Pages 1 through 3 redacted for the following reasons:
- -
Section 14 (Legal Advice)

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

Contents

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

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[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 *Beno 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 records[3] 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 of 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,

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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 Décary 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

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[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.

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CRAIG JONES

Counsel for the Attorney General of British Columbia

[13] Ratushny, *supra* at pp. 232, 234.

Section 26(1)(b) Public Inquiry Act

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
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MISSING
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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.

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.

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.

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

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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Section 26(1)(b) Public Inquiry Act

Section 26(1)(b) Public Inquiry Act

BRITISH COLUMBIA

July 11, 2011

Missing Women Commission of Inquiry
1402 – 808 Nelson Street
Vancouver BC V6Z 2H2

Attention: Art Vertlieb, Q.C., Senior Commission Counsel

Dear Mr.Vertlieb:

Re: Missing Women Inquiry

The Attorney General wrote to the Commissioner last week and indicated that he intended to respond to the Commission's June 30, 2011 letter and its renewed request for funding shortly. I'm writing to let you know that, as matters have progressed, the Attorney now plans to write a broader communication to address a number of issues and concerns surrounding the Commission. I understand that this letter is being prepared currently and it will be sent to the Commission as soon as possible.

Please thank the Commissioner for his continued forebearance.

Sincerely,

Craig Jones
Supervising Counsel

CEJ/rm

Ministry of Attorney General

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Pages 28 through 35 redacted for the following reasons:
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Section 26(1)(b) of the Public Inquiry Act