

Pages 1 through 9 redacted for the following reasons:

Section 26(1)(b) Public Inquiry Act

Labh, Janet AG:EX

From: Tupper, Chris AG:EX
Sent: Monday, July 4, 2011 1:58 PM
To: Jones, Craig E AG:EX; Loukidellis, David AG:EX
Subject: FW: Wally Oppal Letter
Attachments: Scan001.PDF

FYI

Regards,
Chris

-----Original Message-----

From: Kerr, Carleen AG:EX
Sent: Monday, July 4, 2011 1:49 PM
To: Dawson, Gail C AG:EX; Hughes, Candice AG:EX
Cc: Tupper, Chris AG:EX
Subject: Wally Oppal Letter

Hi Candice and Gail,

Could you please send the following signed letter to the Commissioner via email. The hard copy will follow.

Kind regards,
Carlee

385246.



July 4, 2011

Wally T. Oppal, QC
Commissioner
Missing Women's Inquiry Commission
1402 - 808 Nelson Street
Vancouver BC V6Z 2H2

Dear Commissioner Oppal:

Thank you for your letter of June 30, 2011. I will carefully consider this matter and would hope to have a more substantive response to you in the coming week.

Sincerely,

A handwritten signature in black ink, which appears to read "Barry Penner". The signature is written in a cursive, flowing style.

Barry Penner, Q.C.
Attorney General

**MISSING
WOMEN
COMMISSION OF
INQUIRY**

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June 30, 2011

The Honourable Barry Penner, QC
Attorney General of British Columbia
PO Box 9044 Stn Prov Govt
Victoria BC V8W 9E2

Dear Mr. Attorney,

Re: Funding for Participants

The government's recent decision regarding funding for participants at the Missing Women Commission of Inquiry (the "Commission" or the "Inquiry") has, as you know, caused me great concern. While I appreciate that the government is working with limited resources, this decision has a serious and negative impact on the Commission's work. I have reviewed information received by Commission Counsel at two meetings with participants and their counsel, conducted a pre-hearing conference, and reviewed the written material of a number of parties, including counsel for the Attorney General. As a result of these efforts we believe there are opportunities to alleviate your concerns regarding increased costs associated with funding participants while also allowing the Inquiry to meet its Terms of Reference ("TOR") in a cost-efficient, effective and timely manner. With that in mind I respectfully ask that you reconsider your position on my funding recommendations.

I. Background

The background of this matter is well worth repeating. Between 1997 and 2002 over 33 women went missing from the Downtown Eastside of Vancouver. The number of missing and murdered women increases dramatically if you include the years immediately preceding the Commission's Terms of Reference. Beginning in 2002, Robert William Pickton was charged in the murder of 27 of these women and eventually convicted in the deaths of six. It is worth noting that Pickton admitted to killing 49 women and authorities believe that he may in fact be responsible for the murder of many more women.

The tragedy of missing and murdered women is not isolated to the Downtown Eastside. Along several highways in Northern BC, 32 women have gone missing over the past several decades and at least 11 have been found murdered.

It is worth noting that Pickton was first arrested by the police in 1992 in relation to an assault against a sex trade worker. In 1997 he was again arrested and this time charged with attempted murder in the 1997 attack on a sex trade worker. In neither instance were the cases proceeded with. If they had been, it is clear that the murder of a number of missing women would have been avoided. It is also the case that beginning in the early 1990s police began receiving numerous complaints about the number of missing women. It is alleged that for the most part those complaints were ignored or dealt with inadequately.

The tragedy of the missing and murdered women is compounded by the fact that these women were among some of the most vulnerable and marginalised in our society. These are the very women we, as a community, should protect. The women were poor, many had drug and alcohol dependency issues and a large percentage were aboriginal. Members of the community, not only in grief about the horrible losses the entire community suffered, were deeply concerned that the police did not prioritize the investigation into the missing women. They continue to be concerned that many women's lives were needlessly lost, in the most horrific manner, because the police did not conduct their investigation adequately. They believe that these women's plights were ignored or dismissed by the police because of who they were and the circumstances in which they lived.

This is what the Commission must determine. Clearly, this mandate is not only integral to the administration of this Province, but also the public's perception of the administration of justice. The government should be commended for recognising the need to investigate these claims and provide the community with an opportunity to prevent similar tragedies in the future.

After the Inquiry was called, approximately 23 groups approached the Commission to achieve full standing. It may well be argued that all 23 groups satisfied the test for full legal standing. However, I was mindful of the need to conduct the Inquiry in a timely and efficient way and of the limited government resources. For those reasons we thought that the interests of justice were best achieved by having a study commission so that many of the groups who applied for full standing would be able to be involved in a less costly and more open process. Involvement in the study commission does not entirely replace the need for limited participants to be involved, albeit in a reduced capacity, at the evidentiary hearings.

On May 2, 2011 I released my Ruling on Participation and Funding Recommendations. In it I accepted 18 individuals, groups and organizations as participants. Of these participants, 10 were accepted as full participants, while eight were accepted as limited participants.

Of the 18 participants, 13 requested a recommendation for funding for the anticipated costs of participating in the hearing portion of the Inquiry. Based on the affidavit evidence provided by these groups, I was satisfied the 13 participants would not be able to participate in the hearings in a meaningful way without funding. In my funding recommendation, I stated that funding should be provided to the groups based on their level of involvement in the Inquiry; thus, full participants would receive more than limited participants.

It is critical to note that a number of the participant applicants worked extremely hard to come together and form coalitions or working groups. This cooperation on their part demonstrates their understanding and willingness to ensure that the Inquiry is conducted in the most efficient and cost effective manner. Because of the collaboration of the coalitions and working group, the Inquiry will proceed more efficiently, with fewer days needed for cross examinations and submissions.

On May 19, 2011, the Ministry of the Attorney General released an information bulletin stating that it had decided to focus its available resources on the families of the murdered and missing women represented by Mr. A. Cameron Ward. Following the release of this decision, I was quickly made aware of the reaction of several groups that have been granted standing.

It was my intention that all groups granted participant standing have the representation they need to participate in the Inquiry in a fulsome and meaningful way. This is still my intention. Therefore, I instructed Commission Counsel to meet with the participants and their counsel to discuss what options may exist in light of the Attorney General's decision. I also instructed Commission Counsel to research alternatives that may be open to the Inquiry.

As a result of the meetings and research, Commission Counsel informed me that the participants had real and significant concerns and advised me to give the participants an opportunity to formally put their concerns before me. On June 27, 2011 I held a Pre-Hearing Conference where I asked participants to speak to:

- a. Their need for representation by counsel at the evidentiary hearings;
- b. How their interests may be impacted if funding was not provided; and
- c. Communications, if any, they had with the Attorney General's office regarding funding.

I heard from representatives and counsel for 18 organizations and individuals. The majority of the submissions were from the unfunded participants; however, I also heard from Mr. Cameron Ward, counsel for ten families of missing and murdered women, Mr. David Crossin, QC, counsel for the Vancouver Police Union and Mr. Sean Hern, counsel for the Vancouver Police Department (the "VPD") and the Vancouver Police Board. Their attendance and submissions indicated that the issue of funding is not just a concern to those participants who seek funding; funding will have a dramatic effect on the conduct of the Inquiry. As Mr. Hern, on behalf of the VPD, stated, it is important to hear from the constituent communities. Even counsel for the VPD recognises the need in this Inquiry for counsel for those people and organisations that are unrepresented. Furthermore, from a perspective of the appearance of justice, the police groups and the Crown are all funded from the government while those apparently victimised are left to fend for themselves. It would be the height of unfairness to require unrepresented individuals to cross examine police who are represented by highly qualified counsel. Mr. Ward, while appreciative of the government's decision to provide his clients with funding, noted that his clients' interests would be advanced if other participants were funded. Mr. Ward furthermore stated that he cannot pretend nor attempt to represent the interests of all the other participants.

Mr. Arvay, QC, counsel for the February 14 Women's Memorial March and also speaking on behalf of the Downtown Eastside Women's Centre, submitted that the government's decision not to fund participants was misguided. This Inquiry is not only one of the most important in this Province's history, but also has national significance. He notes the government is attempting to defend its decision by stating that it is focusing on families, but this ignores the fact that Mr. Ward only represents ten families of missing and murdered women. This is but a small percentage of those people affected by the tragedy; many of the groups that did not receive funding have close ties with family members of the missing and murdered women and with the individuals who worked, lived and supported these women on a daily basis when their family connections were not strong. Further, Mr. Arvay submitted that the government appears to have misunderstood the role organisations such as his hoped to play at the Inquiry. Compared with making a "presentation" to the Inquiry, the active role of participant counsel is far more complex: counsel will cross examine witnesses, review documents and potentially bring forward witnesses. This role generally requires the skills and knowledge of counsel, especially if the Inquiry hopes to proceed on a time efficient and effective schedule.

Ms. Brodsky, on behalf of the Native Women's Association of Canada ("NWAC"), submitted that her client brings to the Inquiry the voices of aboriginal women across the country. It need not be repeated that many of the missing and murdered women, as well as the vast majority of the women who have gone missing from the Northern Highways in BC, are aboriginal. NWAC

further submitted the funding decision from May 19, 2011, essentially robbed her client of its standing and is discriminatory as it decides who is able to attend the hearings and what evidence is placed before the Inquiry and how that evidence is tested. NWAC's participation in the Inquiry is crucial: NWAC has spent nearly ten years gathering evidence and information related to missing and murdered aboriginal women across Canada. They have a direct interest in the outcome of this hearing and a large role to play in ensuring that the voice of aboriginal women is represented in the Inquiry process.

Ms. Kate Gibson spoke to me on behalf of the WISH, a drop in centre that provides food, medical services, counselling, advocacy, education and referrals to women in the DTES. WISH has also been active in gathering information and working with the VPD on the missing women cases for many years. Without funding, Ms. Gibson submitted, WISH will not be able to participate. WISH has very limited resources and simply does not have the staff or expertise to be at the hearing every day or to cross-examine witnesses. Ms. Gibson further noted that the decision not to fund organizations such as hers is re-creating barriers that they have been working extremely hard to take down since Mr. Pickton was arrested. Rather than illuminating the problems that may have plagued the missing women investigation and seeking to solve them, the Commission would contribute to alienating and marginalising the clients of WISH.

Mr. Gratl on behalf of VANDU, Walk4Justice and the Frank Paul Society outlined the complex nature of the facts of the Inquiry as well as legal issues that will be raised during the hearing and preparations for the hearing. I understand that Mr. Gratl is concerned that, without the opportunity to participate in the hearings, his clients will not have the opportunity to assist the Commission in understanding what impact my recommendations may have on them. Mr. Gratl also noted that Article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples*, adopted September 13, 2007, sets out that "Indigenous peoples have the right to participate in decision-making matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures..."; as a result, funding participants to enable their participation in the evidentiary hearings would accord with Article 18.

Ms. Fox, speaking on behalf of four aboriginal groups who have come together to form a working group for the purposes of the Inquiry, noted that participants must be able to access the full record in order to be able to make useful submissions. The organizations she represents are ill-equipped to have a meaningful role in the Inquiry process without counsel.

Hearing the submissions from the 13 speakers from the various unfunded participants further highlighted the value and necessity of their participation in the evidentiary hearings.

One of the key messages I took from these submissions was the participants' sense of cooperation and flexibility and their desire to come together and participate in the Inquiry. This message stands in stark contrast to the concern raised by some that the funding requests from participants is primarily one of lawyers seeking large pay cheques. In my opinion this suggestion could not be further from the truth. Many of the participants seeking funding are community organizations that struggle year after year to provide services to some of our most vulnerable and marginalised communities. Funding counsel to participate in the Inquiry would mean the organizations would have to reallocate money that should not, and must not, be taken away from programs that are lifelines for many people.

II. Submissions of the Attorney General

At the Pre-Hearing Conference your counsel, Mr. Craig Jones, put forward options to "address the concerns that may be expressed by the unfunded participants." Unfortunately, these options were unable to alleviate my concerns or those of the unfunded participants.

While Mr. Jones is correct in his submission that a public inquiry is different from a traditional trial this does not mean it is not a contentious and adversarial process. Individuals and organisations have a lot at stake and will be working extremely hard to defend their positions and reputations. In order to ensure that the public interest is properly represented at the Inquiry a greater 'public' presence by way of counsel for the participant groups must be ensured; this is after all a *public* inquiry. Mr. Jones's submission that this concern could be alleviated through the bifurcation of Commission Counsel is, in my opinion, untenable. While this may have been possible in previous inquiries, the range of complex and deeply divided interests at play in this inquiry precludes this option here. It would be virtually impossible for one person to act as the voice for sex-trade workers (who are divided on many issues), residents of the Downtown Eastside, aboriginal people, women and community members from across the city, among others. Commission Counsel would not be able to meet with all of the participants, understand their positions, obtain their expertise and then cross-examine witnesses in any meaningful way; nor would Commission Counsel be able to cross-examine on mutually exclusive issues and from mutually exclusive perspectives.

Based on her experience as commission counsel in a bifurcated role, Ms. Hensel, counsel for NWAC, pointed out it is the duty of Commission Counsel to be fair, not to protect the interest of certain groups. Logistically Mr. Jones's proposal is also, in my opinion, not workable in this situation. It would not be feasible for Commission Counsel to prepare a witness to testify, spend time with her developing her story and evidence only to turn around when that witness was on the stand and proceed to cross-examine her.

III. Further Developments

While I appreciate your attempts to provide solutions to assuage the concerns of the unfunded participants, as discussed above, none of the options provided alleviate the obstacles created by not funding the participants.

Based on information received at the Pre-Hearing Conference, it is my understanding that the government did not receive estimates from participants or their counsel with regards to what amounts are necessary for participants to fulfil their role at the Inquiry. Based on the cooperation and dedication on the part of the participants and their counsel to date, I believe there is an amount of money acceptable to the government that would be sufficient, if managed properly, to ensure participants are able to be part of the evidentiary hearings through to their conclusion.

I also believe that there was an important element to my recommendation with respect to funding that was not fully appreciated. Specifically I recommended that groups be funded based "on their level of participation". This was not only to apply to the "limited" versus "full" standing, but also within the full participants as a group.

For example, I assumed that Mr. Ward representing the Families would be involved, to some extent, in all portions of the hearing. However, other full participants will only need to be involved in specific sessions and witnesses that are relevant to them. This would therefore directly affect their need for funding.

Now after hearing all of the additional submissions I still believe that their individual participation (and therefore their funding) can be tailored to satisfy their involvement in specific areas of the hearing and not the hearing in totality.

Commission Counsel has been in contact with Mark Benton, QC of the Legal Services Society of BC ("LSS"), regarding managing funds provided by the government. Unfortunately, Mr. Benton does not have the resources to assist the Commission; however, we are continuing to explore options for an independent entity to assist in making recommendations for managing a fund of money. I submit that working directly with the participants, rather than their counsel, regarding the amount needed for each group would help alleviate the concerns of 'lining lawyers' pockets.'

The Inquiry has the potential to be one of this Province's most important, not only in recognising the failures in our past but hopefully in providing recommendations to prevent the tragedies that took place from happening again. The unfunded participants before me have

worked tirelessly and cooperatively over the past few months recognising the Inquiry's importance and stand ready and willing to move forward to ensure the Inquiry fulfils its obligations.

Failure to fund the participant organisations would leave disenfranchised women and victims in a clearly unfair position at the hearing. Once again I ask you to reconsider your position regarding my funding recommendations.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read 'Wally Oppal', written in a cursive style.

Wally T. Oppal, QC
Commissioner

Labh, Janet AG:EX

From: Jessica McKeachie [Jmckeachie@missingwomeninquiry.ca]
Sent: Monday, June 6, 2011 4:23 PM
To: Loukidelis, David AG:EX
Cc: John Boddie; Art Vertlieb; Karey Brooks
Subject: Missing Women Commission - Notice of Pre-Hearing Conference
Attachments: 2011.06.06 Notice re Pre-Hearing Conference.pdf

Good afternoon Mr. Loukidelis,

Commission Counsel, Art Vertlieb, has asked that I forward the attached notice regarding an upcoming pre-hearing conference.

The notice was sent out to Inquiry participants on an embargoed basis this afternoon and will be posted on the Commission's website tomorrow.

Thank you,,

Jessica McKeachie
Research Counsel
Missing Women Commission of Inquiry
#1402 - 808 Nelson Street
Vancouver, BC V6Z 2H2
Phone: 604-566-8026
Fax: 604-681-4458
Toll free: 1-877-681-4470

NOTICE OF A PRE-HEARING CONFERENCE

On May 24, 2011, I announced that I had instructed my Senior Commission Counsel, Mr. Art Vertlieb, Q.C. to consider how the decision by the Provincial Government to only fund the victims' families represented by Mr. Cameron Ward will impact the Participants' Involvement in the hearing portion of the inquiry and the operation of the Commission generally.

Mr. Vertlieb has now informed me that he has consulted with counsel for the full and limited participants that were denied funding. He has also reviewed what options are available to the Commission in light of the Government's refusal to follow my recommendation. As a result of his discussions, Mr. Vertlieb has advised me to hold a pre-hearing conference to give all Participants an opportunity to make submissions directly to me about how the funding decision by the Government affects their clients' Involvement in the hearing portion of the inquiry and the operation of the Commission.

Therefore, I am, holding a pre-hearing conference on June 13, 2011 at 9:30 a.m. on the 12th floor, 1125 Howe Street. All Participants and their counsel are asked to attend.

At the pre-hearing conference, I ask that the Participants address the following issues:

- The need for them to be represented by legal counsel at the hearing portion of the Inquiry;
- How their interests may be impacted if funding for legal counsel is not provided; and
- A description of the communication they have had with the Attorney General's office with respect to: any input that was sought from them to help the Attorney General's office make a decision about funding and whether any basis was provided to them for the denial of funding.

So that all Participants can be accommodated, I ask that oral submissions be limited to 15 minutes. Written submissions will be accepted, but are not required. Any questions regarding this pre-hearing conference should be directed to: Ms. Jessica McKeachie, Research Counsel, at jmckeachie@missingwomeninquiry.ca or 604-566-8026.

The Hon. Wally Oppal, Q.C.
Commissioner
Missing Women Commission of Inquiry

May 26, 2011

The Honourable Barry Penner
Attorney General of British Columbia
Room 232 Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Sir:

Re: Funding for Community Groups -- Missing Women's Inquiry

I am deeply disappointed with your government's decision not to fund the participation of community groups in the upcoming Missing Women's Inquiry. Many of these organizations could offer the commission of Inquiry valuable insights into the lives of the missing women and the role played by the police in their lives.

As things now stand, there will be a lone lawyer, Cameron Ward, representing the families of the missing women at the Inquiry. However, the RCMP, the Vancouver Police Department and the Criminal Justice Branch will be represented by some of the most costly and prestigious law firms in Vancouver, all at taxpayers' expense. I hardly think this is either an honest or fair way to proceed with the Inquiry. Your decision not to fund community organizations gives the unmistakable impression that your government is stacking the decks in favour of both the police and government agencies.

I strongly recommend that you reverse your decision on funding for community groups wanting to participate in the Inquiry. Already, the Inquiry is regarded with considerable suspicion by the public because a former Attorney General was appointed to lead it. Your government's unwise and unkind decision to not fund the community groups will only serve to cast doubt on both the proceedings and findings of the Inquiry.

I await your response.

Yours truly,

Labh, Janet AG:EX

From: Elizabeth Welch [ewelch@missingwomeninquiry.ca]
Sent: Monday, May 2, 2011 5:57 PM
To: Loukidelis, David AG:EX
Cc: Boychuk, Dave AG:EX; Art Vertlieb; Karey Brooks
Subject: Ruling on Participation and Funding Recommendations
Attachments: Ruling on Participation and Funding Recommendations.pdf

Please find attached the Ruling on Participation and Funding Recommendations, dated May 2, 2011, provided to you on an embargoed basis. The Ruling will be released and posted on the Commission's website tomorrow with its accompanying press release.

Kind regards,

Elizabeth Welch
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**MISSING
WOMEN
COMMISSION OF
INQUIRY**

Missing Women Commission of Inquiry
Ruling on Participation and Funding Recommendations
May 2, 2011

The Honourable Wally Oppal, Q.C.
Commissioner

Ruling on Participation and Funding Recommendations

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I. Events Leading up to the Missing Women Commission of Inquiry

The issue involving missing and murdered women has reached a crisis level in Canada. Since the early 1990s, women have been reported missing, particularly from the downtown eastside of the city of Vancouver (the "DTES"). A tragic aspect of the crisis is that many of the women belonged to the most marginalized groups of society. Many were Aboriginal. Many were sex trade workers who were particularly vulnerable to abuse and violence.

Many community groups and individuals raised complaints regarding women who were missing. Many people believe that the deaths could have been avoided had complaints related to missing women been taken more seriously.

There were many suggestions that a serial killer was operating in the community. The community's fears of a serial killer were well founded when in 2002 the police arrested and charged Robert William Pickton with 27 counts of first degree murder. He was eventually tried and convicted of 6 counts of second degree murder and sentenced to 6 terms of life imprisonment. There was evidence at the trial that Pickton may have murdered as many as 49 women.

II. The Missing Women Commission of Inquiry is Established

Throughout the 1990s and during the Pickton trial the police came under heavy scrutiny. There has been much criticism of the police investigations of the Pickton case in particular and of missing women in general.

Many groups and individuals were extremely critical of the lengthy investigation and called for an independent inquiry. Once Pickton's appeals were finally exhausted the government was in a position to establish an inquiry and did so by Order In Council on September 27, 2010. The Missing Women Commission of Inquiry was ordered under s. 2(1) of the *Public Inquiry Act*.¹ I was appointed sole Commissioner.

The Terms of Reference direct the Commission to conduct the inquiry as follows:

4(a) to conduct hearings, in or near the City of Vancouver, to inquire into and make findings of fact respecting the conduct of the missing women investigations;

(b) consistent with the *British Columbia (Attorney General) v. Davies*, 2009 BCCA 337, to inquire into and make findings of fact respecting the decision of the Criminal Justice Branch on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault;

(c) to recommend changes considered necessary respecting the initiation and conduct of investigations in British Columbia of missing women and suspected multiple homicides;

¹ *Public Inquiry Act*, S.B.C. 2007, c. 9.

(d) to recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization, including the co-ordination of those investigations;

(e) to submit a final report to the Attorney General or before December 31, 2011.

The missing women investigations are defined as "the investigations conducted between January 23, 1997 and February 5, 2002, by police forces in British Columbia respecting women reported missing from the Downtown Eastside of the city of Vancouver."

Thus under the Terms of Reference, the Commission must examine a broad array of issues: missing women investigations, the Crown's decision to stay a proceeding, homicide investigations and coordination of investigations by more than one investigating organization. The array of issues invites different approaches for community involvement.

III. The Process Mandated by the Terms of Reference

When the Commission was first established, it was designated a hearing commission. The *Public Inquiry Act* contemplates two types of commissions of inquiry: hearing commissions and study commissions. Hearing commissions can only consider information and recommendations that are presented to the commissioner through court-like hearings; whereas study commissions can gather material from research, interviews and public consultations.

As a hearing commission, the Commission relies on the support of formally designated participants. Therefore, on November 2, 2010, I invited applications to participate in the evidentiary hearings. At this time, it was assumed that all subject matters would be examined through the powers of a hearing commission. The Commission received 23 such applications.

However, it became apparent that many members of the community who wished to participate did not wish to take part in the more formal hearing process which would necessarily involve obtaining counsel and being subjected to cross examination. Rather they wished to participate in a more informal way by simply telling their stories and making recommendations on policy. Therefore, a more informal process, in the form of a study commission, would be more appropriate. As well Terms 4(c) and (d) essentially call for policy recommendations that are more suited to a study commission.

Thus given the gravity of the events that have given rise to this Commission it would not be in the public interest to confine the public's contribution to formal participation in evidentiary hearings. As well by permitting a more informal process and a lesser hearing process I would expect the Commission's work would be expedited. It was with these considerations that I asked the Provincial Government to broaden the terms of the inquiry to include a study commission. Accordingly, the Provincial Government amended the Terms of Reference to include a joint hearing and study commission.

The Commission's designation as a joint study and hearing commission now allows me to craft forms of participation that are appropriate to the skills and expertise of different individuals and organizations.

IV. "Participant Status" is Necessary for the Evidentiary Hearings but Not the Study Process

This ruling addresses all applications received for participation in the Commission's evidentiary hearings. Given that the Commission has powers to engage the community in different ways, I have decided the evidentiary hearings will focus primarily on Terms of Reference 4(a) and (b). I will use the Commission's study powers to address Terms of Reference 4(c) and (d).

This ruling deals with participation status for Terms of Reference 4(a) and (b). I have decided that formal participation status for the study portion of the Commission's work (Terms of Reference 4(c) and (d)) is not required. In the context of this Commission, I believe formal status in the study process would defeat its purpose. The study process is intended to be informal and to allow individuals to speak directly to me, without cross examination and the other features of the more formalized evidentiary process. As well, an informal process will bring forward all the perspectives and information necessary to understand the policy issues and, accordingly, formal participation status (another way of ensuring that occurs) is not needed. Therefore, participation status as granted in this ruling does not preclude participation in the study process.

V. Participant Status in the Evidentiary Hearings

The applicants can generally be divided into two groups: those primarily focused on the factual issues arising under Terms of Reference 4(a) and (b) and those primarily focused on the policy issues arising under Terms of Reference 4(c) and (d).

Organizations primarily focused on the factual issues arising under Terms of Reference 4(a) and (b) have common characteristics. Many are grass roots advocacy and service organizations that have direct and daily contact with the community, including with many of the women who were reported missing. These groups are closer to the facts at issue. Most of these groups were front line lobbyists for public attention to the missing and murdered women and, ultimately, for the establishment of a public inquiry. I am also mindful that many of these organizations have limited resources and their involvement in this Commission may provide a unique opportunity for their voices and perspectives to be heard.

The organizations primarily focused on the policy issues of the Commission's mandate also have common characteristics. Most are experienced political or policy organizations. These groups have demonstrated a long standing commitment to many of the policy issues the Commission will confront. They have worked for policy or legal reform, represented or advocated special interests in governmental or political arenas, conducted research and published studies or engaged in public education. These groups will be extremely valuable in assisting the Commission make recommendations for missing women and homicide investigations and the coordination of investigations by multiple police forces.

In other commissions, it might not be appropriate to grant these policy groups status to participate in the evidentiary hearings at all. However, the subject matter of this Commission (namely, the investigation of offences against the most vulnerable members of society) has caused me to find there is a different but important role for these applicants to play in the

evidentiary hearings. While the factual nature of Terms of Reference 4(a) and (b) do not necessitate full involvement from the policy groups, because the factual findings will provide an important foundation for the policy recommendations, those groups should have some role in the process.

As a result, I will not exclude either type of applicant from the two distinct processes of this Commission, but the nature of their participation will be different. I anticipate the factual groups will play a leading role in the evidentiary hearings on Terms of Reference 4(a) and (b) and the policy groups will play a leading role in the study process on Terms of Reference 4(c) and (d). With that in mind, I have determined that two levels of participation in the evidentiary hearings will best serve the Commission. Both the *Public Inquiry Act*² and the Commission's Directive³ allow a commission to determine the extent of a participant's participation. I will accept applicants as either Full Participants or Limited Participants.

Full Participants may participate in all phases of the evidentiary hearings and exercise all rights of participation at those hearings, including cross examining witnesses and making submissions. They will also be granted access to the documents disclosed to the Commission.

Limited Participants are granted the same right of access to documents as Full Participants. While they will not have an automatic right to cross examine witnesses I will grant them leave to apply on an individual witness basis. They have the right to make final submissions at the conclusion of the evidentiary hearings. As mentioned, I fully expect the Limited Participants to play a leading role in the study portion of the inquiry. In particular, the First Nations and Aboriginal applicants accepted as Limited Participants are in a position to offer unique policy advice as to the future conduct of missing women investigations, particularly given the disproportionate number of Aboriginal women reported missing.

I believe the creation of two levels of participation best achieves the objective of this Commission: to fully explore all of the issues from multiple perspectives in a timely manner.

VI. The Criteria for Participation in the Evidentiary Hearings

Participants play an important role in the Commission's hearings. They influence the scope of the inquiry by representing different perspectives and interests. They are required to disclose documents in their possession relevant to the Commission's subject matter and will be given the right to review documents disclosed by other participants. They may be entitled to make written or oral submissions, examine and cross examine witnesses and propose witnesses to be called by Commission counsel. Participants have a right to counsel, but may be self-represented.

Formal participation in the Commission's evidentiary hearings will be limited to those persons who demonstrate they meet the criteria for participation with respect to the subject matter set out in Terms of Reference 4(a) and (b).

² Section 12.

³ Practice and Procedure Directive for Evidentiary Hearings, rules 19-20.

The Test for Participation

Rule 11 of the Practice and Procedure Directive for Evidentiary Hearings sets out the participation requirements of s. 11(4) of the *Public Inquiry Act*. It outlines three factors to consider in accepting the applicant as a participant:

- a. whether, and to what extent, the person's interests may be affected by the findings of the commission,
- b. whether the person's participation would further the conduct of the inquiry,
- c. whether the person's participation would contribute to the fairness of the inquiry.

Interests Affected by the Subject Matter of the Inquiry

Applicants are accepted as participants if their interests are affected by a commission's findings. "Interest" must be assessed against the terms of reference that establish a commission's subject matter.

Usually, to participate in Canadian public inquiries, applicants must show they have a "substantial and direct" interest in the subject matter. This standard is set out in the Ontario *Public Inquiries Act*⁴ and the terms of reference for many federal public inquiries, e.g. the *Gomery Inquiry*, the *Arar Inquiry* and the *Cohen Commission*.

The BC *Public Inquiry Act* requires applicants to show "whether, and to what extent, their interests may be affected by the findings of the commission": It does not specify that the interest must be "substantial and direct". However, I have reviewed interpretations of the "substantial and direct interest" test to the extent they may be instructive.

In *The Law of Public Inquiries in Canada*,⁵ the author proposes that the following classes of persons have a substantial and direct interest:

- those who receive notices of alleged misconduct;
- those whose legal interests are affected;
- those who may be seriously affected by the subject matter of the inquiry; and
- those who have a serious and objectively reasonable fear for their well-being or reputation.⁶

Accordingly the following factors will be considered in determining whether a person's interests may be affected:

- whether the applicant has personal involvement in the conduct the Commission is tasked to examine;
- whether the applicant's actions may be assessed or the applicant may be subject to a finding of misconduct;

⁴ *Public Inquiries Act*, R.S.O. 1990, c. P.41, s. 5(1).

⁵ Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010).

⁶ Ruel, *supra* at 57-58.

- whether the applicant's well-being or reputation may be affected by the Commission's findings; and
- whether the applicant's interest is unique to that applicant, shared by other applicants or shared by the broader community.

Furthering the Conduct or Contributing to the Fairness of the Inquiry

Applicants who would further the conduct or contribute to the fairness of the inquiry but otherwise do not meet the interests affected criteria of the test for participation may still be accepted as participants.⁷ Applicants may have a particular perspective or expertise that may assist the Commission in furthering its mandate. There are of course differences among the applicants as to the extent to which their interests may be affected by the Commission's findings.

VII. The Application Process

The following 23 individuals or groups applied to be participants before the Commission:

1. Vancouver Police Department and Vancouver Police Board
2. Government of Canada
3. Criminal Justice Branch
4. The families of Dawn Crey, Cara Ellis, Cynthia Dawn Feliks, Marnie Frey, Helen Mae Hallmark, Georgina Papin, Dianne Rock and Mona Wilson as represented by A. Cameron Ward
5. BC Civil Liberties Association
6. Ending Violence Association of BC
7. West Coast LEAF
8. Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society
9. Amnesty International
10. Coalition of Sex Worker-Serving Organizations, including:
 - Prostitution Alternatives Counselling and Education Society
 - WISH Drop-In Centre Society
 - Downtown Eastside Sex Workers United Against Violence Society
11. Assembly of First Nations
12. Union of BC Indian Chiefs
13. Women's Equality & Security Coalition, including:
 - The National Congress of Black Women Foundation
 - Aboriginal Women's Action Network
 - Coalition of Childcare Advocates
 - Justice for Girls
 - Canadian Association of Sexual Assault Centers
 - EVE (formerly Exploited Voices now Educating)
 - Vancouver Rape Relief Society

⁷ *Public Inquiry Act*, s. 11(4). Also see Ruel, *supra* at 61; Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law, 2009) at 187-191.

- University Women's Club of Vancouver
- The Poverty & Human Rights Centre
- The Asian Women Coalition Ending Prostitution
- Provincial Council of Women
- 14. Native Courtworker and Counselling Association of BC
- 15. The Committee of the February 14 Women's Memorial March
- 16. Downtown Eastside Women's Centre
- 17. First Nations Summit
- 18. PIVOT Legal Society
- 19. Native Women's Association of Canada
- 20. Dr. Kim Rossmo
- 21. CRAB – Water for Life Society
- 22. Carrier Sekani Tribal Council
- 23. Vancouver Police Union

To avoid duplication and encourage cooperation,⁸ multiple applicants may be accepted as a single participant, a grouping I will refer to as a coalition. I appreciate that some applicants applied in coalitions. However, the number of potential applicants was impractical for a formal hearing process, particularly as many of these applicants have overlapping interests. At the oral hearing, I asked applicants to further consider whether they could work cooperatively with other applicants in coalitions.

As a result of this process, the following coalitions formed:

1. Ending Violence Association of BC and West Coast LEAF
2. BC Civil Liberties Association, Amnesty International and PIVOT Legal Society
3. The Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre
4. Carrier Sekani Tribal Council and the Union of BC Indian Chiefs

Applicants who were interested and able to form coalitions were asked to communicate that intention to the Commission through signed coalition agreements ("Coalition Agreements"). The Commission received a number of these agreements and I refer to them below.

Additionally, in an email sent from counsel for the First Nations Summit, the following groups committed to work collaboratively for the purpose of advancing their shared principles:

1. Assembly of First Nations
2. First Nations Summit
3. Native Courtworkers and Counselling Association of BC
4. Union of BC Indian Chiefs
5. Carrier Sekani Tribal Council

The Commission is grateful for their commitment to collaboration and anticipates that these groups will pool resources and share knowledge for the purposes of the inquiry.

⁸ The benefits of coalitions are discussed in Ratushny, *supra* at 190.

VIII. Applications for Participation

I will now deal with each of the applications for participation. As discussed above, I have accepted some applicants as Full Participants and some as Limited Participants.

While the Commission wishes to be as inclusive as possible in considering these many applications, we also must have a hearing process that will support the Commission in its need to be both thorough and timely. Therefore, I have considered whether applicants should work together in coalitions. In making my ruling on coalitions I have relied on the representations made by various groups at the oral hearing and the coalition agreements provided to me since the hearing. The coalitions, set out below, have satisfied me that their interests align to such an extent that it is appropriate for them to work together in a coalition.

A. Applicants Accepted as Full Participants

1. Vancouver Police Department and Vancouver Police Board

There has been much criticism of the police handling of the missing women investigations.

The Vancouver Police Department (the "VPD") is the police department of the City of Vancouver. The VPD is governed by the Vancouver Police Board.

Term of Reference 4(a) mandates the Commission to inquire into and make findings of fact with respect to the conduct of these investigations. To fulfill this mandate, the Commission will necessarily make findings of fact with respect to the VPD and Vancouver Police Board's involvement in the investigation. These findings may include findings of misconduct against members of the VPD and Vancouver Police Board. As a result, I am satisfied that the VPD and Vancouver Police Board's interests may be affected by the findings of the Commission.

The VPD and Vancouver Police Board would provide a valuable perspective, thereby furthering the conduct of the inquiry. Much of the evidence that will allow the Commission to make findings of fact under Term 4(a) will come directly from documents disclosed by the VPD and testimony of members of the VPD.

The participation of the VPD and Vancouver Police Board would also contribute to the fairness of the inquiry. It would be unfair for the Commission to make findings of fact respecting the conduct of the VPD and Vancouver Police Board without allowing them to examine witnesses and make submissions with respect to their conduct.

The VPD and Vancouver Police Board meet the test for participation.

2. Government of Canada

There have been similar criticisms regarding the RCMP's participation in the Pickton investigation in particular and in missing women investigations in general.

The Government of Canada is responsible for the RCMP. The RCMP "E" Division provides provincial and certain municipal police services to BC; therefore, employees of the RCMP participated in the missing women investigations.

The Commission will make findings of fact with respect to the conduct of employees of the RCMP during the missing women investigations, which may include findings of misconduct. As a result, I accept that the Government of Canada's interests may be affected by the Commission's findings.

The Government of Canada, as representative of the RCMP, satisfies the test for participation.

3. Criminal Justice Branch

On January 27, 1998, the Crown entered a stay of proceedings against Pickton upon numerous charges, including a charge of attempted murder. In light of the fact that Pickton was convicted of murders that took place after that date, there have been questions raised as to why that prosecution did not proceed.

The Criminal Justice Branch (the "CJB") is statutorily empowered to approve and conduct prosecutions of offences, advise the government on all criminal law matters and develop policies and procedures in respect of the administration of justice in BC.

The CJB's interests may be affected by the findings of the Commission: Term 4(b) of the Terms of Reference specifically empowers the Commission to make findings "respecting the decision of the Criminal Justice Branch on January 27, 1998". Thus, the CJB which is in charge of all prosecutions in the Province has an obvious interest in Term 4(b) which refers to the stay of proceedings entered against Pickton.

4. Families of Dawn Crey, Cara Ellis, Cynthia Dawn Feliks, Marnie Frey, Helen Mae Hallmark, Georgina Papin, Dianne Rock and Mona Wilson as represented by A. Cameron Ward

The families of Dawn Crey, Cara Ellis, Cynthia Dawn Feliks, Marnie Frey, Helen Mae Hallmark, Georgina Papin, Dianne Rock and Mona Wilson as represented by A. Cameron Ward (the "Families") are the next of kin of eight women who were victims of Pickton.

The Families may have a direct and personal interest in the Commission's findings. I accept the following reasons that support their involvement as set out in their application:

- the Families continue to have questions about the police response to the reports of missing women and the conduct of the investigations;
- the Families allege their grief is partly caused by the police response to their reports of the missing women's disappearances and the consequences of the police response; and
- some of the Families have not learned the fates of their loved ones through a criminal trial process.

The Families will contribute to a meaningful examination of the conduct of the missing women investigation, particularly the initiation of these investigations; as a result, the Families would further the conduct of the inquiry. The Families may be in a position to provide evidence with respect to:

- the missing women's disappearances;
- the Families' searches for the missing women;
- the initial reports of the missing women to the police;
- the information the Families provided to the police about the missing women; and
- the conduct of the investigations.

The Families' participation would contribute to the fairness of the inquiry, both in fact and appearance. Indeed, it would be unfair to deny the Families meaningful participation in the inquiry for a number of reasons, including that the Families have been deeply affected by the conduct of the missing women investigations and may be affected by the outcome of the inquiry.

The Families meet the test for participation.

5. Vancouver Police Union

The Vancouver Police Union (the "VPU") was established with the general mandate to defend and represent the interests of its membership in a variety of circumstances.

I accept that the VPU's interests may be affected by the findings of the Commission. Many active and retired members of the VPU have a personal interest concerning the issues to be explored at the inquiry. Many members will give evidence and may have their conduct evaluated.

The VPU would further the conduct of the inquiry by providing its perspective with regard to its distinct interest in addressing issues associated with the conduct of individual investigators (as opposed to the conduct of the VPD generally). In the interests of fairness, the VPU ought to be granted full participation.

The VPU meets the test for participation.

6. Coalition of Sex Worker-Serving Organizations

The Coalition of Sex Worker-Serving Organizations is composed of the following three societies: Prostitution Alternatives Counselling and Education Society ("PACE"); WISH Drop-In Centre Society ("WISH"); and Downtown Eastside Sex Workers United Against Violence Society ("SWUAV").

PACE is a registered society that aims to promote safer working conditions for sex workers by reducing harm and isolation through education and support. It does so by providing sex-worker led and driven programs and services to survival sex workers in the DTES. It has published a report called "Violence Against Women in Vancouver's Street Level Sex Trade and the Police Response."

WISH is a registered society with a mandate to increase the health, safety and well-being of women working in the sex trade in the DTES. It provides direct services to sex workers through an evening drop-in centre that provides food, medical services, counselling, advocacy, education and referrals to 80-120 women per day. WISH also works with the Vancouver police to gather information on missing women, distribute "persons of interest photos" and build sex workers' trust in the police.

SWUAV is a society with over 200 members that was formed by current and former sex workers who live and work in the DTES. It works to improve conditions and protections for women involved in the sex trade; advocates for systemic change to improve the lives of women in the sex trade; and advocates against violence and discrimination of women in the sex trade.

These three societies provide health, safety and advocacy services to street-based sex workers in the DTES and, importantly, provide support for sex workers who experience incidents of violence. The Coalition of Sex Worker-Serving Organizations states that most, if not all, of the missing women were clients of one or more of its member societies.

In its application, the Coalition of Sex Worker-Serving Organizations submits that many of its members have encountered challenges and barriers when attempting to report violence to the police and participating in the criminal justice process. It also submits its members will be profoundly affected by the outcome of this inquiry. As a result, I accept that the interests of the Coalition of Sex Worker-Serving Organizations may be affected by the Commission's findings.

The Coalition of Sex Worker-Serving Organizations submits that the perspective of sex workers and sex worker serving organizations is essential to the conduct of the inquiry and will promote public confidence. Specifically, the Coalition of Sex Worker-Serving Organizations submits it will contribute to the Commission's understanding of the challenges faced by many women in engaging the police for protection. I accept the participation of the Coalition of Sex Worker-Serving Organizations would further the conduct of the inquiry by providing the perspective of sex workers and sex worker serving organizations.

Finally, I accept that since most of the missing women in the DTES were involved in sex trade work, representation of sex worker organizations would contribute to the fairness of the inquiry.

The Coalition of Sex Worker-Serving Organizations meets the test for participation.

7. The Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre

I am satisfied the February 14 Women's Memorial March and the Downtown Eastside Women's Centre should be accepted as Full Participants. I am also satisfied that these two groups have sufficiently common interests such that it is appropriate for them to work in a coalition. However, I will deal with their applications separately.

The Committee of the February 14 Women's Memorial March

The Committee of the February 14 Women's Memorial March (the "Committee") was formed in 1991 following the murder of a woman on Powell Street. It is a community group with 18-25 members, women who live or work in the DTES. According to the Committee, some of its members attended the Pickton farm during the time women were going missing from the DTES.

The Committee undertakes the following activities: an annual march held on February 14 to raise awareness of violence against women in the DTES; two anti-violence workshops annually; mentorship of women living in the DTES; public outreach including publishing anti-violence materials; and meetings with VPD Chief Constable Jim Chu to discuss women's violence issues. The Committee also participated in making a documentary that explores the murders and disappearances of Aboriginal women in Canada.

The Committee, as representative of the interests of women living and working in the DTES, meets the test for participation.

Downtown Eastside Women's Centre

The Downtown Eastside Women's Centre (the "DEWC") was established in 1978 to support and empower women and children living in extreme poverty in the DTES. It comprises community members and staff who are trusted by women in the DTES. Every day, the DEWC provides a drop-in-centre, self-help programs, referrals, hot meals, laundry, phone access, programs, clothes and toiletries, counselling and advocacy to over 300 women and children. In addition, the DEWC plays a role in organizing the annual Women's Memorial March.

The workers and legal advocates of the DEWC are familiar with the realities of women in the DTES and the missing women investigation. According to the DEWC, its clients have included many of the women who have gone missing or have been murdered.

The DEWC states it will provide direct information about the disappearances of women between January 3, 1997 and February 5, 2002, and the interactions between police and women in the DTES. It also submits it will provide testimonials of friends and families of the missing and murdered women.

I am satisfied that the DEWC meets the test for participation because it will provide the perspective of women and children living the DTES and evidence about missing and murdered women.

8. Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society

The Vancouver Area Network of Drug Users ("VANDU"), Walk4Justice and Frank Paul Society are non-profit organizations centred in the DTES that advocate for Aboriginal empowerment, each with its own emphasis.

VANDU is a non-profit organization with over 2,000 members who are current and former drug users. Its goals are to address issues of poverty, social exclusion, criminalization and illnesses ancillary to illicit drug use. VANDU states that several of the missing women were members of its organization.

Walk4Justice is an incorporated non-profit organization whose purpose is to raise awareness of missing and murdered women and advocate for social change to reduce violence against women. This group states that it has over 10,000 members and supporters nationwide and that it maintains a national database of missing and murdered women. To date, the main activity of Walk4Justice has been a campaign of three long-distance walks from Vancouver to Ottawa to raise awareness for the missing and murdered women.

The Frank Paul Society is a non-profit society focused on urban Aboriginal advocacy, which formed in response to the *Frank Paul Inquiry Interim Report* released in February 2009.

The applicants submit that, together, they will enrich the evidentiary base and level of analysis of the Commission, specifically by:

- marshalling witnesses who would not otherwise be prepared to testify;

- locating expert witnesses to provide historical, socio-political and demographic opinion evidence on the context of the women's disappearances and the relationship between the police and drug users, sex trade workers and Aboriginal women who are victims of violent crime;
- providing evidence dealing with unwritten police practices that apply to the DTES; and
- providing legal analysis of the interests of Aboriginal persons, especially Aboriginal women, sex trade workers and persons using illicit drugs.

Further, these groups submit that drug users and urban Aboriginal persons must be given an opportunity to "set out the extent to which they cooperated with police, to extent to which police sought their cooperation, and, if there was in fact a failure of cooperation" because the "VPD is likely to suggest that sex trade workers and drug users did not cooperate with the VPD".

I accept VANDU, Walk4Justice and the Frank Paul Society meet the test for participation because they will represent the interests of illicit drug users and urban Aboriginal people.

9. Native Women's Association of Canada

The Native Women's Association of Canada ("NWAC") has represented Aboriginal and First Nations women across Canada for over 35 years. Included in its long history of working on various issues of concern to Aboriginal women is its work on the issue of violence against women through its "Sisters in Spirit Initiative."

Through the "Sisters in Spirit Initiative", NWAC has collected evidence related to nearly 600 cases of missing and murdered Aboriginal women and girls in Canada, including 160 cases in BC. This information is stored in a database of cases that can be analyzed by demographic information, life experiences, incident information and trial and suspect information. According to NWAC, this is the most comprehensive source of data relating to missing and murdered Aboriginal women in Canada. As a result of this database and its other research, NWAC states that it has "an intimate knowledge of the experiences of families, the patchwork of policies, programs and services available to women, families and communities and the jurisdictional divisions that have presented barriers in the police and justice systems to respond to the needs of Aboriginal women and families." NWAC submits that its purpose in applying to participate is to share the "data and expertise" developed through the Sisters in Spirit Initiative.

NWAC also submits it will represent a national Aboriginal and First Nations specific perspective with regard to the issue of missing and murdered Aboriginal women in Canada.

I am satisfied NWAC meets the test for participation because it will provide valuable perspectives and knowledge. I note that, unlike the other organizations granted Full Standing, NWAC is not a grass roots service provider in the DTES. Nonetheless, I believe it is critical for NWAC to participate throughout the hearing process. While there are several applicants that represent Aboriginal and First Nations interests, NWAC is unique in its specific focus on and representation of Aboriginal and First Nations women. Because of its history researching the issue of missing and murdered women in BC and Canada from its unique perspective, I have determined NWAC should be accepted as a Full Participant in the inquiry.

I note that other groups have supported NWAC in its application to be accepted as an independent participant.

10. Dr. Kim Rossmo

Dr. Kim Rossmo was a Detective Inspector with the Vancouver Police Department from 1995 to 2000. Dr. Rossmo states that, since 1999, it has been his position that women missing from the DTES were most likely victims of a serial murderer. His views were seriously challenged by some of his colleagues.

Dr. Rossmo's professional abilities and role in the VPD, particularly his analysis and report on the missing women, may be examined at the hearing.

Dr. Rossmo submits that he will likely be subject to personal and professional attacks during the course of the inquiry. As a result, he is concerned about damage to his "interests and reputation." I accept that Dr. Rossmo's interests may be affected by the findings of the Commission. I also accept that Dr. Rossmo's participation would contribute to the fairness of the inquiry. Given Dr. Rossmo's involvement in the investigation may be questioned or examined, it is fair that he be given the right to cross examine these witnesses.

Given his specific interest in the investigation by the VPD, I expect that Dr. Rossmo's participation will relate primarily to Term of Reference 4(a). He is granted the right to cross examine any VPD and Vancouver Police Board witness and is granted leave to apply to cross examine all other witnesses. He is also granted a right of access to all documents disclosed by the Commission, whether or not they are entered as exhibits.

On that basis, Dr. Rossmo meets the test for participation.

B. Applicants Accepted as Limited Participants

While these applicants have demonstrated that they would further the conduct or contribute to the fairness of the inquiry by making submissions with respect to the finding of fact under Terms of Reference 4(a) and (b), their direct interests may not be significantly affected in the same way as those of the Full Participants for they did not play a direct role similar to that played by those who have been granted Full Participant status. Therefore, these applicants have been accepted as Limited Participants.

1. BC Civil Liberties Association, Amnesty International and PIVOT Legal Society

I am satisfied BC Civil Liberties Association, Amnesty International and PIVOT Legal Society should be accepted as Limited Participants. I am also satisfied that these groups have sufficiently common interests such that it is appropriate for them to work together in a coalition, which was agreed to by the applicants by way of Coalition Agreements dated February 7, 10 and 16, 2011.

BC Civil Liberties Association

The BC Civil Liberties Association (the "BCCLA") is a non-profit, non-partisan registered charity for the promotion, defence, sustainment and extension of civil liberties and human rights. It submits that it has experience related to public education, submissions to government bodies, complainant assistance and legal advocacy on matters relevant to the Commission's work. These matters include police procedures and responses and effective systems of police reporting,

oversight and accountability. The BCCLA has participated in several other inquiries, such as the *Braidwood Inquiry*, the *Frank Paul Inquiry*, the *Iacobucci Inquiry* and the *Arar Inquiry*.

The BCCLA called for an inquiry into missing women in conjunction with the Union of BC Indian Chiefs.

I accept that the BCCLA is experienced in promoting systems of police reporting, oversight and accountability and examining police procedures and responses to recommend changes that promote effective policing while ensuring respect of citizens' fundamental rights. Given this, I accept the BCCLA's participation would further the conduct and contribute to the fairness of the inquiry.

Amnesty International

Amnesty International is an international non-governmental organization with extensive experience in research and advocacy in the promotion of human rights. Amnesty International has carried out extensive research and advocacy on the subject of violence against women, Aboriginal rights and administration of justice. Amnesty International released a report in 2004 entitled "Stolen Sisters: Discrimination and Violence Against Indigenous Women." In 2009, it released a follow-up report entitled "No More Stolen Sisters" which called for a public inquiry into the pattern of disappearance and murder of women from the DTES.

Amnesty International has experience contributing to various public inquiries in Canada, including: the *Maher Arar Inquiry*, the *Ontario Ipperwash Inquiry*, the *Iacobucci Inquiry* and the *Braidwood Inquiry*.

Given Amnesty International's experience and research in international human rights law, the intersection of policing and human rights and violence against Aboriginal women, I accept its participation would further the conduct and contribute to the fairness of the inquiry.

PIVOT Legal Society

PIVOT Legal Society ("Pivot") is a non-profit, non-partisan society founded in 2000. Its mandate is to take a strategic approach to social change by using the law to address the root causes that undermine the quality of life for those most on the margins. Pivot operates five campaigns relevant to the DTES in the following areas: police accountability, adequate housing, sex work law reform, child welfare and health addiction. It has a membership of approximately 4,800 individuals, including residents of the DTES, lawyers, community advocates, law students and other members of the general public.

Pivot submits it has "strived to increase police accountability through legal education and has created numerous publications regarding *Charter* rights and the need for reform of the police complaints process." In addition, Pivot has undertaken several *Charter* and human rights cases involving discrimination against DTES residents and has provided support to sex trade workers through its Law Reform Sex Work Committee.

I am satisfied Pivot's participation would further the conduct and contribute to the fairness of the inquiry based on its experience advocating for and providing legal representation to DTES residents and sex trade workers.

2. Ending Violence Association of BC and West Coast LEAF

I am satisfied Ending Violence Association of BC and West Coast LEAF should be accepted as Limited Participants. I am also satisfied that these two groups have sufficiently common interests such that it is appropriate for them to work together in a coalition, which was agreed to by the applicants by way of Coalition Agreements dated February 11, 2011.

Ending Violence Association of BC

Ending Violence Association of BC ("EVA BC") is a charity that was established to provide a broad range of support for community-based victim-serving agencies across BC. It provides support and training to the 240 anti-violence programs it represents and to other service providers. It also engages in advocacy, issues analysis and identification of strategies related to violence against women.

EVA BC participated in the *Lee Inquest*.

EVA BC submits it will bring a province-wide perspective informed by:

- an understanding of the dynamics of violence against women and how marginalization and social powerlessness may affect these dynamics;
- knowledge of the existing services for women who are victims of violence;
- experience working with Aboriginal women and women from other marginalized and vulnerable groups;
- experience providing leadership in developing strategies for working collaboratively to address violence against women; and
- a history of working with communities, the police and government ministries to develop strategies to address violence against women.

I am satisfied that EVA BC's participation would further the conduct and contribute to the fairness of the inquiry because of its experience addressing issues of violence against vulnerable and marginalized women.

West Coast LEAF

West Coast LEAF has been a provincially incorporated non-profit society and a federally registered charity since 1985. Its mission is to achieve equality by changing historic patterns of systemic discrimination against women through BC-based equality rights litigation, law reform and public legal education. West Coast LEAF states that it has a historical interest in violence against women and "in particular in the issue of missing and murdered Aboriginal women." West Coast LEAF is a member of the BC CEDAW Group, which called for a public inquiry in 2008 and 2010 into the problems associated with missing and murdered Aboriginal women.

West Coast LEAF submits the identification of victims, families and witnesses as women, Aboriginal persons, persons living in poverty, sex trade workers and members of the DTES community impacted their interactions with the justice system.

If accepted as a participant, West Coast LEAF seeks to "bring before the Commission a substantive equality analysis of the issues in the missing women investigation." It also seeks to draw the Commission's attention to ways in which the investigation may have been "impeded by

systemic inequality.” West Coast LEAF states it will provide an analysis of the use of stereotypes and the missing women’s ss. 7 and 15 *Charter* rights and will contribute to the issue of the police’s obligation to warn the public about violent serial criminals.

I accept that West Coast LEAF will bring a unique substantive equality analysis, including an intersectional equality analysis, to bear on the evidence before the Commission. Because of its valuable perspective and experience, I am satisfied that West Coast LEAF’s participation would further the conduct and contribute to the fairness of the inquiry.

3. Assembly of First Nations

The Assembly of First Nations (the “AFN”) is the national representative organization of First Nations in Canada, presenting the views of the various First Nations through their leaders in areas such as health, social development and justice. The AFN has advocated for attention to the 520 unresolved cases of missing and murdered Aboriginal women in Canada. The AFN’s interest is supported by internal resolutions, councils and campaigns.

The AFN states it has an interest in the inquiry because it “is the institution to protect and advocate for the collective rights of...different First Nation and Aboriginal communities, across Canada.” The AFN submits that its participation would further the conduct of the inquiry in the following ways: by providing insight and assistance with the development of culturally appropriate policies; by holding the inquiry accountable to victims, families and Aboriginal interest groups; and by allowing the families, friends, communities and First Nation and Aboriginal populations of Canada to feel adequately represented at the inquiry.

Because of the overrepresentation of Aboriginal women in the missing and murdered women, the AFN states that it is imperative that the Commission have a strong First Nation presence. I agree. I am also satisfied the participation of the AFN would further the conduct of the inquiry and contribute to its fairness by providing a national First Nations and Aboriginal perspective.

4. Carrier Sekani Tribal Council and the Union of BC Indian Chiefs

I am satisfied both the Carrier Sekani Tribal Council and the Union of BC Indian Chiefs should be accepted as Limited Participants. I am also satisfied that these two groups have sufficiently common interests such that it is appropriate for them to work together in a coalition, which was agreed to by the applicants in letters dated February 15, 2011.

Carrier Sekani Tribal Council

The Carrier Sekani Tribal Council (the “CSTC”) is a registered BC non-profit that comprises the following member First Nations: Burns Lake Band (Ts’il Kaz Koh First Nation); Nak’azdli Band; Nadleh Whut’en; Saik’uz First Nation; Takla Lake First Nation; Tl’azt’en Nation; and Wet’suwet’en First Nation. The CSTC represents over 10,000 people with a mandate that includes to: preserve and provide the Carrier Sekani heritage and identity; improve social and economic independence of the Carrier Sekani people; achieve a just resolution of land claims and Aboriginal rights issues for the Carrier Sekani people; promote better understanding between First Nations’ people and the general public; advance and improve the standard of living for the Carrier Sekani people; and promote self-government for the Carrier Sekani people.

Members of the CSTC are among the missing and murdered women from the DTES and the Highway of Tears. The vast majority of missing and murdered women from the Highway of Tears are Aboriginal women. The Highway of Tears runs through five CSTC member Nations and the remaining three member Nations must use the highway to access services and resources in larger urban centres.

Additionally, the CSTC submits it has concerns about the relationship of distrust between members of the CSTC and local RCMP detachments and allegations of abuse of Aboriginal persons by the RCMP.

The CSTC submits that the experience of CSTC members cannot be accurately represented by any other organization: CSTC members have firsthand knowledge of the death of Jacqueline Murdock, the deaths on the Highway of Tears and the alleged mistreatment of CSTC members by the RCMP.

I accept the participation of the CSTC would further the conduct of the inquiry and contribute to its fairness by providing a perspective of northern Aboriginal persons and northern First Nations communities.

Union of BC Indian Chiefs

The Union of BC Indian Chiefs (the "UBCIC") is a political organization of First Nations in BC dedicated to promoting and supporting the efforts of First Nations to affirm and defend Aboriginal title and rights and treaty rights. Its mission is to improve intertribal relationships through common strategies to protect Aboriginal title; to hold the federal Government to its fiduciary obligations and change its extinguishment policy; to support their peoples at regional, national and international forums; to continue to defend their Aboriginal title; and to build trust, honour and respect to achieve security and liberty and continue the healing and reconciliation (decolonization) of their Nations.

With the First Nations Summit and BC Assembly of First Nations, the UBCIC is on the First Nations Leadership Council which represents First Nations in discussions with the Government

The UBCIC states it will further the conduct of the inquiry based on its experience and network of relationships among the families of missing and murdered women. The UBCIC submits it has the following experience:

- developing options for addressing the social and economic conditions of First Nations people in BC;
- advocating for families of the missing women from the DTES and the Highway of Tears; and
- considering the unique cultural considerations necessary when carrying out policies and procedures that affect First Nations peoples.

I accept the participation of the UBCIC would further the conduct and contribute to the fairness of the inquiry by providing a provincial Aboriginal and First Nations perspective.

5. Women's Equality & Security Coalition

The Women's Equality & Security Coalition (the "WESC") is an ad hoc group of women's organizations dedicated to the protection and advancement of women's liberty, dignity, security and equality. These organizations have come together to participate in the inquiry. The WESC is composed of: The National Congress of Black Women Foundation; Aboriginal Women's Action Network; Coalition of Childcare Advocates; Justice for Girls; Canadian Association of Sexual Assault Centers; EVE (formerly Exploited Voices now Educating); Vancouver Rape Relief Society; University Women's Club of Vancouver; The Poverty & Human Rights Centre; The Asian Women Coalition Ending Prostitution; and the Provincial Council of Women.

The WESC submits that it will provide "expert guidance and truth-seeking from the perspective of what is critical to advancing the equality rights of women and girls and what is beneficial for women and children." The WESC also states that the inquiry will benefit from the active participation of non-police, non-governmental and non-legal entities. Specifically, the WESC submits it can contribute by:

- offering women-centered and child-centered interpretations and examination of the evidence of other interested parties;
- highlighting the realities, dangers and challenges that women and girls face; and
- keeping the Commission aware of the global issues and impact of its work on the whole community of women and children.

I accept that the WESC's participation would further the conduct of the inquiry and contribute to its fairness based on its perspective of advancing equality interests of women and girls.

6. Native Courtworker and Counselling Association of BC

The Native Courtworker and Counselling Association of BC (the "NCCABC") is BC's oldest Aboriginal justice services organization, providing counseling, referral, advisory and representation services to Aboriginal people in conflict with the law. The NCCABC provides alcohol and drug abuse counseling services, family and youth advocate services and works closely with Aboriginal people on the East side of Vancouver. It called for an inquiry into the investigation of the Pickton murders and the stays of proceedings.

The NCCABC states that it offers a unique perspective for the following reasons: it is neither a political organization nor represents individuals having personally lost loved ones; it has knowledge and experience assisting Aboriginal peoples engaged in the justice system; and it represents all Aboriginal peoples whether Métis, Status Indian, Non-Status Indian, Inuit and Aboriginal from outside the province.

The NCCABC submits that it will further the conduct of the inquiry by offering its unique perspective, a perspective gained from working with Aboriginal women who are susceptible to victimization. With respect to the stay of proceedings at issue in Term of Reference 4(b), the NCCABC states that its experience working in criminal court and its substantial contact with Crown Counsel has afforded it insight into the factors affecting Crown decisions and weaknesses in the Crown's process.

I am satisfied the NCCABC's participation would further the conduct of the inquiry and contribute to its fairness by offering a unique perspective derived from its experience working in the criminal justice system advocating for the interests of individual Aboriginal peoples.

7. First Nations Summit

The First Nations Summit (the "FNS") is composed of the majority of First Nations and Tribal Councils in BC and provides a forum for First Nations in BC to address issues related to treaty negotiations and other issues of common concern. This group represents more than 70% of the First Nations population in the province, representing or advocating on behalf of First Nations in BC who live on reserves and in urban centres. The FNS's mandate includes ensuring the safety, dignity and well-being of all First Nations, in particular vulnerable citizens.

The FNS is a part of the First Nations Leadership Council that represents First Nations in discussions with the BC Government.

The FNS submits it has an interest in participating in the inquiry for the following reasons:

- Aboriginal women are disproportionately represented among the missing and murdered women;
- Aboriginal women continue to suffer violence, indignity and discrimination in Canada and have serious concerns about their safety;
- First Nations' confidence in the administration of justice has been undermined by the investigations; and
- the families of the missing and murdered women need justice, closure, equality and accountability.

Because of its representation of First Nations interests, the FNS submits it has a strong interest in informing the fact finding process, including informing the approach used to ensure both healing and closure. The FNS states that it would further the conduct of the inquiry by representing First Nations in BC and their citizens and ensuring that the voice of Aboriginal people is heard.

I am mindful of the fact that the FNS initially brought the issue of missing women to the attention of the VPD before the missing women investigations began.

I am satisfied the FNS's participation would further the conduct and contribute to the fairness of the inquiry through its representation of First Nations in BC.

8. CRAB – Water for Life Society

As CRAB – Water for Life Society stated in the oral hearing, it has been involved in the DTES community for 20 years, advocating for the interests of missing and murdered women: it spearheaded the creation of Crab Park, a seven acre park at the foot of Main Street; it provided a memorial boulder at Crab Park for missing and murdered women; it holds an annual vigil for missing and murdered women; its members participate in the annual Women's Memorial March; and one of its leaders is involved in advocating for funding for the repatriation of victims' remains to their families.

In its written application, CRAB – Water for Life Society identified its interests in a number of policy issues, including decriminalization of prostitution and the importance of on-street civilian

youth workers, police youth liaison officers, Aboriginal/civilian liaison officers, detox centres and police sensitivity training.

CRAB – Water for Life Society is different from the other applicants. It does not have the breadth of formal experience as other policy groups; in fact, it is a grass roots organization. However, because of its focus on policy issues and its lack of direct involvement in the factual subject matter of Terms of Reference 4(a) and (b), it is distinct from the groups granted Full Participation.

I accept CRAB – Water for Life Society as a Limited Participant. Its strong presence in the DTES and the principle of inclusivity tips the balance in favour of accepting CRAB – Water for Life Society as a Limited Participant on the basis that its involvement would contribute to the fairness of the inquiry.

IX. Funding Recommendations

In response to the Commission's Notice of Standing and Funding, the following 13 applicants sought funding recommendations:

Full Participants

1. The Families as represented by A. Cameron Ward
2. Coalition of Sex Worker-Serving Organizations
3. The Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre
4. Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society
5. Native Women's Association of Canada
6. Dr. Kim Rossmo

Limited Participants

7. BC Civil Liberties Association, Amnesty International and PIVOT Legal Society⁹
8. Ending Violence Association of BC and West Coast LEAF
9. Assembly of First Nations
10. Carrier Sekani Tribal Council and the Union of BC Indian Chiefs
11. Women's Equality & Security Coalition
12. Native Courtworker and Counselling Association of BC
13. First Nations Summit

I have reviewed the Affidavit evidence provided by these applicants in support of their funding applications and I am satisfied they would not be able to participate in the hearing portion of the inquiry without funding. I therefore recommend to the Attorney General that these applicants receive financial assistance to pay for legal counsel to facilitate participation appropriate to the extent of their interest.

⁹ I note that Amnesty International did not apply for a funding recommendation.

In recommending the applicants receive funding appropriate to the extent of their legal interest, I recommend that grants of funding be tailored to the level of participation that each applicant has been granted. Specifically, I recommend that Full Participants receive funding that reflects their comprehensive involvement in the hearing process, and Limited Participants receive funding that reflects their limited involvement in the hearing process. In this way, grass roots service organizations, the majority of the Full Participants, will be given sufficient funding to play a leading role in the evidentiary hearings.

X. Summary

In summary, the following applicants have been accepted as participants in the evidentiary hearings:

Table of Applicants Accepted as Participants

Full Participants	
1.	Vancouver Police Department and Vancouver Police Board
2.	Government of Canada
3.	Criminal Justice Branch
4.	Families of Georgina Papin, Mona Wilson, Marnie Frey, Dianne Rock, Cara Ellis, Cynthia Dawn Feliks, Helen Mae Hallmark and Dawn Crey as represented by A. Cameron Ward
5.	Vancouver Police Union
6.	Coalition of Sex Worker-Serving Organizations
7.	The Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre
8.	Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society
9.	Native Women's Association of Canada
10.	Dr. Kim Rossmo
Limited Participants	
11.	BC Civil Liberties Association, Amnesty International and PIVOT Legal Society
12.	Ending Violence Association of BC and West Coast LEAF
13.	Assembly of First Nations
14.	Carrier Sekani Tribal Council and the Union of BC Indian Chiefs
15.	Women's Equality & Security Coalition
16.	Native Courtworker and Counselling Association of BC
17.	First Nations Summit
18.	CRAB – Water for Life Society

I have also made funding recommendations for 13 applicants, commensurate with their extent of participation at the hearings.

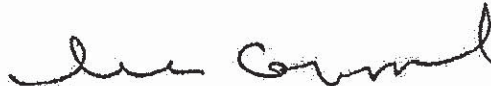
Table of Applicants Given Funding Recommendations

Full Participants

1.	Families of Georgina Papin, Mona Wilson, Marnie Frey, Dianne Rock, Cara Ellis, Cynthia Dawn Feliks, Helen Mae Hallmark and Dawn Crey as represented by A. Cameron Ward
2.	Coalition of Sex Worker-Serving Organizations
3.	The Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre
4.	Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society
5.	Native Women's Association of Canada
6.	Dr. Kim Rossmo

Limited Participants

7.	BC Civil Liberties Association, Amnesty International and PIVOT Legal Society
8.	Ending Violence Association of BC and West Coast LEAF
9.	Assembly of First Nations
10.	Carrier Sekani Tribal Council and the Union of BC Indian Chiefs
11.	Women's Equality & Security Coalition
12.	Native Courtworker and Counselling Association of BC
13.	First Nations Summit



Wally T. Oppal, Q.C.
Commissioner

Pages 50 through 54 redacted for the following reasons:

Section 26(1)(b) Public Inquiry Act

AGT-2011-00144

McDonald, Heather M AG:EX

From: Jones, Craig E AG:EX
Sent: Friday, June 24, 2011 11:51 AM
To: 'Art Vertlieb'
Subject: Missing Women Inquiry - Submissions on Commission Counsel.docx

In draft, as discussed. Please call me if anything arises for you.



Missing Women
Inquiry - Submis...

MISSING WOMEN COMMISSION OF INQUIRY

Established by Order in Council September 27, 2010,

The Hon. Wally Oppal, Q.C., Commissioner

Pre-Hearing Conference, June 27, 2011

SUBMISSIONS OF THE ATTORNEY GENERAL OF BRITISH COLUMBIA

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I. Introduction/Overview

1. In its May 2, 2011 *Ruling on Participation and Funding Recommendations*, this Commission granted participation status to 18 applicants, including individuals, organizations and coalitions. Ten applicants were granted "Full Participant" status and another eight were granted "Limited Participant" status. The Commissioner recommended funding for a total of 13 groups.

2. The Attorney General approved funding for one group, the families of a number of missing and murdered women who were represented by A. Cameron Ward. Funding for the other 12 recommended groups (the "unfunded participants") was not approved.

3. In its June 20th *Status Update*, this Commission wrote:

I am concerned about the effect of the Attorney General's funding decision on the Commission. The Commission is dedicated to ensuring that it is thorough and fair and that all perspectives, identified as unique, necessary and valuable in the *Ruling on Participation and Funding Recommendations*, are adequately represented. The Commission believes this is necessary to ensure it fulfills its mandate under the Terms of Reference. Therefore, the Commission is considering options to address the concerns that arise due to the Attorney General's decision.

4. The Commissioner announced this pre-hearing conference and invited further information from participants concerning the matter of counsel funding. By letter of June 17, 2011, the Attorney General requested, and he was subsequently granted, leave to appear at the Conference and make submissions. These submissions of the Attorney General are made to assist the Commission in understanding its options to address concerns that may be expressed by the unfunded participants.

5. The Attorney is aware of three main reasons offered for requiring the presence (and by extension funding) of participants' counsel in the hearing phase of the inquiry: the first is that counsel will assist a participant in advancing its interest in the process and outcome; the second is to acquire access to documents that, at present, are to be disclosed only to counsel on an undertaking; and the third is to ensure, through vigorous and if necessary adversarial cross-examination and advocacy, that evidence put before

the Commissioner is thoroughly tested and explored and all legitimate arguments are made. These submissions address each in turn.

II. Participation for Which Independent Counsel is not Ordinarily Required

A. Presenting the Perspective of Interested Groups

6. The anticipated role of the unfunded participants is to contribute a perspective that will advance the Commission's understanding of the circumstances of particularly vulnerable members of society, and to present policy arguments surrounding the reform of government systems. This is without a doubt a valuable contribution, but it is not one that requires publicly-funded independent counsel. At its root, a public inquiry is much more than a lengthy conversation among state-funded lawyers.

7. An Inquiry is not a trial, and a Commissioner is not an arbiter between parties presenting "cases".¹ An inquiry is an inquisitorial forum established by the executive of government with a view to investigating facts and making findings and recommendations to government. In an inquiry, the Commissioner represents the public interest in discerning the truth, and it is he (mainly through his agent, the Commission counsel) who is the active inquisitor. Commission counsel decides which witnesses and which evidence will be called before the Commissioner; Commission counsel probes and tests that evidence; no participant has a "case to bring" as in a trial.

8. In this context, the question of counsel funding cannot be viewed from the perspective of "balancing", or "equality of arms". It would be incorrect, and indeed it

¹ Even on the forensic end of the spectrum of inquiry models, a commission is not analogous to a civil proceeding, where the Court expects the parties to conduct the hearing and present all the necessary facts. It is an error to consider an inquiry to be a trial, or even to be "trial-like". The Federal Court of Appeal stated, at page 539 in *Benoit v. Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997] 2 F.C. 527 (C.A.):

In a trial, the judge sits as an adjudicator, and it is the responsibility of the parties alone to present the evidence. In an inquiry, the commissioners are endowed with wide-ranging investigative powers to fulfil their investigative mandate The rules of evidence and procedure are therefore considerably less strict for an inquiry than for a court. Judges determine rights as between parties; the Commission can only "inquire" and "report". . . .

would be a legal error, to view the Inquiry as one of "sides", with the police and Crown opposed by groups playing a de facto prosecutorial role. Only if such a false premise were accepted would it be arguable that the two "sides" must be both publically-funded to avoid unfairness. To the extent that this premise underlies the public perception and threatens confidence in the Inquiry, then in the Attorney's respectful submission it is part of the role of the Commissioner to explain to the public nature of the forum.

9. Inquiries are designed to accommodate submissions and evidence from unrepresented parties, and such participation has become commonplace. The *Public Inquiry Act* itself foresees participation in person, by counsel, or by a non-lawyer agent (s.13(1)).

10. This Commission has described the expected contributions of the Full and Limited Participants as follows:

The 10 Full Participants share common interests: they are primarily focused on the factual issues under Terms of Reference 4(a) and (b). They also share characteristics: several are grass roots advocacy and service organizations that have direct and daily contact with the community, including many of the women who were reported missing.

The eight Limited Participants are those organizations primarily focused on the policy issues of the Commission's mandate. They also share common characteristics: several are experienced political or policy organizations that have demonstrated a long standing commitment to many of the policy issues the Commission will confront. I expected that these groups will be extremely valuable in assisting the Commission make recommendations for missing women and homicide investigation and the coordination of investigations by multiple police forces.

11. The groups at issue do not have personal rights or interests to advance or defend, and nor are their own actions the subject-matter of the Inquiry.² They are therefore in a fundamentally different position from the families who have been impacted (and who the Commissioner described as having a "direct and personal"

² This may not be the case with Dr. Rossmo, whom the Commissioner has found may have personal, reputational interests at stake and may be the subject of cross-examination in the Inquiry. If counsel is needed for Dr. Rossmo to assist him in his role as a witness (beyond that which might be provided by Commission counsel in the ordinary course), he may apply to the Ministry of Attorney General and such a request will be considered on its merits.

interest in the hearings), and also the public servants whose past actions and decisions are to be the subject of the inquiry, and whose activities will be guided by the recommendations that will eventually be made. These persons will be confronted with evidence developed by the Commission's team of lawyers and counsel for the victims' families, and may be extensively cross-examined on their actions and decisions. Their interest is, as the Commissioner found, "direct" and in some cases also personal.

B. Accessing and Reviewing Documents

12. This Commission's Practice and Procedure Directive of October 26, 2010, gives participants and counsel the same potential rights of access:

Confidentiality of records

25. Commission Counsel shall not provide a record to counsel, a participant or a witness until that person has delivered to Commission counsel a signed undertaking, in a form approved by the Commissioner, that all records disclosed by the Commission will be used solely for the purposes of the Commission.

26. Counsel for a participant or a witness shall not provide a record to the participant or witness until the participant or witness has delivered to counsel a signed undertaking, in a form approved by the Commissioner, and counsel has delivered that signed undertaking to Commission counsel.

27. The Commissioner may:

- a. impose restrictions on the use and dissemination of records,
- b. require that a record that has not been entered as an exhibit in the evidentiary proceedings, and all copies of the record, be returned to the Commission, and
- c. on application, release counsel, a participant or a witness, in whole or in part, from the undertaking in relation to any record, or may authorize the disclosure of a record to another person.

13. These rules are consistent with the approach taken in many other commissions, such as the federal Cohen Commission inquiry into sockeye salmon in the Fraser River.

14. Subsequently, this Commission has introduced a restriction: Pursuant to the *Ruling on Participation and Funding Recommendations*, both Full and Limited Participants are entitled to access documents disclosed to the Commission, but to access the documents, counsel for participants must sign an Undertaking of Counsel. At present, therefore, "documents must be accessed through counsel."

15. It would appear that this decision was made in anticipation that all participants would have counsel, and thus none would be excluded from access to any document on the basis that they did not have a lawyer.

16. If that was the expectation at the time, then it is no longer, and it is appropriate that this restriction be revisited in order to give effect to a participant's right to "participate on his or her own behalf" pursuant to s.13 of the *PIA* (subject to any appropriate restrictions made pursuant to the Commissioner's right to limit access to its records³ to protect legitimate privacy, confidentiality, or security concerns). The Attorney General would cooperate to ensure that none of its records were kept from any participant because it was not represented by counsel.

17. The Attorney General does not agree that a lawyer's undertaking should be required for access to Commission documents. Courts and the Crown are well-versed in the design of arrangements, including undertakings of confidentiality, to bind unrepresented parties, including defendants in criminal proceedings, to keep sensitive evidence confidential.⁴ Under the *Public Inquiry Act*, the Commission may make directives and orders including regarding "access to, and restriction of access to, commission records by any person".⁵ The Act also gives the Commission the power to "prohibit or restrict a person or a class of persons, or the public...from accessing all or part of any information provided to or held by the commission" where the Commission

³ Participants do not have a statutory right of access to Commission records. The only requirement under the *Public Inquiry Act* is that restricting access "must not unduly prejudice the rights and interests of a participant against whom a finding of misconduct, or a report alleging misconduct, may be made." (s.15(2)).

⁴ See for instance *R. v. Floria* [2008] O.J. No. 4418 (S.C.J.).

⁵ Sections 9(1) and 9(2)(f).

"has reason to believe that the order is necessary for the effective and efficient fulfillment of the commission's terms of reference."⁶

18. Were the Commission to design a process to facilitate access to its records by participants otherwise than through counsel, its rulings regarding confidentiality, like other conditions of participation, may be enforced through application for orders of the Supreme Court, including, *in extremis*, for contempt. In short, this Commission has all the powers of a court to both facilitate access to, and prevent dissemination of, Commission records.

III. Counsel's Role in Presenting and Testing Evidence

A. Generally

19. The role of counsel in ensuring that all relevant evidence is presented and fully tested is one naturally of concern to the Commission and to the public. As submitted above, this is the traditional role of Commission counsel, acting as the agent of the Commissioner.

20. In the present Inquiry, the Commission has counsel of enormous experience, supported by a team of lawyers, both permanent and *ad hoc*. The Attorney respectfully submits that the Commission is completely equipped and empowered to ensure that the evidence is presented in a fair and impartial way, and that, where necessary, it is subject to the most rigorous testing.

B. The Role of Commission Counsel

21. The flexibility of inquiry processes requires that Commission counsel be prepared to act in whatever way is necessary to ensure that the evidence unfolds properly and

⁶ Section 15 (1)(c).

fully before the Commission, and where necessary to perform the role of vigorously testing that evidence. If it is true that the refusal of government funding will diminish the adversarial aspect of the evidentiary phase and argument, and if that would impair the ability of the Commissioner to fully explore the facts and fairly reach conclusions, then Commission counsel's role must evolve to accommodate that reality.

22. This may require that a Commission counsel go beyond the passive and neutral role, and be assertive – if necessary aggressive – in the presentation of evidence and witnesses and in challenging the evidence and witnesses put forward by others.

23. After discussing in a general way the role of commission counsel, O'Connor A.C.J. wrote in his article "The Role of Commission Counsel in a Public Inquiry" (Summer 2003), 22 Advocates' Soc. J. No.1, 9-11:

While it is essential that commission counsel maintain an impartial posture, it is nonetheless necessary that they get to the bottom of what happened and why, and that they not be deflected by witnesses or their counsel who have a particular interest in the outcome. The balance that must be struck between impartiality and firmness is delicate but absolutely necessary to the success of the inquiry.

C. The Freedom of Commission Counsel to be "Adversarial"

24. While Commission counsel must, as the agent of the Commissioner, be impartial and balanced in his presentation, he need not be shy in probing witnesses and evidence. Mr. Vertlieb, Commission Counsel in the Braidwood Inquiry, pursued the facts with sufficient vigour that Taser International applied to the Supreme Court for a declaration that he was biased. Taser's pleadings were struck as an abuse of process: *Taser International, Inc. v. British Columbia (Thomas Braidwood, Q.C. Study Commission)*, 2010 BCSC 623.

25. This Commission's Practice and Procedure Directive confirms the broad scope accorded Commission counsel in his questioning of witnesses:

- b. Subject to Rule 45, Commission counsel shall call and examine witnesses on behalf of the Commission, and may adduce evidence by way of both leading and non-leading questions,

- h. Commission counsel has the right to re-examine any witness who has testified.

26. The centrality of Commission counsel's role is confirmed by the Commission's Rule 44, which says that only Commission counsel (and a participant/witness's own lawyer) have a *right* to participate in the questioning (examination, cross-examination or re-examination) of a witness. All others must seek leave to do so (and the Commissioner has, in his subsequent decision on standing, elaborated on when participants may participate in questioning).

27. The flexible role of commission counsel is succinctly put by Ruel:

The role of commission counsel in ascertaining the truth may involve obtaining additional information, seeking clarifications, testing evidence and challenging witnesses. As Commissioner Bellamy wrote in her Report of the Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry:

While it is not the role of commission counsel to advance any particular point of view, it does not follow that they should not be vigorous and thorough in their investigation, which includes the examination of witnesses. Commission counsel assist the commissioner in trying to discover the truth. They must be prepared to ask probing questions, especially when a witness's evidence is inconsistent and evasive. Commission counsel cannot accept each statement of explanation at face value[...] They are not advocates for a party, but they are advocates for the truth. They must investigate, test and verify.⁷

28. In his Report following the inquiry into the death of Frank Paul, Commissioner Davies responded to objections raised by some participants regarding the spectrum of roles performed by Commission Counsel Geoff Cowper, Q.C. Commissioner Davies wrote:

In this inquiry, the role of Commission Counsel and Associate Commission Counsel was to call and question the witnesses (except in those few instances where I permitted counsel for a witness to examine that witness), and to ask further questions following cross-examination by other counsel. An inquiry is not

⁷ Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010).

bound by the rules of evidence applicable to court trials, and it was appropriate for them to ask leading questions and, when necessary, press a witness on particular issues. The goal of the inquiry process is to ascertain the truth about what happened, and sometimes that requires challenging a witness's recollection or pressing for responsive answers. In my view, doing so does not place counsel in an adversarial position. I am satisfied that neither Commission Counsel nor Associate Commission Counsel took on an adversarial role.⁸

29. Performing this function, Commissioner Davies found, did not preclude Mr. Cowper from making submissions in closing, nor from assisting in the summarizing of evidence and advising on the drafting of the report. A similar conclusion was reached by Justice Décarý in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, *supra*:

We must be careful not to impose too strict standards on a commissioner who is conducting a public inquiry of the nature and scope of this Inquiry, in terms of the role he may assign to his counsel once the actual hearings have concluded. A final report is not a decision and the case law that may have developed in relation to decisions made by administrative tribunals, particularly in disciplinary matters, does not apply. We must be realistic and pragmatic. The Commissioner will not likely be able to write all of his report himself, or verify the accuracy of the facts set out in it on his own, any more than he could reasonably have asked all the questions during the examination of witnesses or sift through the hundreds of documents that were introduced. What is important is that the findings he makes in his report be his own. If, in order to make those findings, he considers it advisable to seek the assistance of one or more of his counsel, including those who conducted the examination of witnesses, in relation to questions of fact, evidence of law, he must have broad latitude to do so.

30. In *Stevens v. Canada* 2002 FCT 2 (Challenge to the Ontario Parker Commission), Heneghan J. Rejected a similar challenge:

69 ... It is clear that the Commissioner is entitled to establish his method of proceeding in the discharge of his mandate. This liberty must mean that he is authorized to engage and instruct counsel, and to utilize their services as he sees fit...

70 The Plaintiff argues that the possibility that Commission counsel were involved in writing the final report gives rise to a reasonable apprehension of bias, in light of their adversarial role during the hearing process. However, there is no evidence to support that allegation and furthermore, no evidence that the Commissioner abdicated his responsibility to discharge his mandate, including

⁸ Final report of Davies, Part 2.

the writing of his report, in a proper manner. The argument concerning bias must fail.

31. It appears to be accepted that Commission counsels' role in the evidentiary phase must be tailored to accommodate the presence or absence of other counsel with adversarial positions. This was justified by Commissioner Parker in the Stevens Inquiry as follows:

During the course of this Inquiry, some parties accused Commission counsel of being too adversarial... Their complaint lay with the manner in which certain cross-examinations were conducted as well as Commission counsel's submission that certain inferences, adverse to their clients, should be drawn from the evidence... In this Inquiry, although numerous parties were granted standing, no one who appeared was adverse in interest to Mr. Stevens. In these circumstances there was no one to ask the "hard questions" in a probing and thoughtful manner unless this task was undertaken by Commission counsel. [emphasis added]⁹

32. Simon Ruel adopts the statement of Commissioner Denise E. Bellamy that "When there is no party adverse in interest to the witness, commission counsel have a special duty to examine the witness particularly thoroughly." Ruel continues:

As suggested by Commissioner Bellamy, cross-examination by commission counsel may be necessary when there is lack of representation of a particular point of view before the inquiry and commissioners may specifically instruct their counsel to cross-examine witnesses. More specifically, this may happen when all or some of the parties with standing have identical, similar or convergent interest, leaving some angles uncovered; when a single set of government counsel represents multiple public servants and government organizations, and adopts a strategy of not exploring or testing differences in positions or discrepancies; or when a person with a unique and important interest has not sought standing at an inquiry, is unavailable or does not have access to an evidentiary portion of the inquiry[.]¹⁰

33. The same point is made by Ratushny:

[T]here are occasions where credibility may be an issue and the task of testing that credibility through cross-examination falls upon commission counsel. In

⁹ Stevens Inquiry "The Inquiry Process", quoted in Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law Book, 2009 at 221.

¹⁰ Ruel, *supra* at p.52.

some hearings, there may be enough diversity of interest that the parties may be relied upon to do this. But that is not always the case...¹¹

34. This leads to the "fundamental problem" that commission counsel "may have to take on both an impartial and an adversarial role". Professor Ratushny does not suggest that the solution to the problem is funded counsel for participants who *are* adversarial. Instead, he proposes a solution that is within the existing Commission authority.

D. The Option to Bifurcate Commission Counsel's Roles

35. If, despite Commission counsel's freedom to adopt an "adversarial" posture when required, and despite the presence of experienced and respected counsel representing the families of victims, this Commission decides that public confidence requires something more, then the role of Commission Counsel can be divided into two: "Commission Counsel (Hearings)" and "Commission Counsel (Advisory)". This model, advocated by professor Ratushny, liberates counsel to take on an adversarial role without the appearance of impropriety when later advising on the writing of the report.¹² It is a model that has been adopted by the Canadian Judicial Council under Chief Justice Antonio Lamer, who later employed it in a Newfoundland inquiry into three murder convictions.

36. Ratushny describes the role of an independent hearing counsel as follows:

Independent counsel acts in an impartial manner in marshalling and presenting the evidence but also has complete freedom to be rigorous in testing the evidence of witnesses through cross-examination without being perceived as reflecting the views of the Inquiry Committee. Nor will she have the ear of the Committee outside of the hearing room. The application of this concept be illustrated by the Lamer Inquiry.

This approach has considerable benefits for both the commissioner and such counsel. Hearings counsel is free to cross-examine without her approach being

¹¹ Ratushny, *supra* at 18.

¹² *Ibid.*, 230-236.

interpreted as reflecting some pre-conceived views of the commissioner. It is easier to explain such a role to the parties and the public when this counsel will not participate in making findings or writing the report. Similarly, hearings counsel is completely free to make whatever submissions she deems appropriate without the concern that she will be interpreted as speaking on behalf of the commissioner. These submissions are extremely valuable for the commissioner, particularly in final submissions, since they come from counsel with the most comprehensive and detailed knowledge of all of the relevant facts and issues. What is doubly valuable to the commissioner is that all of the parties hear those submissions and may respond to them.¹³

37. Were this Commission to decide that such an advocate is required, an appointment is within the Commissioner's authority under s.7 of the *Public Inquiry Act*. Commissioner Oppal could decide whether the present Commission counsel would move into this role (and the advisory counsel position would be assumed by either another lawyer on the present team, or through an outside appointment), or remain as advisory counsel and have another counsel designated for the hearings. The Commissioner could then give hearing counsel instructions setting out a mandate for the conduct of the hearings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th Day of June, 2011.

CRAIG JONES

Counsel for the Attorney General of British Columbia

¹³ Ratushny, *supra* at pp. 232, 234.

McDonald, Heather M AG:EX

From: Jessica McKeachie [Jmckeachie@missingwomeninquiry.ca]
Sent: Thursday, June 30, 2011 4:03 PM
To: Jones, Craig E AG:EX
Cc: Art Vertlieb; Karey Brooks; John Boddie
Subject: Missing Women Inquiry - Letter to Attorney General
Attachments: 2011-06-30 Lt to AG re Funding Recommendation.pdf

Good afternoon,

Attached is a letter from Commissioner Oppal for the Attorney General.

Thank you.

Kind regards,

Jessica McKeachie
Research Counsel
Missing Women Commission of Inquiry
#1402 - 808 Nelson Street
Vancouver, BC V6Z 2H2
Phone: 604-566-8026
Fax: 604-681-4458
Toll free: 1-877-681-4470

McDonald, Heather M AG:EX

From: Art Vertlieb [Art@verdos.com]
Sent: Thursday, June 30, 2011 10:21 AM
To: Jones, Craig E AG:EX
Subject: Will have letter to you today

Art Vertlieb, QC
200-1462 W 8th Ave
Vancouver BC V6H 1E1
604-707-1202

McDonald, Heather M AG:EX

From: Jessica McKeachie [Jmckeachie@missingwomeninquiry.ca]
Sent: Monday, July 4, 2011 9:38 AM
To: Jones, Craig E AG:EX
Cc: Art Vertlieb
Subject: Pre-Hearing Conference Transcript
Attachments: Pre-Hearing Conference 2011-06-27.PDF

Good morning Craig,

Please find attached a copy of the last Monday's transcript. It is (or will be very soon) available on the Commission's website.

Kind regards,

Jessica McKeachie
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#1402 - 808 Nelson Street
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