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

The Honourable Wally Oppal, Q.C.
Commissioner

Ruling on Participation and Funding Recommendations

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

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

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

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

II. The Missing Women Commission of Inquiry is Established

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

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

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

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

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

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

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

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

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

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

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

III. The Process Mandated by the Terms of Reference

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

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

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

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

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

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

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

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

V. Participant Status in the Evidentiary Hearings

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

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

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

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

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

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

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

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

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

VI. The Criteria for Participation in the Evidentiary Hearings

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

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

² Section 12.

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

The Test for Participation

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

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

Interests Affected by the Subject Matter of the Inquiry

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

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

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

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

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

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

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

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

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

⁶ Ruel, *supra* at 57-58.

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

Furthering the Conduct or Contributing to the Fairness of the Inquiry

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

VII. The Application Process

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

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

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

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

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

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

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

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

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

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

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

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

VIII. Applications for Participation

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

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

A. Applicants Accepted as Full Participants

1. *Vancouver Police Department and Vancouver Police Board*

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

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

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

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

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

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

2. *Government of Canada*

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

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

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

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

3. Criminal Justice Branch

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

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

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

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

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

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

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

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

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

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

The Families meet the test for participation.

5. Vancouver Police Union

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

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

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

The VPU meets the test for participation.

6. Coalition of Sex Worker-Serving Organizations

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

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

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

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

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

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

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

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

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

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

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

The Committee of the February 14 Women's Memorial March

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

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

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

Downtown Eastside Women's Centre

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Native Women's Association of Canada

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

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

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

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

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

10. Dr. Kim Rossmo

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

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

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

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

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

B. Applicants Accepted as Limited Participants

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

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

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

BC Civil Liberties Association

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

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

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

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

Amnesty International

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

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

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

PIVOT Legal Society

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

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

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

2. Ending Violence Association of BC and West Coast LEAF

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

Ending Violence Association of BC

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

EVA BC participated in the *Lee Inquest*.

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

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

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

West Coast LEAF

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

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

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

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

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

3. Assembly of First Nations

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

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

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

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

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

Carrier Sekani Tribal Council

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

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

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

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

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

Union of BC Indian Chiefs

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

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

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

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

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

5. Women's Equality & Security Coalition

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

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

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

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

6. Native Courtworker and Counselling Association of BC

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

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

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

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

7. First Nations Summit

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

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

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

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

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

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

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

8. CRAB – Water for Life Society

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

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

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

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

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

IX. Funding Recommendations

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

Full Participants

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

Limited Participants

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

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

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

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

X. Summary

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

Table of Applicants Accepted as Participants

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

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

Table of Applicants Given Funding Recommendations

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



Wally T. Oppal, Q.C.
Commissioner