

27 June 2011

Vancouver, B.C.

(Proceedings commencing at 10:00 a.m.)

THE REGISTRAR: Order. This pre-hearing conference for the Missing Women Commission of Inquiry is now open. The Honourable Wally Oppal presiding. Mr. Commissioner.

THE COMMISSIONER: Mr. Vertlieb.

MR. VERTLIEB: Good morning, Mr. Commissioner. For the record, Art Vertlieb, counsel, and with me Karey Brooks and Salima Samnani. We are the three hearing counsel who are working on your behalf as commission counsel in order to move this inquiry along.

MR. COMMISSIONER: Thank you. Yes.

MR. ARVAY: Do you want appearances from everybody?

MR. COMMISSIONER: Yes.

MR. ARVAY: Joseph Arvay --

THE COMMISSIONER: You know, it is probably going to take a long time to do this. Why don't we -- no, we will hear -- I will hear from every counsel right now, who is here and who is representing whom. All right, Mr. Arvay, you were about to?

MR. ARVAY: Yes. I represent, along with Ms. Schabus and my colleague, Alison Latimer, the Downtown Eastside

1 Women's Centre and the Committee of the February
2 14th Women's Memorial March.

3 MR. COMMISSIONER: Thank you. Ms. Brodsky?

4 MS. BRODSKY: Gwen Brodsky with, with Katherine Hensel. I
5 represent the Native Women's Association of Canada
6 and my hope is that Ms. Hensel is, is, is on the
7 line.

8 MR. COMMISSIONER: Yes. All right. Thank you.

9 Mr. Doust?

10 MR. DOUST: Yes, Doust, initials L.T., and I have with me Mr.
11 Fetter, F-e-t-t-e-r, first initial M.

12 THE COMMISSIONER: All right.

13 MR. DOUST: We appear for the Criminal Justice Branch of the
14 Attorney General's office.

15 MR. COMMISSIONER: All right. Mr. Crossin.

16 MR. CROSSIN: Yes, sir. My name is Crossin, C-r-o-s-s-i-n,
17 initial D, and I represent the Vancouver Police
18 Union.

19 MR. COMMISSIONER: Thank you.

20 MR. BRONGERS: Good morning, Mr. Commissioner, Jan Brongers and
21 my colleague, Andrew Majawa, on behalf of the
22 Government of Canada.

23 MR. COMMISSIONER: Thank you. Mr. Ward?

24 MR. SKWAROK: My name is Skwarok, S-k-w-a-r-o-k --

25 MR. COMMISSIONER: Yes, Mr. Skwarok.

1 MR. SKWAROK: -- and I am representing Dr. Kim Rossmo.

2 MR. COMMISSIONER: Yes, thank you. All right.

3 MR. WARD: Mr. Commissioner, Ward, initials A.C. With me is
4 Neil Chantler.

5 THE COMMISSIONER: Yes.

6 MR. WARD: We represent the families of 10 missing or murdered
7 women. They are Dianne Rock, Georgina Papin,
8 Marnie Frey, Cynthia Feliks, Cara Ellis, Mona
9 Wilson, Helen Mae Hallmark, Dawn Crey, Angela
10 Williams and Jacqueline Murdock.

11 THE COMMISSIONER: Now, there are a number of families that are
12 not represented. You don't act for them, I take
13 it?

14 MR. WARD: At the moment, I act for the 10 I've listed,
15 families, families of the 10 women I have listed.
16 We have been consulted by two others and we are
17 prepared to represent them as well, but
18 arrangements haven't been made otherwise. We
19 are -- as we advised the commission previously, we
20 are agreeable to representing any and all families
21 as long as there is no conflict of interest
22 between them.

23 MR. COMMISSIONER: All right. Thank you. Yes.

24 MR. HERN: Mr. Commissioner, it's Sean Hern, H-e-r-n, and I act
25 for the Vancouver Police Department and the

1 Vancouver Police Board.

2 THE COMMISSIONER: Thank you. Yes.

3 MS. GOVENDER: Kasari Govender, spelled G-o-v-e-n-d-e-r, first
4 initial K., for West Coast LEAF and Ending
5 Violence Association of BC.

6 MR. COMMISSIONER: Thank you. Mr. Jones.

7 MR. JONES: Mr. Commissioner, Craig Jones for the Attorney
8 General of British Columbia.

9 MR. COMMISSIONER: Thank you.

10 MS. PACEY: Mr. Commissioner, Katrina Pacey, I'm counsel, along
11 with my colleague, Monique Pongracic-Speier, for
12 the Coalition of Sex Workers from the Downtown
13 Eastside.

14 MR. COMMISSIONER: Thank you. Thank you, Ms. Pacey.

15 MR. KING: Yes, Mr. Commissioner, Douglas King, I am counsel
16 with the Pivot Legal Society, BC Civil Liberties
17 Association and Amnesty International.

18 MR. COMMISSIONER: Thank you, Mr. King. All right. Yes?

19 MS. LIVINGSTON: I'm not counsel, but counsel Jason Gratl for
20 the Vancouver Area Network of Drug Users is
21 appearing, but coming late.

22 THE COURT: All right, thank you.

23 MS. FOX: My name is Stacey Fox. I'm counsel for the First
24 Nations Summit and (inaudible) First Nations
25 Summit (inaudible) and I would like to just

1 mention that I will be speaking to joint written
2 submissions on behalf of the First Nations Summit,
3 the Assembly of First Nations, the Union of BC
4 Indian Chiefs, Carrier Sekani Tribal Council and
5 and Native Courtworkers and Counselling
6 Association of BC.

7 MR. COMMISSIONER: Thank you. Anyone else?

8 MR. VERTLIEB: Yes.

9 MS. BROWN: Cleta Brown, I'll be speaking --

10 THE COMMISSIONER: I can't hear you.

11 MS. BROWN: Cleta Brown. I am going to be speaking for the
12 Women's Equality and Security Coalition.

13 MR. COMMISSIONER: Thank you, Ms. Brown.

14 MS. GERVAIS: Robyn Gervais, I appear on behalf of the Carrier
15 Sekani Tribal Council.

16 THE COURT: Thank you.

17 MR. BRAKER: Hugh Braker, Mr. Commissioner, for the (inaudible)
18 Native Courtworker & Counselling Association with
19 (inaudible).

20 MR. COMMISSIONER: Thank you, Mr. Braker. Mr. Vertlieb.

21 MR. VERTLIEB: Thank you, Mr. Commissioner.

22 MR. WORME: Yes, perhaps, Mr. Vertlieb, if you don't mind --

23 MR. VERTLIEB: Yes, is it Mr. Worme?

24 MR. WORME: It's Donald Worme (inaudible).

25 MR. VERTLIEB: Thank you.

1 MR. COMMISSIONER: Thank you, Mr. Worme.

2 MR. VERTLIEB: Is there anyone else on the telephone?

3 MR. WORME: Thank you, commissioner.

4 MR. VERTLIEB: I'm sorry, is there someone else on the
5 telephone?

6 MS. CORBIERE LAVELL: Yes.

7 MS. BRODSKY: Yes, Jeannette Lavell, Corbiere Lavell should be
8 on the phone, representative of NWAC.

9 MR. COMMISSIONER: All right. Well, why don't we, why don't we
10 deal with those people who are on telephone when
11 it's time to do their submissions. I understand
12 they're --

13 MS. BRODSKY: Can we just confirm that my co-counsel, Ms.
14 Hensel, is on the line?

15 MS. HENSEL: I am on the line, (inaudible).

16 MR. COMMISSIONER: All right. Thank you.

17 MS. BRODSKY: Thank you.

18 MR. VERTLIEB: Thank you. Mr. Commissioner, on May 2, 2011,
19 you issued a ruling with participation and funding
20 recommendations granting full standing to 10
21 individuals, groups or organizations, and limited
22 standing to eight groups or organizations, to
23 enable them to participate to varying degrees in
24 the hearing portion of the commission's work.

25 In your ruling, from pages 11 to 24, you

1 found that the participation of these groups was
2 necessary because either: (a) their interests may
3 be affected by the commission's findings; or (b),
4 their participation will further the conduct of
5 the inquiry or contribute to its fairness.

6 You also found that 13 of these groups would
7 be unable to participate in the hearing portion of
8 the inquiry without funding. On page 24 of your
9 ruling, you stated:

10 I have reviewed the affidavit evidence
11 provided by these applicants in support of
12 their funding applications, and I am
13 satisfied they would not be able to
14 participate in the hearing portion of the
15 inquiry without funding. I, therefore,
16 recommend to the Attorney General that these
17 applicants receive financial assistance to
18 pay for legal counsel to facilitate
19 participation appropriate to the extent of
20 their interest.

21 On May 19, 2011, the Government of British
22 Columbia stated that it would provide funding for
23 victims' families that are represented by Cameron
24 Ward, the result being, as you heard, that 12 full
25 or limited participants would not be funded.

1 As a result of your concern about the
2 government's --

3 MR. COMMISSIONER: Was there any, was there any funding
4 commitment made by the government with respect to
5 those families that are not represented by --

6 MR. VERTLIEB: Apparently not. The funding --

7 MR. COMMISSIONER: So, all families are not funded? Only those
8 represented by Mr. Ward?

9 MR. VERTLIEB: That's correct.

10 MR. COMMISSIONER: All right.

11 MR. VERTLIEB: As a result of your concern about the
12 government's decision not to provide funding for
13 counsel to these participants, you instructed me
14 to consult with counsel and representatives for
15 the participants and consider any options
16 available to the commission.

17 You then, on May 24, 2011, issued a press
18 release to inform the public of your instructions,
19 and I want to state that for the record. It's
20 titled "A Statement by Commissioner Wally Oppal,
21 QC, Regarding BC Government Decision on Funding
22 for Groups Participating in the Missing Women
23 Inquiry, May 24, 2011, Vancouver."

24 I am aware of the reaction of several groups
25 that have been granted standing before the

1 Missing Women Commission of Inquiry to the
2 Attorney General's decision last week not to
3 provide funding for their legal
4 representation at the inquiry. My
5 recommendation to the Provincial Government
6 was to fund all the groups that satisfied me
7 that they would not be able to participate
8 fully without financial support. My
9 intention was to ensure that no group with
10 standing before the inquiry would be denied
11 legal counsel at the evidentiary hearings due
12 to lack of funds.

13 As an inquiry commissioner, I must at
14 all times remain independent and I was,
15 therefore, not involved in the government's
16 decision to not fund the groups as I
17 recommended and I did not know the reasons
18 for the decision. That is an issue that the
19 Attorney General can address if he so wishes.

20 My intention is still to ensure that any
21 group that feels it needs to be represented
22 by legal counsel at the evidentiary hearing,
23 in order to participate fully in the inquiry,
24 has that representation. At this stage, I
25 don't know if and how that can be achieved.

1 However, I have asked my counsel, Mr. Art
2 Vertlieb, to meet with lawyers representing
3 the groups that have been denied funding to
4 see what can be done to meet their clients'
5 needs.

6 And that was, as I mentioned a moment ago,
7 May 24.

8 Mr. Commissioner, as a result of your concern
9 about the government's decision not to provide
10 funding for counsel, I want to then bring you up
11 to date on what we have done. We took the
12 following steps: one, we met with counsel for the
13 full participants on May 25, 2011; secondly, we
14 met with counsel and representatives for the
15 limited participants on June 2, 2011; third, we
16 reviewed public communications from the
17 participants; and fourth, we conducted research on
18 options for the commission, and I would like to
19 discuss each of these steps in turn.

20 First, Mr. Commissioner, I want to deal with
21 the meeting with the full participants. This took
22 place on May 25, and let me tell you who did
23 attend: Joe Arvay, QC, and Allison Latimer for
24 the February 14th Women's Memorial March; Jason
25 Gratl, for VANDU, Frank Paul Society and

1 Walk4Justice; next, Katrina Pacey and Monique
2 Pongracic-Speier for the Coalition for sex worker-
3 service organizations, which is composed of
4 Prostitution Alternatives Counselling & Education
5 Society, known as PACE, the WISH Drop-In Centre
6 Society and the Downtown Eastside Sex Workers
7 United Against Violence Society, known as SWUAV.
8 Also there, Mr. Commissioner, was Mark Skwarok for
9 Dr. Kim Rossmo; also, Gwen Brodsky and Katherine
10 Hensel for the Native Women's Association of
11 Canada; and finally, Nicole Schabus for the
12 Downtown Eastside Women's Centre.

13 In terms of the limited participants, I want
14 to tell you who attended at a meeting on June 2:
15 Laura Track and Alison Brewin for West Coast LEAF;
16 Cleta Brown for the Women's Equality and Security
17 Coalition, Tracey Porteous for EVA, Ending
18 Violence Association of BC. For CRAB, there was
19 Don Larson and Kelly White. Stacey Fox and Howard
20 Grant were there on behalf of the First Nations
21 Summit; Robyn Gervais for the Carrier Sekani
22 Tribal Council; Beverley Jacobs for the Union of
23 BC Indian Chiefs; David Eby for the BC Civil
24 Liberties Association; and Doug King for Pivot
25 Legal Society.

1 Mr. Commissioner, both meetings were very
2 productive. Counsel at those meetings gave the
3 following feedback, and I want to emphasize these
4 are comments that were given to us, your
5 commission counsel, as to the issues that had
6 arisen. There were a number of comments. I want
7 to put them on the record for you in no particular
8 order of importance.

9 The first comment. Participants do not have
10 the funds to retain counsel to represent them at
11 the hearing. In effect, nothing has changed since
12 your decision of May 2, 2011.

13 Next comment. A number of participants would
14 be unable to participate in the hearing without
15 counsel due to their limited resources and
16 capacity. In addition, given the marginalized
17 position of many of the participants, it is
18 unreasonable to expect that they would be able to
19 participate unrepresented in a hearing that
20 requires the review of hundreds of thousands of
21 documents, technical cross-examination of
22 professional witnesses and an understanding of the
23 policies and procedures of the commission.

24 Next comment. Many witnesses who have
25 relevant evidence to give will not come forward

1 due to a distrust of a court-like process.

2 Another comment. The government's position
3 that it is funding all the families is incorrect.
4 Mr. Cameron Ward only represents 10 families.
5 Further, other participant groups include victims'
6 families and those groups were not provided with
7 funding.

8 Next comment. Funding only some of the
9 victims' families does not create a balanced
10 inquiry since the families have a different
11 perspective than the other interest groups. For
12 example, the families will be focused on
13 individual cases where other interest groups will
14 be focused on systemic issues.

15 Next point. The government's reasons for
16 denying the participants funding for counsel, to
17 wit, that they can participate anyway, and they
18 can participate in the study commission, shows a
19 misunderstanding of the ability of the residents
20 of the Downtown Eastside to participate on their
21 own.

22 Another point that was made, Mr.
23 Commissioner. The government's decision-making
24 process around funding was not transparent. The
25 Attorney General has publicly stated that the

1 estimated costs of funding participants at 5 to \$6
2 million, however, the participants were not asked
3 for their cost estimates for counsel.

4 Another point made to us, some of the alleged
5 failures in the missing women investigations were
6 a lack of resources and ignoring the evidence of
7 marginalized people. The same mistakes again
8 appear to harm this inquiry process.

9 Another point. The government appears to
10 misunderstand the way in which the study portion
11 of the inquiry will function. Participation in
12 the study portion of the inquiry is not a
13 substitute for participation in the hearings and,
14 as such, participation in the former cannot be
15 used as a justification for not providing the
16 participants funding for the hearing commission.

17 The result of these concerns from
18 participants' viewpoint is they believe the
19 inquiry process has been compromised, and they
20 feel that without the ability to have counsel,
21 that they are being excluded from the hearing and
22 they believe that this will bring into question
23 the procedural fairness, and more importantly, the
24 value of any recommendations that the Commissioner
25 makes.

1 They also are concerned, Mr. Commissioner,
2 that any further delay in granting funding will be
3 inappropriate in these circumstances given the
4 number of years that the police have had to
5 prepare and the months that their counsel have had
6 to prepare, and the few months that the
7 participants will then be left to prepare.

8 I want to just, on the subject of delay, also
9 mention, Mr. Commissioner, the unintended
10 consequence, and that is, this delay impacts on
11 the ability of your staff to obtain the needed
12 cooperation to identify witnesses who should be
13 coming forward to give evidence to you. Another
14 unintended consequence is that it has delayed your
15 northern tour in respect of your investigation on
16 the events up north and, of course, it's also been
17 an unnecessary perhaps distraction from the work
18 of your commission.

19 Now, I want to briefly touch on the public
20 communications from the participants because much
21 has been written about that. Participants have
22 written directly to the government. They have
23 contacted the commission. They have held press
24 conferences and issued press releases to express
25 their concerns. It's clear these groups have

1 strong views and they have expressed these views
2 in media editorials. Rather than repeat them, I
3 just want to alert you to this, and I will ask
4 them during the course of their presentation to
5 feel free to provide those views to you directly.

6 I want to move to the research we've done on
7 options available. Commission staff has
8 considered options available to the commission in
9 light of the Attorney General's decision not to
10 provide funding for counsel. For your benefit, I
11 can report, Mr. Commissioner, there is an emerging
12 area of law dealing with the jurisdiction of a
13 superior court to assist tribunals to properly
14 administer justice fully and effectively.

15 There is the leading author, Simon Ruel,
16 writes about this in his text, *The Law of Public*
17 *Inquiries in Canada*. I just want to read briefly
18 what he says in this text. At page 24:

19 A commission of inquiry is a government
20 department for financial purposes. It is
21 funded out of public funds and has to comply
22 with government financial administration
23 legislation, regulation and guidelines which
24 are not at variance with the authorities
25 provided. However, in order to preserve the

1 investigative and advisory independence and
2 credibility of commissions of inquiry, the
3 establishment of their budgets and decisions
4 as to whether particular expenses are
5 warranted, should be left with commissioners,
6 as indicated by one author. To do otherwise
7 would permit budgetary controls to fetter the
8 inquiry's independence and affect its ability
9 to fulfill its mandate.

10 Mr. Ruel continues, I want to just put this
11 before you as well. He states, starting at page
12 63:

13 With the complexity of matters often under
14 review in a public inquiry, which will
15 potentially involve the consideration of
16 substantial procedural and legal issues and
17 the examination and cross-examination of
18 witnesses, it is unrealistic to expect
19 unrepresented parties to meaningfully
20 contribute to the proceedings of inquiry
21 without the assistance of counsel.

22 As well, unrepresented parties with
23 standing would be at a significant
24 disadvantage in dealing with other parties
25 adverse to their interest that would be

1 represented by counsel. Funding for
2 participants or intervenors with limited
3 financial means is, therefore, not only
4 necessary, to allow them to meaningfully
5 participate in a public inquiry, but also, to
6 ensure the quality of the proceedings for the
7 benefit of the commissioner and the public.

8 He continues:

9 Most public inquiry statutes do not contain
10 authorities with respect to participant or
11 intervenor funding. The authority to
12 recommend funding may be provided for in the
13 Order in Council creating the commission of
14 inquiry. If not, commissioners of inquiry
15 would have the implicit discretionary
16 authority to recommend to the government that
17 funding be provided to parties for legal
18 representation. A funding recommendation
19 made by a commissioner carries considerable
20 weight and would be dismissed by the
21 government at its peril as it could be
22 accused of hampering the proceedings of the
23 commission or tampering with its
24 independence.

25 Some of my colleagues, Mr. Commissioner, may

1 take you through case law, but I wanted to just
2 make these comments, in this brief way, to
3 introduce the discussion to you as part of my
4 introductory remarks.

5 Now, Mr. Commissioner, you have called this
6 pre-hearing conference so that you could hear
7 directly from participants and counsel about how
8 the decision impacts. In particular, you asked
9 participants to comment on, one, the need for them
10 to be represented by legal counsel at the inquiry;
11 two, how their interests may be impacted if
12 funding for counsel is not provided; and three,
13 the description of the communication they have had
14 with the Attorney General's office with respect to
15 any input that was sought from them to help the
16 Attorney General's office make a decision about
17 funding and whether any basis was provided to them
18 for denying funding.

19 And I just want to emphasize, and we have
20 told our colleagues, that you want all
21 participants to feel most welcome to speak to you
22 directly, and so I want the participants to know
23 that they're welcome to speak to you with counsel,
24 and to feel comfortable to talk to you directly
25 with their counsel at their side.

1 Mr. Commissioner, the submissions you are
2 going to hear today are important because they
3 will assist commission counsel in making further
4 recommendations to you as a result of the
5 government's decision not to follow your
6 recommendation to provide funding.

7 And so, I think it's now the time for us to
8 turn it over to the participants, and the plan
9 that we have we think is the most expeditious way,
10 is to deal with the full participants first and
11 then move to the limited participants. There are
12 a couple of changes we need to make to accommodate
13 some of our colleagues' schedules that will
14 necessitate a couple of people going out of order,
15 but perhaps if we could start with that. And I
16 think the first person to speak should be Joe
17 Arvay, QC, representing February 14 Women's
18 Memorial March, and he is with Nicole Schabus as
19 well.

20 MR. COMMISSIONER: All right. Mr. Arvay?

21 MR. ARVAY: Thank you, Mr. Vertlieb, and thank you, Mr.

22 Commissioner, for giving us the opportunity to be
23 here today. Am I close enough to the mic?

24 MR. COMMISSIONER: I can hear you.

25 MR. ARVAY: Thank you.

1 Well, first of all, I am grateful to Mr.
2 Vertlieb for that very thorough introduction. I
3 think he's covered off -- I know he's covered off
4 all of the points I was going to make. He's
5 probably covered off many of the points that those
6 coming behind me are going to make. So, I will
7 endeavor to, to be brief and to highlight --

8 MR. COMMISSIONER: I don't want to, I don't want to cut anybody
9 off here who wants to make submissions. On the
10 other hand, and in the interests of time, I don't
11 know if it's productive to repeat everything
12 that's already been said. My recommendations and
13 my reasons are, are clear, and that is that I
14 carefully considered the, the, the status of each
15 applicant and it was after much deliberation that
16 I made the recommendation relating to funding. I
17 know how important this commission of inquiry is.
18 It has been said by some that Mr. Pickton killed
19 50 or more women and there are many, many women
20 that have gone missing. The government thought it
21 was important enough that we should find out why
22 this issue relating to missing women is a national
23 issue, why so many women have gone missing and why
24 the investigation relating to Pickton went the way
25 it did; and if, in fact, there were women who were

1 killed while -- were killed because the
2 investigation fell short.

3 Those are the allegations that are made and I
4 concluded that it was important that I hear
5 particularly from groups like the Native Women's
6 Association of Canada who apparently made
7 complaints to the police and so on. I have
8 considered all of that and, and my view is that if
9 the hearing is going to be complete, and if, at
10 the end of the day, we are going to give advice to
11 the appropriate authorities as to how future
12 investigations relating to poor women who have
13 gone missing, how those investigations should be
14 conducted, it is something that's very important
15 for our society, for our province, and for our
16 nation, as I have said, that this is a national
17 issue, because we've had concerns from policing
18 agencies across Canada. In fact, we have three
19 senior officers from Peel Regional Police Force in
20 Ontario who are seconded full time to the
21 commission, because that police force feels that
22 the future of investigations relating to missing
23 women is something that all police across Canada
24 should be concerned with, and they are here at
25 their expense.

1 So, it is with that in mind that I felt that,
2 in order to have a fair and balanced hearing, and
3 to hear the concerns of some of the complaints
4 that were made to the policing agencies, that
5 these people needed to have funding in order to
6 have, as Mr. Vertlieb said, full and comprehensive
7 cross-examination of authorities so that all the
8 evidence can be heard.

9 So, I have taken up a lot of time here sort
10 of reiterating what my position has been. So, I
11 say that because I don't know if it's necessary
12 for everybody to go into minute detail as to what
13 the merits of each applicant is. I am well aware
14 of that. But in any event, go ahead.

15 MR. ARVAY: Thank you, and I will use that actually as my
16 jumping-off point to ask the question: Why are we
17 here today? And I also propose to answer it.
18 Because we know that the commissioner has, as you
19 have pointed out, considered the issue of the
20 standing, and therefore, of the interests that
21 each of our respective clients bring to this
22 inquiry, and, and their need for funding. You
23 made a recommendation that was rejected.

24 That rejection, as far as I know, is
25 unprecedented. It's unprecedented for a

1 commission of inquiry to recommend to the
2 government that has called the inquiry, because it
3 believes the inquiry is important, for all the
4 reasons you have said, to then, to refuse to
5 accept that recommendation. It's a very worrisome
6 design for, again, all the obvious reasons. We
7 take it as a slap in your face. We take it as a
8 slap in our collective faces. We take it as a
9 sign that the government doesn't really care about
10 the missing and murdered women. We, we, we are
11 concerned about it affecting the integrity of this
12 commission and the attendance at the commission.
13 It's a very, very worrisome and unprecedented
14 decision of the government.

15 So, the question is, what do we do about it?
16 Well, it seems to me there is three options before
17 you: one is that you can resign and we can all
18 quit; the second is that you can go to court and
19 ask the court to order the government to provide
20 funding; and the third is that you can go back to
21 the government with what might be described as a
22 more persuasive letter or more persuasive
23 decision.

24 With respect to resigning or quitting, we
25 understand that you are not inclined to do that.

1 You are not a quitter and neither are we. This is
2 an important inquiry. We don't want to give up on
3 this inquiry any more than you want to give up on
4 it. If, at the end of the day, all you, all of
5 the government refuses to accept the
6 recommendation and the court doesn't order it,
7 well, you might want to reconsider your decision
8 and we will obviously be reconsidering ours. But
9 it's not our, it's not what our, what we consider
10 our first line of attack is (inaudible).

11 Going to court is also an option, but in my
12 respectful submission, it ought not to be the
13 first option. The problem with going to court is
14 that if we have to get the government to provide
15 funding, only because a court orders that funding,
16 then it raises very serious questions about the
17 rest of your recommendations. If they're not
18 going to accept your recommendations on funding
19 which, quite frankly, is, is, is not that
20 difficult to accept in the larger scheme of
21 things, given the kind of money we are talking
22 about and the kind of budget that the government
23 has and spends on many, many other less important
24 things, if they're not going to accept your
25 recommendation on funding, then our clients at

1 least are very worried that they won't accept your
2 recommendations on, on matters of even more
3 substance coming out of this inquiry.

4 So, that means that the best course of action
5 is to have the government change its mind and
6 change its mind willingly, and how does, how do --
7 why would the government do that and how can we
8 help? Well, the government might do that for two
9 reasons. Notwithstanding what was very clear to
10 all of us when we write -- when we read your
11 decision with respect to standing and, and funding
12 of May 2nd, 2001, it may be that the, that the
13 recommendation on funding was just a little bit
14 too brief. Maybe the government didn't quite get
15 your message. Maybe what the government needs to
16 hear is a, somewhat of a more fulsome explanation
17 of the importance of funding, and I think we can
18 all help you do that. And, and one would hope
19 that, that, that that will go a long way in, in
20 persuading the government to change its mind.

21 The second and related point is, is that when
22 we look at the government's decision to refuse
23 funding, it appears that the government may be
24 under some certain misunderstandings,
25 misconceptions, mistakes, a failure to communicate

1 perhaps, and we can help you with that. And we're
2 hoping that, collectively, that, that we will help
3 you provide more content, if you will, to write a
4 more persuasive letter on funding to the
5 government so that the government will appreciate
6 the significance of the funding decision to your
7 task.

8 Now, before I, I, I do that, I want to just
9 reiterate what Mr. Vertlieb has already done,
10 which is, some of the, some of the passages in
11 your, in your May 2nd ruling, which maybe the,
12 maybe the government lost sight of. Maybe it went
13 too quickly to the funding part of the decision.
14 Maybe it didn't pay enough attention to the
15 standing part of the decision, because the
16 standing part of the decision and the funding part
17 of the decision are rather inextricably
18 intertwined.

19 And if you go to page 5 of your decision, I
20 understand you have a copy of that at hand, you
21 talk about the hearing commission as composed --
22 as opposed to the study commission, being court
23 like. That was, that's important, and it being of
24 a, a formal, a formal hearing process. And you
25 say at page 5 under the heading "The process

1 mandated by the terms of the commission," the
2 third full paragraph, you say:

3 However, it became apparent that many members
4 of the community that wished to participate
5 did not wish to take part in the more formal
6 hearing process which would necessarily
7 involve obtaining counsel and being subjected
8 to cross-examination.

9 And if you go over to page 7, you talk about,
10 under the heading of "VI" the criteria for
11 participation, you say that the, that:

12 The participants play an important role in
13 the commission's hearing, the influence and
14 scope of the inquiry by representing
15 different perspectives. They're required to
16 disclose documents in their possession and
17 will be given the right to review documents
18 disclosed by the participants. They may be
19 entitled to make written or oral
20 representations, examine and cross-examine
21 witnesses and propose witnesses to be called
22 by the commission. Participants have a right
23 to counsel but may be self-represented.

24 And then if you go to paragraph -- page 24,
25 you say, at the bottom of page 24, that:

1 I have reviewed the affidavit evidence
2 provided by these applicants and am satisfied
3 that they would not be able to participate in
4 the hearing portion of the inquiry without
5 funding.

6 And, therefore, you recommend to the Attorney
7 General that there be funding commensurate
8 essentially with their various interests. So, it
9 may be that the, that when you got to the issue of
10 funding in your, in your, in your decision, which
11 was at the, at the very end of, of the document at
12 paragraph -- at page 24 that I read, that the
13 issue of funding was -- may have been so briefly
14 stated, but the government may not have fully
15 appreciated the importance that you placed on
16 standing and the connection that standing made to
17 funding.

18 Now, what happened next? We then have the
19 government's response. Now, I am told by
20 commission counsel that you actually don't have a
21 copy of the information bulletin that we received
22 on May 19th, 2011, in which the government made
23 its decision on funding, and I only have a marked-
24 up copy. We will certainly provide the Commission
25 with a clean copy if it doesn't have one. But I

1 will just read to you what seem to be the two
2 reasons, the two reasons that the government
3 refused funding. This is all we know, subject to
4 another couple of documents that I will refer to.

5 The first reason is that the government
6 believes that it is sufficient, because it has
7 funded, provided funding to family members.
8 That's number 1. It's saying, we don't need to
9 provide funding to all of us because we have
10 provided funding to family members. And secondly,
11 the government says, all groups with standing may
12 still present, and I use -- emphasize the word the
13 government used "present" before the Commissioner
14 in formal hearings.

15 Now, on the issue of funding, you have heard
16 from Mr. Vertlieb, and I am just to going to
17 reiterate a few things. One, in your ruling of
18 May 2nd, you indicated that Mr. Pickton may have
19 murdered 49 women. Therefore, there are at least
20 49 families that would be interested in
21 participating in this inquiry. Mr. Ward
22 represents 10 of those families, maybe 12 of those
23 families. What happens to the other 40-plus
24 families that are not represented by Mr. Ward in
25 this inquiry?

1 Now, my clients actually represent many of
2 the families of the missing and murdered women. I
3 don't come here with a -- to advise you that I
4 have a specific retainer by a specific, by
5 specific families, although no doubt, if we have
6 to play that game, we can provide that to the
7 commissioner, but we don't want to play that game
8 because that's not an appropriate game for us to
9 play. My clients represent, in a very general
10 way, as I am sure some of the other participants,
11 the families and friends of many of the, of many
12 of the missing and murdered women, and that should
13 be enough. That should be enough to even meet the
14 government's criteria of funding.

15 But, but it's, it's also important for the
16 commissioner not to get so drawn into the issue of
17 families to lose the larger perspective. Of
18 course, the interests of families is very, very
19 important, but for many of the women that my
20 clients represent in this community, they don't
21 have families. Their families are either
22 estranged or they have been abandoned, and the
23 only real family that they have are the, the -- my
24 clients and the women who make up my client base,
25 they're the real families of the missing and

1 murdered women.

2 And the other thing to keep in mind is that
3 this inquiry isn't just about the past. It's very
4 much about the future. This inquiry is not just
5 to find out what happened to the missing and
6 murdered women, but to prevent further missing and
7 murdered women, and my clients represent those
8 women, those women who do not want to go missing
9 and do not want to be murdered. And for the
10 government to focus only on the families of those
11 who have been and not worry about those families
12 and those women in the future, is a very, very
13 short-sighted concern.

14 The second criteria or the second reason that
15 the government refused funding for other than the
16 families, is as I read to you, that the government
17 said that other participants may present before
18 the inquiry. And, and to that end, I am going to
19 ask the commission staff to hand up to you a
20 letter that was written by the Attorney General,
21 Mr. Penner, to the MLAs, Ms. Jenny Kwan and
22 Leonard Krog. Could someone please hand those up
23 to the commissioner please?

24 Now, this is Mr. Penner, the Attorney
25 General, explaining why it is, in a little more

1 detail, that they have, the government has refused
2 funding. In the second paragraph, Mr. Penner
3 says:

4 Your letter states that the government's
5 decision not to assist other participants
6 with funding resulted in the exclusion of sex
7 trade workers, Downtown Eastside residents
8 and aboriginal peoples from participating in
9 the inquiry. That is not accurate. The
10 commission granted participant status to
11 multiple groups, and the government's
12 decision not to assist those groups with
13 funding for lawyers has not changed their
14 standing. Every participant can appear
15 before the inquiry and give evidence to the
16 commission without being represented by
17 counsel. The commission process is not an
18 adversarial one where people's legal rights
19 are engaged. It is an investigation into
20 past events involving police investigations
21 to determine how to best move forward in the
22 future with investigation of supporting
23 multiple homicides.

24 Well, first of all, with the greatest of
25 respect to, to the present Attorney General, it

1 seems to me that you, Mr. Oppal, who are not only
2 a distinguished jurist, but a former Attorney
3 General, can set the present Attorney General
4 straight. The present Attorney General does not
5 appear to understand the distinction between a
6 party's status and a witness. A witness can give
7 evidence and, and, and does not need to have
8 counsel to give evidence. But when, when you
9 granted my clients and others in this room party
10 status, it's because you understood that this was
11 an adversarial process and that, that our clients
12 needed counsel in order to help with, with respect
13 to this inquiry, counsel who could examine
14 witnesses, counsel who could cross-examine
15 witnesses, counsel who could make submissions on
16 legal issues, counsel who could determine what was
17 relevant, what was privileged with respect to
18 documents.

19 The job of counsel cannot be overstated,
20 particularly when you are talking about the area
21 of examination and cross-examination. I, I, I am
22 a lawyer of many, many years experience, more than
23 I want to admit to, and yet I find the most
24 difficult and challenging area of my job is to
25 prepare cross-examination. No matter how

1 articulate, no matter how strong, and no matter
2 how forceful my clients can be in the public
3 domain, they are not counsel and they cannot, they
4 cannot fulfill the job of counsel, and I am sure
5 that's the case for everybody in this room.

6 So, for the Attorney General to say that our
7 clients can present, as if they can give evidence
8 and that's the sum total of their contribution,
9 completely fails to understand the role of a party
10 and the role of a witness.

11 This formal hearing is all about fact
12 finding. There may also be some legal questions
13 for sure, but it's also about fact finding. The
14 commission counsel, as the highest regard we have
15 for commission counsel and their whole staff, and,
16 and we know they will do a very good job in
17 helping you find the facts, they are constrained
18 because commission counsel, although they can
19 cross-examine, I accept that, still have to
20 maintain a neutrality in order not to, in order
21 not to undermine your neutrality and your
22 independence, because there is no preordained
23 conclusion. Commission counsel has to maintain a
24 certain neutrality, a certain impartiality and
25 cannot be as aggressive, as aggressive or as

1 forceful as counsel can from my -- as I would be
2 for my clients and I am sure the other counsel for
3 their clients.

4 Mr. Ward, I have nothing but the highest
5 regard for him. He is a very good counsel. He
6 knows what he's doing but he represents only 10
7 families, and he, and he has to represent their
8 interests first and foremost, not the interests of
9 other people, who by his own, who by his own
10 acknowledgement, there may be conflicts with.

11 Also keep in mind that Mr. Ward and his
12 colleague, this is two people against an army of
13 government lawyers and, and AG lawyers. And just,
14 knowing, having been in his position in the past,
15 I know there is just only so many hours in the day
16 and only so much you can do.

17 But the other thing to keep in mind is every
18 lawyer knows that when one is examining or
19 cross-examining a witness, the perspective of your
20 client means everything. Take the simple example
21 of whether, whether someone has been charged with
22 reckless driving, if you're cross-examining from
23 the perspective of the people of the car, you are
24 going to have a different cross-examination than
25 if you are cross-examining from a bystander or a

1 pedestrian on the street. A very simplistic
2 example, but it at least goes to the point that
3 Mr. Ward can't do it all. He cannot do it all.
4 He cannot help you fulfill the terms of your
5 reference.

6 Likewise, sorry, not likewise, on the point
7 that the Attorney General said that this process
8 is not adversarial, it may be that, you know, this
9 is a, somewhat of a different process insofar as a
10 civil litigation case or a criminal case where
11 there is sort of two sides, but to say it's not
12 adversarial is completely wrong. This, there is
13 not going to be any group hug in this room once
14 this hearing gets going.

15 Mr. Doust for the Criminal Justice Branch,
16 Mr. Macintosh and Mr. Hern from the police and,
17 and the others, will be defending vigorously their
18 clients' position. Legal rights are at issue. My
19 client's legal rights of life, liberty and
20 security to person that are at issue in this case,
21 Crown counsel's career -- careers could be at
22 stake. Police careers could be at stake. This is
23 going to be a very adversarial hearing, and
24 anybody who has done or witnessed or seen the
25 other inquiries that have taken place in this

1 province, whether it's the Frank Paul Inquiry or
2 the Dziekanski Inquiry, will know that the process
3 can be very adversarial and, and, and our clients
4 are no match without counsel to the clients who
5 are represented on the other side, and it is the
6 other side, let's be frank about that, in this
7 inquiry.

8 So, let me conclude by saying this. We have
9 to sort of ask ourselves the question, you know,
10 what's really going on with the government's
11 decision? And it seems to me there are a couple
12 of conclusions that one might draw. It's, it's
13 either that the government just simply doesn't
14 believe that lawyers are needed, it's an
15 unnecessary expense, and we are hoping, Mr.
16 Commissioner, that you, with the, with the
17 credentials that you have as, as the province's
18 chief law enforcement officer at one point, a
19 jurist in the trial court and the Court of Appeal,
20 will understand, will persuade the government why
21 lawyers are necessary. And this isn't about
22 lawyers trying to line their pocket. And, and so,
23 if that's, if that's what's really at the root of
24 it, then hopefully the government can be
25 persuaded. And, and with, as I said, a strongly-

1 worded letter, publicly strongly-worded letter or,
2 or a decision, you will change the government's
3 mind.

4 If, at the end of the day, what's really
5 going on is the government doesn't think this
6 inquiry is important, it was all window dressing
7 to start with, well, then we need to know that so
8 we can all make our decision.

9 Now, I just want to end by, by saying, by
10 sort of addressing what I think is a concern that
11 we lawyers all have, and that you may, and others
12 will have, is that this is all about the lawyers
13 just trying to make money. And, and I can't, I, I
14 can't sort of reject that accusation or
15 implication enough. I want, I want you to look
16 around this room and look at the lawyers who are
17 acting for the participants. In every case,
18 we're, we, we all belong to, you know, we are part
19 of small firms. Most of us have done an extensive
20 amount of pro bono work. We, we are willing to
21 work for -- at government rates. I mean, there --
22 if the issue is, well, we're just too expensive,
23 that just, that has just got to be put aside.

24 The government didn't turn us down because of
25 any particular sort of proposal. We made a

1 proposal on May 18th. The next day the government
2 issued this press release. They obviously hadn't
3 even read our proposal. And we are willing to
4 work with the government to make this as cost
5 effective as we can. For instance, I have three
6 lawyers -- we have three lawyers here. I
7 appreciate that we only need two lawyers to do our
8 job, but we were brought together by the
9 commission to have a coalition, so there is three
10 of us here. We've, when we've presented to the
11 government, we said, "We will, we will work on a
12 budget that will allow only, at most, at any one
13 time, two lawyers in the inquiry." We are willing
14 to make all sorts of concessions in order to make
15 this work.

16 I said that I wouldn't have to be involved in
17 the study commission, that I thought that would be
18 an unnecessary use -- unnecessary expense. So,
19 it's not as if the -- but the government never
20 engaged us in that way. It was just a blanket
21 "no" to everybody.

22 And so finally on the issue, and I keep
23 saying "finally," and this, I truly am almost
24 final, the issue of going to court, Mr. Vertlieb
25 has, I know, briefed you on that to some extent.

1 There is jurisprudence now from the Supreme Court
2 of Canada, where an inferior tribunal, which you
3 are, can go to the Supreme Court in aid of, of --
4 to have the court order the government to pay
5 costs. We are more than willing to assist the
6 commission if it comes to that. We would probably
7 join you in that lawsuit. But we really hope that
8 that won't be necessary. For one thing, that will
9 delay the proceedings, and in a significant way.
10 And again, as I said before, it's very important
11 that the government be persuaded to do the right
12 thing and we hope you can do that.

13 MR. COMMISSIONER: Thank you, Mr. Arvay.

14 MR. VERTLIEB: Mr. Skwarok?

15 MR. COMMISSIONER: Mr. Skwarok?

16 MR. SKWAROK: Sir, I'm here on behalf of Dr. Kim Rossmo. I
17 have had the luxury of following Mr. Arvay and
18 listened to the submissions of Mr. Vertlieb and I
19 respectfully adopt all of them and I, I won't try
20 and engage in an act of supererogation by
21 repeating them.

22 Dr. Rossmo was granted standing for two
23 bases. One --

24 MR. COMMISSIONER: Why don't you summarize for us what his
25 evidence would be and what his position would be,

1 in three lines?

2 MR. SKWAROK: His evidence will be that recommendations that he
3 made with respect to the potential of a serial
4 murderer out there were rejected, and he has an
5 explanation for why that occurred.

6 Secondly, he has been victimized by false
7 statements regarding his involvement in the
8 investigation. He has been accused of being
9 responsible for paralyzing the investigation when,
10 in fact, he was one of the first people to have
11 identified that there was a serial killer.

12 So, his attendance in this proceeding would
13 be, first, to help the tribunal come to an
14 appropriate conclusion on key issues of, of police
15 cooperation; and secondly, to defend himself from
16 anticipated criticisms from parties who have
17 already, on record, cast doubt on his integrity.

18 MR. COMMISSIONER: All right.

19 MR. SKWAROK: That was three very long sentences.

20 With respect to communications with the
21 government, I spoke with Mr. Deitch, who advised
22 that there were limited funds available and that I
23 should make a pitch, if you will, about what would
24 be an appropriate amount of funding. I expressed
25 some concerns about the ability to do that, given

1 that I have no idea how long the inquiry is going
2 to be, how many witnesses will be called, or how
3 many documents would be reviewed, but I
4 appreciated the extra question. I told him I
5 would think about it, and before I was able to
6 provide any type of submission, the government
7 advised that it was not prepared to fund counsel
8 for Dr. Rossmo.

9 What is the effect of all this? I can advise
10 the commission that Dr. Rossmo met the
11 government's decision on funding with some
12 disquietude and he is seriously considering
13 whether or not he will participate in these
14 proceedings in the absence of the ability to
15 cross-examine individuals who may have a personal
16 motive to say things about him that are not true.

17 I regret using an *in terrorem* argument and I
18 apologize for that, but those are my instructions.

19 MR. COMMISSIONER: All right, thank you. Thank you, Mr.

20 Skwarok.

21 MR. VERTLIEB: Ms. Brodsky, Mr. Commissioner.

22 THE COMMISSIONER: Yes.

23 MS. BRODSKY: Mr. Commissioner, please excuse my scratchy voice
24 this morning.

25 I wonder if I -- I would like to confirm that

1 my co-counsel, Katherine Hensel, is on the line.

2 Ms. Hensel?

3 MS. HENSEL: Yes, I am on the line, Ms. Brodsky.

4 MS. BRODSKY: And Jeannette Corbiere Lavell, who is the
5 president of NWAC. Are you on the line?

6 MS. CORBIERE LAVELL: Yes, I am.

7 MS. BRODSKY: For the benefit of both Ms. Corbiere Lavell and
8 Ms. Hensel, I would like to advise you that there
9 are about 70 people in this room, and it may be
10 difficult for them to hear you unless you are able
11 to speak quite loudly. The mic is close to the
12 commissioner. I think he will be able to hear you
13 and he will certainly let you know if he can't.
14 And I am about 10 feet away from the mic, so I
15 should be able to hear you, but others will be
16 interested in what you have to say as well.

17 I would --

18 MR. COMMISSIONER: Yes?

19 MS. BRODSKY: I would --

20 MR. COMMISSIONER: Yes, go ahead.

21 MS. BRODSKY: Thank you.

22 Ms. Hensel, you should know, was commission
23 counsel for the Ipperwash Inquiry into the killing
24 of Dudley George, and I feel very pleased to have
25 her as co-counsel and I hope that, together, we

1 both can be a valuable resource to the commission
2 and to our client, who has so much to contribute
3 to this proceeding, as you have recognized.

4 And I wish to recognize president Corbiere
5 Lavell and the special efforts that she has made
6 to speak to you directly. Ms. Lavell came and was
7 prepared to address you on the 13th of, of, of
8 June in person, and we understand that, for very
9 good reasons, that this had to be rescheduled.
10 But she was there, she was available in person,
11 made special efforts to do that, and she today is
12 available on the line, even though that's not
13 perfect. She is calling us from Ontario, and
14 NWAC, being a national organization which is
15 actually based in Ontario and doing the best job
16 it can on a small budget of working right across
17 the country. Ms. Corbiere Lavell is not a lawyer.
18 Her name may be familiar to you though, Mr.
19 Commissioner, as she was the plaintiff in the
20 first legal challenge under the Canadian Bill of
21 Rights to discrimination against aboriginal women
22 under the *Indian Act*, a problem that has not yet
23 been fully resolved.

24 I, before getting into the nuts and bolts of
25 our presentation, I also would acknowledge and

1 endorse the, the remarks of, of those who have
2 appeared before me and commission counsel, Mr.
3 Vertlieb.

4 I would also like to remind you, Mr.
5 Commissioner, that on May 2nd, you granted NWAC
6 full standing to participate in the inquiry and
7 you made a finding, and I quote:

8 It is critical that NWAC participate
9 throughout the hearing process ...
10 And you made the grant of standing on the basis
11 that, and here I summarize:

12 NWAC represents aboriginal women throughout
13 Canada and knows their circumstances. NWAC
14 has relevant knowledge about missing and
15 murdered women in British Columbia and
16 Canada, and among the participants, NWAC is
17 unique in its specific focus on the
18 representation of and with regard to
19 aboriginal women.

20 And just to quote a little further from your
21 decision on your funding and ruling on
22 participation and funding recommendations on page
23 16, NWAC states, and this is just to review what
24 NWAC is about:

25 ... has an intimate knowledge of the

1 experiences of families, the patchwork of
2 policies, programs and services available to
3 women, families and communities and the
4 jurisdictional divisions that have presented
5 barriers in the police and justice systems to
6 respond to the needs of aboriginal women and
7 families.

8 And I won't continue with that, but we were
9 -- NWAC was proud to -- and -- to receive your
10 acknowledgement and accurate assessment of what it
11 would be able to contribute. And specific
12 reference was made as well to the importance of
13 being able to share the data and expertise
14 developed through NWAC's Sisters in Spirit
15 initiative.

16 Now, to get into the core of what we would
17 like to say to you, and I will endeavor not to
18 repeat what's been said before me, Ms. -- I would
19 like Ms. Lavell to address you directly from the
20 client perspective on, on two of the things that
21 you have asked us to address this morning: the
22 impact of the AG's funding decision on NWAC's
23 interest; and on the operations of, of the
24 commission. And I will follow. I have a little
25 bit to say about that as well, and, and I would

1 also like to address the question of what we
2 propose that the commission do and the options
3 available to it. But would it be acceptable to
4 proceed now to hear from --

5 MR. COMMISSIONER: Yes, yes.

6 MS. BRODSKY: -- from Ms. Lavell?

7 MR. COMMISSIONER: All right. Go ahead.

8 MS. BRODSKY: Excuse me, Jeannette, you need to speak as loudly
9 as you possibly can.

10 MS. CORBIERE-LAVELL: Okay, I will try. I am speaking from
11 Manitoulin Island which is in the (inaudible)
12 south island and the distance is --

13 MR. COMMISSIONER: I, I don't know if anybody can hear that. I
14 can barely hear you.

15 MS. CORBIERE-LAVELL: Oh. Well, I am talking as loud as I can.
16 I don't know if I will be able to, to really say
17 very much then because I guess the line is not
18 very good. Let me see if I can switch here. Can
19 you hear me better? Hello?

20 MR. COMMISSIONER: Yes, we can hear you.

21 MS. BRODSKY: Okay, you're good and loud, you're good and loud
22 now, Jeannette.

23 MS. CORBIERE LAVELL: Oh. I had the speakerphone on.

24 MS. BRODSKY: Okay, everybody can hear you now I think.

25 MS. CORBIERE LAVELL: Okay.

1 MS. BRODSKY: Much better.

2 MS. CORBIERE LAVELL: Well, first of all, I would like to
3 acknowledge you, commissioner, for giving us
4 standing, to be able to represent the many, many
5 women across Canada who have been murdered or
6 missing. And as the National Aboriginal Women's
7 Organization, the only one, in fact, we are taking
8 the commission, this inquiry, very seriously. And
9 on behalf of our members right across Canada, we
10 wish to assist, in whatever way we can, with our
11 experience in dealing with violence. And, you
12 know, when we looked at British Columbia, 167
13 missing and murdered aboriginal women whose voices
14 need to be heard, and this is our mandate, and we
15 will not give up until their voices are heard at
16 this inquiry. And as you know, we have had to be
17 very serious and to try to get all the levels of
18 government to listen to us, whether it has to do
19 with our equality rights, whether it has to do
20 with the future of our children and our
21 communities. But right now, in order for us to be
22 a healthy and thriving community, we have to stop
23 this violence, and especially losing our women,
24 because these young women are our future and we
25 need these young women. They are our mothers and

1 our sisters and our aunties, and this is really
2 important, that we are able to deal with the
3 actions of the murderers and, and the way that the
4 police department have reacted to the pleas from
5 our women to ask for proper investigation, to ask
6 for answers. This is the systemic racialized
7 discrimination that we would be able to bring to
8 your commission.

9 And we feel very strongly that this is
10 extremely important, and I can say on behalf of
11 all our provincial and territorial organizations,
12 that this inquiry, granted it is in British
13 Columbia, but there will be so much attention paid
14 to it. And I heard you initially when you said
15 you have police, policing forces there from
16 Ontario, because right across Canada, all the
17 various provincial governments will be looking at
18 your inquiry and see, you know, what the results
19 are, what the recommendations, and this is why it
20 is extremely important to get it right. And I
21 believe the only way that this can be achieved is
22 to grant funding to all those participants that
23 you gave those standing, including us of course,
24 because as our counsel, Ms. Brodsky, pointed out,
25 we are not a large, largely-funded organization.

1 We do with what we can and it's, mostly, it is
2 very minimal. We do not have funds, the legal
3 resources, to be able to bring witnesses, to be
4 able to do all the proper research, you know. I
5 understand there is lots of documentation that
6 will have to be done. And if we do not get any
7 funding to be able to do this very important work,
8 I'm sorry, but we would just not be able to
9 participate.

10 My feeling, and I think on behalf of many of
11 our women, this would not be acceptable. It would
12 be very unfair to the hundreds of other aboriginal
13 women who are, you know, as we all know, at the
14 bottom end of the, of the economic level in
15 Canada, but we just would not be able to.

16 MR. COMMISSIONER: All right.

17 MS. CORBIERE LAVELL: So, that's all I can say right now, and
18 I'm sorry for, you know, this connection, but I
19 live in northern Ontario and, in the bush. So, my
20 apologies for this line. But I do hope that you
21 have heard and I will turn it over to our counsel,
22 Ms. Brodsky and Katherine Hensel.

23 MR. COMMISSIONER: All right, thank you.

24 MS. CORBIERE LAVELL: And thank you for granting me the
25 opportunity to speak today.

1 MR. COMMISSIONER: Thank you for your comments. Ms. Brodsky.

2 MS. BRODSKY: Thank you, Ms. Lavell and Mr. Commissioner. I do
3 know because Ms. Corbiere Lavell and I spoke
4 before the call, that there are a few things,
5 there are a few things to add, and just to
6 emphasize from an NWAC perspective, and that is
7 that a crucial dimension of this inquiry is the
8 reality of hundreds of missing and murdered women
9 having, sorry, hundreds of aboriginal women having
10 been missing and murdered.

11 And NWAC's interest is in bringing a
12 specific, systemic focus on the issues of
13 aboriginal women, and they can't do that without
14 representation by counsel, and without their
15 presence in the hearing, there is no one else who
16 has been granted standing who has a mandate, the
17 authority or the expertise to do that. And this
18 commission of inquiry can't credibly proceed
19 without that aspect of what is at the core of the
20 inquiry's work being illuminated.

21 And so, in effect, though the commission has
22 granted full standing to NWAC, the funding
23 decision of the Attorney General takes that
24 standing away, and further, has the effect of
25 making what is central to the work of the

1 commission impossible.

2 MR. COMMISSIONER: All right.

3 MS. BRODSKY: Now, Ms. Corbiere Lavell spoke about adverse
4 effects going forward, as I did just now, but I
5 need to draw to your attention some present
6 adverse effects of the Attorney General's funding
7 decision. One is with respect to review of
8 documents. As counsel for NWAC, we've been put on
9 hold. We were retained on the explicit
10 understanding that our ability to move forward
11 would -- was dependent on funding. And NWAC, from
12 the beginning, had an awareness that it would
13 require counsel and an expectation, following your
14 funding decision recommendation that -- a
15 reasonable expectation that funding would be
16 provided and now they have been thwarted. And so
17 we've been unable to, we are unable to engage in
18 the process of examining the documents. And so we
19 are concerned. We are already behind in schedule
20 and fearful that this will have an impact on your
21 ability to move forward on the timeline that the
22 government is imagining.

23 Secondly, there is the impact on disclosure.
24 It's not realistic for NWAC to, on its own,
25 without the assistance of counsel, to complete the

1 work necessary to identify potential witnesses and
2 documents relevant to the inquiry. It goes back
3 to our ability to be able to review the documents
4 that are already -- that have already been in
5 play, or disclosed, excuse me.

6 We see as well, this is a present concern,
7 gaps and inconsistencies in what the commission
8 has been able to do, and I say this without
9 faulting the commission in any way whatsoever. It
10 has to do with the crisis that we're in at the
11 moment, the fact that we're derailed.

12 I refer to your, your second progress report
13 and the fact that there is no mention in the
14 progress report to aboriginal women or the rights
15 of aboriginal women. Yes, there are references to
16 other things, other areas of witnesses that the
17 commission proposes to call, which I don't say are
18 inappropriate, but it is a gap that needs to be
19 filled, the, the aboriginal women's piece of it.

20 In contrast, and I don't know why it is, the
21 report is replete with references to prostitution,
22 and I don't say that is wrong, but it's very
23 incomplete. It makes us worried. We worry that
24 the commission may be in danger of falling in the
25 trap of thinking that the phenomenon of missing

1 and murdered women can be somehow reduced to the
2 selling of sex, something that many poor women are
3 forced to engage in.

4 And we don't want the commission to forgot
5 that the missing and murdered women in the
6 Downtown Eastside and on the Highway of Tears are,
7 first and foremost, women, and they are
8 disproportionately racialized women. And we think
9 that you do want us to help you fulfill this gap.
10 It's terribly important. Aboriginal women are
11 disproportionately vulnerable to violence and
12 neglect and mistreatment by police everywhere.

13 And so here's what we propose you do and why.
14 We agree, of course, with Mr. Arvay, that the most
15 desirable course is that the government would
16 change its mind. This is such an unacceptable and
17 shocking decision on the part of the government.

18 In the event that that does not occur, we say
19 it is incumbent on the commission to take legal
20 action to remedy this unacceptable situation.
21 From an NWAC perspective, legal action by the
22 commission is necessary to avoid a serious
23 injustice to aboriginal women and the other groups
24 whose interests are affected in this hearing, and
25 the public interest for the following reasons.

1 The AG's funding decision is discriminatory, both
2 with regard to who it excludes and the content of
3 the perspective that it excludes. It fetters the
4 discretion of the commission and dictates its
5 findings. It will result in procedural
6 unfairness, incredible imbalance, which Mr. Arvay
7 addressed, and who gets to cross-examine and about
8 what.

9 The Attorney General's decision is also
10 unprecedented. And if, Mr. Commissioner, you
11 would like information about the operation of the
12 Ipperwash Inquiry, for example, where there was an
13 advisory panel, I am sure that Ms. Hensel would be
14 in a position to address that for you.

15 The integrity of this inquiry process does
16 depend, as all inquiries do, on the respect and
17 cooperation, including adequate funding from the
18 governments that, that create them.

19 And so there are these various viable
20 options, legal options. You make an order for
21 funding. You have that power. As an inferior
22 tribunal, you have the power, and it's recognized
23 in your own -- in the practice directive, to
24 control your own process. You can go to court and
25 seek enforcement of your order. You, pursuant to

1 recent Supreme Court of Canada jurisprudence, can
2 also seek the aid of the superior court in getting
3 your process back on the rails, by making an order
4 of advanced costs. This decision of the Attorney
5 General is also open to judicial review because it
6 is so unreasonable.

7 Now, just to conclude my part then. There
8 has been no communication essentially between us
9 and the Attorney General. We, we contacted the
10 Attorney General immediately upon being asked to
11 be counsel, and all that we've had back is an
12 e-mail copy of a group e-mail distributed by the
13 Attorney General. No ability to even present our
14 proposal.

15 MR. COMMISSIONER: Right. Thank you.

16 MS. BRODSKY: Those are my submissions.

17 MR. COMMISSIONER: Thank you, Ms. Brodsky. Thank you. All
18 right.

19 MR. VERTLIEB: I'm just wondering if, just before we take a
20 break, Mr. Doust has another commitment, and I
21 know he will be very brief, and if you listen to
22 Mr. Doust's comment and then might be a good time
23 to take a break.

24 MS. BRODSKY: Excuse me, Mr. Commissioner, could I also just
25 ask for some -- any clarification that you might

1 be able to provide about timing of reply? I am
2 aware that Ms. Hensel is on the line, and is there
3 any way that we can anticipate the timing of reply
4 or will it be necessary for counsel to be --

5 MR. COMMISSIONER: How can I give you a timing? I am listening
6 to you.

7 MS. BRODSKY: Very well.

8 THE COMMISSIONER: Mr. Doust.

9 MR. DOUST: Mr. Commissioner, I represent the Criminal Justice
10 Branch, just one branch of the Ministry of the
11 Attorney General. The funding in question is
12 funding by the Ministry of the Attorney General,
13 of which the Branch is only one part. Mr. Jones
14 is appearing before you on behalf of the Ministry
15 to address the funding issue. Therefore, I am
16 submitting it would not be appropriate for the
17 Criminal Justice Branch to make any separate
18 submissions. I respectfully defer to Mr. Jones on
19 these issues with respect to the Attorney
20 General's position on funding. Given my limited
21 role, it's clear to me that it is not for me to
22 take any position on the funding issue.

23 MR. COMMISSIONER: All right. Thank you, Mr. Doust.

24 MR. VERTLIEB: This might be a good time, Mr. Commissioner, to
25 take a short break.

1 MR. COMMISSIONER: All right.

2 **(Proceedings adjourned at 11:17 a.m.)**

3 **(Proceedings resumed at 11:30 a.m.)**

4 THE REGISTRAR: Order.

5 MR. VERTLIEB: Thank you, Mr. Commissioner. Katrina Pacey will
6 be the next presenter.

7 MS. PACEY: Thank you, Mr. Commissioner. Katrina Pacey,
8 counsel for the Coalition of Sex Worker Serving
9 Organizations. We have prepared written
10 submissions. I have provided several copies to
11 your counsel. I have a copy for you, Mr.
12 Commissioner, if I can approach.

13 MR. COMMISSIONER: All right.

14 MS. PACEY: Just to begin, I would just like to just indicate
15 that we adopt the submissions of Mr. Arvay. And
16 you heard from me at length --

17 MR. COMMISSIONER: I was going to say that Mr. Arvay has given
18 a thorough, comprehensive submission. And so I
19 don't want to, I don't want to curtail anyone's
20 right to be heard, but as I said earlier, I don't
21 know if it's useful for me to hear the same
22 arguments that, that he made in a very thorough
23 way. But what I would like to hear from each
24 counsel is how, in your particular circumstances,
25 what your position is regarding the future of the,

1 of the inquiry in light of the decision made by
2 government. That's really what I need to align
3 with.

4 I know what your clients do. I have already
5 made a decision with respect to their relevance
6 and how important they are to the, to the future
7 of the inquiry. So, I don't need to hear all of
8 that and I'm grateful for your written submission.

9 MS. PACEY: I understand, and the submission hopefully spells
10 out some of the submission at length and you, in
11 fact, won't be hearing from me very much at all
12 today because I am going to ask Kate Gibson, who
13 is the executive director of the WISH Drop-In
14 Centre Society, to make submissions on behalf of
15 the coalition today and to be able to indicate to
16 yourself the level to which we will, the coalition
17 will not be able to participate in the process and
18 answer any questions that you may have. I will be
19 available for questions, if you have any. I will
20 take a seat next to Mr. Arvay. So, if I could ask
21 Ms. Gibson --

22 MR. COMMISSIONER: Thank you, Ms. Pacey.

23 MS. GIBSON: I represent the Coalition of Sex Worker Serving
24 Organizations that operate in the Downtown
25 Eastside. We represent decades of service to sex

1 workers in this neighbourhood who are among the
2 most vulnerable members of our society.

3 Between 1997 and 2002, we provided direct
4 services and support to most, if not all of the
5 women who went missing from the Downtown Eastside.
6 We continue to work tirelessly to meet the complex
7 needs of sex workers in the Downtown Eastside, but
8 the reality is that we constantly struggle to
9 maintain our current level of service.

10 These facts were put before the commissioner
11 when we made our initial application for
12 participant status and, after considering the
13 experience and perspectives that our organizations
14 bring to the issues to be addressed by the
15 inquiry, you, Commissioner Oppal, granted us both
16 participant status.

17 You ruled that the coalition meets all three
18 of the tests of participant status and the
19 coalition's interests and particularly the
20 interests of our members and clients will be
21 affected by the findings of the commission. The
22 coalition's participant -- participation will
23 fully -- further conduct (sic) of the inquiry.
24 The coalition's participation will contribute to
25 the fairness of the inquiry.

1 Full standing means that we have the right to
2 document disclosure, cross-examination of all the
3 witnesses, call evidence and make final
4 submissions. The commissioner also found that our
5 coalition would not be able to participate without
6 funding for counsel.

7 However, despite the commissioner's ruling,
8 the Attorney General's office has refused to
9 provide any funding for the coalition to retain
10 counsel. The Attorney General's office, in an
11 e-mail to our legal counsel, said that the
12 government is of the view the organizations are
13 better situated to fund counsel without assistance
14 from government, as well as to represent their
15 interests and concerns to the inquiry without
16 counsel, them or the victims' families.

17 I am here to tell you, Mr. Commissioner, that
18 we are not better situated to fund counsel without
19 assistance from the government and I will take the
20 next few minutes to tell you why we cannot
21 participate in the inquiry without government
22 funding for legal counsel.

23 The inquiry will examine tragic and complex
24 events that span the period of more than six
25 years. These events involved hundreds of

1 individuals and dozens of organizations, including
2 the Vancouver Police Department, the RCMP, the
3 Criminal Justice Branch, and the families and
4 friends of, and service providers to the missing
5 and murdered women.

6 It is estimated that the documents disclosed
7 to the commission will exceed a million pages. I
8 am also advised by our counsel, Katrina Pacey,
9 that it is realistic to estimate that more than
10 100 witnesses will testify in the commission's
11 hearings. In light of the massive document
12 disclosure, the need for focused cross-examination
13 at the hearings, and the complex and sometimes
14 sensitive issues involved in the commission's
15 inquiry, our participation is only possible if we
16 have adequately resourced support staff and legal
17 counsel.

18 The coalition does not have the staff to be
19 present every day at the hearings. The reality is
20 that, if unrepresented, the coalition will not be
21 able to participate in the hearings with any
22 regularity. In fact, given their current funding
23 and staffing challenges, WISH, PACE and SWUAV are
24 unlikely to be able to free a staff member to
25 attend even a small portion of the hearing dates.

1 The coalition struggles to provide the level of
2 service required for their clients now. We could
3 not possibly justify reducing services to sex
4 workers who are currently in need of support,
5 advocacy and counselling to participate in
6 hearings into the tragedies of the past.

7 We don't have the staff nor the experience to
8 review and fully understand the disclosure.

9 Without counsel, the coalition will not have the
10 resources to review the disclosure documents. We
11 do not have the time, experience or skill to
12 review more than 1 million pages of police
13 records, Crown counsel reports, expert reports and
14 other documents, nor can we be expected to know
15 how to assess the relevance and then cross-examine
16 witnesses based on what we see in that evidence.

17 We do not have the staff, nor the experience,
18 to conduct cross-examinations. In terms of
19 cross-examination, the inquiry will involve a
20 large and diverse list of witnesses. We
21 anticipate they will include women, including sex
22 working women living in the Downtown Eastside,
23 family members of the missing and murdered women,
24 Downtown Eastside residents, Downtown Eastside
25 service agencies, expert witnesses, Criminal

1 Justice Branch staff, Vancouver police officers
2 and management, RCMP officers and management and
3 possibly other police witnesses.

4 Cross-examination of these witnesses will
5 only be effective and efficient if conducted by
6 counsel. Certain witnesses, such as the families
7 and community members, will give evidence of a
8 highly sensitive and personal nature and will
9 require careful questioning on those issues that
10 are relevant to the terms of reference. I, for
11 one, would not feel comfortable questioning
12 witnesses from the community where I work every
13 day or the families who have been so deeply
14 affected by this issue. Other witnesses, such as
15 police officers and experts, will require skillful
16 cross-examination that we could not possibly be
17 expected to handle.

18 Even if I were able to relieve myself from
19 time to time from my duties as an executive
20 director to participate in this process, which I
21 cannot, I would be intimidated by the prospect of
22 having to question police officers and Crown
23 counsel.

24 Without counsel, we will not be able to bring
25 forward women to give evidence. As a participant,

1 we have the right to call witnesses and tender
2 evidence that will further the objectives of the
3 inquiry. You, sir, have acknowledged in your own
4 status report that the commission needs our help
5 to bring women forward to give evidence. The
6 reality is that we can't do it without legal
7 counsel.

8 First, there is significant trauma, fear and
9 distrust of government and the courts among many
10 women who are or have been involved in the sex
11 trade in the Downtown Eastside. They are
12 reluctant to participate in a public inquiry.
13 Should these women make the difficult decision to
14 come forward, they would require extensive support
15 from community services and legal counsel before,
16 during and after giving evidence.

17 Second, many women will want to meet with
18 counsel they trust so they can gain a full
19 understanding of the possible implications of
20 coming forward to give evidence. In many cases,
21 women will require this meeting before any
22 information is handed over to the commission.

23 Finally, many women are afraid of the
24 repercussions of giving evidence. Their concerns
25 include retraumatization, loss of privacy, risk of

1 violence and negative treatment by police and
2 others within the community.

3 In order to deal with these concerns and
4 address any possible risks, counsel is required to
5 explore what steps to be taken to ensure the
6 privacy and safety of a witness. Legal counsel
7 will have extensive knowledge of these safeguards
8 and can take steps to make the necessary
9 applications to the commission to request that
10 those safeguards are put in place.

11 You are recreating the barriers women face
12 pre-Pickton arrest. It is our respectful
13 submission that many of the barriers that
14 prevented marginalized women, and in particular
15 women involved in sex work, from coming forward to
16 the police between 1997 and 2002, will be
17 replicated in the commission process if vulnerable
18 witnesses are not provided the necessary community
19 and legal supports. If we do not participate in
20 this inquiry, this will be the effect.

21 It seems fundamentally unjust that the
22 Attorney General of BC is expected to go into this
23 process without any formal legal training -- or
24 expecting us to go into this process without any
25 formal legal training and without legal

1 representation. Despite what I understand to be
2 the position of the Attorney General, this is an
3 adversarial process and the reality is that we
4 would be up against fully-funded government
5 lawyers representing the Vancouver Police, the
6 RCMP and the Criminal Justice Branch.

7 To be clear, we will not be able to
8 participate without funding for counsel and
9 support services for the women, the result being
10 that you will not hear from the women who have the
11 most to say about the police, how the police
12 handle violence in this community. Our
13 experiences and their concern are absolutely
14 unique and essential to building an understanding
15 of their vulnerability to the pattern of violence
16 they experience, as well as the nature of the
17 police response to that violence. Thank you.

18 MR. COMMISSIONER: Thank you.

19 MS. PACEY: Mr. Commissioner, subject to any questions you may
20 have, those are our submissions.

21 MR. COMMISSIONER: Thank you.

22 MR. VERTLIEB: I'm not sure if Mr. Gratl has arrived. I don't
23 see Mr. Gratl, Mr. Commissioner.

24 MR. COMMISSIONER: All right. I will hear whoever is prepared
25 to go ahead.

1 MR. VERTLIEB: So, I think then that would then move us to the
2 group of limited participants who have not been
3 funded.

4 THE COURT: All right.

5 MR. VERTLIEB: And I think we could start with Mr. Worme, who
6 is on the phone. Mr. Worme, are you still with us
7 there?

8 MR. WORME: I am here. Thank you.

9 MR. COMMISSIONER: Yes, Mr. Worme.

10 MR. WORME: Let me, let me just, first of all, just start by
11 greeting each, each of you, particularly you,
12 Commissioner Oppal, and thanking you on behalf of
13 the Assembly of First Nations, on behalf of the
14 Assembly, for providing us standing, even in the
15 limited fashion that it has been, that is what we
16 sought.

17 And I want to say that I have filed written
18 submissions as well. Those have been provided to
19 your counsel, as well as to the other members of
20 the First Nations Collaborative Working Group.
21 And I appreciate this opportunity to make these
22 submissions, but I do want to say that our
23 submissions are supplementary to and hopefully
24 complementary to the commission that will be made
25 by the First Nations Collaborative Working Group,

1 and I understand Ms. Fox will be speaking to this
2 on behalf of the First Nations coalition, but this
3 is in addition to that.

4 And I want to, as well, greet commission
5 counsel, Mr. Vertlieb, QC, and your team, and
6 acknowledge your very poignant and thorough
7 observation in your opening remarks this morning.
8 It really relieves a lot of the, the burden that
9 we felt might otherwise fall to us.

10 I want to as well say good afternoon to the
11 other colleagues that are there representing the
12 other parties that have been granted standing,
13 both limited and full.

14 To Mr. Arvay, QC, I want to say that we
15 endorse the options that you have put forward. I
16 endorse as well your observation that the value of
17 the recommendations that will be made ultimately
18 by you, Mr. Commissioner, will become suspect at
19 the end of the day in the event that funding is
20 not, is not granted, because it does, as Mr. Arvay
21 has quite correctly pointed out, smack of a
22 certain indifference with respect to your ruling,
23 and we fear that that indifference will be
24 reflected insofar as the government's observations
25 of any recommendations that may come out of this.

1 I would say as well that the role of
2 commission counsel, and having served in the role
3 as commission counsel in the Ipperwash Inquiry in
4 Ontario, I think that Mr. Arvay's observations in
5 this respect are also very accurate, that it puts
6 your counsel, Mr. Commissioner, under a tremendous
7 disadvantage of having to pick up the burden that
8 would otherwise be carried and be shared by
9 others. I want to as well acknowledge Madame
10 Lavell Corbiere and Ms. Brodsky and your comments.
11 We endorse those as well.

12 At the end of the day, our recommendation to
13 you, Mr. Commissioner, would be that legal action
14 by the commission will be a very real and perhaps
15 the only option to advance in the event that the
16 government chooses to ignore what we believe and
17 assert is an obligation that has given rise to, as
18 a result of your ruling.

19 Just with respect to the need to be
20 represented by legal counsel at the hearing
21 portion of the inquiry, Mr. Commissioner, I want
22 to say, first of all, that although we were
23 equally shocked by the decision of the government
24 not to provide funding to the parties to whom you
25 have granted standing, I think that they

1 nonetheless need to be commended for the fact that
2 they have at least provided funding in the hearing
3 portion of the inquiry to those families that are
4 very ably represented by my friend, Mr. Ward. But
5 we note, as I think Mr. Arvay has and others, that
6 that is not the entirety of the families who have
7 been impacted by this very tragic series of
8 events, and they will continue to go
9 unrepresented, and particularly the aboriginal
10 victims and families will continue to go
11 unrepresented if they are not in some fashion
12 granted funding together with the standing that
13 the parties have been provided.

14 It's going to be our position that the, that
15 the First Nations collaborative coalition really
16 speaks to the much wider issues, and we can
17 connect our experiences of all the victims who are
18 the subject matter of this inquiry, and we say
19 that systemic racism and the role of such
20 phenomena and what role that that has played in
21 the decision-making process by the police services
22 and by others in authority, have negatively
23 impacted on this. And we believe that our group
24 is represented by highly experienced legal counsel
25 who have specialized knowledge and authority in

1 the field of aboriginal justice and that we are
2 the best position to be able to elicit the kinds
3 of testimony and information that will be of
4 assistance to the commission at the end of the day
5 and making the kinds of representations that will
6 put an end to the tragedy of missing and murdered
7 aboriginal women.

8 With respect to legal counsel in the First
9 Nations Collaborative Working Group, I would
10 mention in particular, Ms. Bev Jacobs, who not
11 only is a doctoral candidate, but has many, many
12 years in advocacy relative to missing and murdered
13 women. Mr. Hugh Braker, QC, as well, having a
14 huge amount of experience that he can bring
15 forward and assist the commission. I fear that
16 all of that will be lost if funding is not
17 provided to our Working Group.

18 I, I, I want to say, Mr. Commissioner, that
19 we have, as a Working Group, and particularly, my
20 client, the Assembly of First Nations, has pledged
21 to support and supply the other parties who have
22 full standing with any and all informational
23 resources that may assist them in examining
24 witnesses that are not of specific interest to our
25 relative organizations. And indeed, I have been

1 invited by your counsel, Mr. Vertlieb, to propose
2 witnesses that we might wish to appear to give
3 evidence and, of course, we would intend to be
4 present for the hearing portion on such a limited
5 basis. But I fear that, without funding, that the
6 evidence that we would hope to elicit that would
7 be of assistance to the commission, would not find
8 its way onto the, onto the record and, in turn,
9 that would restrict any meaningful participation
10 by the Assembly of First Nations.

11 Without funding for legal counsel for this
12 Working Group, we will be severely restricted in
13 attending, not only the hearing portion of the
14 inquiry, but as well, the study portion of the
15 inquiry, which we see will be informed by the
16 evidence of the hearing portion. And although --
17 and the Assembly of First Nations, although no
18 decision has been taken at this moment, the
19 meaningful participation, even in the limited
20 standing capacity, would be in, in my respectful
21 submission, Mr. Commissioner, in significant
22 jeopardy.

23 I want to, I want to just simply say, in
24 closing, Mr. Commissioner, that due to the
25 controversial and national interest that surrounds

1 this inquiry, its procedure and the findings will
2 be examined under sharp scrutiny and
3 politicization. Systemic discrimination for its
4 aboriginal and First Nations people is only one
5 factor that this Working Group intends to advance.
6 In our submission, some of the wider indigenous
7 populations, of whom our organizations represent,
8 will deem the denial of funding to the hearing
9 portion of the inquiry as a result of the very
10 same systemic discrimination that has been endured
11 by First Nations people insofar as the justice
12 system is concerned. And I am very concerned, Mr.
13 Commissioner, that there will be those who will
14 characterize the denial of funding as precisely
15 that. And at the end of the day, it brings the
16 credibility not, not only of, of your commission
17 and your findings and recommendations at the end
18 of the day, but the involvement of our
19 organizations that we represent into, into areas
20 of, of concern.

21 As I say, Mr. Commissioner, I have filed with
22 your counsel and I trust you will have copies of
23 our submissions, but unless there are any
24 questions or comments, those would be our, our
25 submissions at this point.

1 MR. COMMISSIONER: All right. Thank you, Mr. Worme.

2 MR. VERTLIEB: Mr. Worme, it's Art Vertlieb. Just so you know,
3 the submissions were received and forwarded to all
4 other colleagues here this morning and the
5 commissioner has them. So, don't worry about
6 that. It has been done.

7 MR. WORME: Thank you very much.

8 MR. COMMISSIONER: Thank you, sir.

9 MR. VERTLIEB: And if I may say, Mr. Commissioner, I think
10 we've heard from the three people on the phone,
11 but we do appreciate how much more difficult it is
12 to attend by phone and we are grateful for those
13 participants.

14 I think we can move on then, Mr.
15 Commissioner, with Hugh Braker for the Native
16 Courtworker and Counselling Association. Oh, I'm
17 sorry, is Ms. Fox going to do it? Okay. Thank
18 you.

19 MR. COMMISSIONER: He is not here? He was here.

20 MR. VERTLIEB: Mr. Braker is here, but Ms. Fox is going to --

21 THE COMMISSIONER: I see.

22 MS. FOX: Good morning. For the record, my name is Stacey
23 Edzerza Fox. I'm counsel for the First Nations
24 Summit. However, I'm going to be speaking to a
25 written joint submission prepared by the Assembly

1 of First Nations, the First Nations Summit, the
2 Union of BC Indian Chiefs, Carrier Sekani Tribal
3 Council and Native Courtworker and Counselling
4 Association of BC. I would like to note that, and
5 acknowledge, my colleagues and representatives of
6 those organizations here.

7 MR. COMMISSIONER: I am not so sure everyone in the back can
8 hear you.

9 MS. FOX: Okay, sorry. And I --

10 MR. COMMISSIONER: I am having trouble.

11 MS. FOX: Okay, sorry.

12 I would just like you to know that Hugh
13 Braker will make a couple of brief supplementary
14 comments after my submission that are unique to
15 the native court workers.

16 I would like to start out with -- I would
17 like to acknowledge the Coast Salish people and
18 the territories that were (inaudible) at this
19 important discussion, and in particular, the
20 Musqueam and Squamish and Tsleil-Waututh, and all
21 nations and communities who have lost members in
22 these tragic ways.

23 The organization that I am speaking here for
24 today got limited participant status. And
25 subsequent to that, we did communicate with Art

1 Vertlieb of the commission that these
2 organizations signed a letter of understanding to
3 form a Collaborative Working Group to try to
4 coalesce what was requested by the commission.
5 The Union of BC Indian Chiefs and the Carrier
6 Sekani Tribal Council formed a coalition, but also
7 joined us under our letter of understanding to try
8 to cooperate and collaborate as much as we could
9 to share our, our shared interests and principles
10 and to try to focus our participation as much as
11 possible to assist the commission.

12 And, in fact, part of why I am speaking to
13 this joint commission is to demonstrate to you
14 that we are trying to find the ways to work
15 together, but also, it's reflective of the fact
16 that a lot of time and energy has been spent in
17 this process to date just dealing with these
18 issues, such as funding, et cetera, and the
19 organizations simply do not have the human or
20 financial resources to do that, so we're -- it's
21 just a reality.

22 I just want to explain a little bit about the
23 groups. I know you are familiar with all of them,
24 but I think what's important to recognize is that
25 they have an experience of working together. For

1 example, the First Nations Summit, the Union of BC
2 Indian Chiefs and the BC Assembly of First Nations
3 have a leadership accord that they signed in March
4 of 2005, and under that accord, they have embarked
5 on a number of initiatives together as the
6 leadership for First Nations around the province,
7 with the province and the Government of Canada.
8 You may have heard of the *New Relationship* and the
9 *Transformative Change Accord*. Those are all
10 focused on advancing constitutionally-protected
11 aboriginal rights in title but also improving the
12 day-to-day lives of our people.

13 And one such initiative specific to this kind
14 of process was the First Nations Justice Action
15 Plan, which gives them a mandate to pursue such
16 things as our relations with police agencies
17 because our, our organization is to try to advance
18 and improve First Nations/Crown relations at all
19 levels and within all sectors, and that includes
20 the police.

21 The Native Courtworkers and Counselling
22 Association of BC has a long-standing relationship
23 with our political organizations. They provide
24 information to us and they have the support of the
25 chiefs and leaders around the province through our

1 assemblies.

2 And the Carrier Sekani Tribal Council
3 represents a specific First Nation particularly
4 affected by the Highway of Tears and who is also a
5 member of our political organizations.

6 The national AFM, Assembly of First Nations,
7 of course, supports local and regional efforts of
8 the First Nations and the First Nation
9 organizations across the country. So, we do know
10 each other quite well and we do have experience
11 working together and we are trying to reflect that
12 here.

13 I was specifically asked to raise a couple of
14 other points related to international conventions.
15 We would like to reiterate some of the
16 international obligations that the Crown in Canada
17 here has with regard to the issue of missing and
18 murdered indigenous women.

19 On November 12th, 2010, Canada endorsed the
20 United Nations Declaration on the Rights of
21 Indigenous People and issued a statement
22 reaffirming its commitment to protecting and
23 promoting the rights of indigenous peoples across
24 Canada. In particular, Article 22 of that
25 declaration indicates that:

1 ... states shall take measures, in
2 conjunction with indigenous peoples, to
3 ensure that indigenous women and children
4 enjoy the full protection and guarantees
5 against all forms of violence and
6 discrimination.

7 In December 1981, Canada ratified the
8 Convention on the Elimination of all Forms of
9 Discrimination against Women. And in 2008, that
10 committee provided a directive to Canada to:

11 ... examine the reasons for failure to
12 investigate missing or murdered aboriginal
13 women and girls and to take the necessary
14 steps to remedy the deficiencies in the
15 system and carry out an analysis of those
16 cases in order to determine whether there is
17 racialized patterns to the disappearances
18 and that measures to address the problem if
19 that is the case.

20 We submit that the federal and provincial
21 governments have a responsibility to ensure that
22 they remain committed to these -- to the
23 declaration and to the convention and ensure that
24 indigenous peoples are meaningfully participating
25 in this inquiry and providing their voice.

1 The Working Group has had general concerns
2 about the establishment of, and the process and
3 decisions made to date regarding this inquiry. So
4 the organizations weren't consulted about the
5 terms of reference as they were with relation to
6 the Frank Paul Inquiry, and some of them
7 haven't -- I'm instructed that they were not
8 consulted about the level of participation as
9 being full or limited, and then certainly the
10 funding decision was built on that distinction.

11 And the funding decision, specifically the
12 Working Group members were not consulted by the
13 Attorney General before that decision was
14 released.

15 The Working Group organization appreciates
16 that the province is willing to fund the families
17 represented by Mr. Ward. That participation is
18 essential to this inquiry and we support that.
19 However, it is misleading how the province
20 communicated this as families being represented,
21 because as has already been stated, not all
22 families are represented, and there are a number
23 of victims' families who -- of Robert Pickton
24 specifically, but many others more generally
25 around the province who won't take part

1 necessarily represented here.

2 And so the Working Group submits as a
3 priority matter that additional families of other
4 victims must be invited and welcomed into this
5 process to participate if they so choose, and if
6 they do, that funding be assured and provided to
7 support their participation. Our Working Group
8 has a primary concern that all affected families
9 have the opportunity to participate in this
10 process. There is precedent for that kind of
11 support. With the residential schooling here, the
12 federal government provided that support for
13 families for that purpose.

14 With regard to how our interests would be
15 impacted if funding is not provided, without
16 funding, the Working Group organizations simply
17 don't have the human or financial resources to
18 participate in the study or hearing portions of
19 the inquiry. It won't be in a position to
20 participate meaningfully and to effectively
21 contribute to the factual or policy aspects of the
22 inquiry.

23 However, the Working Group has an interest in
24 fulfilling its mandates, which are to address the
25 important and urgent issues of violence against

1 indigenous women and children who are our most
2 vulnerable citizens. And as I mentioned, we have
3 an interest in advancing and improving First
4 Nations/Crown relations at all levels.

5 I think, and this has been said in other
6 words, but Working Group organizations are very
7 concerned that the funding decision is yet another
8 manifestation of the systemic barriers that
9 indigenous peoples, and in particular, indigenous
10 women, face in having their voices heard, and it
11 demonstrates further systemic exclusion and
12 marginalization of the indigenous peoples, the
13 very people who have the most to gain, but also
14 the most to lose if this inquiry is not carried
15 out meaningfully, effectively and with relevance.

16 Our organizations endeavor always to ensure
17 the meaningful involvement of indigenous
18 communities in all matters that affect them,
19 whatever those matters may be. And we try to fill
20 out and round out the indigenous voice by
21 providing the political and policy level input and
22 through the native court workers, the technical
23 input. They have worked with some of the victims
24 and they have all their own experience in that
25 regard. So, amongst our five organizations, we

1 have both the policy and technical expertise to
2 contribute.

3 As Mr. Worme indicated prior to my coming up
4 here, we feel if any of the participants are
5 unable to participate because of lack of funding,
6 we are very concerned that their critical input
7 will never be received and that compromises this
8 process and the outcome.

9 We have an interest in this inquiry
10 proceeding but only if it's thorough, meaningful
11 and relevant, and we have been calling for such an
12 inquiry for many years. The First Nations Summit,
13 for example, passed a resolution and sent a letter
14 to the Vancouver Police Department in 1996 and
15 '97, which was one of the instigators to the
16 government inquiry report recommendation.

17 The inquiry process is a quasi-legal process.
18 The evidentiary aspect of it requires engagement
19 of legal counsel. Now, as limited participants,
20 we realize we may not have as fulsome of a role to
21 play as the full participants, but we nevertheless
22 need to understand what the record is in order to
23 make meaningful submissions on policy
24 recommendations.

25 We are concerned that funding has been

1 limited by the province to the context of the
2 hearing commission portion, because we feel that
3 legal representation is also required in the study
4 commission portion. While that's not a legal
5 process per se, it's nevertheless part of getting
6 the story, so both the hearing and study portions
7 of this inquiry are going to get us the full
8 picture and the full story, which we are going to
9 try to respond to with meaningful recommendations.

10 And for clarity, in the hearing portion, our
11 organizations feel that they have a role to play
12 in identifying, contacting and preparing potential
13 witnesses. And I would say, for example, the
14 native court workers (inaudible) probably a fair
15 number of potential witnesses that the commission
16 may be interested in talking to. And if ordered,
17 we have leave to apply for the right of cross-
18 examination of witnesses, but in order to identify
19 which witnesses we may need to cross-examine, we
20 need to have some sort of regular presence in the
21 hearing process. Further, it is our submission
22 that we can't make policy submissions or
23 recommendations in a vacuum without the benefit of
24 learning from and developing a deeper
25 understanding of the facts and the story and what

1 really occurred.

2 We acknowledge the value of the study
3 commission as a means of reaching out to
4 individuals who may not otherwise participate in
5 the inquiry. However, we submit that it cannot be
6 used as a mechanism for restricting the role or
7 muffling the voice of the participants.

8 On to some of the specifics. We note that
9 the commission has sought and is currently seeking
10 names of potential witnesses. Like other
11 organizations who have spoken before me, we are in
12 a position of a holding pattern where we are
13 unable to conduct that work because we don't have
14 the resources to do so.

15 And the last comment on why we need some form
16 of legal representation in both portions of the
17 inquiry, First Nations in Canada have
18 constitutionally-protected rights and the Crown
19 owes specific legal duties to First Nations, and
20 that's a legal context that informs all of our
21 policy analyses and development of policy
22 recommendations.

23 So, for example, lawyers involved on our team
24 have an intimate knowledge and understanding in
25 relation to (inaudible) aboriginal rights and

1 title. We understand that context. We also
2 understand how that related to historic First
3 Nations/Crown relations that have led to the
4 circumstances and the socioeconomic conditions of
5 our communities today, the very ones that have
6 forced our people into different places like the
7 Downtown Eastside or the Highway of Tears.

8 We do have written submissions that have been
9 submitted to the commission and I can provide you
10 with our copy here as well. I won't go through a
11 lot of the other points here because a lot of them
12 have already been made and, in that vein, I would
13 like to acknowledge the various submissions before
14 me.

15 In terms of input sought by the Attorney
16 General's office in making the decision on
17 funding, none of the Working Group participants
18 were contacted by the Attorney General to seek our
19 input. We were never asked for our budget or an
20 estimate of costs. No input was sought on our
21 interests of what we would like to do in the study
22 portion and the hearing portion, what we would
23 view our role as being.

24 While the Attorney General did not contact
25 the Working Group organizations, I did contact, on

1 behalf of the First Nations Summit, Mr. James
2 Deitch at the Attorney General's office. His name
3 was provided to us as the contact person. He
4 advised me that they were in the process of
5 considering your ruling and the recommendations on
6 funding. He advised me that there was a limited
7 pool of funds available, that they would need to
8 make difficult decisions regarding use and
9 allocations of funds, and stated that, to the
10 extent that participants could come together with
11 others, such as through shared counsel, it would
12 be good. He clarified that no decisions had been
13 made but a decision would likely be made by the
14 end of May.

15 And subsequent to that, the only written
16 communication we received from him, once the
17 decision was made, was the same as all of the
18 other participants, it was through the group
19 e-mail on May 19th, 2001, in which they said that
20 fiscal restraints and the government's view that
21 organizations are better situated to fund counsel
22 without assistance from government, and that they
23 could participate without counsel through the
24 study portion of the inquiry.

25 All other communications or information on

1 the funding decision are those that the Working
2 Group organizations happened to come across in the
3 media, for example, the, the May 19th information
4 bulletin from the Attorney General's office, which
5 has been referred to you before and is included in
6 our package, and the letter that we received that
7 was addressed to Jenny Kwan and Leonard King (sic)
8 from the Attorney General which was also
9 referenced earlier.

10 The Working Group organizations have never
11 received or seen clarifications of some of the
12 statements made by the Attorney General, for
13 example, the statement in the information bulletin
14 that funding the families is consistent with past
15 practice. Our concern is it's a huge -- a
16 complete lack of transparency on the decision and
17 no contact with us to help inform that decision.

18 Our Working Group organizations have taken
19 steps to raise our messages with the government
20 directly, and in an attempt specifically for the
21 government to reconsider its decision, and I will
22 list those.

23 The First Nations Summit wrote to Premier
24 Clark, Attorney General Penner and Minister Polak
25 on May 31st, 2001 (sic), a copy of which was sent

1 to the commission and which was included in part
2 of our submissions here. We indicated -- Premier
3 Clark wrote us back on June 2nd, just simply to
4 indicate that she had received the letter but she
5 had asked that the Attorney General provide us a
6 response specific to our concerns. We have not
7 received any reply from the Attorney General.

8 The First Nations Summit Chiefs and Assembly
9 have their quarterly meeting on June 9th. Premier
10 Clark attended and we raised the funding issue
11 again directly with her.

12 Following that, political representatives of
13 the Assembly of First Nations, the First Nations
14 Summit and the Union of BC Indian Chiefs had an
15 in-person meeting with Attorney General Penner
16 and, again, voiced our concerns and messages. We
17 were advised that funding was not available. And
18 then the Union of BC Indian Chiefs and Carrier
19 Sekani Tribal Council, along with a number of
20 other participants here, also wrote to Premier
21 Clark and held a press conference on this issue.

22 To date, the Working Group has not received
23 any positive response from the province that it
24 will reconsider its funding decision.

25 In closing, the Working Group points out that

1 the issue of violence against women, and in
2 particular, aboriginal women, is gaining the
3 attention it deserves at all levels. We would
4 like to note that the Collaboration to End
5 Violence: National Aboriginal Women's Forum that
6 took place this month, and the announcement of the
7 minister's Advisory Council on Aboriginal Women.
8 There is the upcoming Council of Federation
9 meeting in July that will focus on, among other
10 things, on how to protect aboriginal women from
11 violence; and the United Nations Permanent Forum
12 on Indigenous Peoples, which is expected to hold
13 an experts panel in early 2012 on four issues,
14 including murdered and missing aboriginal women.
15 The Working Group intends to contribute to those
16 processes to the extent that it is able to.

17 However, we view this inquiry as an important
18 piece of the picture and that it must proceed so
19 that we can learn from it and find ways to improve
20 relationships and to protect vulnerable people in
21 our society. Women continue to go missing or are
22 found murdered, and this issue did not end when
23 Robert Pickton was put into jail.

24 Inquiries such as this, and the Frank Paul
25 Inquiry, are invaluable opportunities if they're

1 carried out meaningfully, to identifying issues
2 and proposing solutions.

3 The Working Group is gravely concerned that,
4 notwithstanding the overdue attention and effort
5 on this issue, the province is refusing to support
6 the inquiry in a manner that ensures it is
7 meaningful.

8 There is a noticeable inconsistency between
9 the province's political commitments and its
10 actions on the ground, which is alarming and
11 raises questions about the province's sincerity in
12 relation to the inquiry specifically, and to its
13 commitments to take steps to address missing and
14 murdered aboriginal women generally. On the one
15 hand, Premier Clark has publicly stated that:

16 Way too many aboriginal women go missing in
17 this country and we clearly haven't done
18 enough about it [and] I think the other thing
19 we need to do is we need to identify the
20 common things that are broken in our system,
21 in our law enforcement system and our missing
22 persons system across the west, and see if we
23 can address them.

24 This is in a *Vancouver Sun* article on June
25 20th, 2001 (sic), which is included in our

1 submission. Yet, on the other hand, Premier Clark
2 has repeatedly stated the Province's refusal to
3 fund the participants in this important,
4 long-called-for inquiry which focuses on those
5 very matters.

6 The Working Group submits that it can assist
7 the commission in conducting a thorough, meaningful
8 and relevant inquiry by helping to round out the
9 indigenous voice on the issues at hand, including
10 the historical and contemporary socioeconomic
11 circumstances of, and systemic issues faced by the
12 aboriginal people and communities in the province,
13 by identifying potential witnesses, by helping to
14 ensure the study and hearing commission is
15 culturally sensitive and supportive of families,
16 and that appropriate policy changes are
17 identified and recommended.

18 With that, all of which is respectfully
19 submitted and I would like to hand the microphone
20 over to my colleague, Mr. Hugh Braker specifically
21 for --

22 MR. COMMISSIONER: Thank you.

23 MS. FOX: And I will leave a copy of the hard submission for
24 Mr. Vertlieb.

25 MR. COMMISSIONER: Thank you.

1 MR. BRAKER: Thank you, Mr. Commissioner. As you know, the
2 native court workers are self-represented up to
3 this point in the hearing. We are not in a
4 position to retain counsel.

5 I only want to touch on three points.
6 Firstly, we were not at the June 2nd meeting of
7 limited participants, and I can confirm that the
8 native court workers are in no position to
9 participate without funding. We would be forced
10 to withdraw.

11 We are facing a budget deficit this year,
12 like many of the elements of the judicial system
13 in BC, whether it be sheriffs or judges. There is
14 simply not enough money to go around. Not only
15 are we facing a budget deficit, but we are unable
16 to meet the needs of the native court workers. I
17 have outstanding letters from judges in British
18 Columbia asking me to please appoint a court
19 worker for their court and we are unable to do so
20 because we simply do not have the funding to do
21 so. This means that we cannot participate in this
22 inquiry any further without funding.

23 Now, this has, has an effect on the
24 commission, in my submission, because we have been
25 asked several times by the commission whether or

1 not we can identify witnesses, and we are not even
2 in a position to do that. We think we have
3 potential witnesses. There are court workers who
4 provided services to some of the missing or
5 murdered women. There are court workers who had
6 contact with the police at the relevant times.
7 You may want to know, for example, whether the
8 police asked them, the native court workers, how
9 they could find the missing women or contact them.
10 We have court workers at the relevant times who
11 had knowledge of police procedures and the
12 charging by Crown counsel. You may want to hear
13 from them. We know that there was a police/
14 aboriginal liaison committee with an office in the
15 Eastside of Vancouver at the relevant times that
16 Mr. Pickton was trolling the streets of East
17 Vancouver.

18 We haven't been able to do the research to
19 identify the names of those people, much less ask
20 them questions about whether or not they have
21 something meaningful to give to the commission.
22 We just don't have the staff to do the research in
23 our own office, to go through the historical
24 records to come up with those names. Our head
25 office staff is, at best, bare bones. So, we

1 think, despite the police and the commission for
2 the names of the witnesses, that we are just
3 unable to provide those. So, I confirm that we
4 are still in the same dire financial statements
5 that we were when we made our first submission to
6 you.

7 I want to very quickly touch on two other
8 points. One is the issue raised by Ms. Fox, but
9 just stated a bit differently. She stated to you
10 that you will not have the benefit of an
11 aboriginal perspective. You will have the benefit
12 of perspective of the police, the various levels
13 of government, Crown and the individual families.

14 Now, I have been asked why the aboriginal
15 perspective is different and why it's important.
16 It's important on the face of the names of the
17 missing women. A very disproportionate number of
18 them are --

19 THE COMMISSIONER: Well, I am well aware of the fact that a
20 disproportionate number of aboriginal women were
21 victims.

22 MR. BRAKER: Thank you.

23 MR. COMMISSIONER: I am also aware of the fact that the, of the
24 historical disadvantage of aboriginal women and
25 aboriginal people in the, in the justice system.

1 So I am well aware of that.

2 MR. BRAKER: Thank you. The only thing I wish to state in that
3 regard then is that the history of aboriginal
4 people finds its way into instructions to counsel.
5 Our instructions are different.

6 Mr. Worme and Ms., Ms. Fox raised with you
7 the issue of systemic racism. You may choose to
8 disregard the submissions. I only wish to point
9 out to you the decision of the Supreme Court of
10 Canada in *Gladue*, which I believe you are familiar
11 with. I don't have the cite, but I would direct
12 you to paragraphs 34 and 61 where the Supreme
13 Court of Canada says that there is a tragic
14 history of the treatment of aboriginal peoples in
15 Canada's criminal justice system; and at paragraph
16 61, that there is evidence of widespread racism --
17 or that the evidence of widespread racism is
18 translated perhaps into systemic discrimination.

19 Now, I don't expect that counsel for the
20 police and the various levels of government are
21 going to leap up in front of you and say, "Hey, we
22 should look at racism." I just don't think that
23 they're going to do that. And without the
24 aboriginal voice here before you at the hearings,
25 I say that you are going to be robbed of that

1 opportunity.

2 MR. COMMISSIONER: Well, I don't think anybody disputes your
3 contention that aboriginal voices need to be
4 heard.

5 MR. BRAKER: Thank you, Mr. Commissioner.

6 MR. COMMISSIONER: That is clear.

7 MR. BRAKER: Those are my additional comments. Thank you.

8 MR. VERTLIEB: I just wanted, out of respect to Mr. Grant, to
9 see if he had any comments he wished to make.
10 Anything at all, Mr. Grant, that you wish to say?
11 Mr. Grant is one of the members of the First
12 Nations Summit.

13 MR. COMMISSIONER: Yes.

14 MR. GRANT: Thank you, Mr. Commissioner. My named is Howard
15 Grant --

16 MR. COMMISSIONER: Yes, I know.

17 MR. GRANT: -- and I am from the Musqueam First Nation and the
18 executive director for the First Nations Summit.
19 And I come before you this afternoon just to
20 further provide a bit of background in regards to
21 our limited participation because I think it would
22 be very, very important for the participation of
23 the Working Group and its organizations to be
24 participatory and be somewhat funded in order to
25 achieve the full result of this inquiry in regards

1 to making positive change. And in order to do
2 that, one must understand the bureaucracy that one
3 exists within, and in order to address the
4 relevant questions in a manner that are understood
5 by the people who are being engaged in the
6 conversation, i.e. the victims and the victims'
7 families, because too oftentimes they're very
8 afraid to ask those simple, relevant questions, or
9 if they're asked to respond in a, in a, in a
10 manner that they don't understand, they will
11 become shy and less confident and then withhold a
12 rebuttal or a, or a follow-up comment.

13 And why do I say this? Having lived through
14 this legacy myself in regards to observing
15 friends, families and relatives, that we've gone
16 through a very, very dark period in our time, as
17 you are very well aware, Mr. Commissioner, and it
18 started with the *Indian Act* for us here in British
19 Columbia, the imposition of a patrilineal society
20 on matrilineal people. We lost our women. They
21 were forced out of our homes. Our daughters and
22 our granddaughters were put onto the streets of
23 Vancouver, Prince George and other various cities.
24 Now, not through their own doing in many cases.
25 They were left to fend for themselves. Residential

1 schools then followed up, as you are well aware,
2 along with the sixties scoop.

3 We raised those questions about where our
4 sisters and our mothers were, but they were left
5 unheard and we couldn't ask the more relevant
6 questions because bureaucracy had a system and
7 already developed statute, policies and
8 operational policies that guided the public
9 servant at the ground level.

10 And those questions to be asked by the common
11 person to make change becomes a huge challenge
12 because they could only give you the emotional
13 comment in regards to what happened to their
14 family member. But to ask them to, to assist you
15 in making recommendations for change, Mr.
16 Commissioner, is something that we, as the First
17 Nations organizations, can assist in doing that,
18 because statute and policies were created without
19 the input of the common people, of the aboriginal
20 people in particular, and those stages are
21 required to be considered as you are doing that.

22 So, those are my comments. Hopefully, I am
23 adding some impassioned pleas to say we do have
24 more to offer.

25 MR. COMMISSIONER: Yes, thank you, Mr. Grant. Thank you.

1 MR. VERTLIEB: Next, Mr. Commissioner, is Cleta Brown and then
2 Bev Jacobs wishes to speak after Cleta Brown.

3 MR. COMMISSIONER: All right.

4 MS. BROWN: Good morning, Mr. Commissioner. First of all, we
5 have a written submission which I have given to
6 counsel.

7 THE COMMISSIONER: Yes.

8 MS. BROWN: Thank you. And second of all, I would like to
9 concur with the quoted comments that were made by
10 Mr. Vertlieb and, of course, your own comments and
11 decision on the appropriateness of standing and
12 the necessity for funding and legal counsel. And
13 I would also like to concur with the comments of
14 Mr. Arvay regarding the adversarial nature of this
15 inquiry, the enormous disadvantage that the
16 unfunded organizations would, would endure in the
17 absence of counsel.

18 Next I would like to, very briefly, provide
19 you with some contextual background to our
20 position on funding and legal representation. I
21 am going to be editing on the fly as a result of
22 the comments you made opening, in your opening
23 remarks.

24 Our organization, the Women's Equality
25 Security Coalition, is composed of 11 women's

1 organizations, and we, our members are long-
2 standing advocates for the equality of all women
3 in the province and our membership reflects the
4 age, race, orientation, abilities and
5 socioeconomic diversity of the women of British
6 Columbia.

7 This inquiry is about violence against women
8 and it's about state responsibility to prevent
9 that violence and to respond to it. And in our
10 view, you need the advice and expertise of women's
11 organizations that have long experienced dealing
12 with violence against women, and experience and
13 knowledge about how to define and fulfill the
14 rights of women to quality and security, in order
15 for you to fully examine the systemic issues, the
16 social context and the complexities of the issues
17 before you.

18 And though it is not the main point of our
19 presentation today, I would like you to know for
20 the record that WESC disagrees with your decision
21 to grant limited standing to our coalition because
22 all women in the province are directly affected by
23 the issues before this inquiry.

24 Nonetheless, we sought standing, therefore,
25 because the issues before the commission are of

1 crucial importance to the women of British
2 Columbia, and the members of our coalition feel a
3 civic responsibility to ensure that this
4 commission has the capacity to do its work
5 thoroughly, fairly and with the benefit of a full
6 examination of the causes and consequences of
7 violence against women, and in particular,
8 violence against the most disadvantaged women.

9 It's our observation that there is still
10 embedded resistance within police forces and
11 justice systems to enforcing the law against
12 women's abusers, and this is true not just in
13 Canada, but around the world. And as a
14 consequence, women today do not yet enjoy the
15 protection of the law from the full range of
16 violence against them. Advances have been made
17 but they are uneven and there is still
18 inconsistent application of laws to prevent and
19 protect women from male violence.

20 The issues before the Missing Women
21 Commission of Inquiry can only be understood in
22 the context of the social, historical and legal
23 treatment of violence against women. This is not
24 a perspective which you can expect the police
25 organizations, the Criminal Justice Branch, the

1 Police Union or the families represented by Mr.
2 Ward, to bring forward and fully explore. Yet,
3 without it, the commission will not be able to see
4 clearly the background against which the
5 particular events occurred, or to fully understand
6 the events themselves.

7 So, you will understand, Commissioner Oppal,
8 that the Women's Equality and Security Coalition
9 is shocked by the Attorney General's refusal to
10 provide funding to all the groups to whom you
11 granted standing.

12 The government of British Columbia decided to
13 call this inquiry after many years of demands by
14 all of the groups and coalitions represented here
15 today. But having established the inquiry, the
16 Attorney General of British Columbia has now made
17 it very difficult, if not impossible, for the
18 inquiry to do its job.

19 We fully support funding for the families
20 represented by Mr. Ward, but Mr. Ward alone cannot
21 turn this inquiry into a fair, balanced and
22 informed process.

23 Without funding for participation in the
24 fact-finding hearing for the other 13 groups
25 granted standing that I (inaudible), this inquiry

1 will be grossly unfair and discriminatory. It
2 will be yet another insult added to the tragic
3 neglect and disrespect for the women who are dead.
4 It will not be a correction of that neglect and
5 nor a turning of a new page.

6 It is our position that the inquiry's
7 credibility, relevance and effectiveness will be
8 significantly impaired without the full and active
9 participation of the groups to whom you granted
10 standing. This commission is dependent, in our
11 view, on the 13 groups for information and
12 expertise that the other parties do not have and
13 that cannot be provided by commission staff.

14 WESC maintains that the decision of the
15 Attorney General not to fund the groups to whom
16 you have granted standing, Mr. Commissioner,
17 amounts to a de facto exclusion of women's
18 organizations, aboriginal women in those
19 organizations and Downtown Eastside service
20 organizations, from full and effective
21 participation in the inquiry, and we maintain that
22 this decision is discriminatory on the basis of
23 sex, race and aboriginal origin, and socio-
24 economic status.

25 Now, with respect to the representation by

1 legal counsel, in your decision, standing
2 decision, you wrote that because "the factual
3 findings will provide an important foundation for
4 the policy recommendations," WESC and other
5 coalitions should have a role in the fact-finding
6 process. It is clear from your decision that the
7 finding of facts and the development of policy
8 recommendations have to be integrated. Without a
9 full and balanced fact-finding process, the
10 inquiry is handicapped in developing appropriate
11 policy recommendations.

12 We submit that there can be no full and
13 balanced fact-finding process if only the police
14 organizations and the families represented by Mr.
15 Ward have legal counsel, and if women's
16 organizations are excluded from this process.

17 The Women's Equality and Security Coalition
18 can assist the commission in the following three
19 areas. The examination of the social context in
20 which the disappearances and murders occurred -- I
21 have more detail about that in the written
22 submission, so I won't speak to that at this time.
23 WESC has expert witnesses to propose on this
24 subject and can assist the commission in preparing
25 for their examination. Also, to ensure the

1 integration of fact finding and policy
2 development, WESC wishes to cross-examine
3 pertinent police and Criminal Justice Branch
4 officials regarding investigations and
5 prosecutorial decision making as set out in terms
6 of reference 4(a) and 4(b) in light of the
7 evidence on social context.

8 The second area we may assist on is with
9 respect to a human rights framework. It's our
10 position that the inquiry be conducted inside a
11 human rights framework which takes full account of
12 the obligations of the government of British
13 Columbia, all police and organizations, and
14 individual police officers, to protect, respect
15 and fulfill the human rights of women and girls.
16 Effective and non-discriminatory police action to
17 protect women and girls from violence is crucial
18 to women's enjoyment of their constitutional
19 rights to equality and security.

20 WESC plans to request the commission to
21 invite an expert witness to testify on the scope
22 of state responsibility for violence by non-state
23 actors and the implications of the due diligence
24 standard for government action in connection with
25 the murders and disappearances of women in the

1 province.

2 The due diligence standard you may know has
3 -- was first articulated in the 1993 United
4 Nations Declaration on the Elimination of Violence
5 against Women, and it has recently been, recently
6 been applied by international human rights courts
7 to cases dealing with the murders of women and
8 girls in circumstances similar to those under
9 scrutiny by the inquiry.

10 In addition to identifying an expert witness
11 and assisting the commission to prepare for
12 examination, WESC wishes to cross-examine
13 pertinent police witnesses and Criminal Justice
14 Branch officials regarding whether and how their
15 conduct of investigations and decisions regarding
16 prosecution as set out in the terms of reference
17 4(a) and 4(b) meet the standard of due diligence.

18 And thirdly, the last area I wish to raise
19 with you, the Commission Status Report Number 2
20 indicates that it has identified both lay and
21 expert witnesses on the issue of the relationship
22 between women and prostitution and the police and
23 the lives of women in prostitution in the Downtown
24 Eastside.

25 The Women's Equality and Security Coalition

1 has expertise on this subject. Based on personal
2 experience, service delivery and advocacy to women
3 in prostitution, study of laws in other countries
4 and expert analysis of the rights, implications
5 for women, the coalition has developed a
6 comprehensive analysis on the issue of
7 prostitution. We are fully aware that the inquiry
8 is not tasked with answering the question of
9 whether prostitution should or should not be
10 legalized. However, since the enforcement of
11 prostitution laws and the policing of women in
12 prostitution are subjects for the hearing, the
13 commission needs to be assured that there is a
14 diversity of views and analyses represented among
15 the parties and that the parties to whom the
16 commission granted standing are equally able to
17 propose witnesses and to cross-examine the
18 witnesses on this subject.

19 The commission has requested that we inform
20 you of any witnesses or experts that may have
21 relevant evidence to give by July 30th. WESC is
22 unable and unwilling to do this without the
23 assistance of legal counsel. There are issues of
24 disclosure and assurances of protection that we
25 wish to consult counsel about before providing

1 names for community witnesses.

2 In the collective membership of the
3 coalition, there are individual women who have
4 information that may assist the commission,
5 however, we notice that as things stand today, any
6 witnesses that we put forward will be subject to
7 cross-examination by counsel for the police,
8 Criminal Justice Branch, the RCMP and so on, but
9 the coalition will not have counsel to
10 cross-examine police witnesses.

11 Any witnesses put forward by the unfunded
12 groups are in a vulnerable position, since these
13 groups will not be able to participate in guiding
14 how the evidence of any witnesses they put forward
15 is brought out, interpreted or forwarded to the
16 development of policy, nor will be able to use
17 evidence from these witnesses to test the evidence
18 of police witnesses.

19 So -- oh, last, as well, we've had no
20 communication with the Attorney General's office
21 regarding funding. We learned of his decision
22 from the press release that has been referred to
23 earlier.

24 We are small organizations in terms of paid
25 staff and administrative support. Some of us are

1 one-woman offices or not at all, and we do not
2 have the financial or human resources, even
3 collectively, to retain counsel over such a period
4 of this inquiry, of the hearing part.

5 We are committed so far to assisting the
6 commission in the hearing process and
7 participating as effectively as we can, but we are
8 very clear that the inquiry, without providing
9 legal funding, will result in an unfair,
10 unbalanced and incomplete process in our view, and
11 it will also likely result in a lot of extra work
12 for the commission to accommodate the many
13 unrepresented participants. But we have standing
14 and we will take every opportunity that the status
15 will provide us.

16 Thank you very much, Mr. Commissioner.

17 MR. COMMISSIONER: Thank you, Ms. Brown.

18 MR. VERTLIEB: I understood Ms. Jacobs wanted to speak next.

19 MS. JACOBS: Good afternoon, Mr. Commissioner. Thank you for
20 the opportunity to present here today.

21 First, I, I also need to acknowledge the
22 Coast Salish territory as part of where I come
23 from. I am Mohawk from Six Nations and my name is
24 Gowehgyuseh. That means "she is visiting", and so
25 it's very appropriate that I acknowledge that,

1 that cultural protocol acknowledging that we are
2 all visitors here in this territory.

3 Also, I want to support all of the statements
4 that have been made before me, and specifically
5 the joint statement that was made by my
6 colleagues, Stacey Edzerza Fox and Mr. Grant, and
7 also Donald Worme and Hugh Braker. And this is
8 also, I am here as a lawyer representing my
9 client, Union of BC Indian Chiefs, but this is
10 also a very emotional issue.

11 I have been working with families, as you
12 know, for the last 10 years, starting with a
13 report that went to the United Nations, a special
14 report on the rights of indigenous women, or
15 indigenous peoples, and looked at the impacts of
16 colonization on aboriginal women specifically,
17 many issues that are impacting, and how aboriginal
18 women have taken the brunt of the impacts of
19 colonization and the systemic barriers that have
20 existed for aboriginal women for many years.

21 And, and also the fact that this is a very
22 spiritual issue, because we are talking about the
23 spirits of these women who are missing or who are
24 murdered. And, you know, although we're in this
25 process of, of an inquiry and a very, very

1 specific legal, quasi-legal process, part of this
2 process is acknowledging that spiritual aspect and
3 why we're here, to address these issues and so
4 that it doesn't happen anymore. And part of that
5 spiritual aspect of this as well is the first
6 ceremony that was done to acknowledge your
7 leadership as commissioner in this process by the
8 Coast Salish peoples in this territory, and so,
9 just to honor that responsibility in the spirits
10 of those women.

11 And we all come here to help. Part of this
12 process is that we are all here to address this
13 issue. This, this issue is not an issue about
14 money for lawyers. This is an issue about the
15 missing women and also about the families who are
16 now survivors and survivors of a really emotional
17 and spiritual issue. And when we talk about
18 families and the impacts of colonization on
19 indigenous families, it has a very specific impact
20 and layers.

21 And so part of that process is, is looking at
22 how families have been impacted, and in looking at
23 the children of these women, there is 77 children
24 of these women just in British Columbia, and
25 nationally there is 144 children's voices that

1 also need to be heard in this inquiry, and part of
2 that process right now is that that's not there.

3 And I know that part of this process and, and
4 the joint submission that was made by, by my
5 colleague, made some very specific comments from
6 paragraph 23 to 25 of our submissions, and that
7 was looking at the resources for families, and
8 that that is one of our primary concerns and it
9 was highlighted that all families have an
10 opportunity to participate. And so we have a
11 unique opportunity to be able to represent and
12 ensure that resources are provided to those
13 families. So, I just, I just wanted to put that
14 into perspective and the fact that we need that
15 kind of representation and right now it is not
16 there.

17 I would also like the opportunity to have my
18 client, Grand Chief Stewart Phillip, also speak,
19 if that's okay.

20 MR. COMMISSIONER: Thank you.

21 MS. JACOBS: Thank you.

22 MR. COMMISSIONER: Thank you, Grand Chief.

23 GRAND CHIEF PHILLIP: Wayhust Skelhelt Ipi-Si Nuxsil

24 N-chai-esquis Asiwet. I, too, would like to
25 acknowledge the ancestral lands of the Coast

1 Salish people, namely the Musqueam, Squamish and
2 Tsleil-Waututh.

3 Also, I would like to thank all of the
4 indigenous counsel and presenters for their very
5 articulate presentation of the issues and concerns
6 we have. I would like to also thank the other
7 presenters for articulating the widespread
8 concerns that are held in regard to the decision
9 on the part of the Province of British Columbia,
10 which I find very cold, callous and highly
11 discriminatory towards those most vulnerable,
12 impoverished women and aboriginal women.

13 I don't really have a lot to add to all of
14 the points that were raised, but I would like to,
15 to follow Bev's lead. In my life, I have been
16 blessed with six children, two of which are adult
17 children now, two of which are girls. They're,
18 they both graduated from UBC and U of Vic.
19 They're both teachers, they have children and
20 they're well-established. I have also been
21 blessed with nine grandchildren, four of which are
22 girls.

23 And when one reflects on the recent report by
24 the Auditor General, Sheila Fraser, the point
25 being that the poverty in aboriginal communities

1 is deepening, it's intensifying. And I recently
2 was at the Vancouver Indian Centre a week ago and
3 I heard a report on the urban aboriginal study by
4 Ginger Gosnell-Myers that indicates the influx of
5 aboriginal people to the large urban centres is,
6 is escalating.

7 So, this issue is not about an incident like
8 an airline disaster or a tasing incident. It's
9 about an ongoing tragedy of missing and murdered
10 women that have gone missing in the past, and that
11 continue to go missing and may very well continue
12 to go missing in the future if there isn't a
13 fundamental and, and systemic shift in the way we
14 approach these issues, and that's what this
15 inquiry is about. It has to be done properly.
16 There was a lot of effort that went into getting
17 us to this point and we cannot allow all of that
18 hard work, that dedication, that commitment to be
19 simply swept aside by a decision of political
20 expedience on the part of the government of
21 British Columbia. This is about justice, not
22 about budget manipulation.

23 So, I thank you for the time.

24 MR. COMMISSIONER: And I appreciate you appearing, Grand Chief.

25 I note it's now 20 to 1:00.

1 MR. VERTLIEB: I'm sorry. Well, we can break anytime that is
2 convenient. We're making --

3 MR. COMMISSIONER: How many --

4 MR. VERTLIEB: -- good progress.

5 THE COMMISSIONER: -- have left?

6 MR. VERTLIEB: We have Mr. Eby. We have a few others. Mr.
7 Gratl will not be able to present, so he has
8 someone who is going to present for him. But I
9 think if we perhaps take an hour for lunch and no
10 more. But we are making good progress through
11 the, through the presentations.

12 MR. COMMISSIONER: All right. Thank you. Thank you.

13 **(PROCEEDINGS ADJOURNED AT 12:42 P.M.)**

14 **(PROCEEDINGS RESUMED AT 2:00 P.M.)**

15 THE REGISTRAR: Order.

16 MR. VERTLIEB: So, Mr. Commissioner, we have next Doug King and
17 Kasari Govender from West Coast LEAF. Ann
18 Livingston will speak for Mr. Gratl's group, and
19 lastly, on the non-funded limited participants
20 will be Don Larson and Kelly White, and I think
21 it's Kelly White.

22 THE COMMISSIONER: Thank you.

23 MR. VERTLIEB: So, perhaps Doug King please.

24 MR. KING: Good afternoon, commissioner. We do have written
25 submissions prepared. With your permission, I

1 would like to approach with a copy.

2 Yes, commissioner, I'm appearing today on
3 behalf of the coalition that's comprised of Pivot
4 Legal Society, BC Civil Liberties Association and
5 Amnesty International.

6 To start with, it should be noted that
7 Amnesty International has a policy that we don't
8 actually accept funding from any government
9 institution. So, the submissions made today are
10 mostly with respect to the latter points, our
11 interests and how funding affects the BC Civil
12 Liberties and BC Pivot Legal Society.

13 Obviously, most of our submissions are
14 contained in the written documents that I have
15 passed up to you, so I will be very brief.

16 To summarize, essentially what they're
17 saying, we -- our position is that the interests
18 of our coalition are essentially the same as the
19 interests of marginalized people. All of our
20 groups have been created to represent those people
21 inside the legal system. So, when we do analysis
22 of how our interests have been affected, what we
23 really look at is how the interests of
24 marginalized people have been affected.

25 For the most part, the decision of the

1 Attorney General to limit funding in this case,
2 there seems to be a difference between what we
3 believe is the impact of that on our interests.
4 It is our opinion that the impact is essentially
5 pretty much fatal to the interests of our
6 organization and the interests of marginalized
7 people. And as far as participation goes, while
8 the Attorney General seems to be of the opinion
9 that the impact is, is minor and can be overcome.

10 Probably the most important point I think
11 that we want to make today is, is our opinion that
12 this inquiry is a bit different because it is so
13 focused and because it contains marginalized
14 people so much. From our experience, as
15 organizations working with marginalized people,
16 there is a certain degree of trust that needs to
17 be earned, and, and the work needs to be done so
18 that there is meaningful representation for them,
19 and overlooking the impact that funding has on
20 that, I think can really be fatal, and especially
21 when you talk about the issue of how this inquiry
22 will be looked at by the public perception and
23 whether or not the public will receive it as a
24 substantive inquiry that was really effective.

25 From our experience, especially whenever

1 there is issues involving the police and whenever
2 there is issues involving accountability of the
3 police, the public is usually very critical. And
4 I think in this case, if there's a perception that
5 government forces and police forces are given a
6 higher level of funding or a higher level of
7 protection at this proceeding, it could have a
8 severe impact on how the general public views the
9 impartiality, and that goes obviously to how
10 ultimately the commission is effective.

11 With, with regards to the last issue, which
12 is the communications that we received from the
13 Attorney General, I do want to point out that we,
14 we did have conversations with Jim Deitch from the
15 Attorney General's office. Most of that
16 conversation was actually focused on what funding
17 would look like if funding were granted. In fact,
18 there was no actual discussion of whether or not
19 funding would be restricted to any of the groups.

20 And I think from our perspective, you know,
21 we took the time to communicate with the Attorney
22 General our thoughts on how funding should be
23 allocated and what it should look like, and at no
24 time were we given any indication from the
25 Attorney General's office that it would be limited

1 in any way. And if, if we were given that
2 indication, I think we would have been able to
3 communicate it very differently for them what that
4 impact would have been. And it's unfortunate that
5 we now have to engage in a hearing of what that
6 impact was, when we never had the opportunity to
7 communicate that to them directly.

8 And I think, given the wealth of, of
9 knowledge and experience in this room of all the
10 participants, it's a missed opportunity, because
11 if the Attorney General had asked us what we
12 thought that impact would be, we would have made
13 clear to them from the beginning that it's, that
14 it's very fatal to their participation.

15 And practically speaking, how that affects
16 our groups' participation, it is essentially we've
17 also been of the mind that if marginalized people
18 and the groups that are representing them aren't
19 given fair and full standing at this inquiry,
20 there is no real reason for us to participate.
21 So, at this point, unless there are changes that,
22 I think that are made to funding, unless we feel
23 that there is substantive and equal protection and
24 participation for all parties, then we won't be
25 looking to participate.

1 I will say that we do have a direct response
2 to some of the issues that's been raised by the
3 Attorney General and we hope to raise those in
4 reply. Thank you.

5 MR. COMMISSIONER: Thank you, Mr. King.

6 MS. GOVENDER: Good afternoon, Mr. Commissioner. I am here for
7 West Coast LEAF and Ending Violence Association of
8 BC, which, as you know, were granted standing as a
9 coalition --

10 MR. COMMISSIONER: Yes.

11 MS. GOVENDER: -- and limited standing as a coalition and
12 denied funding.

13 West Coast LEAF and EVA sought leave to
14 participate in this proceeding in order to ask
15 questions and to make arguments that aim to bring
16 before the commission a substantive equality
17 analysis of the issues raised by the missing women
18 investigations, as well as a province-wide
19 perspective on violence against women, but it's
20 not just on those substantive fronts that the two
21 organizations bring expertise. Both organizations
22 have extensive expertise in making these types of
23 arguments before judicial decision makers and
24 before public inquiries, and I think it's an
25 important part of the context when asked what the

1 impact of lack of funding will be.

2 Just turning first to the issue of what
3 contact we had with the Attorney General's office.
4 The acting executive director of West Coast LEAF
5 did play phone tag for a while with James
6 Deitch -- I think is the pronunciation -- but did
7 not actually speak to the Attorney General's
8 office prior to a decision of funding being made,
9 and the reasons that were provided after the
10 decision was made are the same as have already
11 been discussed here: fiscal restraints on behalf
12 of government, the organizations are better suited
13 to find counsel than are the families, or to fund
14 counsel rather, and that any participant without
15 counsel could participate in the study commission
16 of the hearing -- the study portion of the
17 Commission rather.

18 But what I want to say today is that a lack
19 of funding for counsel is a denial of meaningful
20 access to justice for this coalition as well as it
21 is for many of the other participants in this room
22 for three reasons. Firstly, that, that this
23 process is far too resource intensive for pro bono
24 counsel as has been suggested as one of the, the
25 solutions to this problem. According to your own

1 second status report, the estimates of the number
2 of documents exceeds a million pages, hearing
3 dates have not been estimated, but we know that
4 they will be many and transcripts will be
5 voluminous. It is unrealistic to expect that pro
6 bono counsel will be able to dedicate the
7 significant resources required to conduct a
8 document review, participate in a hearing or
9 review transcripts and to prepare submissions
10 based on that evidence.

11 Now, I am aware that this coalition obviously
12 has been granted limited standing to participate,
13 and that that means that we don't have the right
14 to cross-examine anybody. But in order to engage
15 with the evidence at all, or to make meaningful
16 contributions to your recommendations at the end
17 of the day, we would have to be able to engage
18 with the evidence, and we simply do not have the
19 resources to do that without funding.

20 As I have mentioned already, West Coast LEAF
21 has significant experience intervening in cases on
22 public interest issues, and we do rely quite
23 heavily on pro bono counsel in that process. But
24 as attested to in the affidavit of Alison Brewin,
25 which was submitted in the last application, we --

1 it's unrealistic, in our experience, to expect
2 that we would be able to get access to pro bono
3 counsel for this type of a commitment.

4 It has been suggested in correspondence that,
5 prior to this hearing, that this concern could
6 potentially be alleviated through a process of
7 commission counsel whittling down the number of
8 documents that are actually relevant. And I want
9 to say that that our concern cannot be alleviated
10 by this suggestion. In fact, the entire purpose
11 of having the array of participants that you have
12 before you today is to access their expertise and
13 the perspectives that are not already present
14 within or before the commission.

15 The determination of the relevance of
16 documents, as you know, is an essential part of
17 the process of determining the facts before you
18 of past events and past motivations.

19 The expertise on gender and race-based
20 analysis of the coalition members, EVA and West
21 Coast LEAF, must be brought to bear on the
22 determination of the relevance of the documents if
23 the purpose of this coalition's participation is
24 to be realized. In particular, it's the expertise
25 of West Coast LEAF and Ending Violence

1 Association, our expertise of women's equality and
2 security issues, that makes the participation of
3 this coalition particularly important to the
4 Commission.

5 It is submission of this coalition that the
6 commission's job will be to uncover the --
7 uncover the gender and systemic reasons for police
8 failures in regard to the missing and murdered
9 women. It must fall to counsel for the coalition
10 to ensure that the documentation necessary to show
11 this pattern is before the Commission. Bypassing
12 this selection process defeats the entire purpose
13 of having the coalition before you.

14 The second reason that this denial of funding
15 is a substantive denial of access to justice, is
16 that we can't afford to pay for our own counsel.
17 And I think there is, there is some
18 misunderstanding, with respect, that, that it's
19 inherent in the Attorney General's reasons for
20 denying funding. They say that the organizations
21 are in a better position to fund counsel, and
22 there is -- that shows a fundamental
23 misunderstanding of the reality of these
24 organizations and their budgets. It is before you
25 in the affidavits of both executive directors of

1 the organizations that almost entirely the funds
2 that come through these organizations are directly
3 tied to program goals, and there is very little
4 discretionary budget available to hire counsel.

5 The third reason that a denial of funding is
6 a denial of access to justice is that for this
7 coalition, self -- and for many others, self-
8 representing is not free. So, one of the
9 possibilities that is suggested as a way to
10 overcome the problems of funding is for
11 organizations to be here on their own. All of
12 these organizations pay for their staff time, and
13 so for staff to be here to represent, even if
14 that's, those staff are not counsel, is not a free
15 endeavor.

16 I would like to, to just speak briefly to a
17 point that was raised by Mr. Arvay earlier in the
18 day. We fully support the fact that the families
19 are funded, but it has been offered to us as
20 almost an alternative to the organizations being
21 funded. This reason fails to account for the type
22 of systemic and gender inequality that has given
23 rise to these complete failures. The funding for
24 families is extremely important, but as Mr. Arvay
25 has already pointed out, this commission is not

1 just about past events. It's also about future
2 safety. And I would like to add something to
3 that.

4 This commission is not only about past events
5 that happened to individual people, but it's about
6 a system that failed, and a system that will
7 continue to fail until systemic solutions are
8 proposed. And so the families themselves are in a
9 position, in a very good position, to talk about
10 the failures that affected their family members,
11 but you need the other members, the other people
12 here, the other organizations here, to talk to the
13 other aspects of the, of what the commission's
14 task is on systemic inequality.

15 Just then to answer your question, in sum,
16 about what the impact of this lack of funding is
17 on this coalition, it means that we will not be
18 able to apply to cross-examine witnesses. We will
19 not be able to review document disclosure. We
20 will not be able to review transcripts or
21 participate in any substantive way in the hearing
22 process. In fact, we haven't, so far, been able
23 to participate in this hearing in any substantive
24 way due to a lack of resources. Our entire
25 resources that have gone towards this process, has

1 been dealing with the lack of funding and lack of
2 extensive standing issues.

3 So, subject to any questions you may have,
4 those are my submissions.

5 THE COURT: Thank you, Ms. Govender.

6 MS. GOVENDER: Thank you.

7 MR. VERTLIEB: Ann Livingstone please.

8 MS. LIVINGSTON: I believe Jason Gratl, our lawyer for VANDU,
9 Frank Paul Society and Walk4Justice, has submitted
10 a written submission and so I just wanted to make
11 a few comments.

12 The inquiry is dealing with complex legal
13 issues and the people at VANDU feel that it's
14 unfair not to fund legal support for VANDU and the
15 Frank Paul Society and Walk4Justice. VANDU,
16 formed in 1998, and is a democratic member-run
17 organization with over 2,000 members. It's a
18 group of drug users and former drug users who work
19 to improve the lives to people who use drugs.

20 We have three part-time staff. We do not
21 have the funds for counsel, especially, and this
22 is a factually and legally complex process and we
23 are ill-equipped to deal with it without legal
24 counsel.

25 Many of the members of VANDU have valuable

1 information about the missing women. Many of the
2 missing women are users of the illegal drugs, and
3 11 we think were members of VANDU. The
4 criminalization of people who use drugs continues
5 to make women who use drugs vulnerable to be
6 missing or getting murdered.

7 This criminalization also marginalizes the
8 witnesses who need to be heard by this inquiry.
9 It's important that inquiry witnesses, who are
10 criminalized and that they have legal counsel and
11 we can assure them that they have legal counsel if
12 they come and be a witness.

13 VANDU members are stopped and searched daily,
14 sometimes multiple times a day, in the Downtown
15 Eastside by police who have a large deployment in
16 the Downtown Eastside. They are also frequently
17 held in pre-trial prisons awaiting trial, they're
18 often homeless and can be difficult to find as
19 witnesses, which is another way of I'm saying we
20 need support. With legal counsel, it will help a
21 great deal to have that.

22 We have waited over 10 years for this
23 inquiry. We want the findings of the inquiry to
24 lay out remedies for what continues to be a
25 dangerous situation for criminalized people in

1 Vancouver. Thank you.

2 MR. COMMISSIONER: Thank you.

3 MR. VERTLIEB: Ms. Livingstone is the former executive director
4 of VANDU.

5 MR. COMMISSIONER: All right, thank you.

6 MR. VERTLIEB: Next is Kelly White who, along with Don Larson,
7 represent CRAB. Just as a reminder, this
8 organization did not ask for funding.

9 MR. COMMISSIONER: Yes.

10 MR. VERTLIEB: But Ms. White wishes to say a few things to you.

11 MR. COMMISSIONER: All right. Yes.

12 MS. WHITE: Thank you. (Halkomelem language spoken)

13 In the spirit of the highest honour,
14 commissioner, we thank you for the privilege of
15 the time today to meet with all of the people with
16 their crucial concerns. We are thankful for the
17 staff of the commission, all of those that are
18 involved in requesting the legal justice system go
19 forward in the highest honourable manner for our
20 missing and murdered women. An acknowledgement of
21 our grandparents' territory, who have spoken the
22 language of our, of our people, Halkomelem, at the
23 start, it was expressing the highest of the honor
24 for the spirit that brought each that were here to
25 make, privileged to make our steps forward in a

1 concrete and a family manner as we're
2 international family.

3 And also in our language, I stated that in
4 our disciplines, the woman is held in the highest
5 esteem. The great-grandmothers have the -- are
6 the boss of the family and the men, we hire them
7 to speak.

8 As in the beginning of the public inquiry,
9 commissioner and staff and my friends, we put a
10 blanket around the inquiry to protect those that
11 were murdered at the Pickton farm, and the spirit
12 of those that were -- are here, present, to help
13 to represent and try to create a better semblance
14 of justice because of the abortion of justice that
15 happened to our beloved women that were murdered
16 at that farm.

17 The interpret, my friend, Commissioner Oppal,
18 is that, that the blanketing and the medicines
19 that were given, we gave the sage and the cedar
20 in, in the esteem of all of those that were at
21 opening for the public inquiry and had those
22 brushed off with cedar, so that all the negative
23 that we carry when we scrape our women's body
24 parts off the concrete.

25 Our group is co-founder of the missing --

1 Memorial Women's March since 1989. I went alone
2 with my drum at Main and Hastings and several
3 groups came out, by 1990, with us to help us to
4 scrape my cousin, Cheryl Joe, off the ground and
5 her body parts at the pre-trial centre. And
6 because of what happened with us in all those
7 years, we continually go downtown and help them to
8 prepare their funerals and memorials. A lot are
9 at impasse.

10 Since 1990, we helped hundreds of our
11 families with the missing and murdered. Even
12 during the commission, a family was called over
13 for a murder of one of my nieces in Duncan, and
14 another one that was kidnapped, and they came to
15 our emergency hospital room in Victoria.

16 So, there is no rest, my friend. When we get
17 called, they're not all native women that were,
18 that were murdered at that farm. They're other
19 nationalities, and I feel it's important to
20 express appreciation and the highest of the
21 honours for those that come out in the community
22 to help to support and make our place a better
23 place to live in the future, that we put the
24 missing and the murdered behind us, that we move
25 forward, and that would be part of the past and

1 not part of our future, to work together.

2 Part of that blanketing to cover the families
3 and protect their spirits and the spirit of the
4 families going through their hardship, even at
5 this time, is that those women that brought the
6 medicines with that blanket, the red roses that we
7 put down where they're murdered every year in the
8 same, in front of the same hotels, we put the
9 yellow roses down, sometimes 17 at First United
10 Church, where they go missing for over 10 years,
11 the same spots we put those cedar and, and our
12 medicines down, and it's the same places. How
13 could the police not see that?

14 We made a partnership with the Vancouver
15 Police Department, the Memorial March Group, as a
16 result of another one that was getting called
17 suicide. And now what does that do? Vancouver
18 police have a say here and we don't as the
19 Memorial March Committee.

20 I am here for CRAB, Create a Real Available
21 Beach Water For Life Society, and our group has
22 been to United Nations since 1988 telling of the
23 economic and social development apartheid in our
24 homeland where we have to accept 10 million of our
25 people didn't return from the residential schools.

1 They're still missing.

2 But we have four months, my good friend. At
3 this point, we have four months to look through
4 those millions of documents and pages, and our
5 group was asserted that we would be able to have a
6 right to look at those documents, but we need to
7 know what we are looking for. So, at this point,
8 all the lawyers in this room couldn't look through
9 those files by four months, even if we started
10 today.

11 In support of the, of the honour, healing our
12 nations of united resistance to missing and
13 murdered women, I am thankful, commissioner, that,
14 that, that the groups that, that are present,
15 divided as we are with and without funding, it's
16 not the money. All our nations here, the woman is
17 sacred.

18 And while I mention the woman, I celebrate
19 the newborn. We have a newborn part of this
20 process and we want those newborns to have a
21 better life, that we put this all behind us.

22 We find it sacred that abortion of justice
23 that these murdered women went through and their
24 families are still going through. We find it
25 honourable that the staff work hard day and night

1 to create a healing process for the abortion of
2 justice of our women that were murdered downtown.
3 And it's everywhere.

4 And I thank the commissioner for announcing
5 over and over, that since the end of January, at
6 the beginning of the inquiry, that, yes, this is
7 systematic injustice (sic), and for our people,
8 but it's not a man's world, my good friend. It's
9 -- we must have learned from our own nations the
10 highest esteem for the woman in our families,
11 where we all come from. Now, we're all different
12 nationalities and we're one family here, my good
13 friend. We're one heart, we're one mind, we're
14 one spirit and that's not going to go away.

15 And, and, and I appeal to all of those that
16 our participation, we have four months to proceed
17 and, and I'm here for the whole process. I don't
18 understand the whole process. I have never done a
19 public inquiry myself. I think it's kind of
20 backwards to the way of our own governance, and
21 the understanding that I have of Canadian justice
22 system. Even though that's my understanding, I
23 have faith that the people in this room are going
24 to make a big dent in the apartheid of the missing
25 and the murdered and the destitute women that are

1 placed in the predicament that they are in the
2 families.

3 My good friend, I think that all the
4 families, this would be an inquiry if all the
5 families are represented. And I support the
6 commissioner at the beginning, that he wanted to
7 help all the families, and I think that if we
8 proceed any further without all of the families
9 represented, this would be another abortion of
10 justice.

11 And I support you, my good friend,
12 commissioner and the staff, that we rid ourselves
13 of the abuse of the women downtown and, with that,
14 I pledge at the end of the closing ceremonies for
15 public inquiry, that, as in the beginning, those
16 women that came up and gave those medicines to
17 commissioner, to be in charge of them, holding all
18 these people here that are participating, and the
19 families most importantly, that during this
20 process, that we do good and honorable and without
21 want and without need, that we go forward to
22 profess to be able to challenge the apartheid
23 against our peoples, women's.

24 So, with that, my good friend, I come to say
25 that I support all the people that are here, if

1 it's necessary for them to have a lawyer to go and
2 look at those files. The Vancouver Police
3 Department said files were withheld by certain
4 other police organization, and I think we should
5 go forward as best as we can and, and, and work
6 together. If we had all of these lawyers in this
7 room start tomorrow to look at all the files that
8 are required to look at so we could start on
9 October 11th, the crime day that Christopher
10 Columbus allegedly discovered us, discovered,
11 created, discovered us.

12 As in now, we go forward, and my final
13 request to the commission is to understand that
14 those women that gave medicines at the opening
15 ceremonies, at the closing ceremonies, those
16 people come back, they're witnesses and they state
17 what they saw in the public inquiry, and, and they
18 speak, speak that at the closing ceremonies.

19 With that, I celebrate the cleansing of the
20 umbilical cord for safety and a more honourable
21 place in our international home, Vancouver, in our
22 unceded territories of our Salish nation. With
23 that, in the highest of the honors, if I could do
24 anything to make it better, I would ask the Gods
25 to provide that to commissioner, and the ability

1 of the legal and expertise at the tables and the
2 expertise that represent the families. And it's
3 in the spirit of -- I wouldn't want any one of
4 you's to take my place and keep scraping those
5 women's body parts off the ground since 1990. It
6 doesn't leave you. You smell death. You taste
7 it. And I feel badly for those police and
8 investigators that were over there. Now, it
9 appears to be a police state and it's not supposed
10 to be a police state. We are supposed to all have
11 the honor of creating justice together.

12 With that, (Halkomelem spoken) I am Morning
13 Eagle of the White Owl Clan, (Halkomelem spoken)
14 the People of the River. We are in the house of
15 my grandparents here. My grandparents are from
16 Musqueam, Hawaii and Haida Gwaii.

17 So, we look on commissioner and the staff and
18 my good friends here, that we move forward with
19 great strength and without the shadow of a doubt.
20 The world communities, I, in heart and spirit, is
21 looking at Vancouver. We don't want to be the
22 international city of disgrace where it's rampant,
23 where women can be murdered and missing. We are
24 going to change that, and I have full,
25 unconditional faith and love that the expertise in

1 this room is going to make that change.

2 In the highest of your honour, thank you for
3 your time, in the spirit of those that were
4 murdered. If the commissioner or government could
5 make a commitment, it would be that all of those
6 families be here, or represented.

7 I, just in closing, want to say that how many
8 millions are spent on a fish? We are talking
9 about murdered and missing women. How many
10 millions were spent on, on the Frank Paul Inquiry?
11 How many millions were spent on Fred Quilt case?
12 It seems the same for aboriginal people, that the
13 apartheid just continues.

14 In closing, I am here to say the bad boys'
15 club is over and we are going to change it to the
16 highest esteem of women in our family, of our
17 international city. Thank you, in the highest of
18 the honors, in the way of our people. We give and
19 we give and we don't ask. So, we didn't ask for
20 money. It's not the money, my good friend. I
21 don't want you or him or her to go find their
22 bodies of their little ones on the street like
23 we've been doing since 1990. I don't want nobody
24 to do that anymore. (Halkomelem language spoken).

25 With your expertise, I thank you in our

1 language for being in the honourable presence of
2 the ones that will change that apartheid and turn
3 it around, our place to be a better place, safety
4 in the highest esteem. Thank you for your honor
5 and all those that are present, and on that
6 talking stick over there, that we think of the
7 families and help them with repatriation and
8 memorial and put them away. We don't want to be
9 ghouls either, continue with the inquiry without
10 those beloved ones that we are talking about here.
11 They need to be buried. They need to have
12 memorials, the respectful thing. If there is
13 anything that somebody has in this whole room
14 would be respect of the spirit and the mind and
15 this tool between the, the brain and the heart so
16 that we could use that with unconditional love for
17 our next seven generations. We fought hard for
18 our last seven generations, my good friend. And I
19 want to thank you for being there with our
20 families and the staff and our good friends.

21 (Halkomelem language spoken).

22 MR. COMMISSIONER: Thank you. Thank you for coming.

23 MR. VERTLIEB: Next we have Sean Hern from the Vancouver Police
24 Department. Mr. Dave Crossin wants to speak
25 briefly after.

1 THE COMMISSIONER: All right.

2 MR. VERTLIEB: And then Cameron Ward and then finally Mr. Craig
3 Jones --

4 MR. COMMISSIONER: All right.

5 MR. VERTLIEB: -- of the AG.

6 MR. COMMISSIONER: Yes, Mr. Hern.

7 MR. HERN: Thank you, Mr. Commissioner. Just very briefly. As
8 I had indicated in my communication on June 21, on
9 behalf of the Department and the Board, the
10 Department doesn't take a particular position on
11 funding. That's for the Attorney General. But we
12 have said that there is no doubt that the inquiry
13 would benefit if the participants were represented
14 by counsel.

15 The VPD were among those who called for this
16 inquiry to occur, and while the VPD, as you know,
17 has been self-critical of the conduct of the
18 missing women investigation, criticism which is
19 reflected in the LePard Report in, in some detail,
20 the VPD recognizes that the LePard Report is not
21 the final word on the matter and that it's
22 extremely important to hear from the broader
23 constituent community, and that's a very important
24 part of policing itself, is to understand the
25 constituent communities in the police

1 jurisdiction.

2 So, the Vancouver Police Department and Board
3 recognizes that we need to hear from the people
4 affected by the investigation, from the families
5 of the Downtown Eastside and other community
6 groups from the First Nations peoples. They have
7 questions and concerns and complaints that need
8 answering. They have expertise and essential
9 context to provide, and they have suggestions and
10 recommendations that need to be considered. And
11 normally those perspectives within an inquiry
12 would be communicated and brought forward by
13 counsel, but if, at the end of the day, if, at the
14 end of the day, the participants are not funded
15 and this Commission and the participants who are
16 remaining, will need to think very hard about how
17 to structure this inquiry so that it is conducted
18 in a way that doesn't alienate the very people who
19 are here to get answers.

20 Thank you, Mr. Commissioner.

21 MR. COMMISSIONER: All right. Thank you, Mr. Hern. Mr.
22 Crossin.

23 MR. CROSSIN: Thank you for just giving me a moment, Mr.
24 Commissioner. I represent the Vancouver Police
25 Union, and as such, the broad issues that may

1 impact on the union, but more particularly I
2 represent the interests of the individual members
3 where that individual representation has or will
4 become necessary or appropriate.

5 To the degree that my remarks are helpful or
6 relevant concerning the issue that faces you
7 today, I adopt the statement of Mr. Hern, but I do
8 want to say this to you. It's difficult, more
9 difficult than I thought before I came here today
10 and listened to these submissions, to resolve this
11 issue. It's a vexing problem. I don't know
12 whether it will resolve to one of the three
13 propositions that Mr. Arvay put forward or a
14 proposition that my friend, Mr. Jones, is going to
15 put before you or some combination of that.

16 But a resolution may require, it may, an
17 extraordinary effort, more than we've seen in any
18 other inquiries -- and I have been involved in
19 many, as have you -- an extraordinary effort
20 between all participants to ensure that all
21 evidence is put before you and all issues are
22 explored. And to the extent that that
23 extraordinary collaborative effort may be
24 required, I want to tell you publicly that my
25 client and the members of the Vancouver Police

1 Union stand ready to assist to whatever degree you
2 ask, to ensure that happens.

3 MR. COMMISSIONER: All right. Thank you, Mr. Crossin.

4 Yes, Mr. Ward.

5 MR. WARD: Yes, Mr. Commissioner. As I mentioned this morning,
6 my colleague, Mr. Chantler, and I are counsel for
7 a group of at least 10 of the families of Mr.
8 Pickton's, the victims or alleged victims. Our
9 clients are appreciative of the provincial
10 government's commitment to provide some limited
11 funding assistance to them so that they can be
12 represented by counsel here in these proceedings.

13 We perceive that our clients' interests would
14 be advanced if the other participants with
15 standing were also to be represented by counsel.
16 Therefore, we support your rulings on this issue,
17 as well as the submissions that your counsel, Mr.
18 Vertlieb, made this morning.

19 My friend, Mr. Arvay, made some compelling
20 submissions to you, in the course of which he made
21 the remark, and I quote, that "Mr. Ward can't do
22 it all." We lawyers sometimes think we can do it
23 all but, of course, Mr. Arvay is right. I can't
24 pretend to represent the interests of all of these
25 very diverse groups that you have granted standing

1 to. All I can attempt to do, with the resources
2 that have been made available to me, is to do my
3 very best to represent the interests of these
4 families and any others who seek legal
5 representation from our team, to the best of our
6 ability, to ensure that their voices are heard,
7 and that their questions are answered.

8 We can't be expected to represent all those
9 other interest groups that you have heard from
10 today any more than, say, Mr. Doust could be
11 expected to represent the interests of the RCMP,
12 the Vancouver Police Department and the Vancouver
13 Police Union, as well as his client, the Criminal
14 Justice Branch. It just doesn't make sense when
15 people have these different interests. And it
16 would be in the interests of this commission's
17 proceedings, I suggest, to have counsel working
18 collaboratively in the manner in which my friend,
19 Mr. Crossin, suggested.

20 Whatever difficult decision this commission
21 decides to make moving forward, and we take no
22 position with respect to the various options that
23 have been suggested so far, on behalf of my
24 clients, we hope that the hearings can get
25 underway as scheduled, and that they proceed as

1 efficiently and as effectively as they possibly
2 can, and we are certainly prepared to work with
3 any counsel that may be involved, to try to
4 achieve that goal.

5 MR. COMMISSIONER: All right. Thank you, Mr. Ward.

6 MR. VERTLIEB: Craig Jones, Mr. Commissioner.

7 MR. JONES: I wonder, Mr. Commissioner, if this wouldn't be an
8 okay time for the afternoon break, if one is
9 ordinarily taken.

10 MR. COMMISSIONER: I wasn't really planning on having one, but
11 we will have one if you want.

12 MR. JONES: If that's the case, then I'm prepared to proceed.

13 MR. VERTLIEB: It's probably better if we finish, Mr. Jones,
14 with your -- because other people will want to
15 reply, and if we could keep it moving --

16 MR. COMMISSIONER: That would be -- that might be better. I
17 expect that there will be people responding to
18 your submission.

19 MR. JONES: I would be disappointed otherwise.

20 Thank you, Mr. Commissioner. Thank you for
21 granting the Attorney General leave to appear at
22 this pre-hearing conference. I am at something of
23 a disadvantage compared to others in the room in
24 that they have a depth of experience in this
25 commission process that I don't share, and I've

1 certainly benefitted from that as I have listened
2 to the presentations this morning.

3 I wanted to begin, if I could, by clarifying
4 something that Mr. Doust said. He said that he's
5 here as counsel for the Criminal Justice Branch
6 and that I am here for the Ministry of Attorney
7 General. The limited brief that Mr. Doust has I
8 think is reflected in your, in your decision
9 that's being revisited here, but I just wanted to
10 clarify that I am not here for the Ministry of the
11 Attorney General. I am here to represent the
12 Attorney General, and with your background, of
13 course, you will appreciate the difference.

14 MR. COMMISSIONER: Yes.

15 MR. JONES: But I am not here as, as the counsel for
16 government. And that's important, possibly
17 important from this point of view. As I
18 understand it, and I just want to explain the
19 limited nature of my submissions today, the
20 government wasn't invited and hasn't been invited
21 to make submissions before this commission on the
22 question of the standing of the individual groups
23 that applied for standing or what the nature of
24 their standing should be, and governments have
25 never been invited to make submissions in response

1 to requests for funded participation before the
2 commission.

3 So, we haven't had the opportunity to answer
4 arguments with respect to what the criteria should
5 be for either standing or for, or for funding.
6 And I'm saying that not to, in any way, by way of
7 complaint, but simply, as I say, to explain the
8 limited nature of my submissions today.

9 You, you -- this commission made the decision
10 to recommend funding, on submissions and argument
11 from the groups of course, and from commission
12 counsel, and you're perfectly entitled to do that.
13 The government, faced with those recommendations,
14 and the reasons offered for them, exercised its
15 discretion, as the government no doubt would argue
16 that it was entitled to do, and I understand, and
17 my friends would disagree, with that issue, of
18 whether that discretion exists.

19 Mr. Arvay, of course, read to you the words
20 of Mr. Ruel, the author of one of the two leading
21 texts on commissions of inquiry of Canada, and the
22 words of Mr. Ruel were to the effect that a
23 government ignores the recommendations at its
24 peril, and of course that may well be the case.
25 But no learned author, as far as I'm aware, has

1 suggested that it doesn't contain the discretion.
2 If that were challenged, I suppose, on judicial
3 review or by way of account on application, then
4 that would be a question for another day.

5 But I want to stress the point that I'm not
6 here to argue the merits of funding for any
7 particular group. I listened throughout today to
8 the heartfelt and sincere submissions of lawyers
9 and of community leaders and of lay people, and I
10 certainly don't, I don't think any of us, for a
11 moment, doubt their sincerity or their conviction,
12 nor do I doubt, and Mr. Arvay suggested that there
13 was an argument out there that this is all about
14 lawyers grabbing cash. That's certainly not our
15 argument. I have no doubt of the sincerity of
16 counsel for the prospective participants. Most of
17 them are, in every sense, friends, and I would
18 accept each and every aspect of Mr. Arvay's
19 characterization of their background and
20 motivation.

21 So, I am not here to defend any decision of
22 government with respect to the funding. For
23 present purposes, I am simply going to treat that
24 decision as a fact, as part of the context in
25 which this commission now finds itself.

1 My brief, acting for the Attorney General, in
2 its capacity as chief law officer of the Crown, is
3 to try to be helpful in suggesting ways in which
4 the legitimate ambitions of the unfunded
5 participants can be accommodated in the context of
6 a public inquiry, and in so doing, I want to
7 stress that this is a public inquiry, not a trial.

8 I emphasized that at the outset, because I
9 think much of the difficulty is over two disparate
10 visions being urged on the commission. On the one
11 hand, something that has been described as trial
12 like, and in Mr. Arvay's words, extremely
13 adversarial with two or more, and many people made
14 references to two or more sides battling it out
15 and the commissioner acting as the referee and the
16 final decision-maker. That describes a trial. It
17 doesn't, in my submission, describe a public
18 inquiry. And the unique forum of a public inquiry
19 gives, at least inasmuch as it restrains, it also
20 empowers. It provides a flexibility of process.
21 That can go a long way to accommodate the hearing
22 of voices that might not be present at all in a
23 trial.

24 MR. COMMISSIONER: I think though that, with due respect, that
25 I think what counsel are getting at is this, that

1 without knowing what the evidence is going to be,
2 it's reasonable to assume that there will be polar
3 opposites when it comes to the type of policing
4 that took place when the complaints were made.

5 And I think the position here is if -- there
6 are certain allegations that are out there now,
7 and that is, when complaints were made by poor
8 women, poor aboriginal women, many of them
9 disadvantaged, that those complaints fell on deaf
10 ears from the policing community. And so if the
11 aboriginal women's organization, for instance,
12 doesn't receive funding, do you think it would be
13 fair cross-examination for a poor woman from the
14 Downtown Eastside, or any poor aboriginal woman,
15 to be put in a position to cross-examine
16 experienced police? That's really what this --
17 that's really what the position is.

18 MR. JONES: And I understand that, all right? If it were
19 simply a question of --

20 MR. COMMISSIONER: Let's assume for a minute -- excuse me for
21 interrupting you again.

22 MR. JONES: Yes.

23 THE COMMISSIONER: Let's assume for a minute -- I don't know
24 what the police position is going to be. Let's
25 assume for a minute that the police, or some

1 police officer says, "Look, we did all we could
2 and we couldn't help them and they didn't turn up
3 and they weren't very diligent." Now, that may be
4 a challengeable position. So, tell me how a
5 person who is poor, disadvantaged, how they're
6 supposed to cross-examine, cross-examine an
7 experienced officer, having that -- if that's the
8 evidence?

9 MR. JONES: Well, the point I am going to get to, Mr.

10 Commissioner, and that I make in my written
11 submissions, is that in an inquiry model, it is
12 the commission itself, sensitive to the issues, as
13 I think you have just demonstrated that you are,
14 with commission counsel as your agent, who is
15 tasked to present the evidence of the commission,
16 and also to test and probe, and counter where
17 necessary, aggressively where necessary, the
18 evidence presented by the participants in the
19 commission.

20 So, I'm not suggesting that it's perfect. No
21 question, with unlimited funding, we could have
22 unlimited participation. I am not even making the
23 submission before you that it is, in all of the
24 circumstances, adequate. My brief is to set out
25 what -- some of these options. Because if we are

1 in a context without government funding, and I
2 think we have to proceed, at the very least, on
3 the assumption that there are two possibilities,
4 one is with funding by whatever route, and one is
5 without. But if we are in the without, then it
6 seems clear, certainly based on, on, on the
7 commission's expressed concern, that there will
8 have to be some sort of redesign of the process in
9 that context, and so the purpose of my submissions
10 today is to suggest some ways in which that
11 process can accommodate that reality.

12 MR. COMMISSIONER: All right.

13 MR. JONES: My, my friend, Mr. Arvay, and I believe at least
14 one other submission this morning, stressed that
15 the refusal of the government to give effect to
16 the recommendations that the commission has made
17 is unprecedented, and that was the reason for the
18 reading of the passage from Mr. Ruel.

19 This, of course, isn't a judicial review of
20 the government's decision. It could equally be
21 argued, I think, that the request itself was
22 unprecedented, and I think all of us in this room
23 have various experiences with various types of
24 inquiry. My friends, perhaps for ironic effect
25 from the BC Civil Liberties Association, cite to

1 you the case of *Jones v. Canada* from quite a few
2 years ago, and I was, of course, the Jones in
3 *Jones v. Canada*.

4 But of course, what happened there was that,
5 at the end of all of the unsuccessful applications
6 for funding through the courts, the government did
7 agree to provide funding, and what they said, to
8 my recollection, was, "We'll fund one set of
9 counsel." There were dozens of complainants, all
10 of whom had standing, because unlike this process,
11 that was an adversarial process. You had a
12 complaint and you had a respond -- a respondent.
13 So, of the dozens of complainants in that process,
14 they said, "We will fund one set of counsel and
15 you can either be in with that counsel or not.
16 That's your choice." That was the eventual
17 outcome, to my recollection, of, of the APEC
18 hearings. So, it may well be that the
19 government's decision was unprecedented, but I
20 would submit, if so, it was in response to a
21 request that was, in itself, unprecedented.

22 I'm going to move very quickly through,
23 through my submissions, Mr. Commissioner. They're
24 essentially in, in three parts, well, in four,
25 including the introduction.

1 We discussed, in a general way, the nature of
2 an inquiry, and that's beginning at paragraph 6 on
3 page 2. And maybe I should just digress for a
4 moment and give an apology to anyone who is
5 participating on the phone that I haven't been
6 able to get a copy of my written submissions to,
7 but I am not going to refer to them in any detail.
8 I am not going to take you to any of the
9 authorities that are cited. I just want to refer
10 the commission to them.

11 At paragraph 7, we say an inquiry is not a
12 trial. A commissioner is not an arbiter among
13 parties presenting cases. It's an inquisitorial
14 form established by the executive of government
15 with a view to investigating the facts and making
16 findings and recommendations to a government.

17 In an inquiry, the commissioner represents
18 the public interest in discerning the truth and he
19 is mainly, through his agent, commission counsel,
20 the active inquisitor. Commission counsel
21 decides, and only commission counsel decides,
22 which witnesses and which evidence will be called
23 before the commissioner. No participant has a
24 case to bring.

25 And so we move in the next paragraph just to

1 counter this notion of this commission as, as
2 competing sides and that somehow you can weigh up
3 the numbers of lawyers on one side and say that
4 the other side needs an equivalent amount of
5 counsel in order for there to be a balancing or an
6 equality of arms, and we don't accept that view of
7 a commission of inquiry.

8 You know, we can go back to the Mackenzie
9 Valley Pipeline Inquiry, the Berger Commission.
10 Hundreds of participants, lay people,
11 organizations, community groups, governments,
12 corporations with big fancy lawyers, but many,
13 many people came before and simply told their
14 stories without counsel, funded or otherwise.

15 It's difficult to argue that the process or
16 the findings or the recommendations lacked the
17 voice of marginalized persons who appeared before
18 that commission. Commissions of inquiry are
19 even --

20 MR. COMMISSIONER: But surely the circumstances there are quite
21 different. I mean, here, do you not, do you not
22 think that this situation is more analogous to
23 what took place in Dziekanski, for instance, where
24 there was a, a wrongful death and the inquiry
25 there was adversarial, vigorous cross-examination

1 of police. So, what is there -- like, I don't
2 know what the evidence is going to be here,
3 obviously. But what happens if the police
4 position is that the women put themselves into
5 vulnerable and dangerous position and we at the
6 police couldn't do anything about it? Do you not
7 think that that requires some kind of cross-
8 examination?

9 MR. JONES: I would, I would agree with you absolutely, Mr.
10 Commissioner, and perhaps it might be worthwhile
11 exploring the experience of the Dziekanski
12 Commission. As you know, Mr. Vertlieb was
13 commission counsel there.

14 MR. COMMISSIONER: No, I am familiar. I appointed Judge
15 Braidwood on that, so I know the facts of that --

16 MR. JONES: And he was, indeed, so thorough and so assertive
17 and so probing in his cross-examinations that he
18 was accused in court filings of being biased
19 against Taser International, for instance.

20 So, the point that I'll be working towards is
21 that, in this flexible proceeding, in the flexible
22 inquiry, that's one of the tools that is
23 available.

24 MR. COMMISSIONER: Okay.

25 MR. JONES: I'm just going to pass over the remainder of that,

1 of that part of my written submissions, but it
2 deals in the, in the same sense to the nature of a
3 public inquiry as opposed to a trial.

4 The second thing that I address in the
5 written submissions, and this became of increasing
6 concern as I listened to submissions throughout
7 the day, and that is accessing and reviewing
8 documents. There is two points to be made here.
9 One is that this commission has made a decision
10 that a lawyer's undertaking is required to access
11 the documents. That's not the position that the
12 attorney would assert. We believe that
13 arrangements should be made for any participant to
14 access the documents.

15 Here's a concern that's occurred with respect
16 to the documents though, and we've heard from
17 several participants, and I believe that this is
18 right, that there is over a million pages of
19 documents that have been identified at least for
20 the commission, and I take it to be, at least many
21 of the participants' positions, that all 1 million
22 pages must be reviewed by all counsel for all
23 participants in order for them to meaningfully
24 participate. And Ms. Govender was, was completely
25 explicit on this point. It was not enough, in her

1 view, for them to get a culled version. They need
2 to review all 1 million pages.

3 I did a little bit of quick math. If you
4 could review a page every 10 seconds, that's 4,000
5 -- I'm sorry, that's 347 lawyer days for one
6 participant. Times 12 participants, that's 4,164
7 lawyer days. That's one page every 10 seconds.
8 It maybe wouldn't proceed that quickly.

9 Thirty-three thousand, three hundred twelve lawyer
10 hours. At \$100 an hour, that's \$3.3 million.

11 There has been suggestions, as you heard from
12 Ms. Govender, that that process might be
13 streamlined, and I think that that's another
14 important indication of the difference between the
15 inquiry process and the role of commission counsel
16 and a trial. In a trial, the parties would be
17 entitled to all million pages. That may not be
18 the best way of proceeding here.

19 Let me move on to what I take to be the
20 principal objection, if I could put it that way,
21 to proceeding at all in the absence of funded
22 counsel for the presently unfunded participants,
23 and that begins at my page 7, and that's counsel's
24 role in presenting and testing evidence. And I
25 have already said that it's the role of the

1 commission itself in an inquisitorial system
2 through its agent, commission counsel, to identify
3 which evidence should come before you and to
4 present that evidence and to test it.

5 We quote on page 7 at paragraph 23, the
6 difficulty, and I think Mr. Crossin's observation
7 that this is a vexing problem, is, is apt, but
8 this is the root of it, I think, if I can say so,
9 is that commission counsel must be unbiased and
10 scrupulously fair as the agent of yourself, of the
11 commission. That, either in perception or
12 reality, may restrain the tenor at least of the
13 presentation of evidence and cross-examination.
14 And so that's what I think all of the authors,
15 certainly Mr. Ratushny and Mr. Ruel who identify
16 this issue, see as the nub of the problem.

17 There are two ways, of course, of dealing
18 with it, and one is to recognize that commission
19 counsel's role itself is flexible, and it's not
20 only flexible conceptually, it's flexible
21 contextually. If commission counsel, if the
22 commission finds itself in the position where an
23 absence of an adversarial posture, let me put it
24 that way, or participants with an adversarial
25 posture is threatening the probity of the review

1 of evidence, then commission counsel can step up,
2 if I can put it that way, and become adversarial
3 and become more aggressive and more thorough and
4 probing in cross-examination then they would be if
5 all 12 presently unfunded participants were before
6 it. So, we cite some authorities to that effect
7 over on page 8 and 9 and 10.

8 So, that's the first way of dealing with it,
9 is to make -- and so much of this, it's sort of
10 like a waterbed, you push down on one side and it
11 comes up on the other side. Designing the system
12 and the procedures for this commission, we suggest
13 that may have to be revisited, but everything will
14 affect everything else. So, maybe even the
15 questions that are before the hearing commission
16 versus the questions that are before the study
17 commission.

18 At any rate, the second solution, if I can
19 put it that way, obviously these things are
20 imperfect and incomplete solutions, is to
21 bifurcate commission counsel's role, and this is
22 something that Professor Ratushny advocates. He
23 identifies this problem that, look, commission
24 counsel is expected to be advising the
25 commissioner. He's expected to be, in many

1 senses, the public face of the commission. He's
2 expected to participate in the writing, in many,
3 if not most cases, of the commission's final
4 report, and in making neutral and impartial
5 submissions possibly in closing, as well as
6 throughout the hearing. So, there is that role of
7 commission counsel that seems to be at odds with
8 the traditional view of the vigorous advocate.

9 And so Professor Ratushny identifies that
10 problem and then he proposes a solution that Chief
11 Justice Lamer adopted with the Canadian Judicial
12 Council and the Chief Justice later employed it in
13 a Newfoundland inquiry, and that is to have the
14 role of commission counsel split, with an advisory
15 counsel and a hearing counsel. And all of the
16 roles that I've just attributed to commission
17 counsel, the, the advising, the making of neutral
18 submissions, the writing of the report, would
19 remain with the advisory council. But that
20 another counsel, a separate lawyer, with a brief
21 to be as adversarial as you are instructing him,
22 feels it necessary, to perform the function of the
23 hearing counsel. And --

24 MR. COMMISSIONER: Isn't there a possibility that that would
25 foster a conflict? How can, how can that counsel

1 act for all parties in a hearing?

2 MR. JONES: Oh, no, we are not suggesting that they take
3 instructions from anybody.

4 MR. COMMISSIONER: Oh.

5 MR. JONES: What I would -- what I understand the proposal from
6 Mr. Ratushny, is that the instructions are given
7 by the commissioner in a general sense, and that
8 is to adopt as adversarial a process as possible.
9 You can instruct them to consult with other
10 parties, to, to take into account any questions
11 that need to be asked, and any particular lines of
12 inquiry that need to be followed. That's all
13 within your discretion.

14 But no, I don't think that you can have
15 hearing counsel taking instructions from -- I
16 mean, clearly the 12 participants don't believe
17 that they can get together with fewer than 12
18 lawyers, so they're not going to accept that they
19 could get together with one. So --

20 MR. COMMISSIONER: What would be the cost of that? What would
21 be the cost of that process?

22 MR. JONES: Well, it would be the cost I suppose of a lawyer.
23 Whether or not, whether or not you are simply
24 splitting the job of commission counsel into two,
25 which, in extremis, would have no additional cost,

1 because these may be things that commission
2 counsel would do as an, as an independent entity.

3 MR. COMMISSIONER: Right.

4 MR. JONES: So, it would either be from that to somewhat more.

5 But on my reading of the *Public Inquiry Act* that,
6 provided the hearing counsel is taking
7 instructions from you, that is within the
8 authority of the commission, in the same way that
9 appointing commission counsel, advisory counsel is
10 within the authority of the commission.

11 I guess, just before I close, and we've all
12 been sharing a little bit of our experience of
13 other contexts, and as you have noted, every
14 context is different. Every commission has to
15 design its own process within the framework of
16 valid legislation, valid government decisions.

17 We had a little bit of experience with a
18 position similar to this hearing counsel, that
19 Professor Ratushny proposes in the form of the
20 amicus in the polygamy reference. There, as your
21 lordship, or not your lordship, I beg your pardon,
22 as the commissioner probably knows, it was quite a
23 long and arduous hearing. There were 45 days of
24 hearing over six months. There were three parties
25 and I think 13 other participants who had been

1 granted standing, none of them, none of the
2 participants publicly funded, and an amicus was
3 appointed with instructions from the Court to
4 counter, if I can put it that way, arguments and
5 positions and evidence put forward.

6 And in my submission, it was a very
7 successful arrangement, that those who predicted
8 that the sky would fall, some of my friends among
9 them, I think were proven wrong, that it was
10 possible to design a system whereby the points of
11 view that needed to be heard were heard and that
12 participation was, in the circumstances,
13 sufficient.

14 And this was in no small part I think due to
15 the other arrangements that were made, similar to
16 the arrangements that commission counsel is
17 making, for public access to records through
18 websites, through daily provision of transcripts,
19 so that people who couldn't participate every day
20 in the hearing could nevertheless read what went
21 on afterwards and keep current.

22 So, I think that that's -- you know, and that
23 was a fact pattern, where the evidence spanned not
24 six years, but 3,000 years, literally. At the
25 very least, the, the most relevant evidence

1 spanned the last 130 years. And, and I think it
2 was successfully managed from that point of view.

3 So, with apologies for the personal anecdote,
4 I conclude my submissions subject to any
5 questions.

6 MR. COMMISSIONER: Thank you, Mr. Jones.

7 MR. VERTLIEB: Well, Mr. Commissioner, I know that a break at
8 some point will be in order. Katherine Hensel is
9 in Ontario, on Ontario time of course.

10 MR. COMMISSIONER: Yes.

11 MR. VERTLIEB: And I think if we could deal with her reply
12 before we consider having a break --

13 THE COMMISSIONER: All right.

14 MR. VERTLIEB: -- it would be better, if you don't mind. Ms.
15 Hensel, are you with us on the telephone?

16 MS. HENSEL: I am. Can everyone hear me?

17 MR. COMMISSIONER: Yes, Katherine, we can hear you.

18 MS. HENSEL: All right. Hello, Commissioner, and thank you,
19 commission counsel and all the counsel in the
20 room, as well as the commissioner, for letting me
21 go briefly before far more senior counsel than
22 myself.

23 I am going to be making a brief reply
24 submission to Mr. Jones' submission on behalf of
25 NWAC, solely on the role of commission counsel. I

1 will be making those submissions based at least in
2 part on my experience as assistant commission
3 counsel at the Ipperwash Inquiry, and then I would
4 request that Ms. Brodsky be permitted to make the
5 remainder of any reply evidence or reply
6 submissions, if any, if she's seen fit to prepare
7 any submissions on that point.

8 I am going to be very, very brief, but my
9 comments will centre around the role of commission
10 counsel. And I note for the commission's benefit,
11 as well, Mr. Worme who has unfortunately left the
12 call, he had another commitment, is also senior
13 counsel and was commission counsel at Ipperwash.

14 And our experience in that role was that it
15 was really impossible and would have been unfair
16 for us to, and I know that your own counsel is
17 profoundly aware of this imperative, that they be
18 fair to all the witnesses and all the parties and
19 that they not act as advocates for any one
20 perspective or systemic interest.

21 One of the difficulties with commission
22 counsel is that there are, you know, with any
23 public inquiry, it's, it's, by definition, a
24 controversial and complex problem, otherwise the
25 executive doesn't, doesn't call a public inquiry,

1 and it's impossible, in my submission, for, for
2 commission counsel to really master and
3 internalize the expertise and the perspective of
4 all the parties. And I am sure, commissioner,
5 that you were aware of what when you granted
6 standing to the wide range of parties that you
7 did, with the systemic expertise and interests and
8 perspectives that they have, and that certainly
9 NWAC has.

10 So, to ask one single lawyer to step into the
11 role as commission counsel of cross-examining, to
12 be informed by all of these various perspectives,
13 which you have identified as essential for the
14 fairness and the accuracy of effectiveness of your
15 own proceedings, it is really logistically and
16 logically impossible. That lawyer will not have
17 the time to meet with, you know, all of our
18 clients, will not have the capacity cognitively to
19 internalize so much expertise, and that is really
20 our client's expertise. We, we have the time to
21 spend with our clients, but your counsel can't
22 spend nearly the same amount of time. And
23 finally, logically, that, that one lawyer can't
24 cross-examine on potentially mutually exclusive
25 positions.

1 For example, we anticipate that a
2 controversial issue within this inquiry, that may
3 be brought forward by some of the parties, some of
4 the parties who need funding before you, centres
5 around the legalization of prostitution, and the
6 role that the criminalization of prostitution may
7 have played in the circumstances at issue here.
8 NWAC does not believe that prostitution should be
9 legalized. We understand that several of the
10 other parties, who also require funding, do
11 believe that prostitution should be legalized and
12 that it played a role here, the criminalization of
13 prostitution. So, I would ask rhetorically how
14 commission counsel can reconcile those two
15 positions and cross-examine based on both of them.
16 It's impossible, logically impossible.

17 I would also suggest that it, and it sounds,
18 sounded to me from your own comment, commissioner,
19 that you picked up on this, within your own
20 commission, if you have commission counsel
21 preparing witnesses to testify, and as a matter of
22 fairness being permitted to tell their story and
23 their, their experience, in their own words,
24 including police and government witnesses, then to
25 have within your own organization and under your,

1 under the same roof counsel who are going to be
2 testing the evidence and potentially seeking to
3 pin those witnesses with findings of misconduct,
4 that's going to create an impossible conflict for
5 you within your, within your own shop.

6 So, subject to any questions you have,
7 commissioner, those are my submissions just on the
8 role of commission counsel from NWAC's perspective
9 and based on our experience at Ipperwash.

10 MR. COMMISSIONER: All right. Thank you, Ms. Hensel.

11 MR. VERTLIEB: Ms. Hensel, for the commissioner's benefit, just
12 tell us what your involvement with the Ipperwash
13 Inquiry was, and tell us why you have the comment
14 you have made in, in the context of the bifurcated
15 role of hearing and advisory counsel.

16 MS. HENSEL: Okay. I was, I was assistant commission counsel,
17 and I acted both in what we called the Part 1
18 hearings, the formal evidentiary hearings. I also
19 chaired a number of community consultations and
20 other activities in our Part 2, or what you would
21 call your study commission.

22 I would also add that, at Ipperwash, parties
23 -- there were 7 of 17 parties required funding and
24 that was provided, without question, from the
25 Attorney General of Ontario. Those -- counsel

1 appeared both in the Part 1, in the study, or in
2 the evidentiary hearings, as well as during the
3 study commission, to represent their clients in
4 all aspects of their participation in the
5 commission. And one of the reasons for that is
6 we, we noted that there was -- on several
7 occasions, witnesses were confronted during
8 cross-examination in the formal evidentiary
9 hearing with information or input that they
10 provided during the study commission, or the Part
11 2 hearings, or Part 2 proceedings.

12 So, it was essential that they have the
13 coordination and the sort of analytical overview
14 that only legal counsel can really provide, as
15 well as counsel that would protect their interest.
16 Your counsel commissioner, of course, it's not
17 their job to protect any one witness and, in fact,
18 it would be wrong of them to do so. Their duty is
19 only to be fair.

20 Witnesses -- every witness before your
21 inquiry, particularly the parties, will have a
22 reputational interest. And so it's essential that
23 they, that parties who are taking stands against
24 other parties have counsel there to protect them
25 from the attacks that are sure to come in defence.

1 MR. COMMISSIONER: All right. Thank you.

2 MS. HENSEL: Thank you, commissioner.

3 MR. COMMISSIONER: Thank you. Maybe we will take the break
4 now.

5 **(Proceedings adjourned at 3:17 p.m.)**

6 **(Proceedings resumed at 3:31 p.m.)**

7 THE REGISTRAR: Order. The hearing conference is now resumed,
8 Mr. Commissioner.

9 MR. VERTLIEB: Mr. Commissioner, in the rush to finish, we
10 neglected to call on Robyn Gervais, who has been
11 on record for the Carrier Sekani Tribal Council
12 for some time.

13 MR. COMMISSIONER: Yes.

14 MR. VERTLIEB: And I'm sorry about that.

15 MR. COMMISSIONER: Yes, Ms. Gervais.

16 MS. GERVAIS: As Mr. Vertlieb noted, I am counsel for Carrier
17 Sekani Tribal Council.

18 MR. COMMISSIONER: Yes.

19 MS. GERVAIS: And neither David, Tribal Chief David Luggi, or
20 Vice Tribal Chief Terry Teegee could be present
21 today.

22 I would like to just briefly expand on the
23 submissions provided by Ms. Fox on behalf of the
24 First Nations Working Group, with respect to
25 Carrier Sekani's need for funding to participate

1 in the study and hearing commission.

2 As you know, the Carrier Sekani Tribal
3 Council represents eight First Nations in the
4 north spanning from Prince George to Prince
5 Rupert. Five of the eight First Nations
6 communities represented by the Carrier Sekani
7 Tribal Council are directly situated on the
8 Highway of Tears, and the remaining three
9 communities must access the highway to access
10 larger urban centres and resources. Of the
11 official 18 women on the missing women, missing
12 from the women, pardon me, missing from the
13 Highway of Tears, 17 of those women are First
14 Nations. Therefore, it is important that these
15 families and community members have a meaningful
16 opportunity to participate both in the study and
17 hearing commission, if necessary.

18 Carrier Sekani has a distinct role to play in
19 the inquiry and specifically at the study inquiry,
20 and they reject the Attorney General's proposition
21 that funding our legal counsel are not required
22 for the study commission. There is a distinct
23 need for funding to ensure that Carrier Sekani can
24 fully participate in the study portion of the
25 inquiry by ensuring that they have the resources

1 to identify community members who may want to
2 address you at the study hearings and to work with
3 the commission to help identify appropriate
4 locations and community protocols for the
5 hearings.

6 Funding is needed to ensure that proper
7 supports are in place for community members who
8 provide evidence at the study hearings to ensure
9 that there is counselling for community members,
10 to ensure that when people are done speaking to
11 you, that they have the proper supports in place
12 to process through the emotions that will surely
13 arise in speaking to you, and to ensure that
14 further victimization does not occur. Also,
15 depending on the locations of the study hearings,
16 funding may be needed for community members to
17 travel to the study hearing in order to speak with
18 you.

19 As far as legal counsel participation at the
20 study commission, Carrier Sekani submits that
21 legal counsel is -- it is necessary for legal
22 counsel to be present in order to ensure there is
23 a proper record of submissions provided by
24 community members so that informed final
25 submissions and policy recommendations can be both

1 analyzed and submitted at the conclusion of the
2 hearing.

3 Carrier Sekani also requires funding to have
4 legal counsel at the hearing portion of the
5 inquiry in order to review documentation, attend
6 the hearings, prepare final written submissions
7 and apply to cross-examine witnesses, if
8 necessary.

9 Without funding, Carrier Sekani will not be
10 able to participate in either the study or hearing
11 portion of the inquiry. They simply do not have
12 the funds allocated in their budget and would not
13 want to participate without proper supports in
14 place and subject their community members to
15 further victimization.

16 It is the Attorney General's view that there
17 are no costs associated with attending the hearing
18 or the study commission on their own, and that is
19 simply a fallacy. Carrier Sekani Tribal Council
20 is located in Prince George. Simply just the
21 costs of travel to either the study or hearing
22 commission is a cost associated, not to mention
23 the time that would be taken from the organization
24 to sit in on the hearings or the study commission.

25 And just for the record, although Carrier

1 Sekani Tribal Council is happy to participate in
2 the study commission and the hearing commission
3 with proper funding, there is still a call for a
4 separate inquiry into the Highway of Tears.

5 Subject to any questions, those are my
6 submissions.

7 MR. COMMISSIONER: Thank you, Ms. Gervais. Thank you.

8 MS. GERVAIS: Thank you.

9 MR. VERTLIEB: I want to make sure we have everyone now who
10 wants to speak on the first --

11 THE COMMISSIONER: Thank you.

12 MR. VERTLIEB: Thank you, Mr. Commissioner. Mr. Arvay wishes
13 to speak and then Ms. Brodsky.

14 MR. COMMISSIONER: All right.

15 MR. ARVAY: Thank you, Mr. Commissioner, for giving me an
16 opportunity to reply to Mr. Jones.

17 I start off by expressing my regret and
18 disappointment that the Attorney General has
19 chosen to send Mr. Jones here to announce that the
20 decision of the government to deny funding is a
21 fact, and impliedly, a decision that is not, that
22 is not capable of being reconsidered or reversed.

23 I would have thought that the Attorney
24 General, recognizing his proper role as not just a
25 member of cabinet, but the chief legal officer of

1 the Crown, would, knowing that this hearing was
2 going to be taking place and what the nature and
3 purpose of the hearings was, was to send counsel
4 to listen and, and, and to report back, along with
5 yourself, when you render your, your report,
6 rather than sending counsel here to say, the
7 decision has been made. You will just all have to
8 live with it and let's talk about how we're going
9 to cope with an inquiry, which Mr. Jones conceded,
10 and I actually emphasize this concession, because
11 he's here, he says, on behalf of the Attorney
12 General himself and not just on behalf of the
13 government, although I don't -- not quite sure --
14 I'm not sure I understand the distinction, quite
15 frankly. But I ask you to note and emphasize and,
16 and when you are reporting back to the Attorney
17 General, that his counsel has said that this
18 commission process, without having participants
19 properly funded, will be inadequate. Will be
20 inadequate.

21 Now, what a statement that is. It's one
22 thing for us who represent non-profit
23 organizations, organizations that don't have
24 anywhere near the resources of the government, to
25 be able to say to our clients, "We're going to do

1 our best. We're going to do our best. It won't
2 be perfect. It won't even, it won't even be
3 adequate, but we're going to do our best." For
4 the government to come here and tell you that,
5 that, that having struck this commission, with the
6 importance that it, it is to have, to then
7 necessarily come, then to come before you and say,
8 "But, you know, the process is going to be
9 inadequate," is, is quite, quite a, quite a thing
10 to hear.

11 MR. JONES: I don't want to interrupt my --

12 MR. ARVAY: You just did and I would ask you not to interrupt.

13 MR. COMMISSIONER: Okay, I will hear you. I know, I know you
14 don't want to interrupt --

15 MR. JONES: Well, I am hoping to save my friend some breath
16 because he's attributed to me concessions and
17 assertions and all kinds of stuff that I simply
18 never said.

19 MR. COMMISSIONER: Okay, well, why don't we let him -- I will
20 give you an opportunity to reply to him.

21 MR. ARVAY: And at the same time when you do, you might have
22 the court reporter read his words back to him.

23 MR. COMMISSIONER: All right. Okay.

24 MR. ARVAY: I guess this is some indication that the
25 proceedings here won't be very adversarial.

1 Now, turning to Mr. Jones says that this is
2 not going to be a trial, it's not going to be
3 adversarial, or extremely adversarial, and he says
4 it's going to be inquisitorial. Well, the fact
5 that it's going to be inquisitorial may mean that
6 some of the rules of the trial process aren't
7 necessarily in play. But to suggest that, because
8 it's inquisitorial, and because commission counsel
9 has a, a fairly distinct role in, in inquiry,
10 doesn't -- to suggest that that is going to
11 somehow rob the inquiry of a, of a clash of size
12 is, is, is, is an entirely unrealistic portrayal
13 of how commissions of inquiry work. As I said
14 before, whether it's the Frank Paul, the
15 Dziekanski Inquiry, the APEC Inquiry, those were
16 very, very adversarial on the questions of fact
17 that the commission has to come to, come to
18 determine.

19 The one difference between a commission of
20 inquiry and a court is that the commission of
21 inquiry's job is to find the truth, where a court
22 is, is, is -- for lay people, they might find it
23 somewhat difficult to understand -- that for a
24 court, the job is to resolve the issues based on
25 the positions of the various parties, to do

1 justice, but not necessarily find the truth. You
2 are to find the truth, and if you are going to
3 find the truth in an inquiry like this, you are
4 going to need help, a great deal of help on fact
5 finding, and I will come to Mr. Jones' suggestion
6 as to the role of commission counsel in a moment.

7 One of the things that I thought though that
8 the Attorney General said that was -- reflected I
9 think a profound misunderstanding of this inquiry,
10 is found in, is found in his footnote on page 4,
11 footnote 2, and he says in relation to the clients
12 that I represent and others, they don't -- their
13 legal rights aren't at stake, they're not like
14 families and they're not like public servants,
15 but, but there is a qualifier. In footnote 2, he
16 says, this may not be the case with Dr. Rossmo,
17 who the commissioner has found may have personal
18 reputational interests at stake and may be the
19 subject of cross-examination in this inquiry. If
20 counsel is needed for Dr. Rossmo to assist him in
21 his role as a witness, beyond that which might be
22 provided by commission counsel, he may apply to
23 the Ministry of the Attorney General and such a
24 request would be considered on its merits. So,
25 you see, now the Attorney General is saying now,

1 "Well, actually, maybe our decision isn't final,
2 at least with respect to Dr. Rossmo, because Dr.
3 Rossmo may need a, may need a lawyer merely
4 because he's a witness, and he may need a lawyer
5 simply because he has a personal reputational
6 interest at stake."

7 Now, Dr. Rossmo hasn't sued anybody for
8 defamation and he hasn't been sued by anyone. And
9 he's coming to this inquiry for reasons that one
10 would expect, that are to advance the public
11 interest. But for the Attorney General to somehow
12 say that this person's private interests deserves
13 standing, deserves funding, his private interest,
14 reputational interest, but the interests of my
15 clients, who represent, represent missing and dead
16 women, and who represent women who are at risk of
17 missing and, and being, being missed and, and
18 killed, that they aren't, that their interests
19 somehow don't warrant funding, but this person's
20 reputational interest does, is to completely
21 misconstrue this inquiry to be an inquiry in the
22 public interest, in the public interest, and the
23 public interest requires funding, not anybody's
24 particular private interest. And indeed, when,
25 when and if you ever have to go to court and ask

1 the court, ask the court to order the government
2 to fund our clients, the court will say, it's,
3 it's, it's the people that you are asking to be
4 funded. Are you, are you -- is it because of
5 their personal or private interest? And if the
6 answer to that is "yes," the court will say,
7 "Sorry, we are not going to order the government
8 to fund personal or private interests. We are
9 only going to order the government to fund
10 interests which transcend the public interest."

11 And my clients, who represent a broad
12 spectrum of the women in the Downtown Eastside,
13 whether they're aboriginal, poor, sex workers,
14 drug addicted, whatever, they represent the public
15 interest. There is no particular personal or
16 private interest that they are putting forward.
17 And for the government to say, "Well, we're going
18 to fund one person's private interest but not the
19 public interest," they have got it completely
20 backwards. Completely backwards. It's a perverse
21 submission, in my respectful submission.

22 MR. COMMISSIONER: All right.

23 MR. ARVAY: My friend, Mr. Jones, says that what's
24 unprecedented is your, your recommendation for
25 funding. He raised a, a -- he referred to an

1 inquiry that I wasn't going to refer to, because
2 it, it does get a bit personal. But let me,
3 without getting personal, let me tell you what
4 happened in the APEC Inquiry. I was counsel for
5 the students in the APEC Inquiry, some that were
6 very articulate, very smart, one would have
7 thought could handle themselves very well without
8 counsel. We, we asked the government, we asked
9 the government to fund the students' participation
10 in the inquiry. The government refused over and
11 over again. We then went to the commission and we
12 said to the commission, "Please ask -- please
13 request, please request the government to fund the
14 students' legal, legal representation," and you
15 know what happened there. The commission refused
16 to request. The commission said, "We can't
17 request. That's not our job. It's for the
18 government to decide. We can't request." And of
19 course the commission knew, I say anyway that the
20 commission knew that, as soon as they request,
21 they would put the government in a, sort of a
22 tough spot. We had to go to the Federal Court to,
23 to ask the Federal Court to ask the commission to
24 request. It seemed like a rather innocuous thing
25 to ask the commission to do. The Federal Court

1 said to the commission, "You have the power to
2 request the government to, to fund the students."

3 But between the going to the federal --
4 between first asking the commissioner request and
5 going to the Federal Court, there was a new
6 commission of inquiry -- a new commissioner
7 appointed to the APEC Inquiry who was Mr. Hughes.
8 Mr. Hughes wrote a very strong letter. I wish I
9 had it here, but I recall it with, with some, with
10 some recall, some detail. He, he simply wrote a,
11 a very strong letter to the government saying, "In
12 order for this to be a fair inquiry, in order for
13 me to do my job that you have asked me to do, I
14 recommend that the, that the government fund these
15 students." And that's, then with that
16 recommendation, the government caved.

17 Now, again, I hope that, notwithstanding the
18 Attorney General's representation here, that, that
19 there is a fait accompli and that the government
20 is not, is not willing to reconsider, I hope that
21 isn't the final word. I hope, as I said at the
22 outset, that if you wrote a very strong, powerful,
23 compelling, persuasive judgement and, and then
24 follow it with a very strong recommendation, that
25 the government reconsider, it will do so.

1 I, I, I handed up the debates of the Hansard
2 to your left there. If you, if you can pull it
3 aside or open it up, I took the liberty of, of
4 marking in orange the passages I want to read,
5 because Mr. Jones says he, he is not here and --
6 he is here on behalf of the government, but he is
7 not here in any way to suggest that this is about
8 lawyers just seeking to line their pockets and
9 that that's the position of the Attorney General.
10 I hope that's true, except when I read from the
11 Hansard, and the passages I have highlighted, the
12 one, first is on page 7538, when the Honorable
13 Penner is asked questions, he says this in that
14 first paragraph. He says:

15 Obviously, the public as well as the
16 government -- and, I would assume, the
17 opposition, from the comments I've just
18 heard -- have a limited appetite for
19 spending unending amounts of money on
20 lawyers and their fees. That's why we have
21 decided to prioritize.

22 And if you go to the next page, at 7539, he
23 says:

24 Again, as I've said, our government is
25 putting families first. There is a limited

1 amount of money and a limited amount of
2 taxpayer appetite, frankly, for spending
3 money on lawyers and their fees.

4 And again, I, I, obviously I, I draw the
5 inference from that, that his, that his comments
6 are, are, are based on a complete misunderstanding
7 of the role of a lawyer in these inquiries.

8 One of the things I am sure, Mr.
9 Commissioner, that you appreciate, as being a
10 trial judge and a Court of Appeal justice, and
11 indeed, as the former Attorney General, is the
12 utter inefficiency and, and the utter -- and the
13 extra costs involved with unrepresented litigants.
14 I am sure you have been a trial judge with
15 unrepresented litigants who will take hours and
16 hours and hours, if not days and weeks, to do what
17 litigants who are represented by counsel can do
18 much more efficiently and in a much more cost-
19 effective way.

20 So, it is a case, in my submission, of the
21 government, to the extent that this inquiry would
22 proceed without lawyers, and it may not, it may
23 not proceed if we are not here, but if it is to
24 proceed without lawyers, if you are willing to
25 continue on, then there will be -- it may be a

1 case of penny wise and pound foolish.

2 In terms of, again, precedent, the Cohen
3 Inquiry I think is another example of Mr. -- of
4 Judge Cohen making a recommendation for many, many
5 participants to be funded, and they were funded.

6 I'll come back to the polygamy reference that
7 Mr. Jones referenced in a moment. The Mackenzie
8 Valley Pipeline Inquiry was very different. That
9 was very much a policy inquiry. Here we're
10 dealing -- you know, it's -- this is a very unique
11 inquiry. This is not, this is neither Dziekanski
12 or Frank Paul, which involved one person, you
13 know, one person, and it involved, you know, many,
14 many parties and many months, many months, years
15 of, of inquiry time. It's not, it's not that,
16 because we have so many. But -- and it's not the
17 Cohen Inquiry, which is important as salmon is for
18 our economy. You know, we are talking about
19 people's lives. This is a very unique inquiry. I
20 think it has to be said, it may be one of the most
21 important, one of the most important inquiries
22 that this province will, will witness if it's done
23 properly, and if it's not done properly, it will
24 just be, it will be tragic.

25 I heard Mr. Jones with respect to the issue

1 of document -- people accessing documents. I
2 thought his math was, with respect, a little
3 silly, of how many thousands of hours and whatnot.
4 I mean, obviously we are all going to be as cost
5 efficient as we can, and we do rely on commission
6 counsel to help vet the relevant documents, but,
7 but that doesn't mean we will hand over that job
8 to the commission.

9 Well, one of the points that I thought was a
10 little bit troubling in Mr. Jones' brief is found
11 at page, page 6, paragraph 18, when he says this.
12 He says:

13 Were the commission to design a process to
14 facilitate access to its records by
15 participants otherwise than through counsel,
16 its rulings regarding confidentiality, like
17 other conditions of participation, it may be
18 enforced through application for orders of
19 the Supreme Court, including for contempt.

20 Let that one sink in a bit. So, we are going
21 to have some of the people here, who are
22 unrepresented, who spoke to you so eloquently, who
23 may not be as acquainted with the niceties of
24 legal process and who decide they want to share
25 their documents with their, with their community,

1 are going to be cited for contempt. Talk about
2 adding insult to injury.

3 With respect to the role of commission
4 counsel, Mr. Jones has basically said, "well,
5 given that, you know, we have an inquiry which is
6 not going to have participants such as the people
7 I represent and others, funded through counsel,
8 that we will just allow the commission counsel to
9 just get more aggressive and more, more
10 adversarial," for want of a better term, and he
11 cites a number of, of authorities and passages.

12 If you look at the, the authorities that he
13 has, such as in paragraphs 31 and 32, 33, it just,
14 if I can take you to it, just go to paragraph 31
15 by way of example. The underlined portion in
16 paragraph 31 where he is citing from Commissioner
17 Parker in the Stevens Inquiry, it says:

18 In this inquiry, although numerous parties
19 were granted standing, no one who appeared
20 was adverse in interest to Mr. Stevens. In
21 these circumstances, there was no one to ask
22 the hard questions in a probing and
23 thoughtful manner unless the task was
24 undertaken by commission counsel.

25 And then going over to the next page,

1 paragraph 32, he says:

2 Simon Ruel adopts the statement of
3 Commissioner Dennis Beaumine (phonetics)
4 that where there is no party adverse in
5 interest to the witnesses, the commission
6 counsel have a special duty to examine the
7 witnesses thoroughly.

8 And then in the next paragraph citing Ratushny:

9 There are occasions where credibility may be
10 in issue and the task of testing that
11 credibility through cross-examination falls
12 on commission counsel. In some hearings,
13 there may be enough diversity of interest
14 that the parties may be relied upon to do
15 this, but that is not always the case.

16 Now, what these learned jurists and academics
17 and commissioners are all saying is, yes, there
18 will be circumstances where, because a particular
19 interest is not represented before the commission,
20 that it falls upon commission counsel to sort of
21 do double duty. And, and necessity, as always is,
22 the mother of invention, the courts have said, in
23 some circumstances, it will be necessary for
24 commission counsel to be a little more aggressive
25 than they otherwise would be. But it would be a

1 grave mistake to take these exceptional,
2 exceptional instances where commission counsel
3 should be more aggressive as now to be the norm in
4 this inquiry.

5 If, if Mr. -- this puts Mr. Vertlieb and his
6 team in a completely untenable position and it
7 puts you in a completely untenable position
8 because if you don't, if you can't maintain your
9 neutrality and independence, and Mr. Vertlieb,
10 while I fully accept commission counsel can ask
11 probing and cross-examining questions, but he
12 cannot, he cannot replicate or perform our job.
13 He can't do that. If he does that, well, then he,
14 he is no longer commission counsel. He is our
15 counsel. Come on over. Come on over.

16 Now, again, this goes to, as well to Mr.
17 Jones' suggestion that you now hire another
18 commission counsel. So, the Attorney General says
19 there is a limited amount of money for lawyers,
20 but as long as the lawyer dons the hat of
21 commission counsel, the government seems to say,
22 "Let's spend some more money." Well, you know,
23 that might work in some kind of inquiry, but
24 indeed, in the experience I've had, there is two
25 different kinds of commission counsel. Some at

1 the break go and sit in the backroom with the
2 commission and they're kind of one and the same.
3 Others maintain some arm's-length relationship. I
4 am not exactly sure what relationship Mr. Vertlieb
5 and you have. Now, it's probably some hybrid of
6 that, quite frankly.

7 But it, it will solve nothing in terms of the
8 integrity of this inquiry and the effectiveness,
9 and the ability of you to do your job, and again,
10 at the end of the day, you have to ask yourself,
11 "Can I do my job with the handcuffs the government
12 is putting on me?" And if you cannot do your job
13 in an inquiry like this, which is so multi-
14 dimensional, so multidimensional, it's, it's,
15 it's, you know, it's, it's -- there are so many
16 various interests and, and you have already heard,
17 you know, there may be interests between sort of
18 the interests of those who want to decriminalize
19 sex work and those that think, you know, not, and
20 there are so many various interests that you would
21 have to actually hire probably five or six of
22 these sort of commission counsel to represent all
23 the various interests.

24 Well, we're here. We're here. We know how
25 to do a job for our clients. And the other thing

1 is, our clients trust us. Our clients know that
2 we're not -- you know, I am going to, I am just
3 going to come to this polygamy reference in a
4 moment, but there is some analogies. But in, in
5 this case, we've got very vulnerable people, very
6 marginalized people, I know those are kind of oral
7 words, but these are people who are terrified of
8 the legal system. Uhm, you know, talk to any of
9 the, of us who have been acting for the people in
10 the Downtown Eastside, they're terrified to come
11 forward. They're terrified to walk into a
12 courthouse, court building, let alone take the
13 stand. We have their confidence. They are going
14 to talk to us. They're going to give us the
15 information. If, if the, if the lawyer that they
16 have to talk to is a government-appointed lawyer,
17 and that's who it would be, they're going to have
18 a completely attitude than, than, than, than when
19 it's, when they're talking to us.

20 Again, just to then refer to this polygamy
21 reference, I actually thought that the polygamy
22 reference is completely unsupportive of the
23 Attorney General's position. In that case, I
24 don't remember how many lawyers there were, but
25 there was a court -- the largest courtroom in

1 British Columbia full of lawyers. I think there
2 was 30-odd lawyers there. They were all funded.
3 They were all funded. Now, many of them were an
4 act of pro bono, uhm, and -- well, when I say they
5 were all funded, they were all there because they
6 could be there without funding. So, I mean, let
7 me, let me sort of stand corrected and be a little
8 more accurate. There were, I don't know how many
9 parties with lawyers in the room, and some were
10 staff lawyers who, you know, were, were being paid
11 by the organization; others were funded, others
12 were funded by various groups; and others were pro
13 bono. Those that were pro bono, with one or two
14 exceptions I know, and notable exceptions, most of
15 them were, you know, would come in for a
16 relatively short period of time.

17 We all do pro bono work. We all do pro bono
18 work. Nobody can accuse us of not doing that.
19 But none of us who have small practices can afford
20 to come and be involved in this commission for the
21 many, many months, if not longer, that, that, that
22 is the case.

23 And so, you know, in the polygamy reference,
24 there was one question: Is the law constitutional
25 or not? And, and yes, people have -- there was,

1 and there was obviously a factual exploration.

2 But the inquiry here is so much different.
3 There were more than 50 murdered women. There
4 probably -- and many, many more missing. It,
5 it -- the, the issues before this court are both
6 far more complex, and with the greatest of respect
7 to those on, with respect to the polygamy
8 reference, far more important. And, and I, I will
9 stop there. Well, I'll stop there with respect to
10 the polygamy reference, because it would be
11 appropriate to stop there.

12 MR. COMMISSIONER: All right. That's a good reason.

13 MR. ARVAY: So, let me end by saying, subject to any questions
14 you have of me, those are my submissions.

15 MR. COMMISSIONER: Thank you, Mr. Arvay.

16 MS. BRODSKY: Thank you. Mr. Commissioner, thank you for
17 giving me the opportunity to conclude NWAC's reply
18 submissions. I think I can be brief.

19 The Attorney General seems not to understand
20 that this is your inquiry, not his inquiry. It
21 seems to have been forgotten that the inquiry has
22 been created as an independent body because of the
23 concerns that the government has about serious
24 questions that need to be answered, not by them,
25 not by the Attorney General, but by an independent

1 inquiry.

2 My friend, Mr. Jones, began his submissions
3 saying the Attorney General does not have a
4 position on standing and that he does not come
5 here to argue the merits of funding to any
6 particular group. With respect, that lacks
7 credibility. The Attorney General, as manifest in
8 the submissions filed with this commission, does
9 have a position on standing. In effect, what
10 these submissions say is that you made a mistake
11 and that you're wrong. You shouldn't have made
12 the decisions that you have made on standing and
13 you shouldn't have made the associated
14 recommendations on funding. That's the effect of
15 these submissions. The submissions smack of
16 contempt for the commission, its mandate, yourself
17 as the commissioner, and indicate a lack of
18 appreciation of the importance of not interfering,
19 government, Attorney General, not interfering with
20 the commission's authority to control its own
21 process. That's your responsibility, not the
22 Attorney General's.

23 The Attorney General's submissions can be
24 distilled to four points, all of which represent
25 an attempt to interfere with your process or, at

1 the very least, a lack of respect for your
2 independence and responsibility to control your,
3 your own process.

4 First, the suggestion that commission counsel
5 can somehow substitute for representation of
6 parties, that perhaps even the commission counsel
7 could divide himself in two and do both
8 simultaneously, I won't address that further. Ms.
9 Hensel did and Mr. Arvay has as well. The problem
10 of allowing or expecting commission counsel to
11 take over multiple assignments. In your wisdom
12 and independence, you recommended the
13 participation of other parties with their counsel.
14 Oh, yes, there was the suggestion as well that
15 there could be a policy advisor on the side. That
16 doesn't amount to, and Mr. Jones acknowledged,
17 representation for, for the parties.

18 Second, there is the suggestion, the
19 assertion reflected in the submissions, paragraphs
20 6 and 11, that the parties do not have a role in
21 fact finding. Their role is to present policy
22 arguments only. Again, this ignores your, your
23 findings with regard to appropriate role for --
24 roles for the participants. It also ignores the
25 necessary inter-leaning of the findings of fact

1 with the policy recommendations. It's a very
2 problematic proposal.

3 Thirdly, and Mr. Arvay has addressed this
4 point as well, there is the assertion that the
5 only, and this is in paragraph 11, the only
6 affected parties are families represented by, by
7 Mr. Ward, that the groups at issue do not have
8 legal rights or interests to advance or defend and
9 nor are their actions the subject matter of the,
10 this inquiry. That's just wrong, and, and again,
11 an interference with your judgement about how this
12 inquiry is to be properly conducted, to do justice
13 to the serious nature of the issues that you have
14 been tasked to inquire into.

15 The constituents of NWAC, for example, do
16 have legal rights at issue. They have charter
17 rights, rights to equality, security of the
18 person, possibly relevant aboriginal rights,
19 rights at international human rights law. They
20 also have actions that are in issue. A number of
21 the parties may well have actions that are in
22 issue, that have to do with their actions, in
23 seeking help, in providing assistance, in, in
24 undertaking measures to try to bring these
25 concerns to the attention of government and other

1 public authorities. Those are just examples,
2 random examples of actions that, of theirs, that
3 may be the subject matter of the inquiry.

4 Fourthly, it seems that the Attorney General
5 or his, and/or his counsel, don't agree with the
6 commission's directions with regard to the
7 handling of documents for purposes of document
8 disclosure. Well, you know, frankly, that just
9 doesn't matter. It's irrelevant. It's your job
10 to make these decisions, not that of the Attorney
11 General. And it is the, the refusal, the denial
12 of funding represents an interference with your
13 process, a lack of regard for your independence.
14 And the fact that the Attorney General sends
15 counsel here today to, in effect, argue against
16 the grants of standing that you have made and the
17 associated -- by undermining, excuse me, argues
18 against the conditions that you deem necessary to
19 support the parties properly, in particular, the
20 funding, is a further indication that the Attorney
21 General either doesn't understand or doesn't care
22 about the difference between his job and your job.
23 And it's just not appropriate for the Attorney
24 General to send his messenger here to tell you how
25 to run things.

1 MR. COMMISSIONER: Thank you, Ms. Brodsky. Anyone else?

2 MR. HERN: Mr. Commissioner, I have a prior engagement and I
3 would ask to take your leave.

4 MR. COMMISSIONER: Yes, thank you.

5 MR. HERN: Thank you.

6 MS. PACEY: Thank you, Mr. Commissioner. I just would like to
7 indicate on behalf of my clients, I adopt Mr.
8 Arvay's and Ms. Brodsky's submissions.

9 I just would like to make a few additional
10 points. My first is with respect to Mr. Jones'
11 comment regarding whether the commission counsel
12 could be bifurcated and divided into a hearing
13 counsel and advisory counsel. It's my submission
14 that that would not fix what we submit are the
15 critical flaws in this inquiry process, as it
16 would be currently structured, resulting from the
17 funding denial.

18 And the first is, as Ms. Hensel indicated,
19 there are various sometimes competing perspectives
20 of participating groups, which would be very
21 difficult, if not impossible, for counsel,
22 commission counsel to address.

23 But secondly, it's with respect to cross-
24 examination. I agree that commission counsel
25 could take a more probing approach to cross-

1 examination and do a thorough and effective job in
2 terms of thoroughly examining the evidence and
3 testing the evidence that's put forth. However,
4 what I would like to submit to you today is that
5 my clients have a very particular theory of this
6 case through their experience and their
7 perspective after decades of working in the
8 Downtown Eastside, and in particular, between the
9 1997 and 2002 period. They have reviewed the
10 Vancouver Police Department's internal
11 investigation, they have read the RCMP's internal
12 investigation, and they have a very particular
13 theory of what was going on during that time. And
14 in my respectful submission, despite the very
15 talented lawyers you have as commission counsel,
16 they would not be in a position to be sufficiently
17 versed in that theory and to put that theory to
18 the witnesses.

19 I have made this point a number of times. I
20 will be extremely brief, and Mr. Arvay made this
21 point as well, but as you have indicated in your
22 update of June the 20th, it is very difficult to
23 get witnesses to come forward from the community.
24 We know of the structural and systemic barriers
25 that women face to participating in this type of

1 process. And it is my submission that no amount
2 of diligence on behalf of your counsel can replace
3 the trust that's been established both between the
4 client groups that are represented here and
5 counsel for those clients. Meetings with counsel,
6 the ability to further establish that trust and
7 take steps to put protections in place for
8 witnesses who choose to come forward is an
9 extremely important step.

10 And finally, as I have indicated, my clients,
11 having reviewed the RCMP and VPD internal
12 investigation, disagree with the submissions you
13 have heard from Mr. Jones that this is not an
14 adversarial process. They have a very distinct,
15 if not a completely opposite view, of what was
16 going on during that time, the reasons for the
17 absolutely tragic and unnecessary deaths that
18 could have been presented in the community between
19 1997 and 2002 and are, of course, here and
20 participating fully in this process in an attempt
21 to have their day before yourself and have their
22 perspective heard.

23 MR. COMMISSIONER: All right. Thank you, Ms. Pacey.

24 MS. FOX: Thank you for the opportunity to reply. I will be
25 brief. I will not cover points already made. I

1 acknowledge and express an appreciation for the
2 replies of participants before me.

3 My first point, we didn't receive the
4 Attorney General's submissions, so I would like to
5 put that on the record and get a copy.

6 Secondly, with respect to the comments of Mr.
7 Jones on the document review, I want to clarify
8 that my clients in the Working Group did not
9 submit that we needed all five organizations with
10 five lawyers reviewing all 1 million documents.
11 To clarify, our submission was that we were
12 looking for ways to collaborate and streamline our
13 efforts to minimize and use funds efficiently.

14 The Attorney General's representative here
15 didn't address or respond to our key interests of
16 the indigenous voice being heard in this process,
17 which the commissioner has already acknowledged as
18 important. I submit that the Attorney General's
19 representative devalues the role and the, and what
20 our organizations can contribute to this process.

21 The suggestion that commission counsel, with
22 all due respect, that they can represent us in
23 that way, it is inappropriate. Commission counsel
24 won't receive instructions from our clients, and
25 even if they did, they won't understand those

1 instructions or the experiences and nuances behind
2 them. And as has been mentioned by counsel, Mr.
3 Arvay, our clients trust us and we have long-
4 standing working relationships with them.

5 As Ms. Hensel said earlier, commission
6 counsel can't be expected to internalize our
7 experiences. And in that vein, I just note, the
8 indigenous people didn't receive the right to vote
9 provincially until the 1950s, or federally until
10 the 1960s. Our potlatches, which are a
11 manifestation of our governments, were outlawed,
12 prohibited, and we weren't even allowed to raise
13 funds for legal representation until it was I
14 believe the 1960s. And today even, we are still
15 under the authority of the federal minister of
16 Indian Affairs.

17 So, I submit that this inquiry was supposed
18 to be an opportunity for us to choose our own
19 voices finally, and the suggestion that somebody
20 else could do that for us, we take objection to.
21 It's not only a matter about commission counsel
22 being aggressive in cross-examination on our
23 behalf. It's about us telling, fundamentally it's
24 about us telling our story with our own voice.

25 How can aboriginal people have confidence and

1 faith in an inquiry looking into the deaths of so
2 many of our women, if they're not given a voice in
3 that inquiry? Based on our experience, they do
4 not. And for aboriginal people, this inquiry will
5 lack the confidence and faith before it's even
6 started.

7 The Attorney General's suggestion that a
8 redesign within the current funding situation
9 would work, we disagree. We are dismayed,
10 disappointed that the only solutions brought by
11 the Attorney General today were "imperfect and
12 incomplete," yet they were conveyed to us as
13 sufficient for this inquiry.

14 So, just to reiterate and have it on record,
15 we, fundamentally we just want to make sure that
16 the Attorney General understands that this is
17 about our voice and it's not just about processes
18 and technicalities.

19 MR. COMMISSIONER: All right, thank you.

20 MS. FOX: Thank you.

21 MR. COMMISSIONER: Mr. Jones?

22 MR. JONES: Thank you, Mr. Commissioner. I'm not going to
23 engage in any sort of surreply here to --

24 MR. VERTLIEB: Even though I don't --

25 MR. JONES: Sorry?

1 MR. VERTLIEB: I think someone else wants to speak.

2 MR. KING: Sorry, Mr. Commissioner, I was just being courteous.

3 I wanted to make sure there wasn't anybody else
4 who wanted to speak.

5 For the most part, I think the arguments that
6 we were going to make have been very sufficiently
7 covered by counsel before us. The one thing that
8 I wanted to point your attention to, in some of
9 the written documents that we passed up to you
10 today, one of those is an affidavit from David
11 Eby, who was the lawyer with BC Civil Liberties
12 Association. The reason why we wanted to pass up
13 that affidavit is, is to really emphasize how
14 difficult it is, even for organizations like us
15 that work on policy issues around vulnerable
16 people and marginalized people, how difficult it
17 is to make that connection and to understand what
18 their demands are and kind of what their interests
19 are. And I will -- actually, I want to read one
20 paragraph because I think it really kind of makes
21 our point known. Paragraph 20, it says:

22 Even as a representative of a human rights
23 organization that has no interest in the
24 communities in which I worked, I could not
25 have completed those reports or gathered the

1 evidence that I needed from those informed
2 without the assistance of frontline
3 organizations who assisted me in contacting
4 and building trust with these individuals.
5 Even with that active assistance of frontline
6 organizations, I often struggled and
7 sometimes failed in preparing these reports,
8 to make contact and build trust with
9 individuals who are homeless, involved in sex
10 work, addicted to street drugs or otherwise
11 extremely socially marginalized.

12 And I think, to some degree, that's the
13 situation that the commission counsel will find
14 themselves in. And in organizations like ours,
15 who, who continually work, and lawyers who have
16 worked for years with, with marginalized
17 individuals, if we are not able to make those
18 connections, if we are not able to operate as that
19 voice, I don't understand how the Attorney General
20 can make a submission that the commissioner's
21 counsel and a government-appointed lawyer could
22 possibly act as representatives of those people.
23 To us, it just seems ludicrous. That's all.

24 MR. VERTLIEB: And I know Cleta Brown had to leave, but Shelagh
25 Day on behalf of the Women's and Security

1 Coalition wants to say --

2 THE COMMISSIONER: Yes.

3 MR. VERTLIEB: And I think that is all.

4 MS. DAY: Thank you, Mr. Commissioner. It's Shelagh Day and
5 I'm appearing for the Women's Equality and
6 Security Coalition.

7 THE COMMISSIONER: Yes.

8 MS. DAY: I just have a very brief point. The Attorney
9 General's decision and his position here today
10 profoundly does not understand that there is
11 systemic discrimination involved here. When the
12 Attorney General has decided to fund the families,
13 something that we all support, but not decided to
14 fund those groups, who, as Mr. Arvay has said, are
15 acting here in the public interest and knows that
16 this is a large problem, this is not an individual
17 problem, this is a systemic problem that we're
18 trying to deal with here, and it needs all of
19 these groups, particularly the ones that have got
20 depths of knowledge with respect to systemic
21 discrimination. What aboriginal people have to
22 say here is profoundly important. It's years of
23 history. What women have to say here, likewise.
24 It's years of history. And that is relevant here.
25 Mr. Jones apparently doesn't understand this.

1 Neither apparently, so far, does the Attorney
2 General. But it's extraordinarily important to
3 your job here and, therefore, I suggest Mr. Jones'
4 suggestions this afternoon are merely insulting
5 and they won't help. They don't help you. They
6 don't help us solve this problem. Thank you.

7 MR. COMMISSIONER: All right. Thank you, Ms. Day.

8 MR. VERTLIEB: I think last is Kelly White, who says she has
9 one minute to, to, to speak to you please.

10 MR. COMMISSIONER: All right.

11 MS. WHITE: Thank you. I would like to --

12 MR. COMMISSIONER: Yes.

13 MS. WHITE: I would like to thank the Attorney General's office
14 for attending and sending their representative to
15 say the presentation on behalf of the Attorney
16 General's office. I understand that in my
17 disciplines of traditional and the little what I
18 know of the legal society, I understand that the
19 legal society is different for our people than
20 other people in our beautiful country, but I, in
21 my understanding, I, I take the, I would like it
22 on record that I take the Attorney General's as
23 contempt of the proceedings and it should be taken
24 care of as an abortion of justice. Thank you for
25 your time.

1 MR. COMMISSIONER: Thank you, Ms. White.

2 MR. VERTLIEB: Mr. Jones, I think that we can get to you now.

3 Thank you.

4 MR. JONES: Thank you, Mr. Commissioner, and as I say, I don't

5 intend to engage in, in, in any kind of surreply,

6 but I did want to correct what appears to be two

7 misapprehensions in the Attorney's position.

8 There were probably others, but these are the ones

9 I managed to take notes of.

10 Mr. Arvay, in his, in his zeal to be

11 adversarial, is keen to be adversarial, not only

12 against a non-participant in these proceedings,

13 but also with respect to arguments that haven't

14 been advanced.

15 He says, in the first case, that I have been

16 sent here -- and I hope my notes are accurate --

17 that I have been sent here to announce that the

18 decision not to fund was final. That was

19 certainly no part of my brief. That was no part

20 of my submissions. It's no part of my

21 instructions whether the decision is final or not.

22 It would be my assumption, from what I know of, of

23 administrative law, that if you were to make a

24 request, a renewed request to the government, that

25 the government would have to consider that in the

1 same and usual course. So, I just don't think
2 that that's an accurate characterization or our
3 position and, as I say, I have no instructions in
4 that regard.

5 He then says that I have conceded, and he
6 hammered away at that word, that without funding,
7 the hearing would be inadequate. This was I think
8 diametrically opposed to the characterization of
9 our position that was adopted by subsequent
10 presenters, who I think had it more accurately,
11 but for Mr. Arvay's benefit, perhaps I can be
12 clear. My point on inadequacy is this, that if
13 you find that, as presently structured, the
14 hearings will not be adequate, then, in the
15 context of denial of funding, it would be
16 incumbent on the commission to revisit that
17 structure, to make an --

18 MR. COMMISSIONER: To what?

19 MR. JONES: -- to revisit the structure, to make this
20 commission adequate for its purpose and its
21 mandate. And we certainly think that's possible
22 and that's why we've tried to suggest some ways,
23 and only some, and that that could be
24 accomplished.

25 So, with those clarifications, as I say, I

1 don't, I don't want to participate in a rebuttal
2 argument, but if you have any questions, I would
3 be pleased to answer them.

4 MR. COMMISSIONER: All right. Thank you, Mr. Jones.

5 MR. VERTLIEB: Well, Mr. Commissioner, we're grateful to all of
6 our colleagues and the participants who have come
7 and at considerable inconvenience, and it's
8 interesting and so reassuring to see members of
9 the bar who are here out of a sense of
10 responsibility. We've covered everything in a
11 very thorough day and a very thorough way and
12 there is nothing else that we need to do today. I
13 think we can stand down and allow you the time to
14 consider what you wish to do going forward.

15 MR. COMMISSIONER: Yes, I think, I think the object here is to
16 conduct this inquiry in a fair way, and much has
17 been said about the parties' involvement and how
18 best they can help.

19 You know, it's, it's a given that many of the
20 victims and the families here, and particularly
21 the aboriginal people, historically have been
22 disenfranchised, have historically been
23 victimized, and we want to ensure here that they
24 have fair representation, that their voices be
25 heard.

1 And the purpose, as I understand it, of the
2 inquiry, is to find out, first of all, what
3 happened during the Pickton investigation and
4 whether or not the investigation relating to
5 missing women was inadequate, why so many women
6 died, particularly those who were not in a
7 position to speak for themselves, and so -- and to
8 prevent these types of atrocities from taking
9 place in the future, and to have those voices that
10 have not been heard in the past, to be heard.

11 In one extent, this is a, one part of a
12 larger problem that has existed in the criminal
13 justice system long before I came into it, and I
14 note that Ms. Kelly White made reference to the
15 Fred Quilt case. I, I was just out of law school
16 when that horrible incident took place of an
17 innocent man, Fred Quilt, who died in Williams
18 Lake at the hands of the police. And it's those
19 types of injustices that have historically taken
20 place that have victimized the aboriginal
21 communities, and it's incumbent upon all of us to
22 ensure that we change direction and those
23 unfairness, those incidents of unfairness not be
24 repeated. And so this inquiry is part and parcel
25 of that, to correct the mistakes of the past.

1 So, I want to thank everybody who came here
2 today and made submissions, all the counsel. I am
3 indebted to all of you and the members of the
4 public who came here today. Grand Chief, I
5 appreciate you coming here and giving us your
6 comments and, and to imparting your advice to us.
7 Thank you.

8 **(PROCEEDINGS ADJOURNED AT 4:27 P.M.)**

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