



By email

October 7, 2022

Mass Casualty Commission
1791 Barrington Street, Suite 310
Halifax, Nova Scotia B3J 3K9

Dear Commissioners:

Re: Phase 3 submissions of the BC Civil Liberties Association and East Coast Prison Justice Society

1. Introduction

The BC Civil Liberties Association (BCCLA) is the oldest and most active civil liberties and human rights group in Canada. BCCLA focuses on the relationship between people and the state, and the ways in which the state can limit or advance human rights and liberties.

East Coast Prison Justice Society (ECPJS) is a collaboration of individuals and organizations working to advance social justice through advocacy focused on the rights and interests of criminalized and imprisoned people. ECPJS raises awareness of the socio-economic, political and institutional inequalities impacting marginalized people and communities in Nova Scotia and the Atlantic Region.

The BCCLA/ECPJS coalition formed to assist the Mass Casualty Commission (Commission) in exploring the causes, context and circumstances giving rise to the mass casualty, and to ensure that in making recommendations to help prevent similar incidents in the future, the Commission does not inadvertently cause further harm to marginalized people and communities.

The record before the Commission reveals a catastrophic policing failure, on April 18-19, 2020 and long before, that contributed to the mass casualty. This failure did not result from any one officer's action or inaction, but rather, from a series of individual and systemic errors and oversights, some taking place long before the night in question.

These errors resulted from inadequate police oversight and accountability, democratic deficits in policing, failure to develop alternatives to policing, and reliance on a reactive and myopic approach to public safety.

2. Preliminary issues related to the process of this commission of inquiry

There are three preliminary issues related to the process of this commission of inquiry that require discussion because they shape both the factual findings we urge the Commissioners to make and the recommendations that we ask the Commission to adopt: (1) definition(s) of public safety and community safety, (2) non-involvement or under-involvement of directly affected communities, and (3) trauma-informed accommodations of state actors.

2.1. Defining public safety and community safety

There is widespread agreement amongst participants, both governmental and non-governmental, on the importance of making factual findings and recommendations that enhance public safety and community safety. These terms, however, have largely been undefined. Without such definitions, factual findings and recommendations may become unmoored to an identifiable objective and risk being under-inclusive.

Public safety and community safety are not just about policing or crime statistics.¹ Policing statistics may have little to no correlation with crime statistics. Further, crime statistics may not correlate with conceptions of safety or well-being. Conceptions of safety for most Canadians also include broader considerations, like access to basic material goods (food, water, clothing, and shelter), health, family, and clean environments. When public safety and community safety definitions become too focused on policing and crime, it risks ignoring other components of safety that may also be worthy of consideration.

We must also ask who constitutes the “public” or the “community” when we define public safety and community safety. People from vulnerable communities are often excluded from conceptions of the “public” or the “community” and therefore are not the focus of public policy efforts aimed at enhancing safety. Worse, the record reveals that people from such communities—particularly Indigenous peoples, Black people, people with low-incomes, and people with disabilities—are often over-policed and harmed by state actors in the name of public safety and community safety.² Public safety and community safety definitions and

¹ Tari Ajadi et al, *Defunding the Police - Defining the Way Forward for HRM* (2022), p. 34, **[P-001908 / COMM0058412]**

² Jessica Bundy, “‘We’ll Deal with it Later’: African Nova Scotian Women’s Perceptions and Experiences of the Police” (2019) 44:4 *Canadian Journal of Sociology* 319 at 323 **[Exhibit P-002636 / COMM0059276]**; Expert Report: Benjamin Goold, *Exercising Judgment: Understanding Police Discretion in Canada*, p. 43 **[Exhibit P-001873 / COMM0058373]**; Expert Report, Dr. Anna Souhami, *A Systematic Review of the Research on Rural Policing* (May 2022), p. 35 **[Exhibit P-002634 / COMM0058282]**; Hearing transcript (Jones), Volume 31, 2 June 2022, p. 94, lines 11-15 **[COMM0058946]**; Misra Shivangi et al. *The Toxic Culture of the RCMP: Misogyny, Racism, and Violence Against Women in Canada’s National Police Force* (2022) **[Exhibit P-003654 / COMM0059795]**; Kanika Samuels-Wortley, “To Serve and Protect Whom? Using Composite Counter-Storytelling to Explore Black and Indigenous Youth Experiences and Perceptions of Police in Canada” (2021) *Crime & Delinquency* 1-28 **[Exhibit P-005267 / COMM0064461]**; Scot Wortley, *Halifax, Nova Scotia: Street Checks Report* (2019) **[Exhibit P-004479 / COMM0058299]**

recommendations must be evaluated, at least in part, from the perspectives of these communities that often bear the brunt of state coercion in the name of safety.

We encourage the Commission to expressly define what it means by “public safety” and “community safety” in its final report. We also encourage the Commission to adopt definitions that include all people in the Province of Nova Scotia, including those from marginalized communities who may have unique and more pressing safety needs than others.

2.2. Non-involvement or under-involvement of vulnerable and directly affected communities

The Commission has a mandate to explore the causes, context, and circumstances giving rise to the mass casualty and to be forward looking in its recommendations. This understandably required focus on the families whose loved ones were killed and consideration of issues affecting rural Nova Scotians. But ECJPS and BCCLA are concerned that the Commission has not adequately involved other vulnerable and directly affected communities, especially Indigenous peoples and African Nova Scotians. These voices have not been included or centred in many of the Commission’s roundtables and expert reports.

We urge the Commission to carefully consider the secondary literature in the record that identifies how police and public safety efforts regularly neglect or actively harm these communities, and to consider their unique interests as part of the recommendation process.

2.3. Trauma-informed accommodations of state actors

We acknowledge that the Commission had a mandate to adopt trauma-informed procedures. However, we are deeply concerned that these procedures were often not applied in a transparent and principled fashion. Being “trauma-informed” became a throwaway phrase that counsel used to advance whatever strategic outcome was desired. In the eyes of many Nova Scotians, this approach was detrimental to the legitimacy of the Commission’s important work.

The concrete result of the Commission’s trauma-informed accommodation process was that key state actors were not subjected to the same degree of scrutiny as they would have been in a traditional public inquiry process. The evidence of key witnesses often went untested or was tested only through constrained questioning. As a result, there is a real risk that state actors avoided or evaded accountability for their conduct in pursuit of being “trauma-informed”.

The Commission’s approach to being “trauma-informed” negatively impacted its truth-seeking function. This cannot be undone. At this stage, all that can be done is to approach the evidence of witnesses who were granted accommodations with some degree of caution on the basis that their evidence was not subjected to complete and normal cross-examination processes.

3. Factual Disputes

There are several factual findings that we urge the Commissioners to make based on the record before this inquiry. These facts are important to understanding the causes, context, and circumstances giving rise to the mass casualty.

3.1. Complaints concerning the perpetrator's violence and possession of illegal guns were communicated to the RCMP and not properly investigated

The record reveals that complaints about the perpetrator's violence and illegal gun possession were communicated to the RCMP and not properly investigated in the years leading up to the mass casualty. If these complaints had been properly investigated, the perpetrator's violence and collection of illegal guns may have led to criminal charges, removal of the guns from his possession, and enhanced monitoring of his cross border activities.

In 2010, RCMP Cst. Wiley was contacted by HRP Sgt. Poirier concerning a complaint that the perpetrator was threatening to kill his parents.³ Sgt. Poirier's contemporaneous notes state that he spoke with Cst. Wiley who advised "he is a friend of the suspect" and had visited him "on a number of occasions."⁴ Sgt. Poirier advised Cst. Wiley that "the concern at this time is whether or not he does in face [sic] have any weapons at the cottage" and asked that this be investigated. Sgt. Poirier's notes reflect a second conversation, a month later, where Cst. Wiley advised that "he has not spoken to [the perpetrator] ... [but] will attempt to speak to him"⁵

Lisa Banfield testified that she had been introduced to Cst. Wiley when she and the perpetrator encountered him on a drive some time before 2010.⁶ She testified further that Cst. Wiley attended the perpetrator's Portapique cottage in 2010 to ask whether he had firearms. She stated that the perpetrator showed Cst. Wiley a "little musket kind of gun" and a decorative gun and told him "that's what I have."⁷ She stated further that Cst. Wiley was only there for about 10 minutes, that he did not take a statement from her, and that she could tell from the way that the two men interacted that "they knew each other."⁸

Cst. Wiley testified that he had no "specific memory of dealing with Sgt. Poirier at all."⁹ When asked whether Lisa Banfield's testimony refreshed his memory he responded that it did not.¹⁰

³ Foundational Document: Violence in the Perpetrator's Family of Origin, para. 97 [**Exhibit P-003334 / COMM0059739**]

⁴ HRM Police General Occurrence, Supplemental Report of Sgt. Poirier, 8 June 2010, p. 10 [**Exhibit P-003337, p 49 / COMM0003550, p 49**]

⁵ HRM Police General Occurrence, Supplemental Report of Sgt. Poirier, 8 June 2010, p. 13 [**Exhibit P-003337, p 52 / COMM0003550, p 52**]

⁶ Hearing transcript (Banfield), Vol. 48, 15 July 2022, p. 66, lines 10-15 [**COMM0061288**]

⁷ Hearing transcript (Banfield), Vol. 48, 15 July 2022, p. 67, lines 13-17 [**COMM0061288**]

⁸ Hearing transcript (Banfield), Vol. 48, 15 July 2022, p. 68, lines 1-26 [**COMM0061288**]

⁹ Hearing transcript (Wiley), Vol. 65, 6 September 2022, p. 75, lines 15-16 [**COMM0064441**]

¹⁰ Hearing transcript (Wiley), Vol. 65, 6 September 2022, p. 82, lines 9-12 [**COMM0064441**]

He then opined that perhaps his “memory has slipped to do with the whole thing to do with Sergeant Poirier ... or it was coincidental that we talked about firearms around that same period of time and that I had no idea that there was an interest in him with firearms.”¹¹

The reliability of Sgt. Poirier’s contemporaneous notes and Lisa Banfield’s testimony, when compared with Cst. Wiley’s lack of recollection, provides sufficient reason to conclude, at the very least, that a complaint was transmitted to Cst. Wiley and not investigated.

There were also serious credibility issues with Cst. Wiley that further impugn his evidence. Cst. Wiley could not explain why he remembered precise details of his interactions with the perpetrator but could not recall receiving a request to investigate him.¹² He became combative when a participant’s counsel read to him portions of Sgt. Poirier’s notes.¹³ He ended his testimony with a lengthy rant about transcription accuracy, press freedoms, and creating a “timeout corner for media.”¹⁴ His annual assessment from 2006-2007 raised concerns that he got “personally involved with the clients” and failed to follow-up on investigations in a timely fashion.¹⁵ All of this provides further context to support a finding that Cst. Wiley failed to properly investigate the complaint that was transmitted to him.

Brenda Forbes testified that in 2013, she also complained to the RCMP about the perpetrator’s violence, specifically an assault against Lisa Banfield that was witnessed by people other than herself.¹⁶ She also advised the RCMP that the perpetrator “possessed a number of illegal weapons.”¹⁷ RCMP Cst. Maxwell testified that what he received and investigated was a driving complaint, which he categorized as “assist public” before closing.

Ms. Forbes’ evidence should be preferred. She was firm in her recall of the complaint.¹⁸ Her testimony on related details, like relevant witnesses to the assault, is also supported by Cst. Maxwell’s contemporaneous notes that name these same witnesses.¹⁹ Cst. Maxwell’s testimony, by contrast, affected his credibility due to his recollection issues. For example, he could not recall why he had listed various names in his contemporaneous notes.²⁰

These complaints show that before the mass casualty, the perpetrator was known to the RCMP, that concerns about the perpetrator’s violence and illegal guns were transmitted to the RCMP,

¹¹ Hearing transcript (Wiley), Vol. 65, 6 September 2022, p. 82, lines 14-19 **[COMM0064441]**

¹² Hearing transcript (Wiley), Vol. 65, 6 September 2022, p. 136, lines 27-28, p 137, lines 1-9 **[COMM0064441]**

¹³ Hearing transcript (Wiley), Vol. 65, 6 September 2022, p. 128, lines 24-28, p 129, lines 1-12 **[COMM0064441]**

¹⁴ Hearing transcript (Wiley), Vol. 65, 6 September 2022, pp. 142-145 **[COMM0064441]**

¹⁵ Cst. Wiley Performance Review, 2006-2007, pp. 2-3 **[Exhibit P-005557 / COMM0063642]**

¹⁶ Hearing transcript (Forbes), Vol. 45, 12 July 2022, p. 34, lines 12-21 **[COMM0059854]**

¹⁷ Hearing transcript (Forbes), Vol. 45, 12 July 2022, p. 32, lines 13-15, p 34, lines 14-17 **[COMM0059854]**

¹⁸ Hearing transcript (Forbes), Vol. 45, 12 July 2022, p. 38, lines 16-27 **[COMM0059854]**

¹⁹ Handwritten notes of Cst. Maxwell, 6 July 2013 **[Exhibit P-001181 / COMM0011709]**

²⁰ Hearing transcript (Maxwell), Vol. 50, 19 July 2022, pp. 30-31 **[COMM0059927]**

and that in each instance, individual RCMP officers failed to properly investigate these complaints.

3.2. The RCMP failures on April 18-19 were not linked to inadequate funding or equipment

The record reveals that the RCMP made numerous mistakes on April 18-19, 2020. These particular mistakes have not been linked to inadequate funding or equipment. Without a sufficient link between these mistakes and inadequate funding, it is not logical to suggest that allocating further public resources toward policing or equipment may prevent this type of event from happening again in the future. As such, the Commission must carefully scrutinize claims that police resourcing and equipment are at the heart of the RCMP's poor response to the mass casualty.

For example, while it may be true that staffing levels in rural Nova Scotia require small numbers of officers to cover large geographical areas and that this could impact police responses in some instances, the evidence before the Commission for this event was that multiple RCMP members quickly reached Portapique and were available to respond. In fact, there were sufficient numbers of officers to immediately send a second Intermediate Action Rapid Deployment team into the area, but a decision was made by Sgt. O'Brien not to use these available resources because of a perceived risk of officer-on-officer fire.²¹

Similarly, while a larger Emergency Response Team could impact police responses in some instances, the evidence before the Commission for this event was that all available ERT members quickly responded to the call out, and the HRP ERT were also available if needed. The problem the RCMP ERT faced, however, was that other RCMP officers failed to take into serious consideration key witnesses who advised them that the perpetrator was driving a fully marked RCMP cruiser. As a result, the RCMP sent its ERT team to the wrong location.²²

The failure to quickly identify the perpetrator's vehicle was made worse by the RCMP's inability to identify alternative routes out of Portapique. This too was not a resourcing issue. The RCMP already had access to high quality mapping services that would have given them a "better understanding of the road networks in Portapique, thereby enhancing containment efforts during the Mass Casualty events of 18-19 April 2020."²³ However, the detachment commander opted not to be trained in this technology because he was in what he considered the pre-retirement phase of his employment. He was also unaware of who was trained in the technology so could not assign the task of accessing maps to others.²⁴

²¹ Hearing transcript (O'Brien), Vol. 29, 31 May 2022, pp. 18-19 [**Exhibit P-004371 / COMM0058858**]

²² Foundational Document, RCMP Emergency Response Team (ERT), paras. 57-63 [**COMM0006366**]

²³ Brian Corbett, MCC Investigations: Supplementary Report regarding Analysis of Pictometry, p. 13 [**Exhibit P-001546 / COMM0056422**]

²⁴ Hearing transcript (Carroll), Vol. 27, 26 May 2022, p. 48, lines 1-6, 11-18 [**COMM0058601**]

After the RCMP realized that the perpetrator had escaped Portapique and was driving a replica RCMP cruiser, they did not warn the public in a timely fashion. The RCMP have considerable communications resources that are always on call. The director of communications was unable to explain why these resources were not engaged earlier.²⁵ Once the RCMP decided to warn the public of the imminent risk to their safety, there were further delays in drafting and broadcasting those warnings. Even after the text of the Twitter-based warning was approved by RCMP operations, the responsible communications officer thought she had to pursue additional approval of the director of communications.²⁶ These delays were not the product of a lack of resources, and if anything, were worsened by a bloated and hierarchical strategic communications group that required multiple approvals to send a single Tweet in the face of an imminent risk of serious harm to the public.

3.3. The perpetrator was known to target vulnerable women, including Black women and women whose source of income is social assistance

The perpetrator targeted vulnerable women long before the mass casualty, including Black women and women whose source of income is social assistance. Factual findings about this type of violence and exploitation is key to enhancing public safety and developing early warning systems.

The Foundational Document on the *Perpetrator's Violent Behaviour Towards Others* captures some of the perpetrator's targeting and exploitation of vulnerable women.²⁷ But this evidence does not adequately address the extent of this violence, and more importantly, the extent to which it was public information.

The record reveals that the perpetrator was a "well-known household name among many African Nova Scotian communities" and "known for decades to exploit racialized women."²⁸ He used his position as a white, professional dentist to target and exploit vulnerable women.²⁹

The intersecting precarities of these women and their experience of being harmed by the police, made them less likely to trust or report their experiences to the police.³⁰ The record also reveals that some women worried that the perpetrator was affiliated with the police, which made the

²⁵ Hearing transcript (Scanlan), Vol. 34, 8 June 2022, p. 46, lines 2-13 **[COMM0058948]**

²⁶ Hearing transcript (Clarke), Vol. 33, 7 June 2022, p. 49, lines 12-28, p. 50, lines 1-24 **[COMM0058970]**

²⁷ Foundational Document: Perpetrator's Violent Behaviour Towards Others, paras. 151-153 **[Exhibit P-003368 / COMM0059623]**

²⁸ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 17; Hearing Transcript (Fifield), Vol 71, 15 September 22, p. 62, lines 20-27 **[COMM0064775]**

²⁹ Hearing transcript (Fifield), Vol. 71, 15 September 22, pp. 63-64 **[COMM0064775]**

³⁰ Expert Report, Dr. Anna Souhami, *A Systematic Review of the Research on Rural Policing* (May 2022), p. 35 **[Exhibit P-002634 / COMM0058282]**; Jessica Bundy, "'We'll Deal with it Later': African Nova Scotian Women's Perceptions and Experiences of the Police" (2019) 44:4 Canadian Journal of Sociology 319 **[Exhibit P-002636 / COMM0059276]**; Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 20

prospect of reporting to the police even more dangerous.³¹ While complaints were made to the provincial licensing board that governed the perpetrator's denturist practice, the limited scope of these complaints suggests that vulnerable women were not aware of this complaint mechanism or did not consider it a viable option for achieving public safety.³²

The absence of effective public safety resources for vulnerable women meant that the perpetrator was empowered to engage in violent and exploitative behaviour against Black women and women whose source of income is social assistance.

3.4. The RCMP's failure to respond effectively to gender-based violence is systemic and linked to police culture

The perpetrator's violence was gendered, particularly in the years before the mass casualty. The record reveals that the RCMP systematically failed and continues to fail to respond to this type of gender-based violence because of an unaddressed culture of misogyny.

The RCMP do not take gender-based violence seriously and often treat domestic violence incidents as "inconclusive, low-status work that distracts officers from their 'real' police work."³³ Investigating violence against women is inconsistent with many police officers' belief in the "crime is war" metaphor, which leads officers to "seek out work that is considered exciting and action-packed."³⁴ This preoccupation with 'real' police work can adversely impact how police approach aspects of policing that they consider less important, such as domestic violence; "[i]t has been noted that police officers regard being called to domestic violence incidents as rubbish work."³⁵

As Cst. Wiley explained, in his interview with the Commission, officers are informally trained to discount and write off certain types of complaints:

I had a Sergeant early on ... [a]nd I'm sure everybody got this talk ... [say] I am going to teach you something here ... there's two types of investigations. The one you investigate and the one that you conclude. ... And that's what you have to decide. We got so many ticky tacky calls ... you could see that there's a lot of ticky tacky stuff where you don't look to write something off ... But you have to decide [does] this have anything here?³⁶

³¹ Foundational Document: Perpetrator's Violence Against Others, para. 192 [Exhibit P-003368 / COMM0059623]

³² Foundational Document: Perpetrator's Violence Against Others, paras. 45-68 [Exhibit P-003368 / COMM0059623]

³³ Expert Report, Bethan Loftus, *Police Culture: Origins, Features, and Reform*, p. 24 [Exhibit P-001043 / COMM0053825]; Souhami, *Rural Policing*, p. 16 [Exhibit P-002634 / COMM0058282]

³⁴ Loftus, *Police Culture*, p. 22 [Exhibit P-001043 / COMM0053825]

³⁵ Loftus, *Police Culture*, p. 23 [Exhibit P-001043 / COMM0053825]

³⁶ Interview of Cst. Wiley, 13 July 2021, p. 38 [Exhibit P-001202 / COMM0015533]

In this context, it is unsurprising that many women do not trust that the police will be responsive to their complaints and that their experiences will not be classified as “ticky tacky” by the RCMP. As Lisa Banfield explained, in her interviews with the Commission, she was scared to say anything about the violence she had endured from the perpetrator because she did not trust the RCMP or believe that they had the ability to protect her and her family.³⁷ This mistrust was well-placed.

When Brenda Forbes brought a well-founded complaint to the RCMP concerning the perpetrator, as discussed above, it was treated as an “assist public” complaint and closed without a complete investigation. Ms. Forbes was so fearful of the perpetrator and the RCMP’s inability to respond to his violence that she moved to Halifax and then moved out of the province after learning that the perpetrator was linked to Halifax.³⁸ This decision may have saved her life given that the perpetrator killed the people who purchased her Portapique house, John Zahl and Joanne Thomas, on April 18, 2020.³⁹

The case of Susie Butlin had a tragic outcome and provides further case study of RCMP inaction in response to gender-based violence. Ms. Butlin was sexually assaulted by her neighbour. She brought a complaint to the RCMP but was told that no crime had been committed and no investigation was needed. The RCMP continued their inaction despite the fact that a provincial court judge had advised that the conduct was potentially criminal, the neighbour’s wife had contacted the RCMP to raise concerns about her husband’s risk of violence, and Ms. Butlin had called the RCMP a second time to report ongoing harassment. Cst. Wiley responded to the second call, a harassment complaint, and advised Ms. Butlin again that what she experienced was not criminal. This collective inaction ultimately precipitated the murder of Ms. Butlin.⁴⁰

Beyond these case studies of inaction and non-responsiveness to gender-based violence, there is also substantial evidence in the record that police themselves threaten the safety of women, especially Indigenous and Black women, both as abusers and as state actors who cover up for abusers.⁴¹ This fact not only undermines the RCMP’s credibility and ability to make an unbiased assessment of consent, of a complainant’s credibility, or any related decisions, but it also allows them to perpetuate violence against women.⁴² As the Honourable Michel Bastarache wrote in his report on sexual harassment and violence within the RCMP, the core of the problem is an entrenched culture of toxic misogyny within all levels of the force and in all provinces. It is systemic. “RCMP employees appear to blame the ‘bad apples’ without recognizing the systemic and internal origins of this conduct.”⁴³

³⁷ Foundational Document: Perpetrator’s Violence Towards His Common Law Spouse, paras. 92, 149 **[COMM0059740]**

³⁸ Hearing transcript (Forbes), Vol. 45, 12 July 2022, p. 42, lines 1-3 **[COMM0059854]**

³⁹ Hearing transcript (Forbes), Vol. 45, 12 July 2022, p. 20, lines 2-9 **[COMM0059854]**

⁴⁰ Hearing transcript (Grant), Vol. 51, 20 July 2022, pp. 108-110 **[COMM0061282]**

⁴¹ Hearing transcript (Palmater), Vol. 51, 20 July 2022, pp. 93-94 **[COMM0061282]**

⁴² Hearing transcript (Palmater), Vol. 51, 20 July 2022, p. 103, lines 8-18 **[COMM0061282]**

⁴³ The Hon. Michel Bastarache, Broken Dreams, Broken Lives, the Devastating Effects of Sexual Harassment on Women in the RCMP, p. 2 **[Exhibit P-003648 / COMM0058301]**

3.5. The RCMP's conduct throughout this commission of inquiry has obstructed the fact-finding process

In the aftermath of the mass casualty and throughout this commission of inquiry, the RCMP have obstructed the fact-finding process. This behaviour requires comment in the Commission's final report, both to disincentivize this type of conduct in future inquiries and to ensure that it does not impede the implementation of the Commission's recommendations.

In the weeks following the mass casualty, the RCMP quickly became aware of the material ways its conduct caused or contributed to the mass casualty, including befriending the perpetrator, failing to investigate actionable complaints against the perpetrator, disregarding eye witness accounts that the perpetrator was driving a replica RCMP cruiser, deciding not to add AlertReady to the RCMP's "tool box", and delaying warning the public of the imminent risk to their safety.

The RCMP attempted to get the Truro Police not to release material information to the public and to make it "go away." The Chief of the Truro Police refused on the grounds that this request was "not ethically and morally correct" and amounted to a request that he "lie" to the public.⁴⁴ A request for a formal external review of H-Division's conduct was allowed to "die on the vine."⁴⁵

Once it was clear that there would be a public inquiry, the RCMP tasked the spouses of H-Division leadership to be part of its commission "Issues Management Team". This was done at the request of H-Division leadership, the very subjects of the inquiry.⁴⁶ These spouses then created false and misleading business cards that suggested they were commission staff and proceeded to distribute them to members of the public. The conduct was detrimental to the Commission's independence and required the Commissioners to write the RCMP Commissioner Lucki to request that it cease and desist.⁴⁷

Throughout this inquiry, the RCMP's approach to disclosure has been lethargic and troubling. Documents have been held back without notice to the Commission. Other critical documents were inexplicably released at the eleventh hour. Counsel for the Attorney General of Canada even advised a senior RCMP officer to withhold material information from the Commission's interviewers unless asked. This posture has limited the Commission's ability to meet its mandate, and it has limited participants' ability to engage with the record.

The RCMP's conduct is inconsistent with that of a neighbour or community member committed to improving public safety. It reveals an organization with a deep, almost reflexive, hostility to transparency, accountability, and change. The Commission's recommendations face serious implementation challenges if this reality is not confronted.

⁴⁴ Interview of Chief McNeil, 3 August 2021, p. 114 [Exhibit P-001032 / COMM0003767]

⁴⁵ Hearing transcript (Leather), Vol 56, 27 July 2022, p. 84, lines 20-27 [COMM0061294]

⁴⁶ Interview of A/Commissioner Lee Bergerman, 2 August 2022, pp. 58-59 [Exhibit P-004141 / COMM0062441]

⁴⁷ Letter from MCC Commissioners to Commissioner Lucki, 11 May 2021 [Exhibit P-004225 / COMM0061748]

4. Oversight, Accountability, and Democratic Policing

4.1. ECPJS and BCCLA recommend that civilian police governance and oversight entities, including municipal police boards and review agencies, be funded in a manner that is commensurate with the size of policing budgets and proportional to the complexity of modern policing

Accountability of police requires civilian oversight. This can only be achieved if existing oversight bodies, such as municipal police boards and review agencies, are funded to function, not to fail.

The record reveals longstanding concerns with the efficacy of police boards in Nova Scotia (and elsewhere).⁴⁸ When these entities do not function or do not function well, it creates a democratic deficit in policing that allows police to operate without civilian oversight. “This deficit is manifested throughout the entire regulatory framework for the police in Canada, but is especially acute in respect of the regulation of policing methods, tactics, and investigative practices....”⁴⁹

Part of the poor functioning of police boards stems from a lack of clarity in their role and an overly deferential approach when reviewing police policies and decision-making.⁵⁰ But a larger problem is that these boards are funded to fail. Board operating budgets do not correspond to the size and complexity of the policy operations that they are asked to oversee. This leaves boards staffed by volunteers and with limited capacity to engage in meaningful oversight.⁵¹

In response to Commissioner MacDonald’s question on whether inadequate budgets prevent the reviewing body from exercising independent civilian governance, the Chairperson of the Civilian Review and Complaints Commission for the RCMP explained: “Yes, so we can absolutely instigate an investigation where we deem it’s appropriate. But it is dependent upon the resources that we have available to us.”⁵² This creates a real risk that systemic policing issues can go unaccounted for because there is inadequate capacity for civilian review and correction.

The budgets of municipal police boards and review agencies must be increased to reflect the integral role they play in providing civilian oversight and accountability of police. These budgets must continue to increase in tandem with any increases in police budgets. Ultimately, where the Minister of Justice is statutorily enshrined under the *Police Act* as having general supervisory and management authority over policing in the province, responsibility for ensuring that civilian

⁴⁸ Hearing transcript (Critchley), Vol. 67, 8 September 2022, p. 39, lines 10-19 [COMM0064722]

⁴⁹ Harry Critchley, “The Role of Municipal Police Boards in Addressing the Democratic Deficit in Canadian Police Governance”, unpublished, p. 3 [Exhibit P-004808 / COMM0063532]

⁵⁰ Critchley, “The Role of Municipal Police Boards”, pp. 32-33 [Exhibit P-004808 / COMM0063532]; Hearing transcript (Smith), Vol. 70, 14 September 2022, pp 78-81 [COMM0064774]

⁵¹ Hearing Transcript (Perryman), Vol. 67, 8 September 2022, pp. 91-92 [COMM0064722]

⁵² Hearing transcript (Lahaie), Vol., 14 September 2022, p. 65, lines 3-5 [COMM0064744]

oversight is funded to function rests with the provincial government, regardless of whether the RCMP or municipal police forces may be the applicable policing service providers.

4.2. ECPJS and BCCLA recommend that police training be evidence-based and evaluated periodically by external, non-police auditors

The record before the Commission reveals that the RCMP is not transparent about its training programs and systematically avoids external analysis of training efficacy.⁵³ One expert described RCMP training as a “checkbox approach” with limited focus on evidence-based outcomes.⁵⁴ When resources are directed to enhanced training in response to police failure, there are limited procedures in place to ensure that training is effective and that it translates into positive outcomes for the public:

So despite all the resources that we often want to put towards training and say the number one thing we need is more training, we have no data on it, we don't evaluate the training, we don't actually have any process for externally reviewing that training, so tracking that it's being taken. And there's really no evidence that any of the training that we recommend actually has an impact.

And what it does do, of course, is further put resources into policing, and we end up with more and more resources going unaccountably into the police.⁵⁵

For example, antiracism training has been implemented to respond to concerns about biased policing, but research on this type of training shows “it has done very little to actually improve confidence at the community level.”⁵⁶

Internal evaluations of police training, if they are completed at all, are often rudimentary. When HRP Chief Kinsella was asked how a recently added course on anti-Black racism was evaluated, he offered that evaluation consisted of a “participation piece” and feedback from participants and presenters.⁵⁷ There was no internal or external assessment to determine whether the course changed police attitudes towards African Nova Scotians or African Nova Scotians' perceptions of police.

The efficacy and efficiency of RCMP training programs would be improved, not with additional resources, but through greater transparency, measurement of training outcomes, incorporation of evidence-based insights from other fields of study, and external auditing. This type of

⁵³ Hearing transcript (Alan), Vol. 31, 2 June 2022, pp. 69-70, lines 26-3; Hearing transcript (Jones), Vol. 31, 2 June 2022, pp. 95-96, lines 26-4; Hearing transcript (Anderson), Vol. 31, 2 June 2022, p. 100 lines 1-6; Hearing transcript (Di Nota), Vol. 31, 2 June 2022, p 109, lines 10-18 **[COMM0058946]**

⁵⁴ Hearing transcript (Anderson), Vol. 31, 2 June 2022, p. 107 **[COMM0058946]**

⁵⁵ Hearing transcript (Jones), Vol. 31, 2 June 2022, p. 96 **[COMM0058946]**

⁵⁶ Hearing transcript (Wortley), Vol. 67, 8 September 2022, p 84, lines 13-15 **[COMM0064722]**

⁵⁷ Hearing transcript (Kinsella), Vol. 67, 8 September 2022, p. 96, lines 1-12 **[COMM0064722]**

oversight is currently lacking, and as a result, there are limited assurances that resources spent on RCMP training will achieve the intended public safety outcomes.

4.3. ECPJS and BCCLA recommend that the Province of Nova Scotia enact legislation establishing a data infrastructure that (1) mandates equity-conscious and disaggregated data collection; (2) prioritizes Indigenous, African Nova Scotian, and disability community engagement; (3) facilitates openness to external research efforts; and (4) includes concrete disclosure, implementation, reporting requirements.

“[O]ne of the keystones of democratic policing is transparency and access to data.”⁵⁸ A fundamental reimagining of policing in Nova Scotia must include a corresponding shift in the way police in the province collect and share disaggregated and equity-conscious data (with not only a view to race-based data, but also intersecting factors of gender, education, class, disability, and immigration status) on matters within their mandate. This Commission must ensure that police and police oversight bodies collect this type of data, and that they proactively share this data with external researchers and the public. As we noted in our Phase 2 submissions, this recommendation has been endorsed at the highest levels of leadership: Commissioner Lucki, for example, testified that no change can occur without measurement.⁵⁹ Indeed, this Commission has heard widespread calls for increased accountability and transparency, and this recommendation is necessary to ensure that those calls are met.

In general, the collection of disaggregated and equity-conscious data will ensure accountability by improving our understanding of the complex interactions between police and marginalized communities. More specifically, the benefits of a more open and concerted effort to collect and share this data are profound. The Honourable Michael H. Tulloch, in the Report of the Independent Police Oversight Review, writes that data collection provides at least three benefits. First, it shifts conversations about police violence and racial profiling away from allegations and anecdotes to official data sources that allow police and policy-makers to identify problem-areas and develop programs. Second, data collection allows for the development of a defined baseline to evaluate policy, programs, and the progress of strategies. Third, it is crucial to ensuring accountability and transparency, which in turn promotes greater public confidence in policing and police oversight.⁶⁰ He also explicitly rejected criticisms that such a recommendation would be too costly, would undermine policing, or would perpetuate underlying racial stereotypes.⁶¹

Police services and policy-makers across the country are increasingly recognizing these benefits by implementing initiatives to collect and publish this type of data. For example, the

⁵⁸ Hearing transcript (Wortley), Vol. 67, 8 September 2022, p. 83, line 4 [COMM0064722]

⁵⁹ BCCLA and ECPJS Phase 2 Submissions, p. 7, citing Hearing transcript (Lucki), Vol. 59, 23 August 2022, p. 43, lines 3-11 [COMM0063059]

⁶⁰ The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review*, 2017, pp. 245-46 [Exhibit P-004478 / COMM0058298]

⁶¹ The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review*, 2017, p. 247 [Exhibit P-004478 / COMM0058298]

Toronto Police Services Board, pursuant to the Ontario *Anti-Racism Act 2017*, S.O. 2017, C.15, developed a race-based data collection, analysis, and public reporting policy. This policy then led to a June 2022 report confirming that Black, Indigenous, and Middle Eastern people were disproportionately subject to systemic discrimination in police use of force and strip searches.⁶² Similar work is being done in British Columbia, where the *Anti-Racism Data Act*, S.B.C. 2022 c.18 was brought into force to identify and eliminate systemic racism and advance racial equity. Importantly, a cornerstone of both these initiatives is a commitment to community engagement and advisory oversight to determine key priorities and to mitigate concerns of further stereotyping and racial profiling. The RCMP has also committed to collecting data on police interactions with racialized and Indigenous peoples.⁶³ And Bill C-20, currently before the federal legislature, requires this type of data to be reported by the RCMP oversight body to the Minister. Finally, this Commission is aware of the developments following the Wortley Street Checks Report, including the Province's recent acceptance of the Bryan Report recommendation that the Minister of Justice mandate the collection of race-based data for police stops in Nova Scotia.⁶⁴ However, the Bryan Report was limited to "police stops" (including use of force and arrests), so this provincial acceptance does not include the requirement to collect race-based data in other contexts like strip searches, responses to mental health calls, or decisions to issue appearance notices post-arrest in lieu of holding people in custody pending a bail hearing.

While these initiatives indicate a promising trend, the Commission has heard that there is an ongoing dearth of available research and information. As Dr. Goold emphasized, there are "major and disturbing gaps in the research literature when it comes to how police discretion functions, particularly in relation to Indigenous communities and the police response to serious crimes of violence against women."⁶⁵ This observation was echoed by multiple roundtable participants who testified about the need to fill gaps in data in relation to a wide range of topics, including gender-based violence,⁶⁶ firearms licensing,⁶⁷ police complaints, police use of force, and community relations.⁶⁸ In her testimony, the Chairperson of the Civilian Review and Complaints Commission for the RCMP admitted that they currently do not collect intersectional race-based data.⁶⁹ Notably, one participant stated that it was an "absurdity" that the public was unable to access certain policies about victim services intake.⁷⁰ Clearly, there is a marked deficit

⁶² "'We do not accept your apology' activist tells Toronto's police chief after race-based data released" *CBC News* (15 June 2022)

⁶³ RCMP, "Collect and analyze race-based data" (2022 July 18) online: <https://www.rcmp-grc.gc.ca/en/change-the-rcmp/address-systemic-racism/collect-and-analyze-race-based-data>

⁶⁴ Province of Nova Scotia, "Committee Recommendations on Collection of Race-Based Police Data" (1 September 2022), online: <https://novascotia.ca/news/release/?id=20220901001>

⁶⁵ Phase 2 Submissions of BCCLA and ECPJS, p 11 [**CORR0000284**], citing Goold, *Exercising Judgment*, p. 53 [**Exhibit P-001873 / COMM0058373**]

⁶⁶ Hearing transcript (Negin), Vol. 65, 6 September 2022, p 25, line 19 [**COMM0064441**]

⁶⁷ Hearing transcript (Cukier), Vol. 65, 6 September 2022, p 58, lines 25-28 [**COMM0064441**]

⁶⁸ Hearing transcript (Wortley), Vol. 67, 8 September 2022, p. 85, lines 10-11 [**COMM0064722**]

⁶⁹ Hearing transcript (Lahaie), Vol. 70, 14 September 2022, p 34-35, lines 28, 1-5 [**COMM0064774**]

⁷⁰ Hearing transcript (McMillan), Vol. 67, 8 September 2022, p. 108, line 6 [**COMM0064722**]

of available resources and research that must be addressed and must go beyond simply the collection of data related to police stops as contemplated within the Bryan Report.

The Commission has consistently heard that this information deficit exists, in large part, due to a longstanding resistance by the police and certain academic partners toward collecting and sharing data. For instance, Dr. Scot Wortley testified that a significant barrier to ensuring accountability and transparency is the “profound resistance...from police services with respect to access to data in general”,⁷¹ including their view of data as ‘intelligence’ and any potential disclosures as threats.⁷² This culture of *active* reluctance on the part of police agencies to engage with researchers and the public has been further compounded by certain “gatekeepers” within academia that have shielded police from research efforts that seek to address racial bias and discrimination.⁷³ Thus, a reimagining of policing must not only establish the required infrastructure for the collection of disaggregated and equity-conscious data, it must also overcome the hostile, secretive environment that so often occludes an impartial, objective, and open assessment of policing.

The consequences of the lack of openness to external research efforts and data collection are significant. The most obvious consequence, as the record demonstrates, is the lack of insight into the relationship between marginalized communities and policing and the inability to develop a clearer picture of what is actually going on.⁷⁴ Put simply, the lack of transparency inhibits efforts at accountability and transformation by shielding problematic practices, programs, and strategies from review. Perhaps more importantly, however, is Professor Samuels-Wortley’s recognition that this culture of reticence and gatekeeping serves to “silence racialized voices, discredit racialized concerns, and oppresses racialized communities”.⁷⁵ In other words, the ongoing lack of transparency not only erodes public trust, it also reifies the patterns of abuse within low-visibility police interactions and perpetuates the invisibilization of the marginalized and vulnerable individuals for whom the system is precisely designed to serve.⁷⁶

Finally, and perhaps most critically, we submit that any proposed infrastructure for improved data collection must also include effective and concrete measures for disclosure, use, and implementation. The House of Commons Report on Systemic Racism in Policing in Canada, for instance, noted that a gap exists between data collection and concrete action, including “how

⁷¹ Hearing transcript (Wortley), Vol. 67, 8 September 2022, p. 83, lines 8-9 [**COMM0064722**]

⁷² Hearing transcript (Wortley), Vol. 67, 8 September 2022, p. 85, lines 12-15 [**COMM0064722**]

⁷³ Dr. Kanika Samuels-Wortley, *Black and Blue – Will Not Do – Navigating Canada’s Evidence Based Policing Community as a Black Academic – A Personal Counter-Story*, p. 77-78 [**Exhibit P-005266 / COMM0064460**]

⁷⁴ See Hearing transcript (Goold), Vol. 70, 14 September 2022, p. 92, lines 8-13 [**COMM0064774**] See also The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review*, 2017 p. 247 [**Exhibit P-004478 / COMM0058298**]

⁷⁵ Dr. Kanika Samuels-Wortley, *Black and Blue – Will Not Do – Navigating Canada’s Evidence Based Policing Community as a Black Academic – A Personal Counter-Story*, p. 65 [**Exhibit P-005266 / COMM0064460**]

⁷⁶ Hearing transcript (Campeau), Vol. 70, 14 September 2022, p. 34, lines 8-11 [**COMM0064774**]

[data collection] informs policy and operational choices”.⁷⁷ In a particularly egregious example, Dr. Wortley recounted a 15-year delay in implementing the 2003 Nova Scotia Human Rights Tribunal recommendation to study police stops.⁷⁸ Clearly, the Commission must ensure that data collection translates into effective action, including considering equivalent *Anti-Racism Data* legislation that requires annual reporting and publishing requirements for equity-conscious data by police oversight bodies. Moreover, as in Ontario and BC, the Commission must promote meaningful community engagement with marginalized and vulnerable communities to ensure legitimacy and objectivity throughout the process.⁷⁹ These steps are needed to ensure transparency and accountability, and will go far to strengthen, not weaken the effectiveness of our policing system.

4.4. ECPJS and BCCLA recommend transforming the police governance framework in Nova Scotia with the full participation of Indigenous communities, African Nova Scotians, and other marginalized communities

Community disempowerment stymies transformative change in police governance and accountability: “[i]n a system plagued by profound power differentials between those who control the system and those who are subject to its power, transformative reforms cannot be top down: they must be bottom up.”⁸⁰

A fundamental shift is needed and must be done in partnership with marginalized communities for three reasons: (1) the historic layering approach to police reform in Canada has failed the public, (2) people most impacted by policing do not trust models developed, and (3) centering members of groups with low social status in decisions about police oversight can mitigate the antidemocratic impacts that the criminal justice system – and policing in particular – have had on such communities.

Layered reforms to police accountability fail

Police fiercely resist reforms that externalize governance and accountability⁸¹ and policymakers often prioritize their voices over “the experiences and voices of those that are racialized.”⁸²

⁷⁷ Standing Committee on Public Safety and National Security, “Systemic Racism in Policing in Canada” (June 2021) 43 Parl, 2nd Sess at p 71 [Exhibit P-004481 / COMM0058303]

⁷⁸ Hearing transcript (Wortley), Vol. 67, 8 September 2022, p. 47, lines 1-19 [COMM0064722]

⁷⁹ The Honourable Michael H. Tulloch, Report of the Independent Police Oversight Review, 2017, p. 248. [Exhibit P-004478 / COMM0058298]

⁸⁰ Joceyln Simonson, Police Reform through a Power Lens, (2021) 130:4 Yale LJ 778 at 783, p. 811 quoting Marbre Stahly-Butts and Amna A. Akbar [COMM0063536]

⁸¹ Jihyun Kwon, *Misconduct Management - The Rule of Law, Independent Oversight, and Accountability* (2022), p. 70. [Exhibit P-005259/ COMM0064453]

⁸² Hearing transcript (Samuels-Wortley), Vol. 70, 14 September 2022, p. 16, lines 10-12. [COMM0064774]

This power imbalance between the relative interests of police and the communities they police has resulted in layering, a concept that provides an analytical framework to understand why nothing seems to have changed in decades despite structural reforms in policing.⁸³

Policymakers typically layer various components, like different agencies or actors...., rules and laws..., or both... on top of existing structures to avoid 'directly undermin[ing] existing institutions' or 'provok[ing] countermobilization by defenders of the status quo,' such as the police union, because dismantling the established system in its entirety involved greater political and fiscal risks.⁸⁴

Although Ontario is heralded as a beacon of police accountability in Canada, police maintain the stronghold in their own oversight, and have achieved a soft capture of the external bodies intended to hold them accountable.⁸⁵ This demonstrates why incremental acts of law reform fail the public: "despite half a century of consistent reform, layering has not only failed to transform the existing institutions but has also misled the public and reinforced pre-existing institutional logics and power structures in Ontario."⁸⁶

Approaches to police accountability to date leave the public, especially racial minorities, to "bear the burden of a faulty-yet-seemingly-elaborate systemic design that reproduces the inequality and power imbalance inherent in police-community relations."⁸⁷

Study after study, decade after decade, finds biased and discriminatory policing, but this does not lead to change. Members of communities that are impacted by this type of policing demand to see accountability and to see that "something has been done, that their voices are being heard, that the experiences that they've had with police is validated."⁸⁸ But these demands are regularly ignored by governments.

A concrete example of this layered and glacial approach to police reform is the case study of street checks in Nova Scotia. As Dr. Wortley explained, in his testimony before the Commission, a 1999 human rights board of inquiry called for a study of issues related to street stops. In 2004, the RCMP and the HRP invited Dr. Wortley to Halifax to consult on street stops, but decided not to initiate any external evaluation of the issues identified by the board of inquiry. Decades later, Dr. Wortley was retained by the Nova Scotia Human Rights Commission to complete his study into street checks, which found that African Nova Scotians experienced biased policing and that the public had serious concerns with this discrimination. This did not lead to change. In fact, the illegal and racialized practice of street checks did not end until Commissioner MacDonald

⁸³ Kwon, *Misconduct Management*, p. 65 [Exhibit P-005259/ COMM0064453]

⁸⁴ Kwon, *Misconduct Management*, p. 65 [Exhibit P-005259/ COMM0064453]

⁸⁵ Kwon, *Misconduct Management*, p. 81 [Exhibit P-005259/ COMM0064453]

⁸⁶ Kwon, *Misconduct Management*, p. 89 [Exhibit P-005259/ COMM0064453]

⁸⁷ Kwon, *Misconduct Management*, p. 88 [Exhibit P-005259/ COMM0064453]

⁸⁸ Hearing transcript (Samuels-Wortley), Vol. 70, 14 September 2022, p. 16, lines 8-10 [COMM0064774]

provided a legal opinion on the practice at the request of the Nova Scotia Human Rights Commission.⁸⁹

The street checks case study shows that a layered approach to police accountability enables police services to successfully resist reforms for decades, even in the face of widespread calls to end practices that are clearly illegal and discriminatory.

Current accountability models are not trusted by impacted communities

The Commission has heard evidence that people most impacted by policing do not trust current police complaint models and therefore eschew them. Dr. Holly Campeau told the Commission that people who have been involved in the justice system do not perceive complaint mechanisms as being tailored to their needs:

Given what we know about victim/offender overlap in criminology, right, that offer those who are most often victimized are also those who are most involved in the criminal justice system, it is precisely this group of individuals...people who have been arrested, people who are justice involved, people who have been victimized and marginalized who the complaint process is for. If not them, then for who, me? Probably not, right? So it is precisely this group. But that is not the perspective among this group so that is why they remain hidden.⁹⁰

Such findings are corroborated by Dr. Kamika Samuels-Wortley's research into why Black and Indigenous peoples do not complain when they have a negative interaction with police. She explained to the Commission that "...a lot of it has to do with distrust in the system. There is a fear that one will come to the police and relay their trauma over and over again, but nothing will be done in the process after relaying that trauma."⁹¹ The fact that police continue to investigate and adjudicate alleged misconduct exacerbates the problem, because "you're, in essence, going to be turning around to the exact same institution and people that you see as a form - as an oppressor, as you see as the one that has - is the cause of your pain and your trauma....there is no willingness to go through that trauma."⁹²

Shifting power to minorities to offset anti-democratic impacts of policing

Communities subject to policing are the very ones whose voices are vital to transforming the accountability frameworks for police. This is because the criminal legal system, and policing especially, takes away political power of individuals and whole communities through punishment, mass enforcement and surveillance, thus undermining their ability to be full

⁸⁹ Hearing transcript (Wortley), Vol. 67, 8 September 2022, p. 47-49 **[COMM0064722]**

⁹⁰ Hearing transcript (Campeau), Vol. 70, 14 September 2022, p. 34, lines 6-13

[COMM0064774]

⁹¹ Hearing transcript (Samuels-Wortley), Vol. 70, 14 September 2022, p. 30, lines 9-11

[COMM0064774]

⁹² Hearing transcript (Samuels-Wortley), Vol. 70, 14 September 2022, p. 30, lines 16-20

[COMM0064774]

democratic subjects.⁹³ Centering these voices is essential to shift power⁹⁴ and to balance the antidemocratic impacts that policing has had on these communities.

Community control of police and accountability, not community policing

Our recommendation that communities most impacted by police be at the centre of policing policy is distinct from the notion of community policing. As Dr. El Jones told the commission:

[w]hen people are talking about community-controlled policing, we're not talking about, you know, [a] police office on the corner, right, a camera on the corner, or like, you know, putting an RCMP office into the recreation centre in North Preston. That's not what we mean. We mean that police governance, oversight, and all those things belong to community and we get the say over what policing looks like.⁹⁵

As communities are not monolithic, enabling them to primarily influence policing models for themselves will inevitably result in a variety of policing models that are more appropriate for Nova Scotia than the status quo. We agree with Kent Roach that “if we accept the need for democratic control of policing and the diversity of Canada, a detailed or permanent blueprint is not possible. Policing should differ from community to community.”⁹⁶

4.5. ECPJS and BCCLA recommend enhancing democratic policing through both prospective and retrospective governance

The record reveals that there is a democratic deficit in police governance (i.e. direction and control, oversight, and accountability.) Unlike other Commonwealth countries,⁹⁷ the executive and legislative branches in Canada and in Nova Scotia have not, for the most part, used their powers to “direct the police about the goals, priorities, policies, and style of policing”⁹⁸ The democratic deficit in police governance must be eradicated so that policing practices and accountability models truly reflect the interests of communities and are accessible to the public.

Without clear and binding directions from democratically responsible authorities, people have very little recourse to challenge police practices outside of a courtroom. This hands-off approach to police governance has resulted in externalized ‘costs’ of policing that “fall disproportionately on communities of colour and the poor.”⁹⁹

⁹³ Critchley, “The Role of Municipal Police Boards”, p. 48-89 [**Exhibit P-004808 / COMM0063532**]

⁹⁴ Joceyln Simonson, *Police Reform through a Power Lens*, (2021) 130:4 Yale LJ 778 at 783, 785 [**COMM0063536**]

⁹⁵ Hearing Transcript (Jones), Vol. 66, 7 September 2022, p. 128, lines 14-18 [**COMM0064721**]

⁹⁶ Kent Roach, *Canadian Policing: Why and How it Must Change* (Toronto: Irwin Law, 2022), p. 177

⁹⁷ Critchley, “The Role of Municipal Police Boards”, p. 9 [**Exhibit P-004808 / COMM0063532**]

⁹⁸ Roach, *Canadian Policing*, p. 186

⁹⁹ Barry Friedman and Maria Pomarenko, “Democratic Policing” (2015) 90 NYU Law Review 101 at 138 [**COMM0063533**]

4.5.1. ECPJS and BCCLA recommend increasing the prospective governance of police in three areas: (1) strengthening the rule of law, (2) decreasing police bias and misconduct, and (3) enhancing police accountability.

Provincial authorities must use their powers to ensure that police practices reflect democratic standards, and these authorities must develop legal standards with the full participation of marginalized communities (recommendation 4.4). This should include empower both police boards and RCMP advisory boards with the power to direct police leaders, impose policies, and review budgets. We recommend increasing the prospective governance of police by democratic authorities because of the benefits: strengthening the rule of law, decreasing police bias and misconduct, and enhancing police accountability.

Strengthening the rule of law

The rule of law suffers under this *status quo* because the contours of police powers are unknown to both police and the public unless a court provides guidance about a particular practice. This lack of clarity “has the perverse effect of encouraging police to ‘gamble’ with the constitutional rights of citizens, constantly pushing the boundaries of their powers and ‘us[ing] individuals as the means through which to glean [their] limits.’”¹⁰⁰

Decreasing police bias and misconduct

Another reason that authorities should better regulate police powers is to reduce bias and misconduct. The reluctance of responsible authorities to take responsibility for policing policy to date has left the public with “a kind of de facto model of full police independence.”¹⁰¹

The absence of clear direction from the legislative branch “allocates individual officers an unnecessarily broad level of discretion, especially in respect of their duty to ‘prevent crime.’”¹⁰² The history of street checks in Nova Scotia illustrates how this broad discretion was improperly used for years on end. Police used their discretion to stop people and gather their personal information outside of an investigation, a practice they maintained was authorized by common law. When an authoritative legal opinion concluded that the police practice had no legal basis, a directive was issued by the Attorney General to prohibit the practice.

The lack of prospective oversight by responsible authorities left police with complete independence to stop anyone, with racialized communities bearing the high cost of the illegal practice. Evidence shows that racial bias¹⁰³ is a clear factor in police decisions to stop people.

¹⁰⁰ Critchley, “The Role of Municipal Police Boards”, p. 20 [Exhibit P-004808 / COMM0063532]

¹⁰¹ Critchley, “The Role of Municipal Police Boards”, p. 13 [Exhibit P-004808 / COMM0063532]

¹⁰² Critchley, “The Role of Municipal Police Boards”, p. 11 [Exhibit P-004808 / COMM0063532]

¹⁰³ Goold, *Exercising Judgement*, p. 29 [Exhibit P-001873 / COMM0058373]

As Dr. Samuels-Wortley has said: “[r]ace matters. If you’re a Black man in Canada, the question is not if you will be stopped, but when.”¹⁰⁴

Enhancing police accountability

The lack of proactive oversight over the exercise of police discretion enables police not to act, and the failure to require police to document their failure to act in certain contexts can work together to protect police from accountability after the fact.

The Commission heard that discretion is often used by police as a shield from responsibility, especially where there is inaction:

[P]olice officers take the stance that when police did something, like, police used excessive force, we recognize police discretion, we recognize the subjective perspective of the police officers when they were encountering suspect [sic]. But for their inaction, for example, for their failure to act, for their failure to respond to calls or intervene, all of a sudden, you know, they blame that there was no direction, no training, no guideline, no policy, no law, as if they didn’t have discretion to begin.¹⁰⁵

The Commission heard this exact position from Cst. Wiley when he was asked about his failure to properly investigate whether the perpetrator had weapons: “I was never officially tasked to investigate the perpetrator of the Portapique incident in any way, shape or form with him as a suspect.”¹⁰⁶ Under cross-examination, Cst. Wiley admitted that after receiving such a call about the presence of weapons, that he had discretion to go directly and investigate on his own, without any need to have been tasked to do so by the RCMP.¹⁰⁷ Despite this acknowledgement that he had the discretion to investigate the report on his own, he went on to admit that he failed to canvas the perpetrator’s neighbours about whether there was evidence of weapon use, insisting “I was never tasked to go down there and ask around if he did have firearms.”¹⁰⁸

4.5.2. ECPJS and BCCLA recommend that all police in Nova Scotia fall under a single retrospective oversight body that is truly independent and civilian

The single oversight body should be developed in full partnership with Indigenous communities, African Nova Scotians, and other marginalized communities (see recommendation 4.4).

Having a single oversight body to investigate potential wrongdoing by police would assuage public frustration and remove the inefficiencies inherent in the mixed approaches to accountability in Nova Scotia.

¹⁰⁴ Standing Committee on Public Safety and National Security (Canada). (2021) “Systemic Racism in Policing in Canada.” House of Commons, 43rd Parliament, 2nd session, at p. 58 [Exhibit P-004481 / COMM0058303]

¹⁰⁵ Hearing transcript (Kwon), Vol. 70, 14 September 2022, at p 42, lines 19-24 [COMM0064774]

¹⁰⁶ Hearing transcript (Wiley), Vol. 65, 6 September 2022, at p. 83, lines 8-10 [COMM0064441]

¹⁰⁷ Hearing transcript (Wiley), Vol. 65, 6 September 2022, at p. 128, line 26 [COMM0064441]

¹⁰⁸ Hearing transcript (Wiley), Vol. 65, 6 September 2022, at p. 130, lines 9-10 [COMM0064441]

The Commission has heard that having a patchwork of external bodies downloads the burden back to “the victims, who must initiate contact, regurgitate the same traumatic information to another external authority, and wait endlessly until one process is over for the other to resume.”¹⁰⁹

For many individuals, it is an exhausting challenge to try to ascertain which body to complain to, what procedures are used, how to participate in the investigation and when to expect a resolution. This “bureaucratic red-tape exacerbates the frustration of the public, who expect an integrated system of independent oversight.”¹¹⁰

Earlier this year, a special legislative committee in British Columbia recommended that their fragmented system — almost identical to Nova Scotia’s — be overhauled to “establish a single, independent, civilian-led oversight agency responsible for overseeing conduct, complaints, investigations, and disciplinary matters for all police and public safety personnel”¹¹¹ They arrived at this recommendation after determining that “there is a lack of trust of police due in part to a lack of transparency and accountability as well as a complaints process that is difficult to navigate.”¹¹²

The composition of the oversight body must be truly civilian: no retired police (no matter the jurisdiction), seconded police, or anyone who has previously worked in law enforcement bodies such as the Canadian Border Services Agency.

The people empowered to investigate and adjudicate police wrongdoing must be completely independent from police. This independence is a crucial prerequisite for the public and for members of racialized groups to trust the system of oversight. It could also motivate police to comply with any policy direction from democratically responsible authorities and consequently enhance accountability. This is because police would no longer be able to rely on the fact that so long as they exercise discretion “in good faith” they will be okay and not be judged harshly by other police,” a narrative that holds tremendous weight for police, “[n]o matter the changing landscape of oversight, legal frameworks.”¹¹³

¹⁰⁹ Kwon, *Misconduct Management*, p. 79 [Exhibit P-005259/ COMM0064453]

¹¹⁰ Kwon, *Misconduct Management*, p. 75 [Exhibit P-005259/ COMM0064453]

¹¹¹ British Columbia Special Committee on Reforming the Police Act, *Transforming Policing and Community Safety in British Columbia*, p. 11-12 [P-004596/COMM0063226]

¹¹² British Columbia Special Committee on Reforming the Police Act, *Transforming Policing and Community Safety in British Columbia*, p. 9 [P-004596/COMM0063226]

¹¹³ Hearing transcript (Campeau), Vol. 70, 14 September 2022, at p. 45, lines 20-25 [COMM0064774]

4.5.3. ECPJS and BCCLA recommend that police budget requests be assessed using a results-based management framework and tied to public safety benchmarks and outcomes

Related to democratic policing are concerns with how police budgeting decisions are made. The Commission has not focused on either the size of policing budgets or procedures for how those budgets are determined. Nonetheless, the record reveals democratic deficits in how police budget requests are made and reviewed.

Police boards who are tasked with reviewing or advising on police budget requests often do not have the training that is needed to review such requests.¹¹⁴ Even where there is a desire to exercise their democratic oversight function, police boards are often not provided with the information they need to fulfill their role:

[W]e are approving budgets at the board, this should be a place where we can ask those questions and get the answers without having to go ... through the different bureaucracy levels of government. ... The problem is ... if I ask for ... 'Where some of the priorities within the district?' If I ask, 'What are you doing for community policing?' If I ask, 'What are you doing related to gun violence?' we get the basic high-level answers, but if we start to get down to ... some of the more detailed questions, 'Well, what are you doing in deployment areas that are dealing with high-level crime? ... [W]e can't have that discussion ... which I think is important that there is a balance, but we should be able to have that discussion as police commissioners, even if it's an in-camera session, to understand ... what is being done....¹¹⁵

In order to support the governance and oversight role of police boards in evaluating police budget requests, police must be legislatively required to provide annual budget reports that detail the outcome(s) they aim to achieve and the specific policing activities that are linked to those outcomes.

Without access to this necessary context, police boards (and the public) cannot evaluate whether police deliver cognizable public safety benefits and whether requests for increased budgets are justified.

5. Alternatives to Policing and the Public Safety Status Quo

In the following section, we make recommendations that provide alternatives to policing and help transform the public status quo in three specific areas: (1) funding, (2) law enforcement response to behavioural health crisis, and (3) law enforcement response to gender-based and intimate partner violence.

¹¹⁴ Hearing transcript (Roach), Vol. 70, 14 September 2022, at pp. 69-70 [COMM0064774]

¹¹⁵ Hearing transcript (Smith), Vol. 70, 14 September 2022, pp. 80-81 [COMM0064774]

- 5.1. **ECPJS and BCCLA recommend that where an area for detasking police is identified (for example, behavioural health crisis response, gender-based and intimate-partner violence response, and third-party sexual assault reporting) core funding be provided for frontline response and wrap-around services that are evidence-based, culturally safe, embedded in the specific communities they serve, and informed and staffed by peers.**
- 5.2. **ECPJS and BCCLA recommend that marginalized communities have authority in public safety spending decisions in order to ensure that their perspectives are included where they are critically relevant.**
- 5.3. **ECPJS and BCCLA recommend that social problems receive social, not carceral, responses. To that end, stable funding models must be developed for housing, childcare, healthcare, food security, and public transportation.**

There is ample evidence before the Commission regarding the critical role that service providers and non-profit organizations play in achieving community safety, as well as the importance of core funding in maintaining community safety. Sustainably funding community organizations is directly relevant to the provincial Minister of Justice's duties per section 5(2) of Nova Scotia's *Police Act*, which requires that the Minister promote the preservation of peace, the prevention of crime, the efficiency of police services, and the improvement of police relationships with community. Hayley Crichton confirmed that the Department of Justice fulfills this duty, in part, by funding a number of community-based programs.¹¹⁶ Further, the Halifax Municipal Public Safety Strategy identified the non-profit sector as a key stakeholder in 49 of the 76 necessary actions for achieving public safety objectives.¹¹⁷ Yet the sector is consistently at risk of losing the funding they need to provide services such as crisis support and response, emergency and transition housing, and navigator services.¹¹⁸

In her roundtable contribution, Mukisa Kakembo shared the example of Holly House in Dartmouth. In 2020, the Elizabeth Fry Society of Nova Scotia was provided with \$360,000 over two years to run the house for women transitioning out of incarceration.¹¹⁹ It has ten beds and 24/7 support staff to assist women in navigating back into their communities. Despite the home's being in need of repair and the initiative's demonstrable success in serving this community, the organization was unsuccessful in obtaining funding for this fiscal year and will no longer have the funds they need to continue this programming past March 2023.¹²⁰

¹¹⁶ Hearing Transcript (Crichton), Vol. 67, 8 September 2022, p. 20, lines 7-12, **[COMM0064722]**

¹¹⁷ Halifax Municipal Public Safety Strategy 2018-2022, p. 20-35 **[P-004839 / COMM0063611]**

¹¹⁸ Hearing Transcript (Kakembo), Vol. 66, 7 September 2022, p. 105-106, lines 28-1 **[COMM0064721]**

¹¹⁹ Ashley Field, "Dartmouth Transitional Home for Women in Need of 'Desperate' Repairs", *Global News* (27 May 2022), online:

<https://globalnews.ca/news/8875735/dartmouth-transitional-home-vulnerable-women-repairs/>

¹²⁰ Hearing transcript (Kakembo), Vol. 66, 7 September 2022, p. 110, lines 7-11

[COMM0064721]; Ashley Field, "Dartmouth Transitional Home for Women in Need of 'Desperate' Repairs", *Global News* (27 May 2022), online:

<https://globalnews.ca/news/8875735/dartmouth-transitional-home-vulnerable-women-repairs/>

This tenuous, project-based funding approach not only negatively impacts the trust built between community organizations and the individuals they serve, it also pits organizations against each other and undermines the vital work that they do.¹²¹ Pilot programs may employ community members and those with lived experience, develop new ways of creating safety, foster critical relationships, and aspire to become more permanently established, only to see their funding abruptly cut, that safety lost, and those relationships severed¹²² Unless organizations are able to justify the necessity and validity of their programs and do so more compellingly than other organizations serving similar needs, the program will end regardless of its impact.¹²³

This precarious state of project-based funding stands in stark contrast to police funding in Halifax, where the Halifax Regional Police budget steadily accounted for between 22-23% of the municipal budget between 2010-2020.¹²⁴ Entrenching such certainty and dependability for police funding without also setting expectations tied to evidence-based, community-led performance metrics has enabled inertia in all levels of policing institutions and stymied transformative change in public safety.¹²⁵ It also guarantees that policing priorities are set without any input or oversight from the communities that are most policed.¹²⁶ Instead, priorities are set according to what the institution believes are most “tangible” and measurable: more body cameras, carbines, hard body armour, active shooter training, for example, at the expense of recommendations in the *Brown* and *Bastarache* reports that are deemed more challenging due to their difficulty to measure.¹²⁷ As data documenting police violence suggests,¹²⁸ this ideologically-driven approach to setting priorities does not actually keep people safe.

Those who are most disproportionately impacted by policing must be meaningfully involved in budgeting decisions. One model of community-controlled public safety spending is participatory budgeting, which allows for community members to determine how to spend a portion of the public budget. This has been used to address public safety in other municipalities such as Seattle, which allocated \$30 million to a participatory budgeting process in 2021, \$12 million of which was diverted from Seattle Police Department.¹²⁹ The *Defund Report* recommends that the participatory element be independent from government and that processes could occur at multiple different levels, including geographic area, subject matter area, and be

¹²¹ Hearing Transcript (Fifield), Vol. 66, 7 September 2022, p. 115, lines 5-17, **[COMM0064721]**

¹²² Hearing Transcript (Fifield), Vol. 66, 7 September 2022, p. 115-116, lines 5-3, **[COMM0064721]**

¹²³ Hearing Transcript (Siciliano), Vol. 66, 7 September 2022, p. 60, lines 3-15, **[COMM0064721]**

¹²⁴ Ajadi et al, *Defunding the Police*, p. 27, **[P-001908 / COMM0058412]**

¹²⁵ Ajadi et al, *Defunding the Police*, p. 161, **[P-001908 / COMM0058412]**

¹²⁶ Hearing Transcript (Livingston), Vol. 66, 7 September 2022, p. 51-52, lines 3-15, **[COMM0064721]**

¹²⁷ Hearing Transcript (Moos and Martin), Vol. 66, 7 September 2022, p. 112 lines 1-12 (Moos) and p.114 lines 16-23 (Martin) **[COMM0064721]**

¹²⁸ Inayat Singh, “2020 already a particularly deadly year for people killed in police encounters, CBC research shows”, *CBC News* (23 July 2020) **[COMM0063545]**

¹²⁹ Ajadi et al, *Defunding the Police*, p. 163, **[P-001908 / COMM0058412]**

community-specific.¹³⁰ Rather than appointing certain representatives from different communities, this would allow for a spectrum of those whose well-being has been compromised by policing to be appropriately represented in defining and ensuring safety.¹³¹

While participatory budgeting can help direct and focus core funds over time as needs fluctuate, several key areas identified for the Commission remain in need of immediate investment. Accessible and affordable housing has frequently been cited as one of the most critical areas for reinvestment of police funding.¹³² Without adequate housing, people are far more vulnerable to poor health outcomes and to violence.¹³³ Roundtable experts also cited basic services — such as accessible food, healthcare, education, transportation, and recreation — as fundamental needs that correlate with community safety that are persistently not being met.¹³⁴ Dr. Jamie Livingston and Lana MacLean both spoke of the importance of resourcing communities to meet their own specific needs. This requires asking what is needed and what deficits in the community exist that threaten safety, and using core funding to allow communities to develop their own solutions.¹³⁵

5.4. ECPJS and BCCLA recommend removing law enforcement as first responders to behavioural health crisis in Nova Scotia and overhauling the current Mental Health Mobile Crisis team model in conjunction with crisis care experts, including those with lived experience. Crisis calls should be exclusively diverted and responded to by civilian-only teams and the program should employ peers. We do not propose any one specific model, but recommend that governments make evidence-based decisions that are informed by a diverse representation of community members and prioritize dignity and care over coercion and violence.

Relying on or including police in mental health crisis response, including wellness checks, enables criminalization and stigmatization of substance use and mental illness.¹³⁶ The Canadian Mental Health Association BC Division (CMHA-BC) noted almost twenty years ago that “police are, by default, becoming the informal ‘first responders’ of our mental health system”.¹³⁷ In Nova Scotia, the number of *Mental Health Act* involved calls to police increased by almost 70%

¹³⁰ Ajadi et al, *Defunding the Police*, p. 162, [P-001908 / COMM0058412]

¹³¹ Ajadi et al, *Defunding the Police*, p. 163, [P-001908 / COMM0058412]

¹³² Diane Crocker, “*The System is hard to get to know*”: *Home for Good - Research Report*, (14 Feb 2018) p.152-158, [P-003700 / COMM0059865]

¹³³ Hearing transcript (Marriner), Vol. 51, 20 July 2022, p. 124, lines 13-19, [COMM0061282]; Ajadi et al, *Defunding the Police*, p. 152, [P-001908 / COMM0058412]

¹³⁴ Hearing transcript (Livingston and Jones), Vol. 66, 7 Sept 2022, p. 53 lines 3-9 (Livingston), p. 87 lines 4-11 (Jones), [COMM0064721]

¹³⁵ Hearing Transcript (MacLean), Vol. 51, 20 July 2022, p. 106-107, lines 27-25, [COMM0061282]; Hearing Transcript (Livingston), Vol. 66, 7 Sept 2022, p. 53 lines 3-9, [COMM0064721]

¹³⁶ Health Justice, “*No Weapons, No Handcuffs*”: *Putting the Person in Need of Support at the Centre of BC’s Mental Health Crisis Response* (2021), p. 6, [COMM0063553]

¹³⁷ Judith Adelman, *Study in Blue and Grey: Police Intervention with People with Mental Illness* (2003), online: <https://cmha.bc.ca/wp-content/uploads/2016/07/policereport.pdf>

between 2014 and 2019. The number of RCMP wellness checks similarly spiked by 80% between 2016 and 2020.¹³⁸ Approximately one in five interactions with police in Canada involves someone with a mental health or substance use problem.¹³⁹

Several models have been established that augment law enforcement in mental health crisis response (known as co-responder models), but they still position police as first responders to those experiencing mental health crises, despite a lack of evidence demonstrating that this particular approach is effective.¹⁴⁰ For example, Halifax Regional Municipality established the Mental Health Mobile Crisis Team over a decade ago to provide support for children, youth and adults experiencing mental health crises. The model pairs a mental health professional with a police officer to respond to crises. By continuing to rely on police and emergency rooms, these models are outdated and counter to the best practices recommended by experts. There is also a lack of evidence that they are able to meet community needs or otherwise mitigate risks of harm and trauma arising from police engagement.¹⁴¹ A 2018 CBC investigation found that since the year 2000, about 70% of police-involved fatalities in Canada have involved people in mental health or substance use crisis, or both.¹⁴² This reality is exacerbated by the many intersecting identities that put a person at greater risk of police engagement in the first place. According to Jonny Morris of CMHA-BC, “there are general factors that show a driver that increases the likelihood of an encounter with police: being male; being racialized; being a Black, Indigenous or person of colour; living with bipolar disorder or manic symptoms, schizophrenia; homelessness; and unemployment. Systemic factors are driving some of these rates of police contact.”¹⁴³

¹³⁸ Tari Ajadi et al, *Defunding the Police - Defining the Way Forward for HRM* (2022), p. 63, **[P-001908 / COMM0058412]**

¹³⁹ Jillian Boyce, Cristine Rotenberg & Maisie Karam, “Mental health and contact with police in Canada, 2012” (2 June 2015), online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14176-eng.htm#a1>

¹⁴⁰ Taled El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 Temp. L. Rev. 1 (2021), p. 17, **[COMM0063551]**

¹⁴¹ Health Justice, “No Weapons, No Handcuffs”: *Putting the Person in Need of Support at the Centre of BC’s Mental Health Crisis Response* (2021), **[COMM0063553]**, Hearing transcript (Livingston), Vol. 66, 7 Sept 2022, p. 55-56 lines 20-2, **[COMM0064721]**; Stephanie Knaak et al., *Combating Mental Illness- and Substance Use-Related Structural Stigma in Health Care: A Framework for Action* (2020), online: https://www.mentalhealthcommission.ca/wp-content/uploads/drupal/2020-07/structural_stigma_framework_for_action_eng_0.pdf; Ajadi et al, *Defunding the Police*, p. 126, **[P-001908 / COMM0058412]**

¹⁴² Katie Nicholson & Jacques Marcoux, “Most Canadians killed in police encounters since 2000 had mental health or substance abuse issues”, *CBC News* (4 April 2018), online: www.cbc.ca/news/investigates/most-canadians-killed-in-police-encounters-since-2000-had-mental-health-or-substance-abuse-issues-1.4602916

¹⁴³ British Columbia, Legislative Assembly, Standing Committee on Reforming the Police Act, Draft Report of Proceedings, 42-1 (23 February 2021) at 9:40 (Jonny Morris), online: www.leg.bc.ca/content/HansardCommittee/42nd1st/rpa/20210223am-PoliceActReform-Victoria-Blues.htm

Given that police are more likely to be involved with racialized people and those experiencing a mental health crisis—and that these encounters are more likely to be fatal—the assumption that police are necessary in a healthcare response should not be the norm. Even police and public safety ministers have admitted that policing is not the best response to such crises,¹⁴⁴ yet they continue to play an integral role in responding to these crises. This is due to chronically underfunded health and social services and a lack of behavioural health crisis response infrastructure, as well as an ideological reliance on law enforcement as the arbiters of safety and therefore responsible for filling those resulting gaps.¹⁴⁵ Police-led or co-responder models not only fail to produce positive outcomes; their existence and occupation of public safety consciousness has impeded the development of civilian and peer-led programs.¹⁴⁶ However, this is changing in other jurisdictions. The government of Nova Scotia must invest in models that have the strongest evidentiary support. It is their responsibility to work with crisis care experts to design programs that adhere to community protocols and best meet needs identified by communities.

There are a number of models for mental health crisis response that range in terms of their approach and level of police involvement. Toronto’s Community Crisis Support Service Pilot is based on several successful civilian-only or civilian-led models used in the United States. These models, such as the Crisis Assistance Helping Out On the Streets (CAHOOTS) program, have been integrated into existing emergency response infrastructure across the United States, where civilian-only teams respond directly to calls routed to them from 911 dispatchers. They have also proven that the vast majority of calls do not require any form of police intervention and are successful in helping people access necessary services and support.¹⁴⁷

CAHOOTS was launched in Eugene, Oregon 33 years ago and is managed by White Bird Clinic. Teams consist of a medic and a crisis worker. The teams provide immediate stabilization in case of urgent medical need or psychological crisis, assessment, information, referral, advocacy, and transportation to the next step in treatment. While calls reporting a crime in-progress or that involve violence or life-threatening emergency may be additionally responded to by police or other emergency services, police involvement is rarely required. In

¹⁴⁴ Health Justice, “No Weapons, No Handcuffs”: *Putting the Person in Need of Support at the Centre of BC’s Mental Health Crisis Response* (2021), p. 5, [COMM0063553]; Hearing Transcript (Martin), Vol. 66, 7 September 2022, p. 113-114 lines 23-3, [COMM0064721]; Ajadi et al, *Defunding the Police*, p. 63, [P-001908 / COMM0058412]

¹⁴⁵ Ajadi et al, *Defunding the Police*, p. 116, [P-001908 / COMM0058412]; Taled El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 Temp. L. Rev. 1 (2021), p. 6, [COMM0063551]; Hearing Transcript (Livingston and Siciliano), Vol. 66, 7 September 2022, p. 54 lines 8-25 (Livingston), p. 124 lines 3-19 (Siciliano) [COMM0064721]; Hearing Transcript (Jones), Vol. 31, 2 June 2022, (Contextualizing Critical Incident Response: Risks and Tradeoffs) p. 102-103, lines 8-18 (p.102) and lines 6-10 (p. 103) [COMM0058946]

¹⁴⁶ Taled El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 Temp. L. Rev. 1 (2021), p. 19 [COMM0063551]

¹⁴⁷ Ajadi et al, *Defunding the Police*, p. 125, [P-001908 / COMM0058412]

2019, police assistance was only requested 150 times out of a total of 24,000 calls.¹⁴⁸ The CAHOOTS program also saves the municipality money—approximately \$8.5 million annually, while costing about \$2.1 million to run.¹⁴⁹ The model is steadily being expanded across municipalities in the United States.¹⁵⁰ It is critical to note, however, that CAHOOTS is not sustained in isolation — it was able to rely on the trust and goodwill that the White Bird Clinic had built in the community prior to the program launching, and it continues to rely on a robust network of health and social services that maintain community care after emergent concerns are resolved.¹⁵¹ As Dr. Jamie Livingston explained in his roundtable contribution, resources and power must be redistributed to communities in order to build capacity to respond to people in a way that doesn't rely on police.¹⁵²

There are also models currently operating that do not exclusively rely on 911 dispatch and that emphasize peer involvement in their response by employing people with lived experience, such as the Gerstein Crisis Centre in Toronto. Gerstein Crisis Centre runs a mobile crisis team and a separate substance use crisis team, as well as providing limited beds, telephone crisis support, and support with other elements of the criminal justice system. It is funded by the Ministry of Health and Long-Term Care, through the Toronto Central Local Integration Health Network, and operates on an annual budget of \$5.2 million.¹⁵³ This year, Gerstein also received funding from Toronto Police Service for a pilot program where Gerstein staff are embedded in the Toronto Police 911 call centre.¹⁵⁴ The pilot currently operates in the areas of the city where apprehensions per the *Mental Health Act*, R.S.O 1990, c. M.7 and rates of 911 crisis calls are highest. While a Toronto Police dispatcher still answers the initial call, it is the intention that the pilot will grow and bring more crisis workers to 911 call centres, thus eliminating police involvement entirely unless expressly required. It is recommended that future models use a similar dispatch model that is entirely independent from police, where dispatchers are trained in crisis and trauma response, and calls are regularly audited.¹⁵⁵

¹⁴⁸ White Bird Clinic, *What is CAHOOTS?* (29 October 2020) online: <https://whitebirdclinic.org/what-is-cahoots/>

¹⁴⁹ White Bird Clinic, *What is CAHOOTS?* (29 October 2020) online: <https://whitebirdclinic.org/what-is-cahoots/>

¹⁵⁰ Tari Ajadi et al, *Defunding the Police - Defining the Way Forward for HRM* (2022), p. 125, **[P-001908 / COMM0058412]**

¹⁵¹ Taleed El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 Temp. L. Rev. 1 (2021), p. 24, **[COMM0063551]**

¹⁵² Hearing transcript (Livingston), Vol. 66, 7 September 2022 p. 54 lines 16-20 **[COMM0064721]**

¹⁵³ Gerstein Crisis Centre, “Annual and Financial Reports”, 2022, online: <https://gersteincentre.org/about-us/annual-and-financial-reports/>

¹⁵⁴ Jla Star Johnson, “Toronto Police launch 911 mental health call diversion pilot with the Gerstein Crisis Centre”, Toronto Observer, (25 April 2022), online: <https://torontoobserver.ca/2022/04/25/toronto-police-launch-911-mental-health-call-diversion-pilot-with-the-gerstein-crisis-centre/>

¹⁵⁵ Report - *Safer for All: Report and Recommendations of the Community Safety and Well-Being Task Force* (2021), p. 11-12, **[COMM0063531]**

Calls to detask police from behavioural health crisis response are becoming increasingly unanimous. Surveys of those experiencing health crises show that they do not want police to respond to them.¹⁵⁶ Even those who do not otherwise support defunding the police agree that police have no place in providing behavioural health services.¹⁵⁷ In their *Defund Report* submission, the National Police Federation noted that an improved response to people in crisis would include preventing them from encountering or requiring the police.¹⁵⁸ This perspective was further reflected in the roundtable comments of Hubert Martin, a frontline police officer in Yarmouth who said that he relied on non-profit partners when attending to a person in crisis and that they were always his first call.¹⁵⁹ The Commission has an opportunity to recommend changes that decenter law enforcement and prioritize the needs of those in crisis.

- 5.5. ECPJS and BCCLA are in solidarity with other participants in their recommendations to overhaul law enforcement responses to gender-based (GBV) and intimate partner violence (IPV). At minimum, police should be detasked from third party sexual assault reporting, and access to GBV and IPV services for survivors should be possible without police involvement.**
- 5.6. ECPJS and BCCLA recommend that the Province of Nova Scotia undertake a comprehensive review of policing GBV and IPV that includes survivors as leaders in the review.**
- 5.7. ECPJS and BCCLA further emphasize that all existing recommendations and calls for justice from the National Inquiry into Missing and Murdered Indigenous Women and the Avalon Report be implemented without delay.**

Police should be detasked and extracted from frontline response, services, and sexual assault reporting. Though third-party sexual assault reporting programs are active in other provinces, Nova Scotia has yet to follow suit. It is critical that individuals in marginalized communities have safe and accessible avenues to GBV and IPV services and sexual assault reporting that do not involve police. Police are embedded in many necessary institutions and services, including healthcare, education, housing, and social work and this integration has been done at the expense of violence prevention that can be otherwise addressed through social means.¹⁶⁰ In addition to police extraction, these services must be culturally safe and responsive, survivor-led and informed, be based in community, and involve organizations whose staff and values reflect the populations they serve.¹⁶¹ It is vital that frontline services be visible in all communities, representative of those communities, and create space for established support systems in

¹⁵⁶ Taleed El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 Temp. L. Rev. 1 (2021), p. 21, [COMM0063551]

¹⁵⁷ Ajadi et al, *Defunding the Police*, p. 126, [P-001908 / COMM0058412]

¹⁵⁸ Ajadi et al, *Defunding the Police*, p. 63, [P-001908 / COMM0058412]

¹⁵⁹ Hearing transcript (Martin), Vol. 66, 7 September 2022 p. 113-114 lines 23-4 [COMM0064721]

¹⁶⁰ Hearing transcript (Jones), Volume 31, 2 June 2022, (Contextualizing Critical Incident Response: Risks and Tradeoffs) p. 102-103, lines 8-18 (p.102) and lines 6-10 (p. 103), [COMM0058946]

¹⁶¹ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 14

survivors lives in order to build trust.¹⁶² Core funding should also be established for systems navigators so that they may provide comprehensive and consistent support and guidance to survivors throughout the various processes of addressing violence.¹⁶³ Navigators would help to address the “combination of traumatic emotional experiences, social stigma, vulnerability and fear at the juncture of a complex, confusing, alien system [that] can create compounded trauma for survivors and families”.¹⁶⁴

Throughout the Commission, it was evident that incidents of GBV and IPV are also sites upon which many of the systemic failures of law enforcement converge. Such violence not only defined the perpetrator’s life and relationships, but is also endemic in the institution of policing. Structural violence in police culture leads to both neglect and active harm of marginalized communities, amounting to an institutional failure that precludes access to safety and services.¹⁶⁵ Police regularly inflict violence on Indigenous and African Nova Scotian communities and officers often dismiss and discount the credibility of marginalized people experiencing GBV and IPV, especially racialized, 2SLGBTQQIA+ people and those engaged in sex work.¹⁶⁶ Women with disabilities face additional barriers to accessing legal systems and other critical services and no steps are taken to remove such barriers.¹⁶⁷ Those living in rural communities are placed at even further risk.¹⁶⁸

Police policies and practices regarding GBV and IPV, including pro-arrest and mandatory charging policies, contribute to increased criminalization of those experiencing GBV and IPV.¹⁶⁹ They put survivors at risk of arrest, which can lead to immigration detention, deportation, and involvement with the child welfare system.¹⁷⁰ The risk of arrest, as well as of further victimization, not being believed, being discriminated against, and being subjected to use of force, all diminish the likelihood that marginalized women will report violence.¹⁷¹ Even where a report is made and investigated, these policies prevent officers from recognizing patterns of violence and coercive control.¹⁷² The obligation to arrest and charge has created a culture that disproportionately focuses on prosecution rather than prevention of violence in the first place. In

¹⁶² Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 15

¹⁶³ Executive Summary – Gender Based Violence Navigator, Be the Peace Institute, 2019, p. 2, **[COMM0063521]**

¹⁶⁴ Executive Summary – Gender Based Violence Navigator, Be the Peace Institute, 2019, p. 2, **[COMM0063521]**

¹⁶⁵ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 9

¹⁶⁶ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 10

¹⁶⁷ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 11

¹⁶⁸ Report - Luke’s Place: Realities of rural living & the impact on women living with violence (2021) **[P-003690 / COMM0059824]**

¹⁶⁹ Ajadi et al, *Defunding the Police*, p. 109, **[P-001908 / COMM0058412]**

¹⁷⁰ Ajadi et al, *Defunding the Police*, p. 109, **[P-001908 / COMM0058412]**; Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 13

¹⁷¹ Carmen Gill & Mary Aspinall, *Expert Report - Understanding Violence in Relationships* (2022), p. 26, **[P-003352 / COMM0058937]**; Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 13, 20

¹⁷² Carmen Gill & Mary Aspinall, *Expert Report - Understanding Violence in Relationships* (2022), p. 26, **[P-003352 / COMM0058937]**

their roundtable remarks to the Commission, Dr. Pamela Palmater and Deepa Mattoo noted that police are primarily concerned with having enough evidence to ground a charge when, in reality, their first obligation is to prevent and thoroughly investigate violence and prosecution comes second.¹⁷³ Their job is not only to prevent *convictable* violence, but all violence.

The application of these policies in practice is guided by individual officer discretion, which in turn is influenced by institutional perceptions of GBV and IPV. In policing, these perceptions are rooted in patriarchal attitudes towards women generally and biases regarding racialized and marginalized women, including immigrants, Black, Indigenous, 2SLGBTQIA+ women and women with disabilities.¹⁷⁴ These attitudes and biases are part of the endemic violence in police culture discussed by Dr. Palmater, who explained how the police themselves are a threat to public safety. In the context of GBV and IPV, the harm enacted by RCMP officers goes beyond unconscious bias in that many officers are either abusers themselves or are covering up for abusers.¹⁷⁵ This not only fundamentally undermines their credibility in policing GBV and IPV, but allows them to perpetuate violence against women.¹⁷⁶ This violence has been well-documented. The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls emphasizes the critical role policing has played in perpetuating colonial and gendered violence against Indigenous women, girls, and two-spirit people in Canada. In addition, a Human Rights Watch report examined violence committed by RCMP members against Indigenous women and girls in northern British Columbia, including racist and sexist abuse and rape. This violence occurred alongside persistent failures to investigate missing Indigenous women and reports of violence. As the report found, Indigenous women and girls who call police for assistance are often met with “skepticism and victim-blaming, and that police often arrest victims of abuse for actions taken in self-defence.”¹⁷⁷ Further, the Avalon Report outlines how power and privilege enable people and institutions to perpetrate violence over long periods of time, through a variety of ways, with minimal accountability.¹⁷⁸ The lack of accountability in the policing institution perpetuates its violent legacy.

These systemic failures and their consequences are not contained to institutions. They are evident in the impunity with which the perpetrator wielded violence in his relationships and exploited marginalized women through his denturist practice. He was enabled not only by the neglect of police services, but also by the Department of Community Services, which provided him with provincial funds to serve community members receiving Employment Support, Income

¹⁷³ Hearing Transcript (Palmater and Mattoo), Vol. 51, 20 July 2022, p. 118-119 lines 16 (p. 118) (Palmater) -27 (p. 119) (Mattoo) **[COMM0061282]**

¹⁷⁴ Carmen Gill & Mary Aspinall, *Expert Report - Understanding Violence in Relationships* (2022), p. 29-30, **[P-003352 / COMM0058937]**; Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 9-11

¹⁷⁵ Hearing transcript (Palmater), Vol. 51, 20 July 2022, p. 93 lines 1-14 **[COMM0061282]**

¹⁷⁶ Hearing transcript (Palmater), Vol. 51, 20 July 2022, p. 93-94 lines 16 (p. 93) - 23 (p. 94) **[COMM0061282]**

¹⁷⁷ Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (2013) p. 68

[COMM0063541]

¹⁷⁸ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 8

Assistance, and those in the Disability Support Program. He was able to capitalize on the image of goodwill and trust that the provision of such services afforded him. This likely contributed to community members' reluctance to report his coercion and abuse to the relevant regulatory board, as survivors may understandably have worried that their complaints would be discounted and that they may no longer have access to needed denturist services.¹⁷⁹

The perpetrator was also protected by his apparent alignment with the institution of policing. A woman who had spent time with the perpetrator noted seeing two unmarked police cars in the driveway of his warehouse property, along with his imitation RCMP vehicle.¹⁸⁰ She eventually called the RCMP after an interaction with the perpetrator and avoided mentioning his involvement because he had told her earlier that he had a whole battalion of police officers at his disposal. That suggestion, together with the cars in the driveway and garage, concerned her that he was affiliated with the police and prevented her full disclosure.¹⁸¹ Indeed, as the Commission has heard, the perpetrator did have a relationship with Cst. Greg Wiley, who saw the perpetrator as a “good guy”, “pro-police”, and relied on him for information about the community.¹⁸²

As noted by Dr. Rachel Zellars, “policing is the institution where intractable biases and stereotypes mundanely mean the life or death of human beings in our world”.¹⁸³ Institutional failure in the context of GBV and IPV can and has been fatal.¹⁸⁴ The Commission has been tasked with recommending ways in which systemic harm can be eliminated and communities build safety. It has heard that this responsibility is ultimately best fulfilled by community members. Rates of violence, in particular against Black, Indigenous, 2SLGBTQQIA+ communities and women with disabilities,¹⁸⁵ continue at a pace that reinforces that our current reliance on law enforcement is ineffective and actively harmful.

6. Conclusion

The work of this Commission has revealed an uncomfortable truth: A catastrophic policing failure was a significant cause, context, or circumstance giving rise to the mass casualty. At the core of this failure are two recurring themes: (1) inadequate police oversight and accountability coupled with democratic deficits in policing, and (2) neglect of alternatives to policing that are integral to public safety.

¹⁷⁹ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 19

¹⁸⁰ Foundational Document: Perpetrator's Violence Towards Others, p. 48-49, para. 183, **[COMM0059623]**

¹⁸¹ Foundational Document, Perpetrator's Violence Towards Others, paras. 183-184, 192 **[COMM0059623]**

¹⁸² Statement transcript of statement given by Greg WILEY, p. 4-5, lines 152 and 123-175 **[COMM0004021]**

¹⁸³ Hearing transcript (Zellars), Vol. 52, 20 July 2022, p. 61, lines 1-6 **[COMM0061282]**

¹⁸⁴ Summary of Susan Butlin Report for Roundtable **[P-003678 / COMM0059861]**

¹⁸⁵ Avalon Report, *We Matter and Our Voices Must be Heard* (2022), p. 6

We have allowed a myopic, police-centred, and under-regulated approach to public safety to develop in Nova Scotia and elsewhere. This system is expensive and it is ineffective. The record before the Commission reveals the many failures of this status quo and shows how they contributed to the mass casualty.

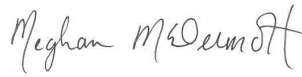
In the face of these failures, we urge the Commissioners (and government actors responsible for public safety) to reimagine the role of police in our society and to develop alternatives to policing that are more likely to achieve public safety.

In undertaking this transformation of public safety, we must also recognize that police and police culture create substantial barriers to change. The existing public safety status quo serves some institutions and people well. The record reveals that police in general, and the RCMP in particular, are resistant to change. Given this resistance, we urge the Commissioners to recommend that the federal Minister of Public Safety and the provincial Minister of Justice commit to reporting annually on the progress made towards implementing this Commission's recommendations until such time as they are completed.

All of which is respectfully submitted,



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