

September 7, 2011

Honourable Shirley Bond
Attorney General
Government of British Columbia
PO Box 9053 Stn Prov Govt
Victoria BC V8W 9E2

Dear Ms. Bond,

On July 22, 2011, your predecessor, Barry Penner, decided to refuse funding to the thirteen groups that were granted standing at the Missing Women Commission of Inquiry by Commissioner Wally Oppal, Q.C. That decision shocks and concerns us.

Commissioner Oppal granted standing to these groups after holding hearings and receiving written submissions. His ruling on standing and participation, issued on May 2, 2011, was made after careful deliberation about the interests of the groups and the expertise they offered. He granted full standing to some groups because they had a direct interest in the findings of the Commission, and limited standing to others whose participation would assist the Commission and contribute to the fairness of the process.

Under the Commissioner's ruling on standing, parties with full standing had the right to cross examine all Inquiry witnesses, and parties with limited standing could cross-examine selected witnesses. Cross examination is the main instrument through which documentary and spoken evidence at a public inquiry is tested, and it is the only means through which parties can challenge, probe, and ensure the accuracy of that evidence. Each party brings its own interests, perspective, and expertise to the cross examination of witnesses. Effective and informed cross-examination requires the assistance of legal counsel.

Commissioner Oppal's standing and funding decision acknowledged the need for cross examination of witnesses by parties with an interest in bringing systemic issues and inequities to light, and the institutional expertise to do so. None of these parties has the resources to retain legal counsel without funding. The result is that former Attorney General Penner's decision in July ensures no party will be equipped or inclined to cross examine witnesses with a view to addressing or revealing systemic issues. It is difficult to conceive of a more substantive, self-interested manner of interfering with the independence of a public inquiry than denying resources to all but police and government, and a small group of grieving families.

The media have reported that hundreds of thousands of police documents have been produced to the Oppal Inquiry. It is simply not possible for a single lawyer, representing a few families, to analyse and cross-examine upon all of these documents. Only if counsel for all interveners are participating in the hearing will these documents, and other evidence, be subject to the kind of critical inquiry that will produce the truth, and support strong policy recommendations for the future.

Commissioner Oppal encouraged individuals and groups to form coalitions, where that was possible, in order to make the hearing process more efficient, and they did so. Commissioner Oppal then recommended that funding be “tailored to the level of participation that each applicant has been granted.” Standing and funding cannot be separated from each other, because funding is what gives reality to standing.

Former Attorney General Penner’s refusal to provide funding, in effect, overturns the standing decision of Mr. Oppal as an independent Commissioner. The groups cannot participate effectively without funding for legal counsel, and in his Pre-Hearing Conference of June 27, the groups to whom the Commissioner had granted standing reconfirmed that this is the case. Mr. Oppal’s authority to control his own process, and his obligation to ensure that the process is fair, require the Attorney General, in turn, to support his decision regarding standing and funding.

We can identify no other case in Canada where a government, having appointed a Commission of Inquiry, then, in effect, overturned a Commissioner’s decision on standing by refusing funding for participation. It is illogical, and it damages irreparably the ability of the Commissioner to do the very work that was assigned to him. The Vancouver Police Department, the RCMP and the Criminal Justice Branch of your Ministry will all be present with highly trained counsel, with the lone lawyer for some of the families, Mr. Cameron Ward to cross-examine them on their conduct. This will be “the height of unfairness”, as Commissioner Oppal wrote in his June 30 letter to former Attorney General Penner. Unfortunately, through no fault of Mr. Oppal’s, the Commission cannot now proceed fairly or credibly.

We understand that Commissioner Oppal, in an effort to salvage the Commission, has now appointed “independent” counsel to represent the interests of women in the Downtown Eastside and Aboriginal women. These “independent” counsel will not be accountable to either group. Unlike counsel working on behalf of the federal and provincial Crown, and police, such counsel will form their position and approach “independently”, i.e., without taking instructions from the groups they purport to represent. There will be no mechanism to ensure that the views of actual Aboriginal women or women in the Downtown Eastside are represented through these counsels’ work. Aboriginal women and women in the Downtown Eastside are already represented, through organizations such as the Native Women’s Association of Canada and the various organizations working with women in the Downtown Eastside. These groups, comprised of the women they represent, were granted standing and are capable of instructing counsel. They should have counsel, like every other party represented at the Commission.

The refusal of funding in this case is also especially egregious because the groups granted standing represent some of the most disadvantaged women in Canada, including Aboriginal women, women living in poverty, women with drug addictions, and women engaged in prostitution. These are women whose voices are rarely heard in legal fora. They are women who are regularly, and in the facts at issue in the Inquiry, repeatedly,

preyed upon, violated and murdered. To render them voiceless when it is their lives and safety which are the subject of the Inquiry, is unprincipled, as well as legally unsound. The appointment of “independent” counsel does not address this imbalance. Rather, it is a reflection of existing inequities. The refusal of the Attorney General to fund parties to the Inquiry will result in an unfair and discriminatory hearing process. Rather than correcting this unfairness and discrimination, the appointment of “independent” counsel will result in further unfairness, and introduces a new form of discrimination.

Canada was criticized by the United Nations Committee on the Elimination of Discrimination against Women in 2008 and during the Universal Periodic Review of Canada by the Human Rights Council in 2009 because of the inadequacies in law and practice with respect to preventing, investigating, prosecuting and remedying violence against women in Canada. In particular, the high levels of violence experienced by Aboriginal women, and the hundreds of missing and murdered Aboriginal women are counted as indicators of failures on Canada’s part to respect, protect and fulfill the human rights of women. Canada has not made an effective response to these significant findings by expert human rights bodies. The Missing Women Commission of Inquiry is the first, and so far the sole, independent body appointed to examine a part of this problem, and make appropriate, concrete recommendations for future action. As such, it is extremely important for the province and for Canada.

However, some important groups have already announced their withdrawal from the Missing Women Commission of Inquiry, and more may do so. If the Inquiry cannot be a credible and fair one because of former Attorney General Penner’s damaging decision not to provide funding, this will be a further tragedy for women in British Columbia and a shame to the country as a whole. Your Government should be willing in 2011 to permit a full, public examination of whether, and if so, in what ways, there have been police and Crown failures to protect women and prevent violence against them, and one in which the most marginalized women, and the organizations that represent them, can participate effectively and enjoy the respect and support that they are owed.

We look forward to your response. Please reply to Professor Kent Roach at Faculty of Law, University of Toronto, 78 Queen’s Park, Toronto, Ontario, Canada, M5S 2C5, Fax: 416-978-2648, Tel.: 416-946-5645, Email: kent.roach@utoronto.ca

Sincerely,

A handwritten signature in black ink that reads "Kent Roach". The signature is written in a cursive, slightly slanted style.

Professor Kent W. Roach, Prichard-Wilson Chair of Law and Public Policy
Faculty of Law, University of Toronto

(http://www.law.utoronto.ca/faculty_content.asp?profile=47&cType=facMembers&itemPath=1/3/4/0/0)

Paul J.J. Cavalluzzo, Cavalluzzo Hayes Shilton McIntyre & Cornish
(<http://www.cavalluzzo.com/profile.aspx?ID=1>)

Mary Eberts, Ariel Sallows Chair in Human Rights, College of Law, University of Saskatchewan
(http://www.usask.ca/law/about_us/bio.php?id=117)

Marlys Edwardh, C.M., Sack Goldblatt Mitchell
(<http://www.sgmlaw.com/en/lawyers/detail.cfm?lawyerid=62>)

Pearl Eliadis, Law Firm of Pearl Eliadis
(<http://www.rights-law.net/>)

Brian Gover, Stockwoods
(<http://www.stockwoods.ca/lawyers-brian-gover.html>)

Patricia D.S. Jackson, Torys
(<http://www.torys.com/OurTeam/Pages/JacksonPatriciaDS.aspx>)

Professor Lucie Lamarche, Gordon F. Henderson Chair in Human Rights, Director, Human Rights Research and Education Centre, Faculty of Law, University of Ottawa
(<http://www.commonlaw.uottawa.ca/en/lucie-lamarche.html>)

W.A. Derry Millar, WeirFoulds
(<http://www.weirfoulds.com/showbio.aspx?Show=510>)

Professor Ken E. Norman, College of Law, University of Saskatchewan
(http://www.usask.ca/law/about_us/bio.php?id=14)

Professor Peter H. Russell, Department of Political Science, University of Toronto
(<http://politics.utoronto.ca/faculty/profile/?id=76>)

Susan Vella, Rochon Genova
(http://www.rochongenova.com/team/susan_vella.aspx)

cc: Commissioner Wally Oppal, Q.C.
Unfunded Participants