



July 27, 2020

The Honourable Mark Furey
Minister of Justice
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The Honourable Bill Blair
Minister of Public Safety
House of Commons
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VIA EMAIL ONLY

Subject: Structural Deficiencies with the Proposed Independent Review Panel for Nova Scotia Mass Shooting

Dear Ministers Blair and Furey,

The British Columbia Civil Liberties Association (“BCCLA”) is writing to express our grave concerns regarding the decision of the Governments of Canada and of Nova Scotia (“the Governments”) to not hold a public inquiry into the mass shooting that occurred in Nova Scotia on April 18 and 19, 2020, and, instead, to appoint a joint independent Review Panel (“the Review Panel”).

The BCCLA is Canada’s oldest civil liberties organization, with an emphasis on law enforcement accountability. The BCCLA has previously called for public inquiries into a number of provincial and national matters relating to police accountability, including into: the missing and murdered Indigenous women and girls in the Downtown Eastside of Vancouver and along the “Highway of Tears” in northern British Columbia;¹ the conduct of police during the G8/G20 protests in

¹ “BCCLA, Aboriginal Leaders, Family Members Call For Public Inquiry Into Murdered and Missing Women,” March 11, 2009, <https://bccla.org/news/2009/03/bccla-aboriginal-leaders-family-members-call-for-public-inquiry-into-murdered-and-missing-women/>

Toronto in 2010;² the death of Raymond Silverfox in the custody of Whitehorse RCMP in 2008;³ the conduct of police and security forces at the Security and Prosperity Partnership (SPP) summit in Montebello, Québec in 2007;⁴ and the conduct of the RCMP at the 1997 APEC summit in Vancouver.⁵

Since the events of April 18 and 19, the families of victims,⁶ legal experts,⁷ thirty-seven Canadian Senators,⁸ a coalition of nearly two dozen anti-gender-based violence organizations,⁹ the former provincial medical examiner,¹⁰ and over fourteen thousand Nova Scotians have all called for an independent public inquiry.¹¹ Just last week, nearly three hundred friends and family members of the mass murder victims marched on the RCMP station in Bible Hill to demand such an inquiry.¹²

Despite all this, the Governments have instead opted for a review that no one has asked for. Minister Furey has stated that, in exploring the options available and accounting for “the families and others who were quite vocal in expressing their desire for answers,” the

² “BCCLA calls for inquiry into G8/G20 policing,” June 30, 2010, <https://bccla.org/news/2010/06/bccla-calls-for-inquiry-into-g8g20-policing/>

³ “BCCLA supports family of Raymond Silverfox in call for public inquiry files, police complaints in deaths of Silverfox and Robert Stone,” June 8, 2010, <https://bccla.org/news/2010/06/bccla-supports-family-of-raymond-silverfox-in-call-for-public-inquiry-files-police-complaints-in-deaths-of-silverfox-and-robert-stone/>

⁴ “Montebello Summit: Request for a Public Inquiry,” September 2, 2007, <https://bccla.org/news/2007/09/montebello-summit-request-for-a-public-inquiry/>

⁵ “Civil rights group reaffirms support for public inquiry into RCMP conduct at APEC,” February 29, 2000, <https://bccla.org/news/2000/02/civil-rights-group-reaffirms-support-for-public-inquiry-into-rcmp-conduct-at-apec/>

⁶ “Father of victim of Nova Scotia mass shooting calls for public inquiry,” The Chronicle Herald, May 7, 2020, <https://www.thechronicleherald.ca/news/provincial/father-of-victim-of-nova-scotia-mass-shooting-calls-for-public-inquiry-446813/>; “Families of N.S. mass killing victims push for public inquiry,” CBC Nova Scotia, July 22, 2020, <https://www.cbc.ca/news/canada/nova-scotia/families-of-portapique-victims-push-for-public-inquiry-1.5659246>

⁷ “Call for a public inquiry into the mass shooting and other acts of violence in Nova Scotia on April 18-19, 2020,” Nova Scotia Advocate, May 15, 2020, <https://nsadvocate.org/2020/05/15/call-for-a-public-inquiry-into-the-mass-shooting-and-other-acts-of-violence-in-nova-scotia-on-april-18-19-2020/>; “Province owes Nova Scotians public inquiry into mass shooting: lawyer,” The Chronicle Herald, June 16, 2020, <https://www.thechronicleherald.ca/news/provincial/province-owes-nova-scotians-public-inquiry-into-mass-shooting-lawyer-462971/>

⁸ “37 Canadian senators sign letter for public inquiry into N.S. shooting,” Global News Nova Scotia, July 18, 2020, <https://globalnews.ca/news/7192729/senators-letter-n-s-shooting-inquiry/>

⁹ “NAWL signs letter on the use of a restorative approach to an inquiry into the Nova Scotia mass shooting,” July 7, 2020, <https://nawl.ca/nawl-signs-letter-on-the-use-of-a-restorative-approach-to-an-inquiry-into-the-n-s-mass-shooting/>

¹⁰ “Former N.S. medical examiner calls for public inquiry into mass shooting,” The Chronicle Herald, May 21, 2020, <https://www.thechronicleherald.ca/news/provincial/former-ns-medical-examiner-calls-for-public-inquiry-into-mass-shooting-452634/>

¹¹ “Nova Scotians for a Public Inquiry,” <https://www.facebook.com/groups/306124757254346/>

¹² “300 family members and friends of mass murder victims march and demand public inquiry,” Halifax Examiner, July 22, 2020, <https://www.halifaxexaminer.ca/featured/300-family-members-and-friends-of-mass-murder-victims-march-and-demand-public-inquiry/>

Governments collectively identified “independence, transparency, and impartiality” as the “core attributes” needed for a meaningful investigation into the events of April 18 and 19.¹³

However, the Review Panel that has been established possesses none of these attributes. First, the Review Panel is not independent. Unlike a public inquiry, the Review Panel will not have the power to compel testimony under oath, nor will it have subpoena power. However, as outlined in its Terms of Reference, the Ministers have committed to ensuring that all government institutions falling under their respective jurisdictions, including the RCMP, “participate fully” in the Review Panel’s work.¹⁴ Should the Review Panel require information from non-governmental institutions such as a telecommunications company or a bank, it will not have the power to ask the court for production orders. Instead, the Ministers assured that “the government will assist the panel in those matters.”¹⁵ Further, beyond notifying the public, the Terms of Reference provide for no other mechanism by means of which the members of the Review Panel may respond to failures of cooperation or other attempts at obstruction or deception. In these respects, the Review Panel is clearly dependent on the very government institutions that it is ostensibly tasked with investigating.

Second, the review panel is not transparent. As is clear from the Terms of Reference, the Review Panel is explicitly forbidden from releasing all documents and information collected, received and considered during its work and in the preparation of its interim and final reports. By contrast, a public inquiry would be simulcast online, with documents and exhibits available to the public to ensure full transparency. Such measures would provide members of the public with the opportunity to scrutinize the inquiry’s work before any final public report was issued, and also ask questions and raise concerns either directly or via the media. It is especially inappropriate that the Governments have appropriated the language of “restorative principles” through an exhortation that the Review Panel will be “trauma-informed” in order to exclude the full participation of the families affected under the guise of protecting them from further trauma. Such an approach is not merely paternalistic, but directly contrary to the expressed wishes of the families themselves for a public inquiry—a point that Minister Furey himself mentioned at Thursday’s press conference.

¹³ “NS Minister of Justice on yesterday's announcement that an independent panel will look into the Portapique shootings,” CBC News Nova Scotia, July 24, 2020, https://www.cbc.ca/listen/live-radio/1-27-information-morning-ns/clip/15788741-ns-minister-justice-yesterdays-announcement-independent-panel-look?fbclid=IwAR312HCsdeeF6IvU15_bOAa4XIPD4XO9tH8NjY2RuV8nqQha2ry40X_d7sI

¹⁴ “Independent Review – Terms of Reference,” July 22, 2020, <https://www.halifaxexaminer.ca/wp-content/uploads/2020/07/TOR-EN.pdf>

¹⁵ “No public inquiry into mass murders,” Halifax Examiner, July 23, 2020, <https://www.halifaxexaminer.ca/province-house/no-public-inquiry-into-mass-murders/>

Third, the Review Panel is not impartial, or, in the minimum, raises the likelihood of a reasonable apprehension of bias. There are concerns that the Review Panel model is being endorsed by two Government Ministers who are former police officers, and that the Review Panel itself includes a former police officer, that threaten to undermine the public perception of the Panel's objectivity.¹⁶ These concerns are further bolstered by the fact that, despite claiming to be the "the most open and transparent province in Canada," Nova Scotia's Liberal Government has never once initiated a public inquiry since assuming office in 2013.¹⁷

Specifically, the government has rejected calls for public inquiries into the following matters:

- the deaths of 53 people during the COVID-19 pandemic at the Northwood long-term care facility in Halifax in 2020,¹⁸
- the death of Gregory Hiles at the East Coast Forensic Hospital in 2019,¹⁹
- the wrongful conviction of Glen Assoun in 1999, which left him imprisoned for 17 years and only fully exonerated in 2019,²⁰
- the shooting death of Bradley Clattenburg by the RCMP in Dartmouth in 2018,²¹
- the death of Joshua Evans, a man with an intellectual disability, at the Central Nova Scotia Correctional Facility in 2018,²²
- the death of Jason Leblanc at the Cape Breton Correctional Facility in 2016,²³

¹⁶ "Minister appears to be protecting RCMP by not committing to mass shooting inquiry: Desmond Inquiry lawyer," The Chronicle Herald, June 21, 2020, <https://www.thechronicleherald.ca/news/provincial/minister-appears-to-be-protecting-rcmp-by-not-committing-to-public-inquiry-desmond-inquiry-lawyer-464747/>

¹⁷ "Privacy ombudsman offers rebuke of N.S. premier's claim to most transparent province in Canada," Global News Nova Scotia, November 14, 2018, <https://www.halifaxexaminer.ca/province-house/no-public-inquiry-into-mass-murders/>

¹⁸ "Workers demand public inquiry into 53 Northwood deaths," The Nova Scotia Advocate, July 14, 2020, <https://nsadvocate.org/2020/07/14/workers-demand-public-inquiry-into-53-northwood-deaths/>

¹⁹ "Local non-profit seeks public inquiry into death of Halifax man in custody," Global News Nova Scotia, August 28, 2019, <https://globalnews.ca/news/5827021/gregory-hiles-ns-halifax-death/>

²⁰ "Glen Assoun calls for inquiry into wrongful conviction that left him in prison for 17 years," The Canadian Press March 4, 2019, <https://globalnews.ca/news/5020518/assoun-calls-for-inquiry/>

²¹ "Experts question police tactics in killing of Truro man," The Chronicle Herald, January 10, 2019, <https://www.thechronicleherald.ca/news/local/experts-question-whether-police-used-de-escalation-tactics-in-clattenburg-killing-274801/>

²² "Groups call for public inquiry into death of intellectually disabled man," CBC News Nova Scotia, December 8, 2018, <https://www.cbc.ca/news/canada/nova-scotia/joshua-evans-call-for-public-inquiry-1.4936543>

²³ "Nova Scotia parents of dead inmates demand public inquiries," CBC News Nova Scotia, March 19, 2016, <https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-prisoner-inquest-1.3499038>


- the deaths of Veronica Park and Camille Strickland-Murphy at the Nova Institution in 2015,²⁴ and
- the death of Clayton Cromwell at the Central Nova Scotia Correctional Facility in 2014.²⁵

Further, the Desmond Inquiry currently underway was initiated unilaterally by the province's Chief Medical Examiner.²⁶ Likewise, the inquiry that was launched into allegations of long-term abuse at the Nova Scotia Home for Coloured Children in 2015 similarly adopted a "restorative approach," with much of the testimony of former residents occurring behind closed doors.²⁷

In sum, the Governments' announcement of the Review Panel instead of a public inquiry represents a grave disservice to Canadians everywhere, but especially to the families and friends of those who died on April 18 and 19, 2020. However, there is still ample time to make things right. It is completely within the Governments' power to convert the Review Panel into a public inquiry under either the federal *Inquiries Act* or Nova Scotia's *Public Inquiries Act* or *Fatality Investigations Act*, with the appointed members serving as Commissioners.

With clear remedies in place, we strongly urge the Governments to act quickly and decisively to restore the public's faith into its handling of this important matter.

Sincerely,



Meghan McDermott
Senior Staff Counsel

²⁴ "Grieving father, law professor call for public inquiry into N.S. prison deaths," CTV Atlantic, September 30, 2015, <https://atlantic.ctvnews.ca/grieving-father-law-professor-call-for-public-inquiry-into-n-s-prison-deaths-1.2588069>

²⁵ "Review calls for end to secrecy in Clayton Cromwell's death in Halifax-area jail cell," Global News Nova Scotia, August 31, 2015, <https://globalnews.ca/news/4420644/clayton-cromwell-death-review/>

²⁶ "Inquiry into Lionel Desmond killings recommended to prevent more deaths, says medical examiner," CBC News Nova Scotia, December 28, 2017, <https://www.cbc.ca/news/canada/nova-scotia/lionel-desmond-killings-inquiry-1.4466162>

²⁷ "More secrecy behind N.S. government's push for restorative approach to inquiry into mass killings: women's groups, law professor," The Chronicle Herald, July 9, 2020, <https://www.thechronicleherald.ca/news/local/more-secrecy-behind-ns-governments-push-for-restorative-approach-to-inquiry-into-mass-killings-womens-groups-law-professor-471775/>