

**In the matter of the *Conflict of Interest Act*, SNS 2010, c 35  
and  
Mark Furey, Minister of Justice**

**AFFIDAVIT**

I, Tim Houston of Trenton in Pictou County, Province of Nova Scotia, make oath and say as follows:

1. THAT I am the Affiant.
2. THAT I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief.
3. THAT I state in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. THAT I swear this affidavit pursuant to Section 31(1) of the *Conflict of Interest Act*, SNS 2010, c 35 (the "Act"), which states that "*Upon resolution of the House of Assembly or the application of a person who states under oath that that person has reasonable and probable grounds to believe a member or a public employee is in contravention of this Act or the regulations and who produces sufficient evidence in support of the allegation to satisfy the Commissioner that there is a reasonable probability that the contravention has occurred, the Commissioner shall inquire into the allegation.*"
5. THAT Section 18 of the *Act* states that "*Ministers and ministerial assistants shall...(c) avoid situations where a conflict of interest or a reasonable perception of a conflict of interest could arise between the minister or ministerial assistant's public duties and private interests.*"
6. THAT I believe there is a conflict, or at the very least, the reasonable perception of a conflict of interest in the Minister of Justice of Nova Scotia, Mark Furey, participating, on behalf of the province, in discussions and or decisions surrounding any investigation, review or public inquiry into the tragedy that occurred in Nova Scotia on April 18 and 19 and took 22 lives (the "Portapique tragedy").
7. THAT I believe that there are four (4) distinct but related factors that cause me, and I believe any objective observer, to reasonably perceive a conflict of interest in Minister Furey participating in, or making, decisions about any investigation, review or public inquiry, and namely: (1) The Minister's employment history; (2) He is the Minister responsible for policing; (3) Minister Furey is potentially a compellable witness; and (4) the existence of a Class-action against RCMP and Province of Nova Scotia.

8. THAT I understand that the Minister of Justice worked for the RCMP for over 30 years, with roles that, according to his LinkedIn page, included "District Commander" and "Policing Consultant (Advisor to the Minister and Deputy Minister)." Attached hereto and marked as Exhibit "A" is the Linked in page for the Minister of Justice.
9. THAT in reviewing the findings of the Conflict of Interest Commissioner in a previous matter before him concerning Mark Furey, Minister of Justice and Glen Assoun, the Commissioner acknowledged that as Minister of Justice, Minister Furey is responsible to the people of Nova Scotia for the functioning of the RCMP. Attached hereto and marked as Exhibit "B" is the July 22, 2019 findings of the Conflict of Interest Commissioner.
10. THAT as numerous concerns have been raised by both the public, family members of the victims and in media surrounding the RCMP's involvement, the issues of the functioning and resourcing of the RCMP in Nova Scotia is likely to be at the core of the decisions on the 'how' and 'what' to examine in the aftermath of the Portapique tragedy. Attached hereto and marked as Exhibit "C" is a Facebook post from the husband of one of the victims of the Portapique tragedy expressing his concerns surrounding the Minister of Justice's potential conflict of Interest. Attached hereto and marked as Exhibit "D" is an article from the Halifax Examiner outlining concerns around the Minister of Justice's potential conflict of interest in the Portapique tragedy.
11. THAT as a result of the likely examination of the resourcing and functioning of the RCMP in Nova Scotia, it stands to reason that Minister Furey, the Minister responsible to the people of Nova Scotia for the functioning of the RCMP, could be, or could at least reasonably be perceived to be, a compellable witness in any inquiry surrounding the Portapique tragedy.
12. THAT given the subject matter of any investigation into the Portapique tragedy would likely examine the responsibility of the RCMP, it is a reasonable conclusion to draw that the more comprehensive the process (i.e. an inquiry), the more likely Minister Furey would have been compelled to give evidence.
13. THAT in working on the Portpique tragedy file and negotiating the review/inquiry process, the Minister knew or ought to have known that he could be a compellable witness.
14. THAT I believe that the fact that the Minister was participating in any capacity in making a determination on a process in which he could be compelled to testify, in and of itself establishes a conflict, or, at the very least, the reasonable perception of a conflict.
15. THAT it is my belief that any in-depth inquiry would likely examine rural policing policies, of which Minister Furey may or may not have been a part of engaging in during his prior

self-described roles as both “District Commander” and as “Policing Consultant (Advisor to the Minister and Deputy Minister),” but would likely be a part of implementing in his role as Minister of Justice.

16. THAT there have been suggestions of a practice in rural policing called “risk it out” in which officers are left to work with no or insufficient back up, which I verily believe. The RCMP was allegedly forced to call in additional support from as far away as New Brunswick on April 18 and 19 and yet there was apparently no contact with the closest local police force. As this aspect of the investigation is discussed, RCMP policy, that Minister Furey may have been involved in during his prior career and currently likely overseeing, as Minister, could be a key element of an inquiry. Attached hereto and marked as Exhibit “E” is an article from the Halifax Examiner discussing the practice of “risk it out.”
17. THAT I believe it is reasonable to assume that in a more in-depth inquiry, policies on staffing that led to the standard scheduling arrangement, along with the scheduling on the days of the Portapique tragedy, would be examined.
18. THAT if the RCMP were understaffed during the Portapique tragedy, the question of “why” would have to be answered at a full inquiry, which could lead to a discussion on the “risk it out” policy. A policy that Minister Furey, as a former District Commander, and as current Minister of Justice, is most likely, not only aware of, but may have also practiced or potentially currently oversees.
19. THAT in the event Minister Furey was involved in implementing “risk it out” or to the extent he was aware of its existence, he would likely have an awareness of the safety concerns over which he presided and potentially failed to correct, as the Minister responsible to the people of Nova Scotia for the functioning of the RCMP.
20. THAT based on the role of the Minister of Justice and Minister Furey’s prior role with the RCMP, it stands to reason that it would not be appropriate for an individual who may have participated in the very practice likely to be at issue, to have any sort of decision-making authority over what would and would not be considered in relation to examining and investigating the Portpique tragedy.
21. THAT in my opinion, at the very least, Minister Furey’s prior involvement with the RCMP suggests the reasonable perception of a conflict.
22. THAT in the Conflict of Interest Commissioner’s prior finding with respect to Minister Furey (Exhibit “B”), the Commissioner acknowledged the recognition and referral of a potential conflict is the first step in addressing perceived conflict:

*"Yes, there may be a possible perception of a conflict, however is it manageable -- can it be addressed?"*

*I think it can.*

*The first step in resolving a possible perception of a conflict has already been taken -- the Minister has identified the problem and seeks an objective assessment."*

23. THAT the fact that the Minister of Justice's role in reviewing and investigating the Portapique tragedy was not referred to the Commissioner for review, further supports the allegation of a perceived (or potentially real) conflict.

24. THAT moreover, the Minister apparently turned his mind to the conflict by suggesting on May 14 to the media that the matter was not a conflict because a prior ruling in a different matter had deemed him not to be in conflict. Attached hereto and marked as Exhibit "F" is the transcript of Minister Furey's comments on May 14, 2020:

*"I reached out to the Conflicts Commissioner on a previous file...the Assoun file and in general terms, the Conflicts Commissioner indicated at that time, that by the very nature of my role in my previous work experience, that in itself did not place me in a conflict of interest.*

*I don't feel that I'm in conflict with this file. I'm satisfied based on what the Conflicts Commissioner shared in his previous finding."*

25. THAT the Minister reiterated his comments that a conflict clearance in the Assoun matter cleared him from conflict in the Portapique tragedy. Attached hereto and marked as Exhibit "G" is the transcript of Minister Furey's comments on September 1, 2020:


*"So I've gone to the Conflict of Interest Commissioner on two previous occasions. One for the Glen Assoun matter and in general, the Conflict of Interest Commissioner determined that there was no conflict, perceived or real, because of my previous employment. Um, I've been guided by that advice and I continue to apply that advice to this day in these circumstances. This matter is certainly a different set of circumstances, but it doesn't change the principle direction and guidance that the Conflict of Interest Commissioner has provided."*


26. THAT I understand that as of September 1, 2020, the Province of Nova Scotia has been added as a party to a class action. Attached hereto and marked as Exhibit "H" is a CBC article confirming that the province had been named a party to a class action in relation to the Portapique tragedy.

27. THAT the *Proceedings against the Crown Act*, RSNS 1989, c360, Section 18 states as follows: "No action shall be brought against the Crown unless two months previous notice in writing thereof has been served on the Attorney General..."
28. THAT pursuant to Section 18 of the *Proceedings against the Crown Act*, it is my understanding that Minister Furey would have, or ought to have, received notice of this pending proceeding on or about June 1, 2020.
29. THAT the announcement of a review was made on July 23, 2020 and that, prior to that date, Minister Furey stated publicly that he was in discussions on the process with the federal government. Attached hereto and marked as Exhibit "I" is a CBC article from June 4, 2020 indicating that the Minister was in discussions with the federal government around the inquiry/review process.
30. THAT I do verily believe that given that the decision was between a review process, that was not necessarily intended to be public, and a public inquiry, which would be public with powers to compel witnesses and the Minister having the aforementioned knowledge of pending litigation on this very subject, it would suggest, at the very least, a reasonably perceived conflict of interest in participating in those discussions and decisions. Attached hereto and marked as Exhibit "J" is a Star Halifax article, dated July 23, 2020, in which some of the differences between a review and inquiry.
31. THAT to summarize my beliefs that Minister Furey was in a real or reasonably perceived conflict of interest, I believe it was reasonably ascertainable that, while participating in or making the decisions about how to examine the Portapique tragedy, Minister Furey was himself a former RCMP member having held management or executive positions.
32. THAT as a result of Minister Furey's previous employment, he may have made, applied or overseen the policies which are likely to come under review, including 'risk it out' procedures.
33. THAT as the Minister responsible for policing in Nova Scotia, Minister Furey would be a likely witness-participant in any inquiry and likely a compellable witness in a statutorily constituted public inquiry.
34. THAT at the most material time, when the decision about the process itself was being made, Minister Furey was a Minister of the Crown in a government apparently being named by notice made pursuant to the *Proceedings against the Crown Act* where multiple parties seek to establish liability for the numerous losses they allege in their class action against the Government of Nova Scotia and the RCMP.
35. THAT pursuant to Sections 31(1) and 18 of the *Act*, I would request that the Conflict of Interest Commissioner conduct a thorough conflict review of Minister Furey's prior

involvement with the RCMP, his status as a reasonably foreseeable witness or participant in any manner or review, his status as the Minister responsible for policing while a class action notice had been served against his government, along with any participation, discussions or decisions he had or took in connection with performing any investigation into the Portapique tragedy.

36. THAT I swear this Affidavit in good faith and in support of my request that the Conflict of Interest Commissioner conduct a review of Minister Furey's role in the Portapique tragedy Inquiry and for no other or improper purpose.

SWORN TO at Halifax, Province of Nova )  
Scotia, this 8<sup>th</sup> day of September, 2020, )  
before me )  
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\_\_\_\_\_)  
Nicole LaFosse Parker )  
A Barrister, Notary or Commissioner of )  
Oaths for the Province of Nova Scotia )

  
\_\_\_\_\_)  
Tim Houston

**Nicole R. LaFosse**  
A Barrister and Commissioner  
of the Supreme Court of  
Nova Scotia