
10 this point in the Commission.

11 Those would be my submissions on the coalition on this witness,
12 barring further questions from the Commission.

13 **COMMISSIONER MacDONALD:** Thank you very much.

14 **MS. ANASTACIA MERRIGAN:** Thank you.

15 **COMMISSIONER MacDONALD:** No questions. Thank you.

16 **MS. EMILY HILL:** The final counsel who we'll hear from with
17 regard to the evidence of Ms. Banfield, or the proposed evidence of Ms. Banfield is Mr.
18 Zeeh, counsel for Ms. Banfield, who's also attending by Zoom.

19 **MR. CRAIG ZEEH:** Thank you, and good morning, Members of the
20 Commission.

21 **--- SUBMISSIONS BY MR. CRAIG ZEEH:**

22 **MR. CRAIG ZEEH:** Myself and Mr. Lockyer, we represent Ms.
23 Banfield in her interest in this inquiry.

24 Ms. Banfield has provided four lengthy recorded police statements
25 that are before this inquiry. They have been used and inserted into the Foundational
26 Documents that we've already heard from today. Her evidence and those police
27 statements will be used in further Foundational Documents that have been at least
28 disclosed to counsel at this point.

1 We have provided written submissions regarding Ms. Banfield's
2 current legal jeopardy. For that reason, we have been steadfast in our position that that
3 she will not, at this time, open herself up to further interviews. But we say that saying
4 that if her legal jeopardy were to be gone, Ms. Banfield will cooperate fully with this
5 inquiry; will subject herself to further interviews on questions that Commission Counsel
6 may have, or other counsel may have, to get a better understanding of what the big
7 picture is.

8 But at least for today's perspective, this is not a question about the
9 relationship with the perpetrator or the background of the perpetrator; that will be dealt
10 with in forthcoming Foundational Documents and other documents, other parts of this
11 inquiry. The focus is in on the events of April 18th and 19th.

12 My friends, I've heard comments about sort of challenging Ms.
13 Banfield's evidence. It seems to me Ms. Banfield is the only witness that's going to
14 have her evidence challenged at this point.

15 Second, perceived inconsistencies. Just because different people
16 have different memories of an event, does not mean, therefore, there are
17 inconsistencies; it may just be a difference of memory. But in those four police
18 statements that this inquiry does have, and that your Commission does have, Ms.
19 Banfield did her best to outline the events from that -- those two tragic days that she
20 recalled. And the first statement being given the first day she's at the hospital; she gave
21 a statement in full detail about what happened, what had transpired, where she lived.
22 She also did a re-enactment.

23 It's my submissions that there are no factual issues that need to be
24 addressed, that need to be clarified, that Ms. Banfield, at this time, can give via sworn
25 evidence.

26 I'll once again encroach that and saying that if the Commission had
27 an inconsistency or an issue they wanted to address, we would be willing to take that in
28 writing and determine if there is a response from Ms. Banfield to those questions. We

1 are willing to do that.

2 But we -- to our written submission, once again, we continue to say
3 that Ms. Banfield, at this time, should not be called regarding the current Foundational
4 Documents that are before this Court, and that further, broader issues of the
5 relationship, the experiences in the relationship, are premature at this stage and would
6 be better addressed at a different time; at a time when Ms. Banfield's legal jeopardy
7 may be changed, and as set out in our written submissions, by that time would be
8 willing to fully cooperate with this inquiry.

9 Those are my submissions. Thank you.

10 **COMMISSIONER MacDONALD:** Thank you very much.

11 **(SHORT PAUSE)**

12 **MS. EMILY HILL:** Commissioners, this is a case where, on behalf
13 of Commission Counsel, we wanted to advise you that it's our view that the request to
14 hear Ms. Banfield is premature.

15 Some information about her was introduced this week in
16 Foundational Documents. The Commission has produced a draft Foundational
17 Document providing additional information about her background with the perpetrator,
18 as well as information about her activities and experiences on April 18th and 19th.

19 That document is based on statements that she's provided to the
20 RCMP, as well as other information that the Commission has. That draft document has
21 been shared with Participants, and we will receive their feedback later this month. We
22 will review that feedback with the aim of making the document as complete and
23 thorough as possible. And that document will be presented in public proceedings.

24 At that point, the Commission will be in a much better position to
25 decide if it wishes to hear from Ms. Banfield as a witness.

26 You also heard Mr. Zeeh's comments with regard to Ms. Banfield's
27 upcoming trial, and we've invited Ms. Banfield for an interview and she has declined
28 because of the criminal matter.

1 Other witnesses have also declined to speak with us, and we do
2 not have the power to compel someone to meet with us, only to testify.

3 While her trial does not prevent the Commission from calling her as
4 a witness in our proceedings, given the number of questions we have for her and our
5 interest in hearing from her on a number of topics, including the events of April 18th and
6 19th, we think it would make more sense to wait and reassess the situation in early April
7 when we expect her trial will be complete.

8 We know that the Commission must complete its work by
9 November 2022, and so we will monitor the situation closely.

10 Those are all the submissions with regard to Ms. Banfield. We can
11 -- again, if you have questions, we'd be happy to address them, take a break, or
12 continue to hear from counsel with regard to other witnesses.

13 **COMMISSIONER MacDONALD:** Well, thank you so much, Ms.
14 Hill. I think it's a good time for a break.

15 And thank you so much, counsel, for your helpful submissions and
16 we'll break for 15 minutes.

17 Thank you.

18 **REGISTRAR DARLENE SUTHERLAND:** Thank you.

19 The proceedings are now on break and will resume in 15 minutes.

20 --- Upon breaking at 10:52 a.m.

21 --- Upon resuming at 11:12 a.m.

22 **REGISTRAR DARLENE SUTHERLAND:** Welcome back.

23 The proceedings are again in session.

24 **COMMISSIONER MacDONALD:** Thank you.

25 Ms. Hill?

26 **MS. EMILY HILL:** Commissioner MacDonald, just before we
27 continue, just two pieces of housekeeping.

28 Ms. Miller referred to two documents, and we think it would be

1 useful to have those formally entered as exhibits.

2 **COMMISSIONER MacDONALD:** Thank you.

3 **MS. EMILY HILL:** The first is Comm 10421; it is a transcript of an
4 interview that was conducted with Sean Conlogue.

5 **REGISTRAR DARLENE SUTHERLAND:** That will be Exhibit 208.

6 **--- EXHIBIT NO. 208:**

7 COMM10421; transcript of interview of Sean
8 Conlogue

9 **COMMISSIONER MacDONALD:** Thank you.

10 **MS. EMILY HILL:** The second is Comm 10417, and that's an
11 RCMP Task Action Report that's related to that interview. I could ask that that also be
12 marked as an exhibit.

13 **MS. DARLENE SUTHERLAND:** And that'll become Exhibit 209.

14 **--- EXHIBIT NO. 209:**

15 COMM10417; RCMP Task Action Report related to
16 Sean Conlogue interview

17 **MS. EMILY HILL:** Thank you, Madam registrar.

18 And as I indicated earlier, exhibits will be available on our website,
19 although not immediately.

20 **COMMISSIONER MacDONALD:** Thank you.

21 **MS. EMILY HILL:** I wanted to, Commissioner MacDonald, provide
22 just Commission Counsel's comments with regard to the other two witnesses Ms. Miller
23 spoke about; Sean Conlogue and Angel Patterson.

24 As I -- as you advised, both of these witnesses live in the United
25 States. I can advise that Sean Conlogue was interviewed by the RCMP and by the
26 Commission, and these interviews have been disclosed to the participants. Some of the
27 information that is shared is dealt with in a Foundational Document focussed on the
28 perpetrator's firearms, which has been shared in draft form with the participants, and will

1 be eventually entered into evidence within proceedings.

2 Angel Patterson was interviewed by the RCMP. Commissioner
3 investigators have made efforts to locate her and have not been successful. As you
4 noted, the Commission does not have the power to compel witnesses outside the
5 country. If these are witnesses the Commissioners feel are important to hear from, an
6 invitation to attend voluntarily may be issued to Ms. Patterson or Mr. Conlogue, if Ms.
7 Patterson can be located. Additionally, Commission staff can look further into the issue
8 of compelling their attendance. It may be impossible, but we can certainly look further
9 into this issue if these are witnesses that the Commission feels they should -- further
10 steps should be taken with regard to.

11 **COMMISSIONER MacDONALD:** Thank you.

12 **MS. EMILY HILL:** We -- the next individuals who counsel would
13 like to make submissions with regard to are David Faulkner and Deb Thibeault. That
14 request comes from Ms. Hupman. I will just advise before Ms. Hupman begins that Ms.
15 Thibeault is represented by Patterson Law, and they have indicated that they support
16 Ms. Hupman's application.

17 **COMMISSIONER MacDONALD:** Thank you.

18 **--- SUBMISSIONS BY MS. LINDA HUPMAN:**

19 **MS. LINDA HUPMAN:** Good morning again, Commissioners.
20 Thank you, Ms. Hill.

21 Yes, I would like to make -- and they will be relatively brief
22 comments with respect to these two civilian witnesses, and I will just briefly outline our
23 reasons why we feel it is important to hear further from them. They both have provided
24 interviews, but we believe that keeping in mind the -- the mandate of the Commission,
25 which guides your work, that consideration of our proposal for these witnesses should
26 be -- should be done for the reasons I will hopefully articulate for you.

27 Mr. David Faulkner, who was interviewed by the Commission and
28 whose interview I believe has already been entered as a result of supporting documents

1 for one of the Foundation Documents, and it is found at Com-40424, was one of the few
2 people who also saw the perpetrator as he moved around Portapique on the night of
3 April 18th. Mr. Faulkner has given a statement to the MCC investigators and, as
4 indicated, it has been referenced in the Foundational Documents. Mr. Faulkner
5 describes his observations of the perpetrator at 71 Orchard Beach Drive, and the
6 interaction between the perpetrator and Mr. Andrew MacDonald's vehicle at that time,
7 and as he followed the -- Mr. MacDonald's vehicle and the perpetrator up Orchard
8 Beach Road and then Mr. Faulkner, as Mr. MacDonald did, exited towards Portapique
9 Beach Road. Mr. Faulkner had observations of the vehicle of the perpetrator, and when
10 -- and it is our submission that it's important to call Mr. Faulkner for further exploration of
11 his -- of his -- of what he viewed and his interaction with the officer that he met at --
12 ahead of Portapique Beach Road or -- or just in from the -- from the intersection.

13 At that time, as -- as Mr. Faulkner was seeking to -- to flee the area
14 with his family, we do know from both Cst. Beselt's statements and Mr. Faulkner's that
15 they had interaction after the interaction of the Constable with Mr. MacDonald and his --
16 and his wife. We think that there -- there's a need to further explore the -- that
17 interaction between Mr. Faulkner and the -- and the police member at the scene. There
18 is, we would suggest, some inconsistencies in Mr. -- in Cst. Beselt's explanation of what
19 he spoke to Mr. Faulkner about. Mr. Faulkner had a bit more detail in terms of the
20 questions he was asked by Cst. Beselt.

21 We think it's important to -- to drill down more into whether --
22 exactly what Mr. Faulkner conveyed or -- and/or what questions Cst. Beselt did or didn't
23 ask Mr. Faulkner about, about his presence in the community and what he may or may
24 not have seen. We think that this is a gap regarding the interaction of -- of the police
25 member and Mr. Faulkner, and it's an opportunity, we think, to further explore and to
26 supplement the information that currently exists. And it goes, we would suggest, to the
27 Commissioner's mandate in -- in dealing with the response of the -- of the police and
28 their -- and their operational activities and so on. And we think that this area is still

1 somewhat vague and unclear, and that, hopefully, throughout the proceedings through
2 testimony from -- from Mr. Faulkner and -- and perhaps further down the road from --
3 from Cst. Beselt as well, we can get a clearer picture of the factual details of what was
4 shared at that particular point in time. So we think that this is an important witness and
5 an opportunity to further supplement the information and the factual basis or the factual
6 underpinnings of that exchange, and that it is an important piece for the Commissioners
7 to pursue.

8 So those would be my submissions with respect to Mr. Faulkner if
9 you have any questions in -- in that regard.

10 **COMMISSIONER MacDONALD:** Thank you so much, Ms.
11 Hupman.

12 **MS. LINDA HUPMAN:** The next witness that we -- I would like to
13 speak to is Debra Thibeault. Ms. Thibeault has provided a statement through an
14 interview with the Commission investigators, which has just recently been provided, and
15 but is not an exhibit. Her statement is in document Com-51438, and I would ask
16 Madam Registrar if we could have that marked as an exhibit, please.

17 **REGISTRAR DARLENE SUTHERLAND:** That'll become Exhibit
18 210.

19 **COMMISSIONER MacDONALD:** Thank you.

20 **MS. LINDA HUPMAN:** Thank you.

21 **--- EXHIBIT 210:**

22 Statement of Debra Thibeault

23 **MS. LINDA HUPMAN:** Our interest in having Ms. Thibeault called
24 is -- relates to some inconsistencies or differing information that comes from her through
25 her statement in respect of the access point from the east end of Cobequid Court to the
26 Blueberry Field Road. Ms. Thibeault and her husband resided in the house right at that
27 location. She provides some significant information in her statement about their
28 activities and their role in the barrier -- post and barrier that existed at that location for

1 the community and on behalf of the blueberry field owner, as I understand it. We
2 believe that her testimony or her evidence in her -- in her statement is somewhat
3 inconsistent and does not completely jive with information provided to the Commission
4 by S/Sgt. Al Carroll in his interview relating -- which is at Com-19386. That information
5 from S/Sgt. Carroll refers to attending at that location on the morning of April 19th in -- as
6 he entered in Portapique and provided some relief and supervision on officers
7 maintaining crime scenes and so on. This -- there's a difference in terms of the
8 description of the condition of this barrier, and we feel that this -- that there needs to be
9 more clarity and more examination of the evidence of each of those people who made
10 observations of that, and so that the Commission can explore and have a better
11 understanding of -- of what that situation was at that time.

12 Ms. Thibeault and her -- and her husband were not present. They
13 had left the community on the day of the 18th for -- for personal reasons. Obviously,
14 were not able to return right away, but my understanding is it was probably on the
15 following Monday, and she made observations both before leaving in terms of that
16 barrier and when she returned. And as I say, it appears to differ from the other
17 information that is in the other -- from the other witness in the other documents. So, we
18 suggest that this is both a gap and inconsistencies or differences of evidence that
19 should be further explored due to the importance of the theory of how the perpetrator
20 left the community and made his way and he eluded police that night.

21 So those are our points with respect to the -- the need to call Ms.
22 Thibeault.

23 **COMMISSIONER MacDONALD:** Thank you so much.

24 **COMMISSIONER STANTON:** Just going back to your
25 submissions with respect to Mr. Faulkner, could you be a bit more specific for me with
26 respect to how the inconsistencies that you referenced are material to the foundational -
27 - the factual foundation for us?

28 **MS. LINDA HUPMAN:** I think it's important to determine with

1 clarity exactly what each -- what transpired between them so that it's clear what
2 information Constable Beselt had in terms of moving forward in his decisions that night
3 from that point on.

4 **COMMISSIONER STANTON:** And sorry, how would Mr. Faulkner
5 be able to assist?

6 **MS. LINDA HUPMAN:** Well, I think it's important to determine and
7 it's not clear to me from reading each of the recounts of these individuals what the full --
8 what the full exchange between them was, whether or not Mr. Faulkner was perhaps
9 asked questions that one might have thought he would have been asked about leaving
10 this crime scene, this incident, and I think it's important to know exactly what was
11 canvassed with him. And I'm not sure -- in our opinion, that's not clear from either of the
12 explanations to date.

13 **COMMISSIONER STANTON:** Thank you.

14 **COMMISSIONER MacDONALD:** Thank you so much.

15 **MS. LINDA HUPMAN:** Thank you.

16 **MS. EMILY HILL:** Commissioners, just to provide a bit of
17 information with regard to these two individuals, Mr. Faulkner, as Ms. Hupman
18 indicated, was interviewed by the Mass Casualty Commission, and that interview is
19 already an exhibit in these proceedings.

20 I understand that efforts to follow up with him with regard to some
21 new questions have, as of yet, been unsuccessful.

22 With regard to Ms. Thibeault, her -- oh, I should indicate Mr.
23 Faulkner's interview is referenced in the Portapique April 18th and 19th Foundational
24 Document, primarily at paragraphs 121 to 133.

25 Ms. Thibeault also conducted an interview with the Mass Casualty
26 Commission. It was also relied on in the Portapique April 18th-19th Foundational
27 Document, primarily at paragraphs 51 and 53, although at the time that the document
28 went out, it didn't -- the transcript hadn't been completed, although that has occurred

1 now.

2 The interview that Ms. Hupman referred to with Staff Sergeant All
3 Carroll is already an exhibit in these proceedings.

4 The next witnesses counsel would like to speak with you about are
5 Brenda Forbes and Peter Griffin. It is Ms. Merrigan from the coalition made up of the
6 Transition House Association of Nova Scotia, Women's Shelter Canada and Be the
7 Peace Institute who would like to address you on these points, and she will be doing so
8 by Zoom.

9 **COMMISSIONER MacDONALD:** Thank you, Ms. Hill.

10 **--- SUBMISSIONS BY MS. ANASTACIA MERRIGAN:**

11 **MS. ANASTACIA MERRIGAN:** Thank you, Commissioners, for
12 hearing me again.

13 The Coalition has proposed two additional witnesses to be heard
14 from in relation to the Portapique documents. It's the Coalition's position that the
15 existing Foundational Document doesn't contain enough evidence regarding the context
16 of whether individual victims were specifically targeted by the perpetrator or whether
17 they died as a part of a random encounter.

18 We're asking Commission Counsel to address this gap in the
19 information surrounding the nature of the perpetrator's relationship with each victim, if
20 any, the information about the perpetrator's reputation in the Portapique community,
21 specifically relating to the propensity for violence, both gender-based and otherwise,
22 and then information known to the Portapique community about the perpetrator's
23 ownership of police vehicles and firearms.

24 It's the Coalition's position that Brenda Forbes is in a good position
25 to give more information than she has based on her interview. And I apologize. I'm not
26 sure if this forms part of the evidence. It's already been submitted at document number
27 3883. That's the interview with Brenda Forbes and her partner, I believe.

28 And so the Coalition would suggest that that is the start to some

1 information, but that that information requires more development, whether that's by
2 interviewing Ms. Forbes again and, in our submission -- written submissions, we've
3 suggested that perhaps if there is a fear for safety on Ms. Forbes' behalf that she could
4 indicate that in her interview, that some accommodations may be able to be made
5 pursuant to the rules set out by the Commission.

6 If it's -- if it pleases the Commission, the submissions for Peter
7 Griffin are quite similar except for we don't have an interview with Mr. Griffin.

8 Mr. Griffin does have some brief interactions with police in our
9 interviews that indicate that he would very likely have information about the
10 perpetrator's relationships in the Portapique area, his access to police vehicles
11 specifically, and his access, potentially, to firearms as well.

12 The documents do also note that Mr. Griffin felt he was targeted by
13 the perpetrator, felt that the perpetrator may have come to his door.

14 So given that he has not cooperated, it's the Coalition's position
15 that subpoena may be the only way to get this very important information from Mr.
16 Griffin and that he and Ms. Forbes would be appropriate witnesses to call.

17 If subpoena is the only way to do that, certainly open to a trauma-
18 informed approach that would allow either or both of those witnesses to either testify *in*
19 *camera* or to be given an opportunity to testify in another trauma-informed process that
20 would provide them some safety while still obtaining the information.

21 We think -- the Coalition is insistent this is very important
22 information to understand the events that occurred April 18th and 19th and the context
23 of those events.

24 Those would be our submissions on those two witnesses, barring
25 any questions.

26 **COMMISSIONER MacDONALD:** Thank you.

27 Thanks so much.

28 **MS. ANASTACIA MERRIGAN:** Thank you.

1 **MS. EMILY HILL:** Commissioners, with regard to Ms. Forbes, this
2 is another case where it's the view of Commission Counsel that this request is
3 premature.

4 Ms. Forbes has been -- has provided interviews both with the
5 RCMP and the Commission, and all of which have been shared with the Participants.
6 Her information is relied on in two Foundational Documents, one of which has been
7 shared in draft form with Participants, and one which will be shared soon.

8 We will review the feedback that we receive on those documents
9 and would suggest that we would make decisions about what evidence may be needed
10 to fill gaps at that time.

11 With regard to Peter Griffin, as Ms. Merrigan indicated, Mr. Griffin
12 did provide statements to the RCMP which are relied on in the Portapique 18-19
13 document. He has declined to be interviewed by the Mass Casualty Commission. His
14 email to that effect has been shared with Participants.

15 The next request to hear from a witness is with regard to Bjorn
16 Merzbach, and it is Ms. Miller who would like to make that application to you.

17 **COMMISSIONER MacDONALD:** Ms. Miller.

18 **--- SUBMISSIONS BY MS. TARA MILLER:**

19 **MS. TARA MILLER:** Thank you, Ms. Hill.

20 Hello again, Commissioners. My submissions with respect to Bjorn
21 Merzbach, Mr. Merzbach is -- has provided a statement and it was referenced in the
22 Portapique 18th and 19th Foundational Document, so is an exhibit already. But my
23 submission is with response to Mr. Merzbach with respect to helping the Commission
24 have a better understanding dealing with the area of Cobequid Court.

25 As we understand, there's no evidence, or very limited evidence,
26 before the Commission dealing with the identification and discovery of the Cobequid
27 Court crime scenes. Furthermore, information relating to the timeline of the deaths of
28 residents living on Cobequid Court, and that would be Aaron Tuck, Emily Tuck, Jolene

1 Oliver at 41 Cobequid Court, and Joy and Peter Bond at 46 Cobequid Court, is sparse.
2 And Mr. Burrill acknowledged that in his presentation.

3 So with a view to the mandate of the Commission to assess the
4 response of the police and also steps taken to inform, support and engage members of
5 the community, that's the lens in which I'm framing these comments with respect to Mr.
6 Merzbach.

7 We submit that Mr. Merzbach could provide further helpful
8 information. We understand that he relayed a list of the deceased in the community,
9 which included the Tuck family, to Leon Joudrey early on the morning of April 19th.

10 This, of course, was prior to the bodies of these individuals being
11 discovered by the RCMP, which we understand happened in and around 3:20 p.m. that
12 afternoon. This information is not canvassed in statements provided by Mr. Merzbach
13 or Mr. Joudrey.

14 However, Mr. Joudrey does say in his statement, which is at -- the
15 exhibit number I don't have handy, but it's COMM09109 at line 2157, that Mr. Merzbach
16 had called him on the morning of the 19th and filled him in on:

17 "A little bit more stuff." (As read)

18 Which we understand means a list of the deceased.

19 So the question which naturally arises, Commissioners, is how Mr.
20 Merzbach was able to determine this information, as well as the fact that the RCMP
21 were not on scene at Cobequid Court until well after the area was supposed to have
22 been canvassed through the night with door-to-door members' efforts.

23 Those are gaps. And we will speak tomorrow about this same
24 issue with relation to police officers, but those are gaps which must be addressed to
25 ensure the Commission's review of causes, context, and circumstances is fulsome.

26 In addition, there are also some gaps and/or errors in Mr.
27 Merzbach's whereabouts through the late evening hours of April 18th. And I'm going to
28 reference certain paragraphs of the Foundational Document, the Portapique

1 Foundational Document.

2 At paragraph 140, there's reference to his wife's statement
3 indicating the entire family was sheltering in place at 11:14 p.m.

4 Paragraph 144 of that same document states that Mr. Merzbach
5 stayed on Orchard Beach Drive property to protect his residence. This was after he
6 ensured his family was able to safely leave.

7 However, at paragraph 197, he's reported to be at a neighbour's
8 property on Portapique Beach Road, which is inconsistent with the information in the
9 earlier paragraph that he stays on his own property to protect it through the night. And
10 the reference there is that he's -- at paragraph 197, that he's at the Murphy property
11 sometime after 11:22.

12 So these are questions that if Mr. -- that raise some lingering
13 questions, rather, if Mr. Merzbach understandably may have been out in the community,
14 and if he observed things, and certainly if it is accurate that he was able to relay, early in
15 the morning of the 19th, a list of the deceased to another community member, I think we
16 need to hear that from Mr. Merzbach, and the circumstances which lent themselves to
17 him being able to come into that information.

18 And lastly, to pick up on comments of Ms. Merrigan, who has joined
19 us by Zoom, and with her comment that it would be helpful to have a sense of whether
20 some of the victims were specifically targeted by the perpetrator.

21 We do understand that Mr. Merzbach was the president of the
22 Orchard Beach Estates Association. So this would have been, as I understand it, all of
23 the roads in Portapique that were not the Portapique Beach Road that were private
24 roads. And he would perhaps be in a really good position to provide evidence on the
25 nature of relationships, the exact kind that Ms. Merrigan was looking, given his sense of
26 relationships around the community.

27 Subject to any questions from the Commissioners, those are our
28 submissions with respect to the value Mr. Merzbach could add in filling in some gaps

1 and inconsistencies.

2 **COMMISSIONER MacDONALD:** Thank you so much, Ms. Miller.

3 **MS. EMILY HILL:** With regard to Mr. Merzbach, as Ms. Miller
4 indicated, he did speak with the RCMP, and that statement is already in exhibit in these
5 proceedings.

6 Information about the identification and discovery of the Cobequid
7 Court crime scenes is not dealt with in the Portapique documents, as Ms. Miller
8 indicated. And in fairness to the participants, it is dealt with in a Foundational Document
9 which they have not yet seen a draft of. And so that sort of piece of the narrative has
10 not yet been sort of fully explored.

11 So if -- with regard to the potential benefit Mr. Merzbach's
12 information may provide to that, my suggestion is that it would be best to wait for the
13 opportunity for the participants to review that information, give feedback, and identify if
14 there are remaining gaps that Mr. Merzbach or others could fill.

15 If there are broader questions aside from that particular point that
16 the Commission wishes to have canvassed with Mr. Merzbach, I can advise that he has
17 not been formally interviewed by the Commission. He has spoken to Commission staff
18 when Commission staff were in the community doing work. And I think the suggestion
19 would be that if there are areas that should be explored with him, perhaps we could
20 explore whether we could find out those answers to those specific questions in an
21 interview and then revisit the question of whether he would need to be called as a
22 witness.

23 **COMMISSIONER MacDONALD:** Thank you.

24 **MS. EMILY HILL:** The final non-RCMP witness that is proposed is
25 with regard to an issue of some information that's included in the Foundational
26 Document about GPS coordinates. And I understand that Ms. Nijhawan would like to
27 address you with regard to the need for a potential expert in this area.

28 **COMMISSIONER MacDONALD:** Thank you.

1 Ms. Nijhawan?

2 **--- SUBMISSIONS BY MS. NASHA NIJHAWAN**

3 **MS. NASHA NIJHAWAN:** Good morning, Commissioners, my
4 name is Nasha Nijhawan. I'm appearing on behalf of the National Police Federation.

5 The NPF represents RCMP members below the rank of staff
6 sergeant who are involved in the police response and subsequent investigation relating
7 to the mass casualty event.

8 Thank you for the opportunity to speak to a gap which the National
9 Police Federation has identified with respect specifically to the Portapique documents
10 as presented to date.

11 As noted in earlier correspondence with the Commission, pursuant
12 to rule 28, the National Police Federation has requested that the Commission conduct
13 further investigation by seeking an expert able to interpret the data presented in a
14 particular document, which is exhibited now and which can be found at COMM3863.
15 This document provides GPS location data from Lisa McCully's cellphone from the night
16 of April 18th, 2020.

17 In the Foundational Document, "Portapique: April 18-19",
18 Commission Counsel has drawn specific inferences from a particular piece of this data.
19 It forms the basis of a hypothesis of the time of Ms. McCully's murder, which in turn
20 informs available hypotheses about the order of the other murders committed by the
21 perpetrator and his movement in the community.

22 The Commission has determined that this question is material and
23 important to its mandate by including it in the Foundational Documents, and we agree.

24 However, it is the NPF's submission that the inferences drawn by
25 Commission Counsel and presented in the Foundational Document are not apparent
26 from the face of the document. This document shows various locations where Ms.
27 McCully's phone, based on GPS data, even after the time that we know her to be
28 deceased because her body had been discovered.

1 It is not apparent on the face of the document which data points are
2 most reliable or why, and what the basis is for the inference that has been presented.

3 The NPF's request at this time is simply for the Commission's
4 investigative team to provide participants with a report from an expert who is able to
5 interpret this data so that we all may better understand the strength of the inference that
6 has been drawn. Whether this report needs to be presented through oral testimony
7 before the Commission is, of course, first a question of discretion for Commission
8 counsel. We are not, at this time, asking that the Commission exercise its subpoena
9 powers under Rule 37 to address this gap. However, depending on the results of any
10 available expert evidence on this particular technical issue, the NPF would reserve the
11 right to do so at a later stage in the proceedings. And I'm happy to take any questions
12 about that point.

13 **COMMISSIONER MacDONALD:** Thank you so much, Ms.
14 Nijhawan.

15 **MS. NASHA NIJHAWAN:** Thank you.

16 **COMMISSIONER MacDONALD:** Ms. Hill?

17 **MS. EMILY HILL:** Commissioners, we understand that the
18 Commission is, as Ms. Nijhawan said, in the process of collecting further information
19 about the GPS coordinates from -- available from Ms. McCully's phone, which may
20 assist what -- with understanding what inferences can reasonably be drawn. So I'd
21 suggest at this time that once this information is collected and shared with Participants
22 NPF and other Participants can decide if they wish to reraise this issue at that time.

23 **COMMISSIONER MacDONALD:** Thank you.

24 **MS. EMILY HILL:** Commissioners, those are all the submissions
25 with regard to non RCMP witnesses that Participants asked to be able to address you
26 about. We, as I indicated earlier, have received an application for a proposed expert
27 report, and it's our proposal that that issue be dealt with in -- completely tomorrow.

28 But in order to understand what issues are at play and where

1 counsel should focus their submissions, we thought it might be useful to invite
2 Ms. Nijhawan, counsel for MPF, to set out her -- just to explain what the expert report is
3 that she proposes to tender, and then hear from any other counsel, if any wish to object
4 and the nature of their objections, so that we have a sense of what it is that we will be
5 discussing tomorrow. Also, to provide guidance to Ms. Nijhawan as to whether she
6 should be making a witness available.

7 **COMMISSIONER MacDONALD:** Thank you so much. I would like
8 your advice on -- it's quarter to twelve. We could break now and hear from
9 Ms. Nijhawan after lunch, which of course, we would be happy to do as well from other
10 Participants, or we can hear from her now and that would give the lunchtime for other
11 Participants to respond. But...

12 **MS. EMILY HILL:** That latter suggestion might make the most
13 sense if it's agreeable. Just that it's all -- it's been a busy week with a lot of information
14 flowing back and forth, and so I think being able to give Participants who are responding
15 to this application an opportunity to decide amongst themselves on how they might want
16 to address it this afternoon, knowing that the full arguments will be made tomorrow, but
17 just to be able to sort of set out that roadmap this afternoon.

18 **COMMISSIONER MacDONALD:** Thank you.

19 **MS. EMILY HILL:** I should also just note that prior to receiving the
20 NPF application, Commission Staff had reached out to the proposed expert, Dr. Carlton,
21 about the possibility of participating in a roundtable in Phase 2 of our proceedings, and
22 so information about these discussions have been disclosed to Participants.

23 **COMMISSIONER MacDONALD:** Thank you.

24 Ms. Nijhawan?

25 **--- SUBMISSIONS BY MS. NASHA NIJHAWAN:**

26 **MS. NASHA NIJHAWAN:** Hello again, Commissioners.
27 Tomorrow, you are going to hear applications from Participants' Counsel about the need
28 for the Commission to hear sworn live testimony from 17 NPF members, whose

1 responses to the events in Portapique are detailed in the Portapique Foundational
2 Documents. The question for the Commissioners is to determine whether, as set out in
3 Rule 37, the attendance of these witnesses is necessary. The Commission has set out
4 the bases on which necessity will be determined, namely, a gap, a dispute, or to provide
5 important context.

6 The NPF's most important role in these proceedings is to provide
7 support to our members while they are involved in the Commission's work, in
8 recognition the fact hat all of them have been exposed to a potentially very serious
9 psychologically traumatic event, and that they are all grieving the loss of one of their
10 colleagues. They are in this capacity individuals deeply and directly affected by the
11 events. They are people more than just their uniforms.

12 In doing so, the NPF has and will continue to advocate for the
13 Commission's application of a trauma-informed approach, as mandated by its Orders in
14 Council, to the manner in which the Commission designs its processes and interacts
15 with our members.

16 In order for the NPF to properly represent its members' interests,
17 we must come to a common understanding about what impacts trauma has on public
18 service personnel, including police officers, and how this may be different from the ways
19 in which we understand trauma in respect of the victims of crime and their families.

20 Tomorrow, I will make submissions to the -- that the Commission is
21 obliged to consider the role of its trauma-informed mandate in considering whether
22 subpoenas should issue for the live testimony of our members at the request of various
23 Participants. In order to make those submissions, I will need to explain how the
24 exposure to a mass casualty has impacted our members, with particular reference to
25 the way in which they, as police officers, experienced the traumatic events, not just on
26 the day of an exposure like the mass casualty but throughout their careers.

27 I will also need to tell you how our members, particularly, have
28 experienced their involvement with the Commission's investigations to date so that you

1 may consider that whether you are prepared to risk causing them more harm by
2 requiring them to appear before you after having already completed interviews with your
3 team. I do not expect you to take my word for it. I also do not expect you to already
4 understand or to be able to take notice of this complex area of emerging research in the
5 field of psychology, which is not well integrated into our common view of police officers.
6 I note that no expert reports have yet been commissioned by the Commission on this
7 issue, and that none of the Commission's mental health team possesses this specific
8 expertise.

9 Accordingly, tomorrow I will seek to tender into evidence two
10 affidavits so that the Commission may consider our arguments about trauma when
11 considering the Rule 37 applications from the other Participants.

12 The first affidavit contains an expert report from Dr. Nick Carlton, a
13 professor at the University of Regina in the Department of Psychology, a registered
14 doctoral clinical psychologist in Saskatchewan, and the Scientific Director of the
15 Canadian Institute for Public Safety Research and Treatment. Dr. Carlton's report
16 provides some necessary foundational information about the potential impact of the
17 events on involved members, how they may be exhibiting or dealing with the resulting
18 trauma, impacts of that trauma, and what requiring live testimony might mean for these
19 members.

20 The second affidavit I will seek to admit is from Brian Sauvé, the
21 President of the National Police Federation, and includes the results of a survey
22 conducted recently of national -- by the National Police Federation of its members who
23 have already engaged in the Commission's interview process over the past several
24 months. This information illustrates the actual impact to date on our members and will
25 make real the potential retraumatisation of individual members from the Commission's
26 process.

27 I will be making more complete submissions on the NPF's position
28 with respect to the necessity of specific members attending tomorrow, but for now, I just

1 wish to alert the Commission to this threshold issue, which is the NPF's submission that
2 in order to properly consider whether or not to grant these Rule 37 applications, the
3 Commission must make meaningful notice of trauma as it impacts the witnesses that it
4 may subpoena, and for that, additional evidence is required.

5 **COMMISSIONER MacDONALD:** Just one practical question if I
6 could ---

7 **MS. NASHA NIJHAWAN:** Yes, sir.

8 **COMMISSIONER MacDONALD:** --- Ms. Nijhawan. Can I take it
9 from your submission that this is, you used the word "threshold", so this is a threshold
10 issue? Is it your submission that that has to be dealt with before we get into the
11 arguments proper on the potential witnesses that the other Participants wish to hear
12 from?

13 **MS. NASHA NIJHAWAN:** So the NPF's submission about how the
14 Commission must apply its trauma-informed mandate in considering the requests is that
15 it comes into play sort of at two stages. The first stage, we say, this idea of remaining
16 trauma-informed and making decisions with an eye to cause the least harm is baked
17 into every decision the Commission must make. And so when considering the
18 necessity of a witness's testimony, the idea of potential trauma must be baked into that
19 analysis. However, with respect to specific individuals -- so that's at a general level, and
20 that's the general argument which the evidence which I seek to admit will inform
21 because, as I said, I don't expect you to take my word for it.

22 However, we will also be submitting tomorrow that on an individual
23 basis the Commission may need to make personal individual considerations of the
24 actual experience of that member based on evidence that may already be before the
25 Commission through their interviews or based on evidence that may need to be brought
26 before the Commission once that initial question of necessity is considered. But we
27 remain steadfast in our submission that necessity can't be considered in a vacuum
28 outside of trauma. We still have to think about weighing the general impact that we

1 know will exist for any person who has been impacted by these events with the
2 necessity or the usefulness of their testimony to the Commission's mandate.

3 Of course it would be helpful to the Commission. Of course it
4 would be best if everybody could explain in their own first-person voice what they
5 experienced. But at what cost? That'll be our submission tomorrow.

6 **COMMISSIONER MacDONALD:** Thank you.

7 I was just -- and I apologize I didn't make myself clear. I was just
8 looking at the practicalities for this afternoon and ---

9 **MS. NASHA NIJHAWAN:** Oh, I'm sorry.

10 **COMMISSIONER MacDONALD:** --- and -- you know, or whether
11 we would have to -- I'm not suggesting we have to. I just would like your thoughts on it.

12 **MS. NASHA NIJHAWAN:** So I'm very sorry for misunderstanding
13 your question.

14 In terms of whether or not the evidence is admitted, we would say
15 that has to be dealt with as a threshold issue in the -- I understand it's going to be dealt
16 with in the morning, and so you may hear again from me on that topic depending on the
17 position of other Participants before we move into a case-by-case consideration of each
18 member because, as I say, it's a part of the analysis.

19 **COMMISSIONER MacDONALD:** Thank you so much.

20 **MS. NASHA NIJHAWAN:** Thank you.

21 **COMMISSIONER FITCH:** Ms. Nijhawan, just before you leave, am
22 I clear to understand, as you've laid out the concerns, that the NPF would be agreeable
23 to other forms of bringing information forward to the Commission to fill some of those
24 gaps that we may have?

25 So for example, we've heard from the Coalition the ability of the
26 inquiry to ask questions in a number of ways, so that may be something that you're
27 going to address, but I'm presuming that there would be some interest in ensuring that
28 those that can talk will have the opportunity.

1 **MS. NASHA NIJHAWAN:** Absolutely. It will be the NPF's
2 submission that all of our members are interested in serving the work of the
3 Commission. They all wish to be helpful. In fact, they wish so much to be helpful that
4 they may be willing to extend themselves beyond what is appropriate for their own
5 wellness, and so it would be our submission that you should not ask them to do too
6 much. You should ask them to do what is necessary and that, on an individualized
7 basis, we should look at what evidence is already available, what questions must be
8 asked of the members and find ways to allow them to participate meaningfully in a
9 trauma-informed way, which in our submission will not include live testimony.

10 **COMMISSIONER FITCH:** Thank you.

11 **COMMISSIONER MacDONALD:** Thank you, Ms. Nijhawan.

12 **MS. NASHA NIJHAWAN:** Thank you.

13 **COMMISSIONER MacDONALD:** And of course, we'll hear from
14 Participant Counsel. You'll have to collaborate, I guess, during the break and we'll hear
15 from you in an order in which I trust you can agree upon.

16 Thank you.

17 We'll break now until 1 o'clock.

18 **REGISTRAR DARLENE SUTHERLAND:** Thank you.

19 The proceedings are now on break and will resume at 1 o'clock.

20 --- Upon breaking at 11:57 a.m.

21 --- Upon resuming at 1:05 p.m.

22 **REGISTRAR DARLENE SUTHERLAND:** Welcome back. The
23 proceedings are again in session.

24 **COMMISSIONER MacDONALD:** Thank you, and thank you again,
25 counsel.

26 Ms. Hill, do you have an update for us?

27 **MS. EMILY HILL:** Yes. Thank you, Commissioner MacDonald.

28 I've spoken to Counsel for the Participants and understand that a

1 number of them would like to address you with regard to sharing their position with
2 regard to the proposed expert witness. This is just to lay out their positions so that we
3 can make plans for tomorrow in terms of how we should proceed.

4 **COMMISSIONER MacDONALD:** Sure. That would be helpful.
5 Thank you.

6 **MS. EMILY HILL:** So first we'll hear from Ms. Ward from the
7 Department of Justice.

8 **--- SUBMISSIONS BY MS. LORI WARD:**

9 **MS. LORI WARD:** Good afternoon, Commissioners. My name's
10 Lori Ward, and together with my colleagues, Patricia MacPhee and Heidi Collicutt, we
11 represent the Attorney General of Canada and the RCMP as well.

12 We're aware of Ms. Lenehan's email this afternoon requesting a
13 statement of qualifications for Dr. Carlton. That's an important step in qualifying an
14 expert witness, and we recognize that, but with that caveat, we do not anticipate that we
15 would oppose the qualification of Dr. Carlton and the tendering of his report.

16 In keeping with the Commission's trauma-informed mandate, it's
17 important that these considerations must be taken into account in the Commissioners'
18 decisions with respect to witnesses as outlined by Ms. Nijhawan.

19 And I anticipate we may have further comments tomorrow, but
20 those are our comments for today. Thank you.

21 **COMMISSIONER MacDONALD:** And thank you, Ms. Ward.

22 **MS. EMILY HILL:** Commissioners -- thank you, Ms. Ward, for
23 raising the issue.

24 As Ms. Ward indicated, a request was made to Ms. Nijhawan to
25 provide a statement of qualifications and I understand she's providing that now or very
26 shortly, so counsel will have the benefit of that as they consider their position for
27 tomorrow.

28 Next, I think we would hear from Mr. Bryson.

1 **--- SUBMISSIONS BY MR. JOSHUA BRYSON:**

2 **MR. JOSHUA BRYSON:** Thank you, Commissioners. This will be
3 a brief overview.

4 We did, in fact, receive the report and CV Monday night at 7
5 o'clock, so we've had just a bit of time to review it and will have more submissions to
6 make tomorrow. But essentially, it's our understanding that the NPF intends to tender
7 this report to influence the Commission's decision as to whether we call members or
8 not, so effectively as a bar to calling them to give *viva voce* evidence in this proceeding.

9 Our position is that the expert evidence sought to be tendered is
10 simply not admissible. And there is a gatekeeper role we're asking that this
11 Commission exercise, and I will be quoting from *White Burgess*, the Supreme Court of
12 Canada decision that I know you're very familiar with from 2015 that talks about the
13 evidence being necessary and reliable.

14 So first on the issue of reliability, what I intend to address tomorrow
15 is the fact that this proposed expert has not treated, diagnosed, reviewed any of the
16 medical files for the 17 members that this report is being used to say that they're
17 ineligible, effectively, to testify, yet there is an opinion that's being proffered that may, in
18 fact, disqualify these members that this proposed expert has not personally interacted
19 with from testifying.

20 And this is irregardless (sic) of their own personal circumstances,
21 their own personal mental health, so on that issue it's our position that the evidence is
22 simply not reliable. It's too generic, it's too general. It has no personal application for
23 this Commission to be of any value.

24 It's also not necessary. The Commission can inform themselves
25 that this was, in fact, a very traumatic process for all Participants, including police. The
26 evidence being proffered is not -- is not required to inform the Commission of that fact.
27 That is accepted by everyone.

28 There's also a concern that this would effectively be precedent-

1 setting. Police have a very difficult job. Part of that job often requires testifying in the
2 course of violent crimes. The Major Crime Unit has to testify on homicides quite often.

3 It requires court testimony, and that's why they're often referred to
4 as professional witnesses. To suggest that these members be disqualified from
5 testifying, given the nature of the subject matter and their personal, hypothetical,
6 experiences, is very concerning to the Participants. And, in our view, it acts as a bar for
7 this Commission to fulfil its mandate, which is to understand what happened; why it
8 happened; the circumstances of what happened; and making recommendations going
9 forward.

10 Professor Wigmore has a good quote about experts; "The expert
11 must be a knower; he cannot merely be a guesser."

12 This expert is guessing, given the expert's lack of information
13 pertaining to each of these members. And we ask the Commissions to shy away from
14 endorsing that generic expert opinion that's being proffered. And I'm also aware of the
15 fact that most Participants -- I believe I all of us -- have issues with the qualifications that
16 are being proffered by Dr. Carlton.

17 Thank you. They're my submissions, subject to any questions you
18 may have.

19 **COMMISSIONER MacDONALD:** Yeah, just -- no, that's a helpful
20 heads-up and we'll hear more tomorrow but it's helpful for us to at least know what the
21 issues are before us. And I think Ms. Nijhawan indicated, and I get the sense that
22 Participants' Counsel -- other Participants' Counsel would agree that we'd be putting the
23 cart before the horse before we resolve this expert report issue.

24 **MR. JOSHUA BRYSON:** Yes.

25 **COMMISSIONER MacDONALD:** Thank you.

26 **MR. JOSHUA BRYSON:** Thank you.

27 **COMMISSIONER MacDONALD:** Well, thank you again, Mr.

28 Bryson.

1 Ms. Hill?

2 **MS. EMILY HILL:** Yes, I believe Mr. Pineo would like to address
3 this.

4 **COMMISSIONER MacDONALD:** Hello, Mr. Pineo.

5 **--- SUBMISSIONS BY MR. ROBERT PINEO:**

6 **MR. ROBERT PINEO:** Good afternoon, Commissioners.

7 I just have two comments to make. The first is we endorse and
8 follow the recommendations that Mr. Bryson has just made.

9 The other area that would speak to tomorrow, though, is more of a
10 general context -- of a general context nature, and that is the faith that the public and
11 the Participants have in this proceeding, in this Commission, bears directly on the
12 quality of the participation of all of the witnesses and other participants. And I'm not
13 sure that there would be a lot of faith in the ultimate findings and recommendations of
14 this Commission if a blanket expert report was used to block critical evidence from
15 being given.

16 So, certainly, I think that has to be woven into the overall decision
17 that's made, because what's being requested here is that none of the first responders or
18 RCMP members on the ground over those two days will be called to fill in gaps and
19 resolve errors.

20 And in looking at that, it really should be done on an individual
21 basis, if at all. So if Constable So-and-so is truly too traumatized to be able to speak,
22 that should come from his medical records and his evidence, and then perhaps another
23 way to get his evidence could be fashioned. But we submit that it is contrary to the
24 public interest to have a blanket blocking of those witnesses testifying.

25 Thank you.

26 **COMMISSIONER MacDONALD:** Thank you, Mr. Pineo.

27 **MS. EMILY HILL:** Ms. Miller?

28 **MS. TARA MILLER:** I have nothing further to add.

1 **COMMISSIONER MacDONALD:** Okay, I don't think you can be
2 heard so I will repeat what you said; you have nothing further to add and endorse the
3 comments of the previous two Participant Counsel?

4 Thank you.

5 **MS. EMILY HILL:** And I think the final person who wished to
6 address you on this point was Mr. Topshee.

7 **COMMISSIONER MacDONALD:** Okay.

8 For the benefit of the record, I'll repeat what you said.

9 Mr. Topshee is saying in light of having heard the previous two
10 presenters, that there's no need for him to add anything. So thank you.

11 **MS. EMILY HILL:** Chief Commissioner, at this time I think our
12 proposal would be that we adjourn and return tomorrow morning at 9:30, given the
13 request by Participant Counsel to ask the proposed expert witness questions with
14 regard to their qualifications. I think that Ms. Nijhawan has advised that the witness is
15 available tomorrow morning at 9:30, and we would pick up on that point at that time and
16 move through those questions before proceeding any further with regard to general
17 applications for witnesses.

18 **COMMISSIONER MacDONALD:** Thank you so much, Ms. Hill.

19 So counsel are well aware of this but for members of the public who
20 are following, I believe I mentioned in my opening remarks that, you know, commissions
21 of inquiry such as these have to be nimble, and things come up and so it is today and
22 we -- it is appropriate to deal with this expert issue before we start getting into the
23 submissions proper, and thank you, counsel, for acknowledging that the best time to do
24 hat -- we appreciate the heads-up, but the best time to do that is tomorrow morning, and
25 that's what we'll do.

26 So on that basis, we will break for today with our appreciation for all
27 your submissions.

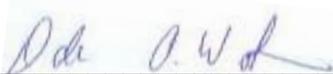
28 Thank you.

1 **REGISTRAR DARLENE SUTHERLAND:** Thank you.
2 Proceedings are adjourned until March the 3rd, 2022, at 9:30 in the
3 morning.
4 --- Upon adjourning at 1:16 p.m.

5
6
7 **C E R T I F I C A T I O N**
8

9 I, Maxime Roussy, a certified court reporter, hereby certify the foregoing pages to be an
10 accurate transcription of my notes/records to the best of my skill and ability, and I so
11 swear.

12
13 Je, Maxime Roussy, un sténographe officiel, certifie que les pages ci-hautes sont une
14 transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et
15 je le jure.

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