



September 22, 2017

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**Amnesty International Canada
Canada Without Poverty
Canadian Feminist Alliance for International Action
Femmes Autochtones du Québec/Québec Native Women
First Nations Child and Family Caring Society
Native Women's Association of Canada
Dr. Pamela Palmater, Ryerson University Chair in Indigenous Governance
Union of BC Indian Chiefs
Women's Legal Education and Action Fund (LEAF)**

Dear Members of the Signatory NGOs:

**Re: Concerns of Non-Governmental Organizations with Standing before the Inquiry
Re: Response to Letter of August 23, 2017**

Thank you for your letter of August 23, 2017 outlining your collective areas of concerns and questions for the National Inquiry. Thank you also for providing us with the opportunity to reply in writing.

I will address your questions in the order they appear in the enclosure of your letter.

Inquiry Schedule (and Topics)

To date we have scheduled a total of 9 Part I Community Hearings for this Fall, which hearings focus on hearing from families and survivors through a variety of different options. This is in addition to the first Community Hearing that was held in Whitehorse.

The Schedule has been posted on our website with the next Community Hearing occurring from September 25 – 27, 2017, in Smithers, British Columbia. Attached is a copy of the Poster we have distributed to families, survivors, Parties with Standing at the Smithers Community Hearing, the British Columbia government, and the media. This is one of the means by which we are communicating our schedule.

As you know, we held our first Expert Hearing in Winnipeg, Manitoba during the week of August 21, 2017 on the topic of Indigenous Laws and Decolonizing Perspectives. We have yet to schedule the balance of the expert hearings, pending a consultation with stakeholders to occur later this fall. Assuming we do not receive any an extension of time to complete our mandate, it is our intention to hold up to a maximum 8 further expert hearings between January and April, 2018. Expert hearings will hear from experts of varying types of expertise and knowledge including families, survivors, Elders, Traditional Knowledge Holders, professionals and academics.

The topics we are looking at exploring through Expert evidence, subject to ongoing consultation, are:

1. Sexual Assault and Violence;
2. Constitutional and legislation as colonial violence contributing to the incidence of violence against Indigenous women and girls;
3. Human Rights;
4. Media;
5. Criminal Justice System;
6. Institutionalized, systemic and structural colonial violence through existing social policies, programs and services;
7. Forensic Police File Review Panel.

Similarly, assuming we do not receive an extension of time to complete our mandate, it is our intention to hold approximately 5 - 7 institutional hearings between January and April, 2018. In this phase of our hearings, we will hear directly from the institutions themselves – both Indigenous and non-Indigenous. We intend to adopt a strength-based approach.

The general topics which we intend to examine during the course of the institutional hearings, subject to ongoing consultation with stakeholders, are:

1. police investigation practices;
2. Child welfare models, applications and outcomes;
3. government services;
4. Indigenous governance and Community empowerment;
5. sexual abuse and violence prevention and response strategies;
6. empowerment of marginalized groups within Indigenous populations (e.g.: sex trade workers, women in prison, human trafficking victims, LGBTQ2S people);
7. Coroners' investigation practices.

We recognize that there are many topics that would warrant both expert and institutional hearings are currently operating within a limited time and resource constraints. We also intend to insure that many perspectives are reflected over the course of the institutional and expert hearings including:

1. Decolonizing perspectives
2. First Nations, Inuit and Metis as distinct perspectives
3. LGBTQ2S Perspectives
4. historical perspectives
5. gender perspectives
6. disability perspectives
7. intergenerational perspectives: Elders, children and youth
8. urban and rural perspectives
9. community regional and Québec specific, national and international perspectives

We want to engage families and survivors throughout the three Parts, and are identifying ways to do this. We would appreciate any ideas or suggestions you may have in this regard.

How are hearings classified as National as opposed to Regional

National hearings will be those Truth Gatherings that will receive information that is not specific to one particular region. Typically, the institutional and expert hearings will be classified as National since there witnesses and topics will be National in scope. On the other hand, Regional hearings will be those Truth Gatherings that receive information specific to a particular region. Typically the Part 1 Community Hearings will be Regional. There is however the possibility of some crossover of the Parts (for example, we are considering a Part I hearing comprised of Indigenous police officers who have lost love ones). Since those Indigenous police officers would come from across the country, it would make sense to declare that particular Part I hearing as National. Similarly, as we are considering having blended Part hearings such as having hearing from a local grassroots organization during the course of a Community hearing which would then be a Part I and Part II combined regional hearing.

However, where there is to be a departure from the typical scenario, we will provide advance notice of same to the affected parties.

The viability of some of these plans will depend upon the result of our request for an extension of time.

Process

1. The procedures for participating in hearings are set out by the *Legal Path: Rules of Respectful Practice*. We recognize the challenge presented by the fact that a number of a large number of parties were granted standing and the implications for opportunities for cross-examination. While it is not our preference that any party to be cut off during the course of their cross-examination, we are also obliged to ensure that we respect the time lines within which we must complete our current mandate. That said, we have tasked our commission counsel with designing a better process so that all parties who wish to cross-examine will have an opportunity to do so proportionate with the interest that they have to the content of the examination. As well, we are scheduling fewer witnesses per day of hearing which will translate into a longer period of time for cross-examination.
2. We are exploring the opportunities for families and their community allies to participate in Parts II and III. Under the current funding arrangements, there is no scope for providing funding directly to families and community allies to attend in person at these proceedings to observe. However we are looking at other formats such as a web based format which would allow families and others to actively participate. This is in addition to our commitment to have all Part II and Part III sessions live streamed through a web cast so that all may view the proceedings.
3. As outlined in the *Legal Path: Rules of Respectful Practice*, Parties with standing at a particular Truth Gathering will be provided with that documents by Commission counsel in advance. The *Rules* prescribe that documents will be distributed 48 hours in advance at the latest. However commission counsel will make best efforts to distribute documents and summaries of anticipated evidence one week in advance of the Truth Gatherings.
4. We have retained Wortzmans (affiliated with McCarthy Tetrault) which is a e- discovery firm to, among other aspects of document management, create a system which will allow parties with the appropriate standing to access documents, exhibits and transcripts. Our Commission Counsel is working with Wortzmans to have a vehicle which will not require a specific form of

technology in order to gain access to the materials. The product being suggested is called ShareFile. No special software is required to access this platform. Only a web browser is necessary. We expect to be in the position to provide more specific details, through our commission counsel, shortly, once we have completed our due diligence.

5. Parties with Standing can definitely be called as witnesses. Indeed, it is the intention of Commission Counsel to canvas Parties to see whether there is any interest in testifying either at an Institutional hearing or an Expert hearing. We also want to hear from you in terms of the selection of topics, design of the content and forum, and identification of potential witnesses. If any of the Parties have an interest in testifying or wish to have input, I encourage them to contact our Lead Commission Counsel, Susan Vella.
6. Attached please find the recently approved *Legal Path: Rules of Respectful Practice* in both English and French. They will be posted on our website shortly.

Confidentiality Undertakings

1. The Confidentiality Undertakings, as drafted, are standard for Public Inquiries. Their objective is to ensure that sensitive confidential information is not released to the public unless and until they become public exhibits. The intent is to allow Parties access to confidential documents and information prior to them becoming evidence at Truth Gatherings or Hearings. As well, it is important that the documents be returned to the National Inquiry at the conclusion of its mandate where they have not been made public exhibits. I would direct you to our Lead Commission Counsel should you have any further concerns or suggestions for improvement. However, we wish to protect the privacy and confidentiality of what will be sensitive and possibly traumatizing information relating to health, education, criminal justice issues, police and coroners' investigations, child welfare interventions and other such matters that are specific to individuals. It is worth repeating that once a document becomes a public exhibit, the confidentiality undertaking no longer applies to that specific document.

Funding

1. The funding for Parties is allocated from the National Inquiry's overall budget.
2. We are limited in the sums that could be allocated to each Party. It was important to us that all applicants who met the criteria for standing and funding be granted same. However, the consequence is that the amount allocated had to be distributed proportionately to the Parties.
3. Family and survivors are welcome to attend expert sessions and health supports and hospitality will be provided at "in person" expert hearings. However, under the current financial constraints, the National Inquiry cannot provide funding to families who wish to attend expert hearings to observe. As stated above, we are exploring web based platforms which would facilitate greater access to families to be able to actively participate in the expert hearings. Importantly, we do recognize their expertise, and that expertise can be contributed during their testimony shared at Part I Truth Gatherings where they will receive funded accommodation, transportation, meals and child care. Each family and survivor sharing their information, expertise, solutions and recommendations during Part I Truth Gatherings are also entitled to

bring a support person whose travel, accommodation and meals will also be funded. As well health supports are available. Furthermore, where family members or survivors testify at expert or institutional hearings, they will receive funding.

4. As requested, enclosed is a copy of the PCO guidelines entitled "Terms and Conditions: Contribution Program for the National Inquiry into Missing and Murdered Indigenous Women and Girls". This document sets out the terms and conditions attached to funding of the Parties in the National Inquiry.
5. I am pleased to advise that all of our recommendations to the Privy Council Office regarding funding have been approved by the Clerk, Michael Wernick.
6. The Contribution Agreements have been finalized and approved by the PCO, and we expect to be sending these out to all of the Parties with Funding within the next few days. The Contribution Agreements, and Retainer Agreements, will need to be signed and returned. Any questions about them should be directed to Christian Rock at c.rock@mimiwg-ffada.ca.
7. Under the current Contribution Agreements approved by PCO, there is no automatic scope for retroactive funding. This is apparently standard practice. However, we have asked PCO to make an exception for those Parties who attended at the recent Winnipeg expert hearing and were represented by external counsel. If granted, we will seek an amendment to the applicable Contribution Agreements.
8. The basis upon which the overall funding amounts were allocated was generally as follows: We assumed the maximum hourly rate for senior counsel of \$350.00. We assumed attendance at one hearing per Part for which standing was granted and allocated [10 hours per day times 3 days], and added to that estimates for transportation and accommodation. Travel time at counsel's ½ rate is also included. In addition we included the cost of preparation of the application for funding. This is the general formula we followed, though we exercised some discretion to reflect extraordinary costs such as of travel for those who travel from remote locations.
9. As indicated above, those Parties who were granted standing in more than one Part received more funding than those Parties who were granted standing in only one Part.
10. The requirement to be accountable for each dollar expended is in reference to the PCO Guidelines which are enclosed.
11. The term for the funding granted is from now until fiscal year end which is March 31, 2018. However, we are advised that PCO will grant our request to extend the time by which the funds must be expended beyond March 31, 2018. This will be done by way of an amendment to the Contribution Agreements.
12. If an extension granted, together with an increase in our budget, we will allocate additional funding for the Parties where their participation is expected to increase. We will seek additional funds in an increased budget for such a purpose.

Respectfully,



Chief Commissioner Marion Buller

cc: Commissioner Bryan Eyolfson
Commissioner Michele Audette
Commissioner Qajaq Robinson
Susan Vella, Lead Commission Counsel
Aideen Nabigon, Interim Executive Director