
Missing Women Commission of Inquiry

Status Report on Commission Progress

The Honourable Wally Oppal, Q.C.

Commissioner

Missing Women Commission of Inquiry

Status Report on Commission Progress

March 3, 2011

Introduction – Missing Women

For many years British Columbia has experienced the horrific and tragic consequences of missing and murdered women. The total number of missing and murdered women is uncertain and estimates vary widely.

The Joint Missing Women Task Force has stated that between 1978 and 2001 approximately 65 women had gone missing from Vancouver. According to the 2005 Take Back the Highway awareness demonstration, 32 women and girls were missing or murdered along Highway 16, an 800-kilometre section of highway between Prince George and Prince Rupert (also called the Highway of Tears). Aboriginal women formed a disproportionately high percentage of these totals.

Robert Pickton was charged with killing 26 of the women missing from Vancouver. The DNA of an additional six women was found on his farm. The Crown proceeded with six charges and on December 9, 2007 he was found guilty and sentenced to six terms of life imprisonment.

While the issue of missing and murdered women raises many pressing and important social, political and economic issues, one important aspect is the conduct of police forces in investigating cases of missing women.

Commission Established

On September 27, 2010, the Missing Women Commission of Inquiry was established by an Order in Council pursuant to the *Public Inquiry Act*, S.B.C. 2007, c. 9. I was appointed sole Commissioner. The Commission was designated a hearing commission.

Its Terms of Reference are 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;

(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.

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.”

Purpose of the Status Report

While the Commission is not required to provide status reports under the *Public Inquiry Act* or the Terms of Reference, we wish to keep the public and applicants apprised of the Commission’s progress, given the substantial interest expressed in our work.

The purpose of this Status Report is to provide general information about the Commission’s activities. It will cover the following topics:

1. Commission counsel
2. Website
3. Hearing venue
4. Practice and Procedure Directive
5. Document disclosure
6. Participant access to documents

7. Pre-hearing conferences
8. Standing applications
9. Recommendation to designate the Commission a joint study and hearing commission
10. Future activities
11. Staying informed

Commission Counsel

Immediately after I was appointed Commissioner, I retained Art Vertlieb, QC to act as senior Commission Counsel. Mr. Vertlieb was senior Commission Counsel of the Braidwood Commissions, the public inquiries established by the Provincial Government to investigate the use of conducted energy weapons in the province, as well as the death of Robert Dziekanski at Vancouver International Airport.

Website

On November 1, 2010, the Commission launched its website: www.missingwomeninquiry.ca. The website provides information about the Commission's activities. The directives on the procedure the Commission has adopted, the Commission's Terms of Reference, the legislation applicable to the Commission and the biographies of Commission staff are made available to the public through the website. The website will also include transcripts and exhibits from the evidentiary hearings, media releases and any rulings I make. The website will be an important communication tool for our work.

Hearing Venue

While the majority of the Commission's hearings will take place in the hearing room at the Federal Court in Vancouver at 701 West Georgia Street, we may also hold the community portion of the hearings at a community venue. The dates are yet to be confirmed.

Practice and Procedure Directive

On October 26, 2010, the Commission adopted a Practice and Procedure Directive for Evidentiary Hearings, authorized pursuant to s. 9(1) of the *Public Inquiry Act*. The Directive establishes the rules that will govern the Commission's hearing process.

The matters addressed in the Directive include:

- access by the public and media;
- the procedure for applications for standing and funding recommendations;
- the rights of participants;
- the powers of the Commission regarding participants;
- the procedures regarding orders, applications and witnesses; and
- the rules for document disclosure, namely the use and confidentiality of documents disclosed to the Commission.

Document Disclosure

Shortly after the Commission was established, Commission staff began to work collaboratively with the Royal Canadian Mounted Police (RCMP), the Vancouver Police Department (VPD) and the Criminal Justice Branch (CJB) on the disclosure of relevant documents. Commission staff requested early disclosure from these participants to ensure that documents would be provided to the Commission and other participants well in advance of the hearings.

The RCMP, VPD and CJB have each provided Commission staff with a list of document categories and a schedule for delivery of those documents. They are voluminous. We have been informed that we can expect to receive millions of pages of documents. We are hopeful that all participants will make their best efforts to ensure the Commission receives prompt document disclosure throughout its mandate as our goal is to conduct this inquiry in a timely way.

Participant Access to Documents

For those granted access to documents in advance of the evidentiary hearings access will be provided electronically. Documents will be held in an electronic database which will be accessed remotely through the Commission's website. Of course, documents will be confidential and access will be password protected.

Pre-Hearing Conferences

The subject matter of this Commission involves a tragedy that has been felt deeply, not only by members of the Vancouver Downtown Eastside community, but across the Province and indeed the Country. Many of the people directly affected by the subject matter of the Commission belong to vulnerable and marginalized groups. These people often do not have the resources to influence policy change. Many members of the community strongly advocated for a public inquiry. Once the Commission was established they demonstrated great interest in the Commission's work.

Given these unique circumstances, we decided to hold two pre-hearing conferences: one in Vancouver on January 19, 2011 and one in Prince George on January 21, 2011. The purpose of these pre-hearing conferences was to introduce the Commission to the community, and in so doing, describe the role of the Commission and its mandate. Commission staff also requested the community's feedback on the meaning the Commission should give the Terms of Reference and the process the Commission should follow. The pre-hearing conferences were not a replacement for the evidentiary hearings. They were held solely to discuss the general mandate of the Commission and to give a voice to those people who may not be able to qualify for the more formal hearings.

Matters Discussed at the Pre-Hearing Conferences

The Vancouver and Prince George pre-hearing conferences were well attended. Both pre-hearing conferences opened with welcome ceremonies conducted by aboriginal leaders Chief Ian Campbell of the Squamish Nation and Chief Dominic Frederick of the Lheidli T'enneh First Nation, respectively.

After the opening ceremonies, I introduced the Commission to the community by describing its role, Terms of Reference and planned procedure. I then asked interested parties to share any comments they had about the meaning of the Terms of Reference, which could assist Commission staff in further developing the issues.

The feedback we received from those who attended the pre-hearing conference was greatly appreciated and beneficial. As explained below, it has informed the direction we wish to take in fulfilling the Commission's mandate.

Standing Applications

On November 2, 2010, we invited applications for standing from any individual, group, government agency, institution or other entity to participate formally in the Commission's hearings by notice through a media release and the Commission's website. Under the *Public Inquiry Act*, the test for standing requires that the applicant show:

- 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, or
- c. whether the person's participation would contribute to the fairness of the inquiry.

We received applications from the following applicants:

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. 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
 - University Women's Club of Vancouver
 - The Poverty & Human Rights Coalition
 - 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

I granted standing to the following applicants, with reasons to follow:

1. Vancouver Police Department and Vancouver Police Board
2. Government of Canada
3. Criminal Justice Branch
4. The families as represented by A. Cameron Ward

These applicants were granted standing in advance of the other applicants due to their clear legal interest in the subject matter of the Commission.

After receiving the applications, we held a hearing for standing. Notice of the hearing was given on the Commission's website and in a media release on December 7, 2010. The hearing took place on January 31, 2011.

The purpose of the hearing was two-fold. First, the remaining 18 applicants were given an opportunity to make submissions to augment their written applications at an oral hearing by highlighting their specific areas of interest in the Commission's mandate and their anticipated level of involvement at the hearings.

Second, as result of the overlapping and common interests of many applicants, applicants were asked to make submissions on forming coalitions. While we appreciate that many applicants originally applied in coalitions, we are still concerned the total number of potential participants is

unwieldy for an evidentiary hearing. We would like to be as inclusive as possible in considering the many applications for standing; however, the hearing process must be efficient.

To date, the following applicants applied in or have entered formal coalitions:

1. Coalition of Sex Worker-Serving Organizations
2. Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society
3. Women's Equality and Security Coalition
4. Ending Violence Association of BC and West Coast LEAF
5. BC Civil Liberties Association, Amnesty International and PIVOT Legal Society
6. The Committee of the February 14 Women's Memorial March and the Downtown Eastside Women's Centre
7. Carrier Sekani Tribal Council and the Union of BC Indian Chiefs

At the hearing for standing, I told applicants that I intended to have my ruling on standing issued by the end of February, 2011. However, based on the community feedback that we have received, and for the reasons described below, I have decided to defer my ruling on standing until early Spring.

Recommendation to Designate the Commission a Joint Study and Hearing Commission

Community Feedback

Over the past few months, concerns about the hearing process used by the Commission to fulfill its mandate have been raised by various members of the community. These concerns have been communicated to the Commission by members of the public, in media reports, in community organized forums and at the pre-hearing conferences organized by the Commission.

In particular, the community has expressed concerns about their ability to participate in the Commission's process. The following are examples of the types of participation concerns that have arisen:

- the Commission's process should be accessible and community-driven as opposed to adversarial;
- vulnerable and marginalized individuals should not be discouraged or made to feel excluded by an overly formalized process;
- the emotional needs of the victims' families should be respected and supported;
- aboriginal groups should be involved in a manner that is culturally sensitive; and
- the northern communities affected by the ongoing missing and murdered women investigations from the Highway of Tears should be given an opportunity to participate meaningfully without compromising those ongoing investigations.

Community members have also stated that a flexible and inclusive process will improve the Commission's ultimate recommendations by ensuring they are:

- appropriately contextualized;
- culturally sensitive; and
- suitable for northern communities affected by the missing and murdered women along the Highway of Tears.

Issues Arising from Standing Applications

As stated, the large number of potential participants would inevitably lead to a cumbersome evidentiary hearing. Further, some of the applicants only wish to participate in certain aspects of the Commission's work. For example, some applicants are concerned only with the policy aspects under Terms 4(c) and (d). Other applicants have direct interests in the factual inquiries under Terms 4(a) or (b).

Applicants also have different expectations about how they will participate. Some applicants seek full participation, including the right to cross-examine all witnesses. Other applicants seek limited rights to make submissions or cross-examine only a few witnesses.

Ability to Address the Community Feedback and the Issues Arising from Standing Applications

In the following section, I describe my reasons for recommending a joint study and hearing commission. However, this Status Report is not a ruling on my interpretation of the *Public Inquiry Act* or the Terms of Reference.

Based on the community feedback and submissions of the participants, in our view, the Terms of Reference give the Commission two distinct but related mandates: “to inquire into and make findings of fact” and “to recommend changes”. These distinct mandates, one factual and one policy, must currently be achieved through a hearing commission. The *Public Inquiry Act* distinguishes between hearing and study commissions.

Subsections 21(1) and (2) of the *Public Inquiry Act* set out the powers of a hearing commission:

(1) Subject to this Act and the commission’s terms of reference, a hearing commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:

- (a) issuing directives respecting any of the matters set out in subsection (2);
- (b) holding written, oral and electronic hearings;
- (c) receiving submissions and evidence under oath or affirmation;
- (d) making a finding of misconduct against a person, or making a report that alleges misconduct by a person.

(2) Without limiting the powers of a commission set out in Division 1, a hearing commission may make directives respecting any of the following:

- (a) the holding of pre-hearing conferences, including confidential pre-hearing conferences, and the requiring of one or more participants to attend a pre-hearing conference;
- (b) procedures for preliminary or interim matters;
- (c) the receipt and disclosure of information, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a participant or witness on oath, on affirmation or by affidavit;
- (d) the exchange of records by participants;
- (e) the filing of admissions and written submissions by participants;

(f) the service and filing of notices, records and orders, including substituted service and the requiring of participants to provide an address for service;

(g) without limiting any other power of the commission, the effect of a participant's non-compliance with the commission's directives.

By virtue of this designation, the Commission may only undertake the activities of a hearing commission, set out above in s. 21(1) and (2) of the *Public Inquiry Act*, in addition to the general powers of a commission outlined in Part 3, Division 1. Furthermore, under s. 21(3), a hearing commission is prohibited from exercising the powers of a study commission set out in s. 20(1) unless the hearing commission is also designated as a study commission. Subsections 20(1) and (2) state:

(1) Subject to this Act and the commission's terms of reference, a study commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:

(a) conducting research, including interviews and surveys;

(b) consulting with participants, privately or in a manner that is open to the public, either in person or through broadcast proceedings;

(c) consulting with the public generally and, for that purpose, issuing directives respecting any of the matters set out in subsection (2).

(2) Without limiting the powers of a commission set out in Division 1, a study commission may make directives respecting any of the following:

(a) the notification of participants and the public regarding a consultation under this section;

(b) the holding of public meetings, including the places and times at which public meetings will be held and the frequency of public meetings;

(c) the conduct of, and the maintenance of order at, public meetings;

(d) the receipt of oral and written submissions.

As stated by the British Columbia Supreme Court, the purpose of the distinction between a study commission and a hearing commission is to afford, where necessary, higher levels of procedural fairness to subject matters that require it: *Taser International, Inc. v. British Columbia*, 2010 BCSC 1120 at paras. 39 – 40.

Recommendation

As a result of the concerns expressed by the community, set out above, and the Commission's important public function, I am recommending that the Lieutenant Governor in Council grant the Commission the powers of a joint study and hearing commission.

The additional powers of a study commission would allow us to address the concerns of the community by giving the Commission increased flexibility over its process, including the ability to engage directly with the public outside of the formal hearing process.

A joint study and hearing commission would also permit the Commission to fashion different forms of participation to participants' interests, abilities and expertise. Applicants who may not strictly meet the test for standing in a hearing commission could still be involved in the study portion of our work. Ultimately, the Commission's process would be more inclusive and participants could speak directly to me without the formalities of the adversarial process.

A joint study and hearing commission would enable us to craft a more focused but still thorough hearing process while ensuring that both processes are procedurally fair. In the result, I believe the Commission may be able to more efficiently fulfill its various mandates.

Given my recommendation, I have decided to defer my decision on standing until I receive direction from the Government in response to this request.

Future Activities

Commission staff will continue to prepare for the evidentiary hearings by:

- working with participants with respect to document disclosure;
- reviewing disclosed documents;
- importing disclosed documents into the Commission's database, to ensure participants can access documents once they are granted participant status; and
- contacting and conducting interviews of potential witnesses, including family members of the missing and murdered women.

Staying Informed

The public can stay informed about the work of the Commission by:

- visiting the Commission's website which will provide access to publications, reports and rulings of the Commission; and
- attending the evidentiary hearings or reading the transcripts of those proceedings.

A handwritten signature in black ink, appearing to read "du Croix".