

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

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II Appearances / Comparutions

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Mr. James Russell	Counsel / Conseiller
Ms. Patricia MacPhee	Counsel / Conseillère
Ms. Nasha Nijhawan	Counsel / Conseillère
Mr. Joshua Bryson	Counsel / Conseiller
Ms. Sandra McCulloch	Counsel / Conseillère
Ms. Lori Ward	Counsel / Conseillère
Ms. Tara Miller	Counsel / Conseillère

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Halifax, Nova Scotia

--- Upon commencing on Monday, March 7, 2022 at 9:03 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: Good morning, everyone. Hello and welcome. Bonjour et bienvenue.

We join you from Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. And today, like every day of this inquiry, we begin by remembering those whose lives were taken or were harmed, their families, and all those effected by the April 2020 Mass Casualty in Nova Scotia.

Where we left off on Friday, we were continuing to hear submissions from Participants.

Hearing submissions from Participants is an integral part of work that helps identify material gaps and points of difference and shapes which witnesses we will call and the questions we will ask.

The Participants are a broad, diverse group with different positions and perspectives.

A reminder that the Participants include the families, first responders, government institutions, and various advocacy groups, all represented by their own legal counsel. Our role is to hear these different perspectives and consider their submissions in the context of our mandate.

As we have said, it is the intent of the Commission to call witnesses to testify, as deemed necessary. This includes RCMP officers. Five of the six witnesses being discussed today are RCMP officers we expect to hear from in the proceedings. The question to be determined is when it makes the most sense to do so.

We emphasize again the submissions for witnesses that we will

1 continue to hear today are based on just the first three Foundational Documents. And
2 that's three out of more than 30 we will work through during the public proceedings.

3 There is much more to come with the Foundational Documents
4 about what happened and why, included information about the RCMP command
5 decisions.

6 So thank you again and we will hear from Commission Counsel.

7 **MS. JAMIE VanWART:** Good morning, Commissioners. My name
8 is Jamie VanWart. Member of the Commission Counsel team.

9 Today we're going to be continuing our proceedings from where we
10 left off last week.

11 I'll do a brief introduction. This is a public inquiry. We anticipate
12 every day there will be new people watching for the first time.

13 So last week, Commission Counsel presented the first three, of
14 several to come, Foundational Documents. Those documents were "Portapique: April
15 18-19, 2020)", "First Responder Actions in Portapique", "Containment Points in and
16 Around Portapique".

17 Each of the Foundational Documents included source material. All
18 of the source material were tendered as exhibits and are now before the Commission.

19 The Commission also heard from a witness, Darryl MacDonald.

20 It is Commission Counsel's view that the record created last week
21 in relation to these first three Foundational Documents will create a record that will allow
22 the Commission to do its forward-looking work to fulfill its mandate.

23 The Mass Commission has procedural rules, and those rules are
24 called "The Rules of Practice and Procedure of the Mass Casualty Commission". And
25 these rules are available for anyone to access through the Mass Casualty Commission
26 website. And in those rules, and specifically Rule 28 and Rule 37, a process is set out
27 by which Participants, after the presentation of a Foundational Document, may make
28 representations to the Commission that there were gaps left in the record that should be

1 filled by hearing witnesses. And this is the process that we are in at this point of the
2 proceedings. And it began on Wednesday last week, continued on Thursday, and will
3 continue this morning.

4 So we will be continuing to hear from Participant counsel. We have
5 structured these proceedings to hear from Participant counsel on an individual-by-
6 individual basis.

7 And as Commission Counsel, we do not intend to speak to the
8 Participant counsel's application, except to the extent that if we have information that
9 the Commission may find helpful, we will add comments at the end of their
10 representations today.

11 So for example, on Wednesday and Thursday last week, in a
12 number of occasions, we indicated that it will be a Foundational Document in the future
13 that may be a better time to address whether or not to hear from this witness.

14 So before we begin, I would add there are a few housekeeping
15 matters from last week.

16 First, on Thursday, so March 3rd, Commission Counsel indicated in
17 these proceedings that we had sent written questions to a Cst. Vicki Colford, but had
18 not heard back from Cst. Colford.

19 And I just wanted to clarify that those questions were actually only
20 just sent on Thursday, March 3rd, 2022. The same day we made those
21 representations.

22 So in all likelihood, Cst. Colford hadn't heard or seen those
23 questions at the time we made those submissions.

24 Also, on Thursday, March 3rd, in relation to Cst. Nathan Forrest,
25 Counsel referenced COMM number 15506, which is Cst. Forrest's interview to the Mass
26 Casualty Commission. This interview has not yet been entered as an exhibit, and at
27 this time, we suggest it appropriate to do so. And I'll allow Madam Registrar to indicate
28 what exhibit number that document will have.

1 **REGISTRAR DARLENE SUTHERLAND:** That's Exhibit 213.

2 **--- EXHIBIT No. 213:**

3 COMM15506, Cst. Forrest's interview to the Mass Casualty
4 Commission

5 **MR. JAMIE VanWART:** So the first individual we'll hear about is
6 Cst. Jeffrey MacFarlane. And I believe counsel from Burchell MacDougall will be
7 speaking to this matter.

8 **--- SUBMISSIONS by MR. JAMES RUSSELL:**

9 **MR. JAMES RUSSELL:** Good morning, Commissioners. My
10 name is James Russell, and along with my colleagues, Stephen Topshee and Linda
11 Hupman, we represent the families of the Oliver-Tuck family and the Campbell families.

12 Thank you for allowing me the opportunity to address the
13 Commission regarding Cst. MacFarlane.

14 Just to remind you how Cst. MacFarlane relates to the Portapique
15 Foundational Documents, it was Cst. MacFarlane who took a statement from Andrew
16 MacDonald shortly after he was released from the hospital on Sunday morning, April
17 19th, 2020.

18 This statement, which has the reference COMM0002703, has
19 already been made an exhibit in these proceedings. And the most relevant sections are
20 at lines 201 to 215 and 506 to 512 of the statement.

21 According to the transcript, this statement of Mr. MacDonald was
22 taken between 5:00 a.m. and 6:05 a.m. on April 19th, 2020.

23 In his statement, Mr. MacDonald gives important information on the
24 existence of the replica police car, and excerpts of this portion of the statement are set
25 out in the Portapique Foundational Documents. The information on the existence of
26 that replica police car is, of course, clear and unequivocal.

27 We submit though that the gap that needs to be addressed is what
28 use Cst. MacFarlane made of that key information at the time. There is no information

1 we have found to indicate whether this information was passed on, and if it was, to who
2 it was passed on.

3 Further, in that same statement, Andrew MacDonald provided
4 information on another route out of Portapique, the Blueberry Road. It's not clear that
5 this information, important though it was, was followed up on at this point or earlier in
6 the proffering of the information about that from Kate MacDonald to Cst. Colford.

7 While we appreciate that based on the proposed timeline of the
8 movements of the perpetrator, the timing of Cst. MacFarlane coming to know this
9 information and how this information was treated may not have impacted the result of
10 this tragedy, but we submit that the key issue here is the basic handling of information
11 by those who learned of the existence of this alternate route out of Portapique.

12 The issue in essence is that dissemination of key information, or
13 lack thereof, if that's the case, to responding police members during an ongoing active
14 shooter situation. Perhaps there's lessons to be learned, recommendations for the
15 future that could flow from what was or what was not done in this case.

16 Cst. MacFarlane's testimony is important in the context of the
17 Commission's mandate as stated in the Orders in Council. They've been reiterated
18 numerous times about the recommendations addressing police action, operational
19 tactics, response, decision making and supervision, as well as police policies,
20 procedures and training in respect of active shooter situations. Again, we submit a
21 recommendation that Cst. MacFarlane should be called as it fits into Rule 28. Again,
22 I'm going to read this because I feel that it's not being addressed exactly by responding
23 individuals to our submissions.

24 "Participants may propose witnesses to support,
25 challenge, comment or supplement the foundational
26 documentation in ways that are likely to significantly
27 contribute to an understanding of the issues relevant
28 to the mandate of the Commission." (As read)

1 We respectfully submit that, in addition to the gaps that can be filled
2 by having Cst. MacFarlane, and really all of the members that are being suggested to
3 testify under oath, these members can be given sufficient -- or significant context to their
4 actions, their training, their experience, which using the words of Rule 28 can
5 supplement the Foundational Documents in ways that are to likely significantly
6 contribute to the understanding of the issues before this Commission.

7 Subject to any further questions, those are my submissions on Cst.
8 Jeff MacFarlane.

9 **COMMISSIONER MacDONALD:** Well, thank you so much, Mr.
10 Russell.

11 **MR. JAMES RUSSELL:** Thank you.

12 **MR. JAMIE VanWART:** The Commission will now hear from
13 counsel for Canada, either Ms. Ward or Ms. MacPhee. I believe it's Ms. MacPhee.

14 **--- SUBMISSIONS BY MS. PATRICIA MacPHEE:**

15 **MS. PATRICIA MacPHEE:** Good morning. We have very brief
16 submissions with respect to Cst. MacFarlane. I think my friends from the National
17 Police Federation will likely address it in greater detail, but it's true that Cst. MacFarlane
18 has not been interviewed by the Mass Casualty Commission as of yet. If there are -- if
19 there is information that the Commissioners feel needs to be gathered from him, we
20 would suggest that he is open to be interviewed and to fill any gaps or add those
21 additional context that my friends are looking for from him. He does appear later in the
22 events, not directly involved in the actions in Portapique, or the first responders at that
23 time, or in containment, so it's a matter that, we would submit, can addressed or should
24 be addressed later on in these proceedings. But again, he is available to be interviewed
25 and he's also available to answer any written questions, should that be required. Thank
26 you.

27 **COMMISSIONER MacDONALD:** Thank you, Ms. MacPhee.

28 **MR. JAMIE VanWART:** Next Commission will hear from Ms.

1 Nijhawan from the National Police Federation.

2 **--- SUBMISSIONS FROM MS. NASHA NIJHAWAN:**

3 **MS. NASHA NIJHAWAN:** Good morning, Commissioners. Nasha
4 Nijhawan for the National Police Federation. I'd like to take this opportunity and thank
5 you for it to respond briefly to my friend Mr. Russell's request for the attendance of Jeff
6 MacFarlane by subpoena under Rule 37. And I'm going to start my comments by just
7 addressing this question of what the application and what the applicable rule is.

8 Mr. Russell has noted correctly that participants are free to suggest
9 areas for which the Commission should conduct further exploration in order to
10 supplement the Foundational Documents under Rule 28. That is not, however, the test
11 for whether or not a witness should be subpoenaed, and we don't disagree, as my friend
12 from Canada said, that it's very possible that further information from Cst. MacFarlane
13 may be appropriate for the Commission. However, it's our position that that does not, at
14 this time, justify a subpoena as being necessary under Rule 37. So with that in mind, I'll
15 just address the specific issues raised by Mr. Russell with respect to this witness.

16 Cst. Jeff MacFarlane is a member of the Major Crime Unit. He was
17 called out shortly after midnight during the mass casualty by Major Crime along with his
18 partner Cst. Mike Woolcock. Csts. MacFarlane and Woolcock as relevant to the current
19 Foundational Documents conducted, as Mr. Russell said, an interview over the
20 telephone of John Andrew MacDonald, who had been shot by the perpetrator the night
21 before. That interview was entirely audio recorded and a transcript of that recording has
22 been produced. Mr. Russell suggested there are a couple of relevant items in that
23 interview, which -- about which we would like to know what happened, what happened
24 with that information after Cst. MarFarlane and Cst. Woolcock received it.

25 I just want to address what those exactly information are because I
26 think I have to disagree with Mr. Russell in his characterization of that information.
27 There was some information from Mr. MacDonald about the car that he observed the
28 night before. That information had also been passed on contemporaneously during the

1 -- or 911 call, which was happening during the events. His comments about the car are
2 less clear than I think perhaps Mr. Russell has suggested. And he, for example,
3 speculates during his interview that perhaps it was the same car, the Taurus, that had
4 been in the driveway that he had observed that Mr. -- the perpetrator had slapped some
5 decals on, you know, in short order. So it didn't actually advert to the existence of an
6 entire replica car that was separate from the known automobiles owned and registered
7 by the perpetrator.

8 But in any event, this question of the information that was available
9 to police about the replica car is addressed entirely in another Foundational Document
10 which is forthcoming about the replica car and what was known about it and when. So it
11 would be our suggestion that, in accordance with Rule 28, because those Foundational
12 Documents have not been completed or entered into evidence, it would be appropriate
13 for the Commission to follow up on this suggestion from a participant to understand
14 exactly what information was transmitted by Cst. MacFarlane up to the chain of
15 command. There is another Foundational Document, which will deal with command
16 decisions, in which we can explore what use was made of that information.

17 I can say that it's my understanding, by reviewing all of the officer's
18 notes, that Cst. MacFarlane in the usual course would have reported to his supervisor,
19 Cpl. Jerry Rose-Berthiaume, who was the lead investigator at MCU on this file. There is
20 evidence in the file that Cpl. Rose-Berthiaume then reported to S/Sgt. Steve Halliday,
21 who then reported to S/Sgt. Jeff West, who's CIC. So that chain of information is
22 properly canvassed in the Command Decisions document, and Jeff MacFarlane isn't
23 going to be able to tell you much, except to tell you, yeah, this is who I called after
24 conducting this interview.

25 Important context for this information is also that, as my friend Mr.
26 Russell said, the interview with Mr. MacDonald concluded around 6:05 a.m., and within
27 about 20 minutes, Lisa Banfield had come out of the woods and investigative and
28 command attention was substantially shifted to that event, which also led to the

1 emergence of a great deal of information about the replica police cruiser that the
2 perpetrator had constructed.

3 My friend, Mr. Russell, has also suggested that Mr. MacDonald
4 provided clear unequivocal evidence about the existence of the Blueberry Field Road in
5 his statement. I respectfully would submit to you that that is an overstatement of the
6 evidence. Though it remains of interest, I would suggest to the Commission how that
7 information was passed on, to suggest that such a clear statement was made to Cst.
8 MacFarlane, is not accurate.

9 At lines 839 to 844 of his statement, Mr. MacDonald says, in
10 response to the question from Cst. MacFarlane:

11 "Is there any way to get out of that area aside from the
12 Beach Road?" (As read)

13 "Potentially yeah. So there's, um, uh, I've never been
14 able to do it, but, like, um, there's a road that goes there
15 when you approach Portapique Beach Road, there's an
16 old church on the left-hand side. There's a road there
17 that goes south towards the water. Pretty much straight.
18 And then it's not on -- it's not a kept road, but it's more
19 like a path. That road goes down and it almost meets
20 with one of the branches of Orchard Beach Road, and it's
21 not like a real path, but if you had a four-wheel
22 something, you could probably get across to the other
23 road." (As read)

24 So somewhat less of a clear message about whether or not there
25 was a second road out of Portapique. And that question can properly be explored in the
26 Command Decisions document. And we would suggest that if the Commission sees
27 that further investigation is necessary, it would be appropriate under Rule 28 to conduct
28 an interview of Cst. Jeff MacFarlane, which he is more than happy to attend.

1 I'll also note that the Commission has already scheduled an
2 interview with Cpl. Jerry Rose-Berthiaume, who is the person that he would have
3 provided that information to and who would have passed it on. And that person may
4 actually be the missing link, so to speak, between Command and between this
5 investigator. And so that would be a more appropriate way to address this gap in the
6 evidence to the extent that there is one.

7 **COMMISSIONER MacDONALD:** Thank you.

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

9 **MR. JAMIE VanWART:** Thank you, Commissioners. The only
10 comment from Commission Counsel is that further down the road in the proceedings,
11 there will be a Foundational Document entitled "Confirmation of Decommissioned
12 RCMP Vehicle". That may be an opportunity to further address some of the issues
13 raised by Mr. Russell.

14 Next we have Donnalee Williston. And there are three counsel
15 speaking to this matter. Perhaps we could hear from Ms. Miller first? Unless I'm, I
16 guess, told otherwise?

17 Or, Mr. Bryson, did you want to proceed first? Thank you. Oh,
18 okay. Thank you. So we'll hear from Mr. Bryson. Thank you.

19 **COMMISSIONER MacDONALD:** Good morning, Mr. Bryson.

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

21 **MR. JOSHUA BRYSON:** Good morning, Commission.

22 Ms. Williston was the call-taker that took Ms. Blair's call at 10:01 on
23 April 18th. And Ms. Williston's evidence can confirm if she ever received follow-up
24 questions about the call after she posted it at 10:04 p.m.

25 We know there was at least one inquiry about the nature of the call
26 from Ms. MacCallum on the dispatch side, but it's apparent from our review of the
27 disclosure that no one actually listened to that very integral and important 9-1-1 call.

28 There was key information in that call that was not conveyed to

1 anyone. It's our belief, based on the disclosure, and Ms. Williston can inform us if this is
2 in fact the case, that the risk management side or the dispatch side did not listen to that
3 call, where not only was the content disclosed, but also the fact that there were gun
4 shots heard, that there were screaming, so actual gunshots, not just as the -- what's
5 noted in the Colchester call logs, that there was a report of gunshots, but that the call
6 taker could actually hear gunshots. And that was confirmed by the Commission in their
7 presentation on the Portapique documents.

8 So it's important to see how that information flowed. And Ms.
9 Williston can confirm if anyone besides Ms. MacCallum made inquiries about that
10 information, did she make observations of anyone else listening to that very integral and
11 important 9-1-1 call? So that's one issue.

12 And the relevance to the Commission's mandate is the flow of
13 information, where the Participants have significant issues with how the information
14 flowed.

15 So we can see in the Colchester call logs that there were inquiries
16 made at roughly 10:19, "Did the caller sound MHA?" There was a reply at roughly
17 10:22 that, "It doesn't say that here," or that, "The caller is not MHA." Words to that
18 effect.

19 So when the IARD team is driving out, formulating the response to
20 this mass casualty, there's 22 minutes where they do not know the severity of the
21 situation that they're about to encounter. And that's a serious issue from a Participant's
22 perspective.

23 So that's one issue we're asking that Ms. Williston address.

24 The second issue is in regards to the CAD recorded calls, and
25 that's document 36368, it includes Richard Ellison's call, he lost his son in this tragedy,
26 Corrie Ellison, he had called 9-1-1 at 10:59 and it tells us that Call Taker 8 had received
27 the call. It does not appear that the call was -- actually created a file until 10:59 -- sorry,
28 11:14, rather. That's 15 minutes later. And this information about the fact that Richard

1 Ellison had called, reported that his son Clinton had called him to tell him that their other
2 son, Corrie, was shot, that information did not make its way into a file for roughly 15
3 minutes, 11:15. And that was not broadcast on the Colchester call logs until 11:00 --
4 actually, 11:15. The file was created at 11:14. It was not broadcast until 11:15. That's
5 my understanding of the disclosure. So there's 16 minutes there where Richard Ellison
6 is calling, indicating the information he received from his surviving son, "My other son is
7 shot," and it's not actually broadcast for 16 minutes.

8 The other concern I have is that when you look at this Document
9 36368, it's coded as a priority 3. It's not coded as a Priority 1. Why is it coded as a
10 Priority 3? We heard from the 9-1-1 presentation that Priority 3 is the least serious
11 priority. We also know from Ms. MacCallum's statement to the Commission that a
12 Priority 3 also means that not everyone gets that same information. And that could
13 explain the delay in creating the file and posting this information to members.

14 So these are several questions that we have for the call taker side
15 of this flow of information to address these gaps and to clarify the factual basis so that
16 we can then make recommendations to the Commission to help prevent these gaps and
17 these issues from arising in the future.

18 So subject to any questions you may have, there are my
19 comments.

20 **COMMISSIONER MacDONALD:** Thank you so much, Mr. Bryson.

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

22 **MR. JAMIE VanWART:** Do counsel from Patterson Law wish to
23 also speak to this matter? I believe Ms. McCulloch is walking to the podium.

24 **COMMISSIONER MacDONALD:** Good morning, Ms. McCulloch.

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

26 **MS. SANDRA McCULLOCH:** Good morning, Commissioners.

27 Again, my name is Sandra McCulloch. I'm with the legal team from Patterson Law, who
28 represents a number of the participants among those who are most effected by the

1 mass casualty event.

2 I want to speak about Ms. Williston, the request that we share with
3 Mr. Bryson. I'll try not to cover any ground that Mr. Bryson already has. But we do want
4 to stress the importance of Ms. Williston in understanding everything that she can
5 inform the Commission about in relation to both starting from being the one to receive
6 the call from Jamie Blair, and further, her presence in the OCC and having information
7 about what happened in that environment after that information was received and all the
8 information that flowed after that.

9 Ms. Williston is an on the ground, so to speak, civilian member
10 participating in and witnessing the RCMP's response during these critical hours. She's
11 someone with crucial information relevant to this event that speaks to the Commission's
12 ability to fully examine the mass casualty event and all of the causes, contexts and
13 circumstances giving rise to. Certainly aware that Ms. Williston has provided an
14 interview, and that transcript is available. That's document Com Number 43476. In
15 spite of that interview, we would submit that we actually don't have all that much
16 information from Ms. Williston. The interview is largely technical in nature and by and
17 large covers a lot of the information that we received from our witness Mr. MacDonald
18 last week and doesn't actually dig very deep into the facts that are within Ms. Williston's
19 knowledge about the mass casualty event itself.

20 To highlight a couple of the pieces that we would submit would
21 need further follow up from Ms. Williston, this includes information that she provides
22 about the reverse 911 calling, this described the attempts to do it within the OCC that
23 night. She further discusses what appears to be either her or the OCC's assumptions
24 about the ongoing utility of it, or reasons not to carry on with it, and we see this around
25 pages 38 and 39 of her interview, and we would submit that this warrants much more
26 exploration, so that we can fully understand what efforts were being undertaken within
27 the OCC of this nature and why.

28 Ms. Williston also touches upon her frustrations with the extraction

1 of the children, specifically in relation to Children's Services. The Commissioners will
2 appreciate that our clients who invested in the children's experience are -- have a need
3 to understand everything that was done to protect those children and to bring those
4 children out, ensure that they were cared for. It's deeply important to our clients to fully
5 understand everything that can be known about the children's extraction.

6 In her -- to mention one more final point in relation to her statement,
7 Ms. Williston references software she describes as Pictometry, P-I-C-T-O-M-E-T-R-Y,
8 which could have been a useful tool during the mass casualty event, but really doesn't
9 say all that much about it and why it may not have been available at the time, and so
10 this is something that we would submit needs to be better understood. If there was a
11 tool available that simply wasn't in place or active at the time that may have informed
12 the RCMP's response, then we would submit that that's something that we need to
13 better understand as well.

14 And we will -- and we certainly acknowledge and expect that we will
15 hear comments from either the Attorney General of Canada or perhaps the National
16 Police Federation in relation to the trauma-informed mandate and how that should
17 impact your decision as to whether Ms. Williston ought to be called as a witness or not.
18 And I won't repeat all of the comments that you would have heard last week in regards
19 to this, including from my colleagues Mr. Pineo and Mr. Scott, but certainly we'll just put
20 a period on that and encourage Commissioners that you think carefully about whether
21 or not the -- any trauma that may flow to Ms. Williston by coming and providing more
22 fulsome answers to some of these questions, we would submit, should not outweigh the
23 necessity of ensuring that this information is brought before the Commission.

24 And subject to any questions, those are my comments in relation to
25 Ms. Willison.

26 **COMMISSIONER MacDONALD:** Thank you so much, Ms.

27 McCulloch.

28 **MS. SANDRA McCULLOCH:** Thank you.

1 **MR. JAMIE VanWART:** Commissioners, you will next hear from
2 Canada and Ms. Ward will be speaking.

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

4 **MS. LORI WARD:** Good morning, Commissioners. My name's
5 Lori Ward. I represent the Attorney General of Canada.

6 **COMMISSIONER MacDONALD:** Good morning, Ms. Ward.

7 **MS. LORI WARD:** Our comment -- our main comment with regard
8 to Ms. Williston is that her evidence would be premature as evidenced by the fact that
9 she's not cited in the first three Foundational Documents we're dealing with. And, in
10 fact, her evidence will be more germane to the Command Decisions document.

11 Ms. Williston was interviewed. I would submit that some of the
12 issues that have been raised are perfectly suited for follow-up written questions as well.
13 In fact, some of these things were canvassed, and it would be prudent to see if Ms.
14 Williston has a clear recollection of some of these things before she would ever be
15 subpoenaed to testify. In addition, I think other call takers were mentioned whose
16 evidence she couldn't necessarily speak to. So overall, we would just say that it's
17 premature to consider a subpoena for Ms. Williston. Thank you.

18 **COMMISSIONER MacDONALD:** Thank you, Ms. Ward.

19 **MR. JAMIE VanWART:** Thank you, Commissioners. Ms. Ward
20 made reference to a Foundational Document, RCMP Command Decision narrative.
21 There is also going to be a Foundational Document entitled "Overview of 911 Call
22 Taking and Dispatch in Nova Scotia," which may be an opportune moment to have
23 further discussions on this -- on -- with regards to Ms. Williston.

24 **COMMISSIONER MacDONALD:** Thank you.

25 **MR. JAMIE VanWART:** The next individual is S/Sgt. Steve
26 Halliday, and we'll be hearing from counsel from Patterson Law.

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

28 **MS. SANDRA McCULLOCH:** Good morning again,

1 Commissioners. I had prepared comments in relation to the -- a number of
2 commanding officers sort of as a group, so ---

3 **COMMISSIONER MacDONALD:** Sure.

4 **MS. SANDRA McCULLOCH:** --- I will speak to S/Sgt. Halliday
5 specifically in a moment, but I wanted to make a few preliminary comments that would
6 apply to all of these commanding officers that I'll be speaking about this morning.

7 One thing I want to touch upon first is, you know, we've heard a lot
8 about the Rules, and we've heard a lot of suggestion from, in particular, the National
9 Police Federation, but also, the Attorney General of Canada in relation to essentially
10 urging -- by my interpretation, is urging your -- the Commissioners, you to consider all of
11 the other alternatives to calling these witnesses by subpoena. By our read of the Rules,
12 the Rules essentially create a two-step process whereby it's up to you, Commissioners,
13 to determine if any of the witnesses that we are advocating for, or any participants are
14 advocating for, should be brought before the Commission in order to give evidence, and
15 if that is the case, they will be brought forward by way of subpoena, and this is Rules 37
16 and 38. The Rules go on, in particular Rule Number 43, to speak to if there are
17 accommodations or other considerations to be made in relation to a particular witness,
18 then it is incumbent upon us to, at that second stage, consider whether maybe some
19 other means of gathering their evidence is to be brought forward.

20 So to -- I guess I just raise this, to the extent that there is some sort
21 of suggestion that we need to consider -- canvass and consider all other options by
22 which we might gather evidence from witnesses does not seem entirely consistent with
23 the way that the Rules are laid out. That it's incumbent upon us to first persuade you
24 that these witnesses need to provide further information to fill out the Foundational
25 Documents, and then we consider -- and I would submit that this will be on -- upon
26 application of somebody advocating, you know, either the National Police Federation or
27 the Attorney General or Canada to advocate that there is something other than, you
28 know, by subpoena, on this stage, giving testimony before everyone, if there's some

1 other means that we need to do, that that's what the Rules is directing us to do. So I
2 just want to flag that that's our interpretation of the Rules, and we would submit that, you
3 know, that that's the playing field with which we are bringing our request here today.

4 As a second more general point that would apply to all of these
5 commanding officers that I'm going to speak about today, Commissioners, I -- it's
6 already been touched upon and I fully expect that we're going to hear a lot of suggestion
7 that these requests that we are bringing here today are premature, that,
8 Commissioners, you shouldn't consider bringing these witnesses before the
9 Commission to give evidence until a later stage whereby I take away the suggestion is
10 we will be better positioned to know if we really need to hear from these witnesses or
11 not. We certainly allow that it is possible that some of these requests are somewhat
12 premature here today. The problem that we have in advocating on behalf of our clients
13 is that we have no knowledge about exactly what's going to come before the
14 Commission at a later date. We've seen preliminary drafts of documents; we know
15 they're going to be revised. We don't really know what content is in them at this point.
16 Much as we may make some assumptions about that, we don't know for sure at this
17 point.

18 We know there are names that are on the tentative schedule at this
19 point. It hasn't been made clear to us whether these witnesses have, in fact, been
20 subpoenaed, and will, in fact, be appearing at a later date.

21 So we're not assured of their certainty of them being brought
22 forward before the Commission. That's why we're emphasizing our view that they need
23 to be brought forward. And to extend that comment that we don't have knowledge and
24 certainty about whether these individuals be brought forward, we don't know for what
25 purpose the Commission may be envisioning having them brought forward, even if it is
26 a certainty at this point.

27 We -- it's been made clear that, you know, witnesses will not be
28 brought forward for all purposes to speak to everything. And so we feel it's incumbent

1 upon us now to make sure that the Commission is aware of what we feel needs to be
2 canvassed through these witnesses, whether that happens now or happens at a later
3 date.

4 And just as a final point on that before I move on to speak to S/Sgt.
5 Halliday, I -- we do have some concern that if we don't raise these concerns with you
6 now, that we may miss the boat, so to speak, you know. And if we talk about these
7 witnesses at a later date in the context of, for example, the command decisions
8 Foundational Document, we do have some concern that if we wish to speak to any of
9 these witnesses for any purpose that falls outside of the four corners of that particular
10 Foundational Document, it may be there's more relevance on these Portapique
11 Foundational Documents that we're dealing with right now, we don't want to lose that
12 opportunity and somehow feel stifled at a later date that the questions we're asking, you
13 know, don't fall within or only within that command decisions narrative, for example, or
14 the ERT narrative at a later date. So we feel it's incumbent upon us to highlight things
15 that -- issues that come out of these documents now so that, Commissioners, you are
16 aware of our concerns, whether you feel that these witnesses need to be brought
17 forward right now or if that's something that needs to happen at a later date.

18 Specifically, in relation to S/Sgt. Halliday, we of course understand
19 that he's one of the commanding officers that was part of the early response during the
20 early hours of the mass casualty event. He was directly involved with the fulfilment of
21 responsibilities of other members, and particularly, working with S/Sgt. MacCallum.

22 We will also speak here today in relation to the issue of
23 containment, which is the subject of one of the three Foundational -- Portapique
24 Foundational Documents that we've been dealing with these past number of days.

25 We submit that this is another occasion where it is critical that the
26 Commission ensure that it has fully explored all of the information that S/Sgt. Halliday
27 has to offer in relation to the Portapique Foundational Documents in general, but also in
28 relation to containment, specifically.

1 We need to better understand his expectations in tasking as he did
2 containment-related responsibilities, such as tasking S/Sgt. Carroll to assist in that role,
3 mapping specifically to S/Sgt. MacCallum. He speaks about these things in his
4 interview with the mass Casualty Commission COMM document 19375, and he speaks
5 generally about that role, but from our perspective, there is a lot of detail that can be
6 gleaned from him that simply isn't in that interview.

7 At page 11 of that same document, his interview with the Mass
8 Casualty Commission, S/Sgt. Halliday speaks to not finding -- not feeling that
9 containment was, "Not a challenge" because you could block highways. We find that
10 statement at page 11. We would submit that this is a comment that needs to be much
11 more fully explored in light of the failure to contain Highway 2 to the east of Portapique
12 until long after the perpetrator's believed departure.

13 We also need to ask more questions about S/Sgt. Halliday's
14 ongoing role in relation to the Portapique response, specifically in relation to
15 containment. We know from his statement -- this is discussed in and around page 14 --
16 that the nature of the containment efforts was reviewed periodically, but exactly what
17 the nature of that review was and exactly what actions were taken, either directly by him
18 or at his direction, need to be more fulsomely explored. There's just more questions
19 that are generated by this information, and we submit that it's incumbent upon the
20 Commission to gather that.

21 Furthermore, and as a final point, it would be our submission that
22 S/Sgt. Halliday can be canvassed more fully in relation to the RCMP's diversion of
23 resources to five houses during the early hours of the mass casualty event. Thus far,
24 this is a point or a topic area that's been, you know, touched upon somewhat in these
25 materials, and certainly in the supporting documents, it's in there, but that is a significant
26 concern of ours and our clients, and so we should be speaking to S/Sgt. Halliday in
27 relation to that as well.

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

1 **MS. SANDRA McCULLOCH:** Thank you.

2 **COMMISSIONER MacDONALD:** Ms. McCulloch, would it be
3 convenient for you to address your comments of the other commanders, or -- totally in
4 your hands, whatever. I thought when you began today you had some general
5 comments applying to all and -- it's up to you. We're pleased to hear you on all of the
6 proposed witnesses now or...

7 **MS. SANDRA McCULLOCH:** Certainly.

8 **COMMISSIONER MacDONALD:** Whatever you ---

9 **MS. SANDRA McCULLOCH:** I'm happy to carry on.

10 **COMMISSIONER MacDONALD:** Sure.

11 **MS. SANDRA McCULLOCH:** I suppose if there was counsel who
12 wished to speak to my submissions thus far, if they felt differently, then I'd certainly be
13 happy to sit down and let them speak to my comments thus far, but I'm happy to carry
14 on.

15 **COMMISSIONER MacDONALD:** Sorry; one of the challenges we
16 have is the room is so big, and you're not miked, but Ms. MacPhee?

17 Sure. So they're fine with you carrying on, Ms. McCulloch, if you're
18 comfortable. If not, we can go one at a time.

19 **MS. SANDRA McCULLOCH:** That's fine.

20 **COMMISSIONER MacDONALD:** Thank you.

21 **MS. SANDRA McCULLOCH:** Thank you, Commissioner.

22 So I will -- I'll move on then, just in the order of the names that I
23 have in my notes. So I would speak about S/Sgt. Rehill; he's another commander that
24 we have -- commanding officer that we have indicated we believe needs to be brought
25 before the Commission to provide further evidence.

26 S/Sgt. Rehill was the commander at the -- or the risk manager,
27 excuse me, at the outset of the mass casualty event, situate within the OCC; recipient of
28 crucial information, such as from the 911 calls of Jamie Blair, the children, the

1 MacDonalds; privy to the communications of the first responders and engaged in those
2 communications. And S/Sgt. Rehill was tasked with management of the RCMP's
3 response during these early hours.

4 We would submit, similar to what I've indicated in relation to S/Sgt.
5 Halliday, we do have information from him but it is not without concerns and not without
6 areas for further investigation and examination.

7 We note that his handwritten notes, which seem sort of like a -- I
8 would describe it as a journal or a log that is maintained in handwriting, appears to have
9 been largely after prepared, so not contemporaneous with the event but after prepared;
10 that's COMM number 13953.

11 We submit that those handwritten notes omit critical details,
12 including information received by S/Sgt. Rehill about or instructions he gave about the
13 Zahl-Thomas home, the Faulkners' family's presence, the movement of the first
14 responders on Portapique Beach Road; there are -- these things are touched upon, but
15 in his handwritten notes they're considerably lacking, if there at all.

16 There are some peculiarities in relation to these handwritten notes.
17 There are, for example, two entries in relation to learning from Richard Ellison about the
18 death of Corrie Ellison with the timestamp of 10:38 p.m., which would -- based on the
19 information that we have received, that would have been a notation made prior to Corrie
20 Ellison's actual death, as submitted by Commission Counsel to you last week.

21 And so we clearly have information that's in these notes that
22 requires some questioning and examination.

23 In relation to his interview with the Mass Casualty commission, and
24 this is COMM number 49655, areas for further questioning arise there as well. He
25 states that he didn't have knowledge of the fully marked replica cruiser until the morning
26 of April 19th; this is at page 19 of that statement, which warrants further understanding
27 as to exactly what he means by that statement, based on everything else that we know
28 thus far in his interview, he references there having been found two bodies in the vicinity

1 of 135 Orchard Beach Drive. He doesn't identify both. We might presume who he is
2 talking about, but he doesn't identify exactly who he's talking about. Given the proximity
3 of the Blair home, it warrants clarification.

4 In his statement, this is in and around page 20, he speaks to his
5 interpretation of Ms. MacDonald's representation of the perpetrator's car as simply
6 decommissioned and stripped, but doesn't clearly explain that in full detail and why it is
7 that he came to that conclusion from the information provided, much less delve into the
8 implications of that interpretation.

9 At page 33 of his statement, he speaks to or tries to describe the 9-
10 1-1 mapping, which seems to be a bit of a moving target, as far as an issue goes. So
11 therefore something that we submit the Commission must explore further from all of the
12 people that have information about what exactly was going on in relation to using any
13 sort of 9-1-1 map. That, we submit, requires further investigation.

14 At page 44 of his interview, he speaks to:

15 "The concern of blue on blue" (As read)

16 And his apparent hindsight that:

17 "I guess I could have had two or three teams in there."

18 (As read)

19 This critical information is not explored more fulsomely with him and
20 we would submit that is necessary that the Commission does so.

21 In relation to containment, and this is beginning in and around line
22 364 of the Colchester radio records, COMM3806, it is S/Sgt. Rehill that directs a
23 roadblock to the east of Portapique on Highway 2, but then diverts a responding
24 member to the west and does not return to his directions in relation to setting up
25 containment in the east. And this is something that needs to be further explored as to
26 why a decision may or may not have been made in that regard.

27 In our submission, it's quite critical that these, and not exclusively
28 these issues, but these issues which are directly on point to the details that are outlined

1 in the Portapique Foundational Documents, need to be more fully explored from one of
2 the commanding officers at that time.

3 And as I'd mentioned in relation to S/Sgt. Halliday, there is again
4 this issue of the diversion of RCMP resources to the neighbouring Five Houses area.
5 And exactly why this was undertaken and what impact it may have had to the response
6 in and around Portapique needs to be more fulsomely explored. And it is our
7 submission that S/Sgt. Rehill can speak to that as well.

8 Moving on to Sgt. O'Brien.

9 **COMMISSIONER MacDONALD:** Thank you.

10 **MS. SANDRA McCULLOCH:** Sgt. O'Brien was the NCO, although
11 all indications are that he was not working that night and it isn't entirely clear how he
12 came to be assuming a leadership role that evening. We would submit that this
13 requires more fulsome explanation.

14 Perhaps part of the reason we don't have that is thus far, we don't
15 have an interview conducted by the Commission of Sgt. O'Brien. He has submitted
16 essentially a written Q and A to respond to questions posed to him in writing and
17 answers that he provided in return. We don't have any knowledge as to how those
18 answers were generated, whether that's something he did independently, and exactly
19 how he came to put his answers together. Some of those answers require further
20 explanation as well in relation to Answer 2 of this document.

21 Forgive me, the Q and A, I should give you the numbers, they are
22 COMM numbers 46248, 46250.

23 In relation to Answer 2, he speaks to the assumption that:

24 "Police car was again decommissioned or a stripped
25 cruiser. Something to that effect." (As read)

26 He:

27 "Did not consider the possibility that the replica had
28 actual decals and a light bar." (As read)

1 And we would submit that the basis for this assumption warrants
2 further exploration, what information he had by which to make this assumption and what
3 came from that assumption, at least from his perspective.

4 It is our submission that in general, the concern that we've heard
5 about, I mentioned a moment ago in relation to S/Sgt. Rehill, this concern about blue on
6 blue as a basis for why -- fewer -- so few officers were permitted entry into Portapique
7 needs to be more fulsomely understood from all of the officers that -- excuse me, all of
8 the members had input into that decision.

9 Another issue that we have been raising for some time now is
10 identified in Answer 8a of Sgt. O'Brien's materials. He confirms members' use of
11 cellphones. So they were communicating with one another via their cellphones. We've
12 seen other references to using, for example, maps on cellphones. We have submitted,
13 a number of occasions, that this is information that must be obtained by the
14 Commission to understand the nature -- frequency, nature, what have you, of
15 communications between officers where they were using something other than the
16 Colchester radio or other sources for sharing information of which we are aware. To our
17 knowledge, this sort of disclosure has yet to be provided, and we submit that it's
18 critically important for the Commission to more fulsomely understand these
19 communications as well.

20 And again, we raise the concern about the diversion of RCMP
21 resources to responding in Five Houses. And I won't say that over and over again, but
22 we would submit that Sgt. O'Brien can speak to this as well.

23 S/Sgt. MacCallum is one of the others that we are submitting needs
24 to be brought forward to speak to the information in the Portapique Foundational
25 Documents.

26 S/Sgt. MacCallum, like S/Sgt. Halliday, was one of the commanding
27 members during the early hours of the mass casualty event. As I mentioned a moment
28 ago, we understand that mapping related responsibilities were provided over to S/Sgt.

1 MacCallum. We similarly submit that the interview conducted with S/Sgt. MacCallum
2 leaves a number of critical areas only partially explored. And the interview is COMM
3 number 19382.

4 To cite examples, S/Sgt. MacCallum arrives at the Bible Hill
5 Detachment to perform his role, yet appears to have limited information. To take a
6 quote from page 23:

7 “What’s going on? Do we have sufficient human
8 resources? Do we have sufficient containment?” (As
9 read)

10 Suggestive of him not having the information he needed at a very
11 critical time in the event. And we would submit that this requires further understanding
12 as to exactly what he meant in providing this information, what it is that he knew prior to
13 his arrival, what did he expect to be in place when he got there?

14 S/Sgt. MacCallum speaks to having impeded ability to access
15 mapping or log in to CIIDs to see members’ location. He speaks to having ---

16 **COMMISSIONER MacDONALD:** I’m sorry, I didn’t hear the first
17 part of that sentence.

18 **MS. SANDRA McCULLOCH:** Mr. -- excuse me, S/Sgt. MacCallum
19 speaks to his ability to access mapping or logging into CIIDS having been impeded
20 during these critical hours. He speaks to it having taken 25 to 30 minutes to resolve.
21 We see this around page 23/24 of the interview.

22 We would submit that it’s crucial to fully understand exactly what
23 S/Sgt. MacCallum was trying to accomplish and whether the ability to log -- what was
24 the reason that he couldn’t log in or he was having difficulties in that regard and what
25 the impact of that was.

26 S/Sgt. MacCallum, and I apologize, I didn’t mark down a page
27 reference for this, but S/Sgt. MacCallum also speaks of his familiarity with Portapique,
28 there having been a number -- having been there a number of times and having “knew

1 that road”.

2 The interview also further describes his satisfaction with Google
3 Maps and feeling that Google Maps didn't accord with the accuracy of the real roads.

4 There's a quote, he speaks to:

5 “It's making roads where there are no roads.” (As read)

6 There's a lot here that needs to be unpacked, we would submit, in
7 understanding exactly what S/Sgt. MacCallum was seeing or not seeing, what problems
8 he was concerned with that he was identifying, and ultimately why he, as we understand
9 from his statement, resorted to working from a map taken off the wall.

10 And there's just a lot here that's not fully explored, and we would
11 submit that it is critical that we speak to the person who was tasked with mapping and
12 understanding the area to the benefit of all other responding members, we need to hear
13 more from him and fully understand exactly the work that he was doing and what he
14 was accomplishing.

15 And again, I'll just state it briefly that we would submit that he would
16 also be able to offer information as to the diversion of RCMP resources to Five Houses
17 during the response in Portapique.

18 The last of the five that was among this window for submissions is
19 S/Sgt. West. S/Sgt. West became the critical incident commander, which was
20 broadcasted at or around 1:19 in the morning on April 19. While we -- probably with
21 respect to S/Sgt. West it's probably a little more premature than the other individuals,
22 there's probably more merit to that suggestion that calling him now as opposed to later
23 is somewhat out of time, but that's -- we think it's important that we raise a number of
24 critical points in relation to him, information that he is aware of including his
25 understanding of the time that the Blair home was accessed and attended to by
26 members, and why it was and when it was, that being later in the morning on April 19.
27 S/Sgt. West's interview -- and I similarly apologize, I didn't write down a Com number.
28 He also creates some uncertainty with respect to mapping, also speaks to accessing of

1 Google Maps, a hand-drawn map on a flipchart. We need more information about who
2 created this map and how it was put together and why. If there were other maps relied
3 upon to put this information together, how was that accomplished? Who helped to
4 accomplish it? Questions of that nature. There's just simply not enough information to
5 inform the information he's attempting to convey.

6 And we submit that there are other areas in S/Sgt. West's interview,
7 you know, in the realm of decision making, public alerting. For example, his comment
8 that the alert ready wasn't a tool in their toolbox, which is around page 50 of his
9 statement. So, again, I -- as I've said, we appreciate that S/Sgt. West it may be
10 premature to call him at this point and that it should be deferred until a later point, but
11 again, I just -- to circle back to my initial comments, we do have some concern about
12 making sure that things that we believe are relevant to the Portapique Foundational
13 Documents are at least flagged for you, Commissioners, at this time.

14 Do want to stress is a final comment that this response that these
15 individuals have been interviewed and they've answered questions in these areas, we
16 would submit that that's simply not an answer for not calling these individuals. In the
17 case of all of them, more questions arise and none of them are immaterial to the
18 Commission's work. We will have heard from Mr. Russell this morning identifying that
19 supplementing information we already have is certainly within the realm of why
20 evidence is collected in this fact-finding process.

21 In regards to the -- what I expect we may hear, this being reminding
22 Commissioners of the trauma-informed mandate and the concern about potentially
23 creating trauma or aggravating trauma by calling these individuals as witnesses, the
24 ones that we're discussing here today that you may look at them from a different lens in
25 that they are not first responders heeding commands on the ground, but rather, these
26 are individuals providing commands to -- from, in some respects, from afar, but
27 nevertheless, we expect that there will be a suggestion that there -- we must continue to
28 have concern about trauma in occasion to these individuals by having them come and

1 speak to these matter. But we would submit that the importance of creating a fulsome,
2 factual record absolutely has to be front and foremost to your Commissioner's minds
3 when it comes to determining whether or not any of these individuals will be called as
4 witnesses.

5 And I would stress, it's just a -- I think I said final point already, but I
6 mean it this time. And I would just stress that, you know, there's other trauma that we
7 have to balance here as well, trauma to the victims, potentially trauma to members of
8 the public by not creating a fulsome, factual record. We would submit that it's also
9 worth considering whether not giving -- whether it's the commanding officers or other
10 first responders, not giving them an opportunity to answer questions, reasonable
11 questions and providing fulsome information and answers may actually be trauma-
12 inducing as well. Ms. Nijhawan has spoken to that the first responders they want to
13 help, they want to provide information to the Commission, and I trust that she would say
14 the same of the commanding officers as well. And so I would submit that it is worth
15 considering whether not having those individuals come forward and saying what they
16 feel needs to be said can be trauma inducing as well. So just an additional thought I
17 wanted to leave, Commissioners, you with. Subject to any questions you have in follow
18 up to my lengthy submissions, which I thank you for listening to, those are my
19 comments.

20 **COMMISSIONER MacDONALD:** Yeah, thank you. The only
21 question I have is just a practical one. Were you planning on giving the submissions on
22 behalf of Patterson Law for Cpl. Mills?

23 **MS. SANDRA McCULLOCH:** Yes. Yes, Sir.

24 **COMMISSIONER MacDONALD:** We could do that now and then if
25 we did that, we could break, and that would give Ms. Nijhawan and Ms. Ward or
26 MacPhee an opportunity to collect their thoughts during the break.

27 **MS. SANDRA McCULLOCH:** Sounds fine. Thank you.

28 **COMMISSIONER MacDONALD:** That appears fine to counsel

1 from the Government of Canada and for the Federation. So if you don't mind.

2 **MS. SANDRA McCULLOCH:** Sure. Very good.

3 I will keep my comments fairly brief in relation to Cpl. Mills. You
4 have heard all of my general comments already, and I would extend them in relation to
5 Cpl. Mills as well. For context, Cpl. Mills was in command by way of the ERT team, and
6 we again -- it may be -- we appreciate that it may be somewhat early days to hear from
7 Cpl. Mills. We know that an ERT-related document is coming, and certainly his
8 information will be relevant to other documents such as command decisions as well, but
9 we respectfully submit that it is critical that the Commission appreciate those areas
10 which bear upon the narrative that we've already been discussing, the Portapique
11 Foundational Documents, and that there be a fulsome opportunity to explore the parts
12 of that narrative that Cpl. Mills has involvement in, particularly containment; particularly
13 the timing of the access of the Blair home, which I've already mentioned a moment ago;
14 the extraction of civilians, including Clinton Ellison and Ms. Banfield; the direction of
15 Police Dog Services within the community; and of Cpl. Sutton specifically, of whom we
16 discussed last week. These are all points of interest to the Commission's mandate
17 which warrant precise attention to ensure that none of the knowledge that can be
18 gleaned from Cpl. Mills is overlooked in any way.

19 I would similarly footnote Cpl. Mills with respect to the RCMP's
20 diversion of resources to Five Houses, given that the ERT team was similarly tasked in
21 that respect. And those are my submissions in regards to Cpl. Mills.

22 **COMMISSIONER MacDONALD:** Well, thank you so much.

23 **MS. SANDRA McCULLOCH:** Thank you as well.

24 **COMMISSIONER MacDONALD:** So we'll take a 15-minute break
25 and after that break we can hear from counsel for the Federation and/or the
26 Government of Canada. Thank you.

27 **REGISTRAR DARLENE SUTHERLAND:** Thank you. The
28 proceedings are on break and will resume in 15 minutes.

1 --- Upon breaking at 10:38 a.m.

2 --- Upon resuming at 11:01 a.m.

3 **REGISTRAR DARLENE SUTHERLAND:** Welcome back. The
4 proceedings are again in session.

5 **COMMISSIONER MacDONALD:** Thank you.

6 **MR. JAMIE VanWART:** I believe we can begin by hearing from
7 counsel from Canada.

8 **COMMISSIONER MacDONALD:** Thank you, Mr. VanWart.

9 **MS. LORI WARD:** Thank you, Commissioners.

10 **COMMISSIONER MacDONALD:** Thank you.

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

12 **MS. LORI WARD:** I hadn't planned to say anything about trauma
13 or being trauma informed today, but then Ms. McCulloch I believe characterized those in
14 supervisory positions as not first responders, or something of the sort. And again, I
15 think I heard what was an insinuation that only maybe the IARD guys, and the ERT
16 guys, and the guys on the ground, the guys wearing the hard body armour, maybe
17 they're only the ones who experienced trauma. I think that's one of the erroneous
18 assumptions that Ms. Nijhawan sought to dispel last week. Some of these guys and
19 these women with 20 and 25 and 30 years of service, who saw 22 people killed that
20 day, including 1 of their own, experience trauma just as any other Nova Scotian,
21 probably more so.

22 Now, what I took from the Commissioners disallowing the expert
23 report was that the Commission has probably sought, and gained, and already had
24 some expertise with this topic. We know the Commissioners have engaged some
25 experts in this regard. And we expect that the Commissioners won't be making those
26 sorts of assumptions that the Participants seem to be making.

27 Again, as I said last week, those RCMP members in supervisory
28 roles and the other RCMP members, want to assist this Commission and provide

1 information that you need.

2 Again, we're surrounded by trauma and there needs to be a
3 balancing of trauma. And how those traumas are balanced, it's a tall order. And that's
4 why you're sitting up there.

5 Moving on to the information that's sought from these witnesses, or
6 proposed to be sought, I would simply say that saying that something wasn't fully
7 canvassed does not make it so. A lot of the issues that were raised have been fully
8 canvassed in documents and interviews to date.

9 One of the questions was why did Sgt. O'Brien come in to work if
10 he wasn't working that evening? Well, he came to work because Stuart Beselt called
11 him. He was Stuart Beselt's supervisor.

12 Most of these witnesses sought were not working as scheduled that
13 evening. Most of them came in because they heard that something major was
14 happening and they were needed, because that's what they do.

15 S/Sgt. MacCallum commented on maps. He wasn't happy with
16 Google Maps. He ended up taking a map off the wall. Well, whatever issues there are
17 with Google Maps are probably questions for Google.

18 Anyway, he spoke about this in his interview, and many of the other
19 issues that Ms. McCulloch raised.

20 Finally, we would suggest that most, if not all of this information
21 sought, if it's not already on the record, is to be addressed in subsequent command
22 decisions.

23 And I take Ms. McCulloch's point that I think she allowed that some
24 of these witnesses might be premature, but they wanted to put their marker down, which
25 is fair enough.

26 But we have the Command Decisions document yet to come, 200
27 plus pages, some time in May. The Decommissioned Vehicle document, as well as the
28 ERT document, and a document specifically on public alerting.

1 So with respect to these witnesses, we would just submit that they
2 are all premature at this point and could be reassessed somewhere down the road.

3 Thank you, Commissioners.

4 **COMMISSIONER MacDONALD:** Thank you, Ms. Ward.

5 **MR. JAMIE VanWART:** National Police Federation counsel, Ms.
6 Nijhawan.

7 **COMMISSIONER MacDONALD:** Thank you.

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

9 **MS. NASHA NIJHAWAN:** Thank you, Commissioners.

10 So on behalf of the National Police Federation, I'm here to respond
11 to a request for subpoenas of five individuals who were in commanding roles during the
12 mass casualty event: S/Sgts Halliday, West, MacCallum, and Rehill, and Sgt. O'Brien.

13 I'm also going to speak to you about the necessity of, at this stage,
14 issuing a subpoena for Cpl. Tim Mills, who was the individual who was in charge of the
15 ERT at that time. So in another type of commanding role.

16 I'm going to address a comment made by Ms. McCulloch that these
17 were not people in first responding roles. These were people who were engaged in the
18 events from afar.

19 I'd like to dispel that assumption. It's erroneous. These were
20 individuals who were very much on the ground, who are operational, not white shirts
21 sitting at headquarters. They were making decisions. They were subsumed in the
22 uncertainty and weighted by the responsibility of their decisions. And on their watch, as
23 you know, one member was shot and injured and another was killed. To suggest that
24 there is some lesser degree of trauma that these individuals may have been exposed to
25 I think is actually a completely erroneous assertion and that, in fact, when you hear from
26 them, as I expect you will, you'll hear that the exact opposite is true.

27 But aside from that issue, the real reason that a subpoena must not
28 issue for these members at this time is that we are here to talk about gaps, or disputes,

1 or need for context with respect to three Foundational Documents. And the
2 Commission itself has decided that it will present the evidence in a particular way, and
3 that is to offer, first, a community perspective on the events in Portapique, and then a
4 response -- a perspective of the response of the IARD team in that first responding
5 group. And then on top of that basic factual information, layer on several other types of
6 analysis.

7 So as we move through the proceedings, as the Commissioners
8 well know, we will receive a document about the Emergency Response Team, which
9 can be layered on top of these documents. It covers the same timeframe, but details
10 the involvements of other officers.

11 We're going to lay on top of that, a chronology from the perspective
12 of the command team, these officers that we just -- these members that we just spoke
13 about. And that is also going to lay on top of the existing documents.

14 We are also going to look topically at some of the important
15 questions that participants have raised. This question of RCMP public communications.
16 Alerting. We're going to look at the question of the use of air support over the same
17 time frame by the same members, and we're going to look at information that the RCMP
18 may have received about the existence of a replica police cruiser created by the
19 perpetrator.

20 So all of these documents are going to answer some of the
21 questions that were raised by Ms. McCulloch today, and many other questions that
22 could be asked of the members that have been identified.

23 Each of these members have participated in providing evidence to
24 the Commission on a voluntary basis. All except Sgt. O'Brien did so in a recorded
25 interview.

26 Those interviews are yet to from part of the record because their
27 actions have yet to be addressed in the Foundational Documents that the Commission
28 has before it.

1 In addition to those interviews, those members have notes, reports,
2 timelines, summaries of their involvement, which are also before the Commission.

3 This question of whether or not each and every one of the
4 questions raised by Ms. McCulloch have been answered, I can't tell you that, because
5 I've heard those questions for the first time just now. But I can tell you that most -- the
6 question for the Commission is, have they been answered? And that question cannot
7 be addressed until we see what is in fact presented in these future Foundational
8 Documents.

9 So with respect to the application itself, all -- for all of these
10 witnesses, this question is premature.

11 Now, we have added on to that an indication quite clearly from the
12 Commission that it intends to hear from the five members that we've described as
13 commanding members. And I've heard Ms. McCulloch's endorsement of a two-stage
14 process with respect to members who may need accommodation.

15 I think it would be extremely problematic for the Commission to, at
16 this stage, consider that maybe it would be good for these members to testify for their
17 own trauma. I think it would be problematic for the Commission to assume that what
18 we're really doing here is balancing, in some way, actual trauma for one person, with
19 the potential trauma of not knowing to another person.

20 But more specifically, I'd like to remind the Commission what a
21 trauma-informed mandate is, as defined by the Commission, and as accepted by the
22 Government of Canada.

23 A trauma-informed approach is meant to minimize harm, minimize
24 the chances of re-traumatization, and enhance safety, control, and resilience.

25 So it's for this reason that I look forward to the opportunity to
26 present information from each of these members about what they in fact have
27 experienced and what in fact they need from the Commission in order to achieve this
28 objective. And that's not for today. That's for another day. And so I'll just put a pin in

1 that issue and say let's not make assumptions, but let's ensure that our process
2 provides these individuals the opportunity for safety and control, and to speak their own
3 -- speak to their own experiences for themselves.

4 Subject to any questions that you have, those are my comments on
5 these witnesses.

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

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

8 **COMMISSIONER MacDONALD:** Sorry, were you going to
9 address Cpl. Mills separately or did I misunderstand?

10 **MS. NASHA NIJHAWAN:** Perhaps I didn't address him directly
11 enough, except to say that his involvement is covered ---

12 **COMMISSIONER MacDONALD:** Oh, okay.

13 **MS. NASHA NIJHAWAN:** --- not in these documents, but in the
14 Emergency Response Team document which is to come. And so my submission is that
15 his evidence would also be premature.

16 **COMMISSIONER MacDONALD:** Thank you.

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

18 **MR. JAMIE VanWART:** Commissioners, Commission Counsel will
19 make a couple of comments. First, Ms. McCulloch, in her representations, did indicate
20 that the Commission needs to obtain messages from RCMP officer's cellphones. I can
21 advise that the Commission has requested this information, including outstanding text
22 messages. We have also followed up with the Department of Justice on our initial
23 request.

24 With regards to the first five individuals, the S/Sgts Halliday,
25 McCallum, Rehill, and West, and Sgt. O'Brien, Commission Counsel has advised the
26 Participants that it wishes to hear from these individuals, and wish to do so within
27 relation to a forthcoming Foundational Document that will be presented later this spring
28 entitled "RCMP Command Decision Narrative".

1 And with regards to Cpl. Mills, Commission Counsel can advise that
2 there is a forthcoming Foundational Document entitled “RCMP Emergency Response
3 Team Response” that will be addressing Cpl. Mills involvement.

4 There is another bit of housekeeping today, Commissioners. On
5 Wednesday we heard from counsel with regards to a number of individuals, including a
6 Sean Conlogue. Subsequent to Wednesday, the Commission disclosed some further
7 information. So Ms. Miller would like to make -- address the Commission and make
8 some further comments in light of that.

9 **COMMISSIONER MacDONALD:** Absolutely.

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

11 **COMMISSIONER MacDONALD:** Good morning.

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

13 **MS. TARA MILLER:** Again, for those watching, my name is Tara
14 Miller. I’m with my colleague, Alex Digout. We represent family members of Kristen
15 Beaton and Aaron Tuck.

16 I appreciate the opportunity to speak again with respect to this
17 witness, Mr. Conlogue, who I addressed last week in terms of gaps in evidence relating
18 to him.

19 As Commission Counsel indicated, we did receive additional
20 disclosure on Friday relevant to this witness, and that disclosure was a further FBI
21 statement, audio and video. We’ve listened to the audio. The video is still in
22 production. But it is, we assume, matches with the video.

23 I spoke, as I said, to this last week, but I’ll again just review at a
24 high level.

25 Mr. Conlogue was a very close friend of the perpetrator and Ms.
26 Banfield. They visited him frequently in Maine. He was scheduled to come to Nova
27 Scotia to visit them prior to COVID closing the borders. The relationship was described
28 as family.

1 When the perpetrator last visited Mr. Conlogue in the States in late
2 February or March, he told him that he had put him in his will and he loved him.

3 But it's more than this. The reason for my comments about this
4 witness is more than this close relationship. It's specifically with respect to ensuring that
5 the Commissioners, and that the families, and that Canada have a fulsome timeline of
6 what happened on April the 18th, prior to 10:01 when the first 9-1-1 call was received.

7 And the reason for this is because Mr. Conlogue was one of the
8 last two people, other than Ms. Banfield, to speak to the perpetrator on Saturday, April
9 the 18th. And he did so not once, but twice. He spoke with him mid-afternoon when he
10 would have been present with a call that took place with Angel Patterson, I spoke to her
11 last week, and then he had a solo call on Facetime with the perpetrator, Ms. Banfield, at
12 5:30, which would have been 6:30 Nova Scotia time. This is less than four hours, as
13 the clock is ticking down, to when the carnage starts. And this was a 24-minute
14 Facetime call. That's a significant period of time.

15 So when we received this new disclosure on Friday, I listened to it
16 and through, well perhaps there's detail about the details of this contact in those
17 additional information.

18 And to my dismay, there was not. That just affirms and highlights
19 concerns that we have with respect to these reliance on prior statements as filling in
20 these gaps and building this timeline.

21 We know there are now two FBI statements, one ATF statement,
22 one statement with the RCMP, and one statement with Commission Counsel. None of
23 these statements, including the recent disclosure, spend any amount of time reviewing
24 what exactly took place and what was said in those two contacts that day.

25 The Commission interview, you know, certainly reviews certain
26 things, but it spent some time reviewing mental health resources for Mr. Conlogue, who
27 has lost a friend. And we have no issue, when it comes to trauma-informed mandate to
28 share mental health resources and support, but let me be clear, it is not at the sacrifice

1 of getting relevant facts. And we do not have any detail about these two contacts that
2 Mr. Conlogue had in the critical hours leading to the tragedy which unfolded several
3 hours later.

4 We submit detail of these two contacts is particularly relevant for
5 the Commission's work. And I'm echoing my comments last week, but I wanted to
6 reinforce that even with this additional com log, it didn't nothing to allay my concerns
7 with respect to detail that might exist in the record already.

8 Subject to any questions, those are my submissions. Thank you.

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

10 **MR. JAMIE VanWART:** Commissioners, that does conclude the
11 matters that were scheduled to be heard today.

12 **COMMISSIONER MacDONALD:** Well thank you so much, Mr.
13 VanWart.

14 And thank everyone, thank you Participants, and thank all members
15 of the public who are engaged, and of course Participants' counsel as well.

16 We will review and we will make our decision and respond to all the
17 submissions that have been made, and we'll do it as quickly as possible.

18 So just for members of the public, there's a lot to digest and we
19 don't want to overpromise, except to say that we will take tomorrow, that's for sure, and
20 attempt to digest the important information that we heard and make sure we have
21 sufficient time to make the proper decisions and to give the proper direction.

22 And so we will not be having hearings tomorrow.

23 And Rule 43 has been mentioned, and again, I'll speak for
24 members of the -- Participant counsel are fully aware of the rules and the purpose of the
25 rules, but just speaking for the public, Rule 43 is a process whereby special
26 arrangements, if they are required or desired by a witness in order to facilitate their
27 testimony, then that can be asked for and, of course, the Commission would consider
28 that. And we've heard quite a bit last week and some today about the effects, the

1 traumatic effects on so many people as a result of this horrendous casualty, and that's
2 something which, of course, the Commission is abundantly familiar with.

3 During the Wednesday proceedings, Commission Counsel, Mr.
4 Burrell, will present the next Foundational Document, focussed on the perpetrator's
5 actions overnight in Debart. And we've asked participants proposing witnesses vis-à-vis
6 that Foundational Document to do so on Wednesday, and any participants who oppose
7 that, we would handle it by way of written submission. So we're trying to be agile and
8 flexible, and rather than -- we think that -- we expect that the presentation of that
9 Foundational Document will not take a long time, so it would be time well spent to hear
10 from those who wish to propose other witnesses, but to afford an opportunity for those
11 who may oppose a chance to do so, we would do it by way of written submissions
12 again, just to be flexible.

13 And given the iterative nature of this inquiry, the schedule of
14 proceedings will move in the most efficient and timeliest fashion possible. We will
15 always try to give as much certainty as possible, but we have to be agile in response to
16 new information, submissions, and the availability of witnesses and the availability of
17 others.

18 Even when public proceedings are paused, again, I'll say this for
19 the public primarily, the work doesn't end. The Commission will continue its work. And I
20 think I mentioned this in my opening remarks while Mr. Burrell was presenting one
21 Foundational Document, there is a team of lawyers back at the office, if you will,
22 working on the ones that are to come. So it is very much iterative and we'll continue to
23 review documents that are still coming in and sort those and, of course share those with
24 participants at the earliest opportunity. And we continue our independent investigation,
25 and we're preparing for phase two proceedings, including the review of -- or receiving
26 Commission's reports, and working with participants to shape expert witness panels.
27 So we hope to have, you know, the issues that were talked about over the past week or
28 so, we hope to have expert reports on those, so that when we get to phase two and

1 three we can find out what are the best models in the world for any issues that we see
2 that may have played out in Nova Scotia. So that's coming. And, of course, we'll be
3 reviewing the submissions from participants. And the submissions have been very
4 helpful. Rest assured we have questions too, absolutely.

5 And again, for members of the public, please don't get the
6 impression that when we're paused and not having oral proceedings that Participant
7 Counsel are paused. I'm sure they are very -- will be very, very busy reviewing the
8 disclosure that we on a regular basis send along, and identifying gaps and errors in
9 upcoming Foundational Documents, as well as preparing their clients with regards to
10 the materials that will be ahead. So, everybody will be busy, I would think.

11 And we still have a long way to go here before we can reach any
12 conclusions and recommendations made in the final report later this year. Yet together,
13 repeating what I said in my opening remarks, but, you know, I think it's sometimes
14 helpful, together we are making important progress and appreciate your patience as we
15 continue this very, very complex and very challenging work. So, again, a thank you to
16 everyone.

17 And, Commissioner Fitch or Commission Stanton, I don't know if
18 you have anything you wanted to add. No. Then thank you. We'll resume again at
19 9:30 on Wednesday. Thank you.

20 **REGISTRAR DARLENE SUTHERLAND:** Thank you. Lunch will
21 be served shortly, and the proceedings are adjourned until Wednesday, March the 9th,
22 2022 at 9:30 a.m.

23 --- Upon adjourning at 11:29 a.m.

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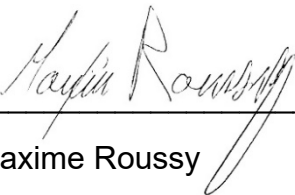
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CERTIFICATION

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

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



Maxime Roussy