

**Native Women's
Association of Canada**

PRE-INQUIRY CONSULTATION REPORT

May 2016

Introduction

Consultations were held by the Provincial and Territorial Member Associations (PTMAs) of the Native Women's Association of Canada (NWAC) in March 2016, to garner opinions about the upcoming Inquiry into Murdered and Missing Native Women and Girls (MMIWG). These consultations involved a wide range of participants, including youth and Elders, Aboriginal Metis and Inuit women, and those living on- and off-reserve, and in small and medium-sized communities, cities, and remote locations. Participants in the consultations have a wide range of experience working in their local communities, provinces or territories, and nationally on issues of importance to Indigenous women and their families – including violence and its prevention.

A consultation kit was prepared and distributed through the national office of NWAC for use at these sessions. Many of the PTMAs, but not all of them, reported back to the national office following the format of this kit. Accordingly, this summary report of all the consultations also follows the arrangement of topics in the consultation kit. Questions and topics from the kit appear below in bold, followed by the contributions from the consultations. This report also covers topics and suggestions from the consultations that do not exactly track the topics in the consultation kit. A copy of the consultation kit is attached to this summary report.

Questions and Topics Considered at the Consultations

A. FACTS AND POLICY

There seems to be general agreement that the Inquiry into disappearances and deaths of Indigenous women and girls should deal with both facts and policy. Do you agree?

PTMAs who answered this question replied yes. Three reports emphasized that legislation and law (including the *Indian Act*) should also be reviewed.

B. STANDING AND FUNDING

Do you want the Inquiry to have power to make decisions about standing, and to be able to give financial support to those with standing?

(a) Standing

There was unanimity that the Inquiry should have the power to grant standing.

There was broad support for requiring that standing be granted to NWAC and PTMAs, and other organizations working with vulnerable women and girls and with survivors (e.g. Friendship Centres, Transition Centres, street outreach teams, etc.)

Participants in the consultations were insistent that standing be granted to family members, some expressing the need that the Inquiry not be rigid about who constitutes “family”. The point was made that those who had disappeared or been killed often had close family-like relationships with friends and community, who are grieving them, and in a position to provide valuable information to the Inquiry. One report referred to “self-identified” family in this context. The point was also made that “family” in Indigenous communities can include extended family and friends, and this should be remembered by the Inquiry.

Accordingly, it was recommended that the Inquiry give close attention to the criteria for standing.

It was also pointed out that standing determinations would be region-specific, taking in to account the wishes and the circumstances of the various regions. No “one-size-fits-all” approach should be taken to the issue of standing.

One PTMA report reminded us that standing can be acquired for different purposes, e.g. an organization could get standing to submit a report or other policy information whether or not it participates in the other parts of the Inquiry. The Inquiry should follow this approach.

(b) Funding

There was unanimity that resources should be provided to those with standing. The emphasis in this context was on family members and organizations working with families and women.

There were no recommendations in the reports that the Inquiry provide funding to institutions like police. It was pointed out that some agencies, departments and organizations would already have resources to take part in the Inquiry, based on their own budgets, and that need should play a part in the funding decisions. The example of the Oppal inquiry, using its funding virtually entirely for police representation at the hearings, was raised as something to avoid.

It was pointed out that for those in remote and isolated locations, funding would facilitate not just attending the Inquiry itself. In addition, it would enable people to get together and determine their positions for the Inquiry, something that is very difficult to do in the face of distance, cost and weather obstacles to convenient travel.

The issue of funding for those with standing at the Inquiry was linked by many to issues of accessibility. Useful suggestions for how the Inquiry might make itself accessible to those in rural and remote locations, those in prison, the homeless, those with addiction issues, and others who would not be able to connect with a conventionally-run Inquiry were made in the consultation reports, and these are considered immediately below. They are also considered under the heading of Making Safe Space at the hearing.

Some PTMAs suggested that *core funding* be provided to NWAC (and the PTMAs) so that they could play a major role in the Inquiry, by, for example, attending each hearing and following the process of the Inquiry throughout, as well as giving advice to the Inquiry. The recommendation of core funding was extended, in some of the reports, to other provincial and territorial organizations working with vulnerable women and girls, survivors and families.

(c) Growing out of the discussion of standing and funding came suggestions in many of the reports for making the Inquiry more accessible

The Inquiry should itself go and hear people, where they live. People should not have to pull themselves out of their communities and travel to the Inquiry. Scheduling of the Inquiry should allow it to travel to remote communities, rural hubs, as necessary, to hear testimony.

The record of these meetings could, it was suggested, be done on tape, instead of through paper transcripts.

The willingness of the TRC to travel to hear people was referred to as an example. One PTMA queried whether it would be possible for the Inquiry to hire people to go into the communities to meet with the families, so the families would not have to travel to the Inquiry (this being one approach of the TRC).

Uses of technology like satellite links and video/tape recording could make the Inquiry more accessible.

Similarly it was proposed that a 1-800 number could be used, either by the Inquiry, or by NWAC to assist people to interact with the Inquiry.

It has also been suggested that the Inquiry set aside particular days, or parts of a hearing session, to deal with families, and deal with other issues in different sessions.

C. A TRULY NATIONAL INQUIRY

a) Do you agree that the Inquiry should be truly national?

The answer was, unanimously, yes.

The consultation reports made it clear that a “national” Inquiry would be one that involved the federal, provincial and territorial governments, and institutions like the police who operate at both levels, and child welfare, which operates primarily at the provincial and territorial level.

The Inquiry should have the power to investigate and deal fully with issues that are interjurisdictional, and that occur at one level or another, so that all governments’ conduct is scrutinized. If some of that power needs to come from the provinces and territories, they should give it.

It was pointed out by some that involving both federal and provincial/territorial governments means that not just the national Indigenous associations would be involved, but also the provincial/territorial or regional ones (like the Atlantic Women’s Association).

The implication of a national Inquiry, to some PTMAs, was that there had to be a strong regional presence, either through representation on the Inquiry itself, on an Advisory Committee, or by having each province and territory treated as its own region.

b) Do you agree that Canada should work with the provinces and territories to establish a truly national inquiry?

Again, the answer was a unanimous yes.

c) Given the past support by provinces and territories for a national inquiry, what can be done by local PTMAs and others to get them to make that support real, by joining in the national inquiry?

One PTMA suggests that if its province or territory has not already signed on, it could meet with territorial leaders to secure their participation.

Several PTMAs pointed out initiatives they already have underway with provincial or territorial governments, and said that these should be continued to reach their desired goals (ie, in the Yukon, a Memorandum of Agreement), and used as a grounding or a framework for the government's participation in the Inquiry.

One suggested strongly that initiatives that were effective at the territorial or provincial level should be brought to the attention of the Inquiry, so that they could be recognized and used as models for the solutions and approaches recommended by the Inquiry.

The need to keep in contact with political allies to work for an effective Inquiry was stressed.

People also stressed the need for the PTMAs to play a leadership role in all communities, and in the province and territory, to increase awareness of the issues facing Indigenous women and youth.

D. RECOMMENDATIONS OF PRIOR REPORTS

Do you agree that the recommendations of many prior reports should be examined with a view to implementing them as quickly as possible?

(a) Reviewing

The consultation kit did not specify which reports were at issue, and some of the consultation groups pointed that out.

However, others mentioned specifically some reports that needed to be reviewed. These included the Royal Commission on Aboriginal Peoples Report, the Marshall Commission Report, the TRC Report, the Ipperwash (Dudley George) Report and the Oppal Inquiry Report.

It was also mentioned that the review should include reports issued by international human rights bodies.

A warning was made that reviewing past recommendations should not consume too much of the time of the Inquiry, or delay it, and that the Inquiry should not let itself be deflected from its primary purpose by the contents of the reports.

However, there was a sense that the previous reports had identified a lot of issues, and contain useful information. The Inquiry should not duplicate past work, but draw on the reports, and fill gaps instead of “reinventing the wheel.”

It was suggested that a review of the reports was a good beginning to develop an action plan.

It was also suggested that a data base of previous inquiries and recommendations could be developed for the Inquiry and those interested in it to use as a resource. However, this should not use up the funds allocated for the Inquiry.

There was also an observation that the work of some other Commissions had been done in accordance with principles and approaches that this Inquiry should adopt. Specifically mentioned in this connection was the restorative approach taken by the Nova Scotia Home for Colored Children Restorative Inquiry.

In addition, it should be considered how the Calls to Action of the TRC might apply to the Inquiry.

(b) Implementing

There was more caution about the idea of implementing the recommendations of these reports quickly than there was about the idea of studying them for inputs into the work of the Inquiry itself. Some of the recommendations might be dated. It was also suggested that the whole context developed in the Inquiry was necessary to determine which of the previous recommendations should be implemented.

It was also pointed out that the governments to whom the recommendations had been made bore the responsibility to implement them. It would be undesirable to set up a situation where non-implementation could somehow be blamed on the process of the Inquiry.

If any of the previous recommendations were to be implemented without waiting for the Inquiry to report, it should be those of immediate benefit to families and children. The resources to implement the recommendations would have to be available from sources other than the Inquiry.

It was also stated that before there is implementation of any past recommendation, stakeholders would have to be informed and give their consent.

c) Who should do the reviewing job: the Inquiry or the governments to whom the reports were made?

There was only slight support for the suggestion that governments should do the reviewing, because they have already had the reports, in some cases for years, and have done little or nothing with them.

A PTMA who said that Canada should review the reports regarded this task as one that should be done, quickly, before the Inquiry started its work, so that the analysis would be available to the Inquiry right away.

One suggestion was that Status of Women Canada and Amnesty International could, perhaps, work together and independent of government, to review the reports.

There was more support for the idea that the Inquiry should do the review, preferably as a first order of business. This option was preferred because, in the words of one PTMA, “we do not trust the governments”.

The Inquiry could issue an analysis of the reports, and also an annotated bibliography, in the first part of its mandate.

One suggestion was that both the Inquiry and the governments should review the reports, and that family, community, and Elders should also have access to them for purposes of review and to locate pertinent information.

Another suggestion was that NWAC and the PTMAs, should do the analysis, with funding from Canada. This would retain ownership of the advocacy behind the reports in the hands of those who had actually done the work, and lobbied for the various inquiries, commissions and inquests that had written the reports.

One PTMA said that even if there was no funding, analysing the reports was still something that should be done.

d) It has been suggested that a good topic for the Inquiry to examine would be why governments have been so resistant to implementing the reports. Do you agree?

Not all consultations addressed this question.

Of the ones who did address the question, opinion was divided. Some said don't do it, and some said do it.

One PTMA argued that knowing why governments had not implemented previous recommendations would permit the Inquiry and advocates to develop better strategies for implementing the recommendations of this Inquiry, and improve communication and working relationships with governments.

Overall, government accountability and transparency need to be improved, and knowing why governments had not implemented past recommendations could help with this.

One participant said that governments have been reluctant to implement the recommendations because of the colonial mentality and racism dating back for a long time. Government policy has been aimed at reducing the numbers of “Indians”: if there are no Indigenous people with rights and

recognition, governments can take land and resources, including water. This motive for government inattention to the recommendations is particularly acute right now.

Another contention was that money was at the root of non-implementation and so not much analysis beyond that was needed.

E. COUNSELLING FOR THE FAMILIES OF THE DISAPPEARED AND DECEASED WOMEN

a) Do you agree with the recommendation that there should be counselling for those families and survivors who are involved with the Inquiry, before during and after that involvement?

aa) Do you agree that a program of counselling for the bereaved families or loved ones should be established as a priority, independent of the Inquiry, and that counselling related to the Inquiry experience should also be available?

There was universal agreement to these questions.

People felt that such supports should be available whether or not a person took part in the Inquiry.

The counselling supports should be made available immediately, in view of the need.

The following points were made about the nature of the support to be offered to individuals and families on a continuing basis:

- Must be ongoing, before during and after the Inquiry
- Must be culturally appropriate to the person involved
- Elder support should be available
- Counselling should be locally available to people
- Must address situations where both a victim and a perpetrator are members of the same family, or there are divided perspectives within the family
- Must not take too narrow a view of “family” when determining eligibility for counselling (see comments under Standing)
- Person getting the counselling or support must have choice in deciding what is appropriate
- Should be available to those living in remote locations, homeless, those in prison
- Should be meshed with services already being received by people, for example, for addiction issues
- Should include a 1-800 number for people to access counselling advice or information in an anonymous way if they wish
- Programs should be available to men and boys as well as women and girls
- Support and counselling for communities may be necessary and should be available
- Consider this issue in the context of the trauma already existing from the residential schools and provide what is necessary

There were also suggestions made about making support available to participants at the hearing (including Inquiry personnel), to deal with the immediate trauma, over and above what might be

available in a more long term counselling program or by way of prior preparation for a hearing or counselling afterwards:

- There must be sufficient notice of where the Inquiry will be, and what it will be doing, to enable persons to prepare themselves for the sessions
- There must be information available to people about the possibility of triggering and its effects occurring at the Inquiry, as well as information about how and where to get help preparing for that
- Cultural practices and ceremonies are the basis of supportive practices at the hearing
- Elders and ceremony are essential at every step of the process and must be relevant to each community
- Translation should make it possible to access materials and participate in the hearing in the person's own language
- Have debriefing tools available; people are open and raw after the sessions
- Have trauma-based medical supports available at the sessions; traditional, modern, and practical mental health supports should be available
- The presence of the Inquiry in the community, and the conduct of its proceedings, should be conducted in accordance with appropriate local protocols, eg drumming, cleansing, gifts. The report of the Nova Scotia/New Brunswick consultation contains a detailed list of what protocols would be appropriate for this region
- Aftercare from the Inquiry process could include massage, reflexology, acupuncture, etc.
- One PTMA suggested there might be a role for PTMAs in the areas where the Inquiry visits, and people will be interacting with it: they could provide safe housing and other resources for those who are travelling in to attend the hearing. In a similar vein, another suggested that PTMAs could help families prepare for the Inquiry and for dealing with the media, and accompany families to the Inquiry
- There should be support and debriefing for those providing support to hearing participants, as they will be affected too
(see also below, Creating Safe Space at the Inquiry)

b) Not only counselling, but other services, were recommended to be offered in connection with the Inquiry:

- Media training, to prepare families and loved ones for the intrusion of the media, and to inform them of their rights.
- Language and translation support
- Support for those with physical and cognitive disabilities
- Personal support worker to accompany and assist those participating in the inquiry, paid for by the Inquiry

c) The consultations gave examples of the kinds of help that people need when they have a loved one go missing, or a loved one is found dead:

- Search and rescue
- Support during a trial or other court/justice proceedings: a place to stay, meals, emotional support, child or Elder care, financial support and replacement of lost wages (These supports are also relevant to attendance at the Inquiry itself)

d) It has been suggested that the revival of the Aboriginal Healing Foundation would be a valuable measure. Do you agree?

Not all consultations addressed this question.

Those who said that it would not be valuable to revive the AHF cited experience with the AHF when it was in operation: it was remote from them, did not offer what they needed. They suggested that the large amount of money required to restart the AHF might be better spent regionally. NWAC and Pauktuutit who have presence in communities across Canada could be the mechanism through which programs are delivered.

Those who said that it would be valuable to revive the AHF observed that its programs and resources available to them when it was previously operating had been very valuable.

If the AHF were to be revived, the following changes would be desirable:

- a governance structure that included necessary participation from the regions and from women to ensure that its programs are relevant
- a monitoring mechanism to ensure that its work can be focussed and supported by the people and communities that it should serve
- a greater range of offerings, more flexibility, and availability on- and off-reserve

e) Should governments await the results of an Inquiry before considering what assistance to make available to orphaned children of those missing or murdered?

No was the universal answer.

f) Is it possible to identify the children now, and provide them with recognition and resources?

PTMAs said yes, and offered the following:

- The ages of surviving children will range from quite young to middle-aged, and some of the supports offered might vary with age.
- All children should be provided with recognition that they have suffered this loss.
- Supports provided to surviving children could include financial, counselling, information about their parent's fate and circumstances surrounding it
- An Education Fund, available to children at all stages of life, would be desirable
- Surviving children need to be reconciled with their families, communities and their culture

- All family members need counselling and support; be mindful of situations where the victim and the perpetrator are in the same family, or there is family discord about what happened
- Those children who are in state care need to be restored to their family community and culture, reconciled, and provided with trauma treatment and counselling
- Advocacy for the children of the missing and murdered is necessary

One consultation said that the children of missing and murdered women should be invited to the Inquiry sessions, “so that they know their mums matter”. They continued “They are still living and we need to celebrate their lives”.

One consultation emphasized the need for measures to ensure that perpetrators do not profit from their crime, and the importance of ensuring that perpetrators make restitution to their victims, including surviving children. Such restitution would help cover the costs incurred by the family in looking for their loved one, and securing justice for her.

E. OVERALL, WHAT IS THE PURPOSE OF THE INQUIRY?

a) Healing: If an objective of the Inquiry and the investigation of past cases are to promote healing, what would healing look like?

One consultation offered that “healing is not the purpose of the Inquiry although it may be an outcome.” It continued: “it would not be appropriate for anyone other than the family members and loved ones to determine what healing would look like.”

Others offered a more detailed view of what might constitute healing. Strong elements include closure, a restoration of dignity and feelings of self-worth, and the development of healthy connections with the memory of the lost relative, and with family, and communities.

It was generally agreed that there are expectations of healing and justice for this Inquiry that go beyond what counselling could provide.

It was also agreed that recognition and memorialization form part of healing.

b) Other objectives of the Inquiry:

- Resolve past cases while examining the failures of the police and justice system to respond adequately to violence against Indigenous women and girls
- Hold leaders and authorities accountable, and promote accountability of police and justice officials and governments in the future
- Identify steps that can be taken to prevent future deaths and disappearances; develop “a clear and concise plan” with Indigenous women and girls and other stakeholders and get government commitment to that plan
- Change systemic thinking about factors that contribute to missing and murdered Indigenous women and girls, by means of fact-finding and a robust examination of policy and systemic issues through a human rights framework
- Change the way policy is created with respect to Indigenous peoples by developing a new mechanism or mechanisms for making policy and embodying such mechanism(s) in the way the Inquiry operates and in its final product

- Create new relations between Indigenous peoples and the state, including the police
- Achieve closure for the bereaved
- Empower a younger generation
- Educate non-Indigenous people

Some memorable observations:

“This should be the final inquiry of MMIW.. ... There must be no more MMIW”.

“There needs to be a fundamental shift, and we need to be part of that shift. We can’t be stuck in the same old systems after this.”

“We want things to change so our families feel safe. We want answers, justice and change.”

“We also need to have room for cultural celebration – music, dancing and humour lift spirits and help heal.”

F. COMMISSIONERS

a) Should there be one Commissioner or more than one?

- One Commissioner (who is an Indigenous woman), with an Advisory Board that includes no more than six members, representing the four directions and with an Elder and Youth representative
- More than one
- More than one, but no more than 2 or 3
- Several Commissioners
- A minimum of 4, maximum of 7

b) What factors should determine how many Commissioners?

- Representing certain regions across Canada
- Each region to have their own Commissioner; Yukon to have its own Commissioner
- Representation from across the country if possible
- Should be representative of First Nation, Inuit, and Metis
- Should reflect regional representation, including the North
- Have one Youth Commissioner
- There should be an Elder involved

c) If there is more than one Commissioner, should the Order-in-Council specify a lead Commissioner?

- The Order-in-Council should specify two lead Commissioners, one female and one male; if there is only one lead there should be strict criteria for the position, perhaps decided by the Commissioners themselves or by the 5 NAOs
- More than one co-chair should sit, one being of Indigenous ancestry, and immersed in their own cultural practices

- The leader of the Commission should be specified ahead of time so they don't have to sort it out among themselves, or get into lobbying from one end of the country to another
- The Inquiry should operate by consensus, but if a lead Commissioner is appointed it must be a woman
- There should be one "floating national chair" to provide a constant

d) Who should select the Commissioner(s)?

- The federal government should make the final decision, but all provinces and territories should take part in shortlisting the names; there should be a nomination process with each nomination having five seconders
- The Indigenous women's organizations from the provinces and territories should have a say in who the Commissioners are
- Indigenous peoples in the provinces and territories should select the Commissioners with the governments supporting their decisions
- First Nation women need to be involved in choosing the Commissioners; families need to be involved in choosing someone they trust
- Federal provincial and territorial governments, NWAC and Pauktuutit must be involved
- NWAC should make recommendations for at least one of the Commissioners

e) What characteristics should the Commissioners have?

- All should be First Nations, Metis, Inuit women (but a man who could get men to accept responsibility for their actions could also be considered)
- Majority should be First Nations, Metis, Inuit; women and men should be on Inquiry
- Inquiry should be led by Indigenous women, men and Elders
- There should be an Elder involved and they should all be Indigenous and female
- Female, and a mother or grandmother; it should be someone who is strong, healthy and stable in all four aspects (healthy and mentally grounded)
- Not necessary to have all women, but the majority should be women
- Youth representative is needed
- Elder
- Should not be family or loved ones of the victims, or current or former federal, provincial, territorial or Aboriginal politicians or representatives of political organizations
- BUT....Commission should include "at least 1 or 2 family members impacted by MMIW"

Consensus that deep knowledge of Indigenous culture, history and experience is necessary:

- "broad knowledge of Aboriginal history"
- "Knowledge of diverse cultures among Indigenous populations and regions"
- "have their finger on the pulse of the community": and know the territory, First Nations culture, issues and history
- Have a clear understanding of who is an Indigenous woman
- Desirable expertise includes Indigenous ways of knowing
- Have an extensive knowledge base of the geographical area, issues affecting the area, and Indigenous traditions and culture that are specific to the area

Consensus that legal knowledge is a desirable characteristic, but it must include knowledge of the realities of the law and legal system for Indigenous peoples:

- Native lawyers and judges should be considered
- Areas of expertise include both legal knowledge and human rights
- “They should know the realities of access to justice (and lack thereof). There are rules, laws, and then the reality.” “They should also have some basic judicial knowledge, of different jurisdictions and systems”.
- Mixed experience, but at least one Commissioner should have a background in law
- Expertise in legal and investigation would be desirable

Consensus that knowledge of the realities of Indigenous women’s lives is crucial:

- Have a clear knowledge of lifestyle and issues for women living on- and off-reserve
- They need to understand poverty and social marginalization, and the lived impacts of those
- Understand street living, although important to avoid stereotypes that assume all Native women are homeless and on drugs
- Desirable expertise includes family, racism, sexism, poverty, addictions, human trafficking, violent crimes, gangs and all forms of violence

Knowledge of systems like education, employment, and social work: “the Inquiry needs to look at systemic issues, which keep Indigenous women marginalized”.

National perspective

Important personal characteristics:

- Open-minded; fair; philanthropic
- Healthy and stable in all four aspects; healthy and mentally grounded
- “Role models in the community doing the things we have been taught are important based on traditional teachings and who always live life with integrity”
- Have values, especially the seven grandfather teachings and practice those like love, respect, honesty, and wisdom
- Accountability
- Experience, as well as formal education

G. MANDATE OF THE INQUIRY

a) Establish how many missing and murdered Indigenous women and girls there are

“Discover the REAL numbers”.

b) Is murdered too narrow a term?

- Yes.
- Accidents and suicides should be included. Accidents, suicides, death and disappearances.
- “Murdered is too narrow a scope”.
- “Police tend to rule out murder to lessen their workload.”
- We already know from the pre-Inquiry that there are some cases ruled as suicide that the families want reinvestigated.
- However, “murdered” conveys the necessary element of violence, which is what the Inquiry is about.

- Change the name to something broader if it is not too late, given the publicity for MMIWG. Otherwise, make it clear that “murdered” is a broad term, not limited by Criminal Code definition.

c) Should the mandate of the Inquiry include a date range for the Inquiry’s work?

There was broad consensus that the date range should be left open. One said that it should go back to 1980,

d) Should the mandate specify that the deaths and disappearances should be in Canada?

Responses generally favoured leaving this open. Depending on experience at the Inquiry, the Commissioners could make further rules.

One consultation recommended that there should be support for bringing back remains from other countries or locations in Canada so that families can have the closure they need.

e) A Data Base

Responses favoured creating a national data base. Two responses emphasized the desirability of a local or regional focus as well, because local work on a local data base often turns up more information. A local data base is an effective tool for local advocacy and violence prevention efforts.

There should be an advisory committee to consider what data needs to be collected, and from where, and to decide other aspects of the data base. It should not just be composed of statisticians and other experts, but include representation from PTMAs, NWAC, women with experience.

The definitions of who would be included in the data base need to be clear and agreed upon, and they could be revisited in the future to see if they are still good, or need to be adjusted.

The data base should be independent of government.

The data base should continue on after the end of the Inquiry.

Data should be updated and maintained so that the data base can be used as a monitoring tool. Are the numbers of MMIWG going down, changing, etc. ? This, done on a regular basis (yearly), will enable tracking of how effective are the measures put in place on the recommendation of the Inquiry.

Part of the preparatory work of setting up the data base should be determining what other data bases exist and what they document.

Involvement of the families with database creation should include consultation about use of their family member’s data, and a process for familiarizing them with the data base and how it works.

There should be good security measures for the data base and its contents.

The data base should be funded by the federal government.

There should be criteria in place for accessing the data base: responses favoured access by families, communities, Indigenous women's groups for their own work, but did not rule out access by others under proper conditions of security. There was no discussion of access by police to this data base.

f) Should the mandate include inquiring into police treatment of disappeared or deceased women and girls?

A resounding and unanimous yes.

Look into how families' reports of missing women were treated, and also the conduct of investigations. Revisit closed and cold files. Examine police conduct with respect to vulnerable women and their families. Also investigate situations where families may not have made reports to police because of distrust, where the family tells the Inquiry about these cases. Most favoured investigating all cases, not just those where someone raised a complaint. Families may not come forward to the Inquiry about a case because the family is divided about the situation, or because the perpetrator is in the family. .

Cases could also be found in coroners reports, the media, medical literature, and other sources even where a family did not bring them directly to the Inquiry. Investigate deaths in hospitals, prisons and jails, as well as deaths arising from involvement with child welfare authorities.

g) How should police conduct be investigated?

Strong support for the creation of an independent body to investigate police conduct. The independent body would do the investigations for the Inquiry and report to them, and would continue in existence after the Inquiry has ended.

The independent body would be civilian, and have appropriate representation from Indigenous peoples.

The body must be one that people can have trust in, for now and into the future.

These investigations could change results in some cases. They will also provide a basis for improving systems and practices for handling cases in the future. One PTMA suggested that the independent body (which it called the Advisory body) should do a periodic review of the cases it investigates, and make it public, so that people can determine whether the situation is improving.

Responses were not detailed enough to tell whether it was thought that this independent civilian review agency for police would also investigate deaths in custody or hospitals, or where child welfare authorities were involved. There needs to be further consideration of that question.

h) How to avoid "lawyering up" at Inquiry hearings

This question relates to the power of an Inquiry to make findings of misconduct against someone. If the Inquiry contemplates making such findings, it must give the person notice and an opportunity to be heard. The consultation kit suggested that one way of avoiding this lawyering up was for the Inquiry not to make findings of misconduct.

The main comment about this was that if the Inquiry granted “amnesty” to persons for misconduct, how was that misconduct going to be addressed? “If the issue of misconduct is never addressed, the same misconduct will continue to happen.”

The “amnesty” was rejected. As one PTMA said, “accountability is the most critical”.

It was also suggested that police should pay for their own lawyers at the hearings.

i) Should the Inquiry try to find ways of cooperating with the police?

To resolve outstanding cases...

A good case was made that police need to start co-operating amongst themselves in order to be more effective at solving these crimes. Interjurisdictional cooperation and information sharing, establishing and accessing a common police database, use of joint task forces and inter-agency cooperation were all named as strategies the police should use.

Family members themselves can best answer the question about what degree and kind of cooperation with police in their individual case would be desirable. One PTMA suggested having a support person or organizational liaison working with the police to relate to families and address their need for information and other concerns.

In the future.....

There was a general view that it is desirable to work out better relationships with police as part of a strategy to reduce violence and to deal with what does happen. Police will always be with us, and they are needed. So, it is necessary to have a positive relationship with them.

However, forging a good relationship in the future depends upon an acknowledgement by police of mistakes in the past.

A key element of any successful long-term strategy is a fundamental change in police attitudes to Indigenous peoples. Education could help with this.

Without a fundamental change in police attitudes, there would be no success.

These observations apply to all police forces, including First Nations police.

There were several examples and models of how a better relationship could be developed. Yukon, for example, cited its own work with local police authorities. Nova Scotia offered as an example the restorative approach taken to reparations for residents of the Home for Colored Children . It was urged that the Inquiry report contain information about these models so that they could be used by others.

Success is

“... when every case of missing and murdered Indigenous women gets the attention that it deserves.”

“When the police start to show a little more fuckin’ respect”.

H. CREATING SAFE SPACE AT THE INQUIRY

There was general agreement about the need to create safe space at the Inquiry.

The points that were made about this goal and how to achieve it:

- There should be support for what the families and loved ones define as safe space, and they should not be forced to accept someone else’s version of “safe space” while their needs go unmet
- Creating safe space at the Inquiry begins a long while before people actually are before the Inquiry: it depends on what counselling has been available, and how well the Inquiry succeeds in making itself trustworthy: “We need to have confidence and trust in the process and the way it’s operated, and based in people who have knowledge of our people and our history.....”
- The process needs to be indigenized – based on Indigenous values, beliefs and processes
- NS/NB put forward a detailed schedule of how an Inquiry attendance in their region would proceed, based on Indigenous practices, emphasizing that a key element is that the Nation would host/invite the Inquiry, the Inquiry would not invite the attendees
- Ceremony should be available not just at the hearings and other meetings of the Inquiry, but also to Commissioners and staff to help them keep in balance
- Recommendations above concerning the selection of Commissioners, their characteristics, and the mandate of the Inquiry all go to whether the Inquiry will be seen as trustworthy
- Indigenous languages should be used in communications with the community and with families and witnesses; Inquiry should have staff who are language speakers. Hearings and meetings with the Inquiry could be organized by language groups.
- The Inquiry should come to the communities; hearings should avoid big centres if possible. There should be different formats for meeting with the Commissioners, including hearings that are not in public, and off the record meetings
- Legal advice should be given to family members and potential witnesses as part of their preparation to engage with the Inquiry, through duty counsel and other measures

(See also above under Counselling for Families where additional or similar suggestions have been gathered)

It was also agreed that the involvement of gangs and human trafficking means that the Inquiry and some witnesses might have to be given special security protection.

I. GETTING GOOD ADVICE

a) The following are some of the structures recommended for providing the Inquiry with good advice.

Saskatchewan:

An “inner circle” of families and loved ones, called the Family Advisory Council, which travels with and advises the Inquiry.

.NWAC through a representative should also accompany the Commissioners to every meeting and hearing across Canada to provide advice and consistency; NWAC and its PTMAs have been leaders on the issue and should be considered a lead partner with whom to consult prior to, and regularly throughout the Inquiry

A secondary circle of people with varying skills, who work with, or for, those who are the most vulnerable.

This structure should be established by the Order-in-Council (“OinC”) appointing the Inquiry.

Alberta

An advisory council consisting of family members advocates Elders and Youth should be part of the Inquiry.

This council should be established by the OinC appointing the Inquiry.

Yukon

An advisory body should be made of Indigenous women’s groups. This body should be in every province and territory, to ensure that the work that is done continues and is realized in the spirit it is intended.

This work should be paid, with core funding to the women’s groups.

Elders’ advisory council and a spiritual advisory council on a provincial and territorial level. The spiritual council should be made up of representatives from the territory and be chosen by the people of the territory.

Families also want to be involved continuously in all stages and at all levels of the process.

NS/NB

An advisory family council.

The Atlantic Women’s Council to be a lead in the process.

NWT

Advisory Councils should be established in each province and territory, or regionally. They should include women who have experienced women who have experienced life on the street. These councils should be established by OinC.

PEI

There should be an Advisory Board, to keep things on track and lend assistance to the Commissioners as needed.

Nfld

Along with one Commissioner, there should be an Advisory Board which includes no more than 6 members, representing the four directions and an Elder and Youth.

Ontario

There should be a Grandmothers Council, with representation from grandmothers of the victims if possible, to advise the Inquiry and also the responsible Ministers.

There should be a family member, an Elder and an advocate as a support team.

Elders should be required in council.

b) How should the Inquiry involve youth, or get the perspective of youth on the issues?

- Many suggested having a Youth representative on the Inquiry itself, or in the Advisory Council
- Youth could advise on what kind of process and materials would effectively educate youth
- Care should be taken to avoid traumatizing youth; perhaps they could work with Elders
- Have mandatory stops at high schools for the Inquiry
- Present the information on MMIWG at youth panels, conferences, FOXY in the North, and cadets; have specific youth campaigns
- Invite youth to public hearings in their area
- Specific programs for youth who have lost a family member
- Whenever there is family or community involvement in the Inquiry, youth should be included in those groups
- The suggestion about cultural celebration, music, humor and dance offers good potential for reaching youth

c). Should there be a Law Lodge?

This question received a positive response, and also prompted some thoughtful observations.

It was pointed out that the Law Lodge is a concept, not a place or physical structure. This is a point made by Dr. Val Napoleon, who originated the Law Lodge concept and discussed it at the round table sponsored by FAFIA, NWAC and CJWL.

We were also reminded that the Canadian system of law is based on colonialism and is patriarchal in nature. That system, and the laws within it (including the *Indian Act*) perpetuate the marginalization of women and girls. The Inquiry is set up in, and by, this Canadian legal system. A Law Lodge to present Indigenous law and knowledge would be in conflict with that system and thus with the Inquiry. How would that conflict be dealt with?

There are many different systems of Indigenous law and knowledge. How would it be determined which one to use or apply in any given circumstance?

The Law Lodge suggestion was seen as being consistent with the desire to Indigenize the Inquiry, and liked for that reason. It was suggested that Indigenous women be included in the development of the Law Lodge, and be able to influence the personnel and law choices for the Lodge with respect to any particular province, territory or region.

The Law Lodge was also seen as a way to promote education of non-Indigenous people and thus greater understanding and less discrimination and stereotyping.

J. OTHER TOPICS/OTHER ADVICE

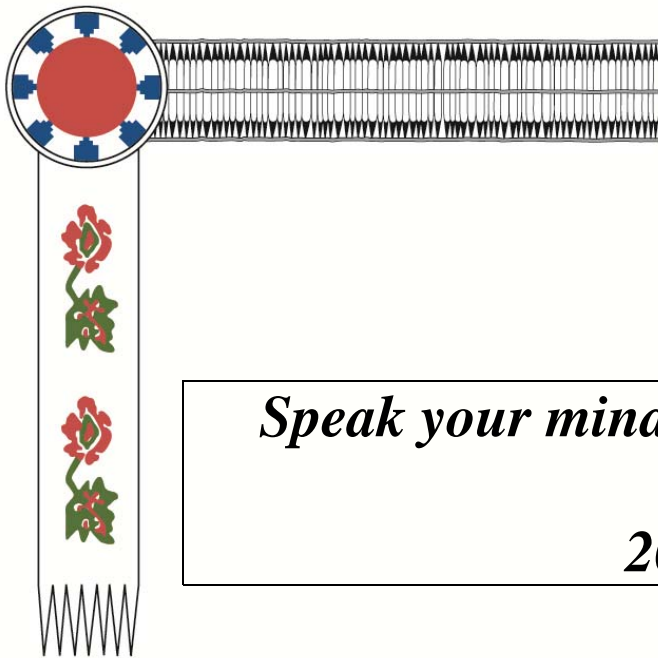
The last part of the consultation kit set out a number of other possible topics for investigation by the Commission and asked participants whether they agreed that these matters should be investigated. Not all consultations addressed that question. Those who did were, generally, in favour of the Inquiry including those topics in its investigation. A list of the topics may be found in the Consultation Kit.

It was recommended by one PTMA that the Inquiry have an observer from the UN. There may be other international human rights bodies who would be interested in the Inquiry, particularly those who have investigated human rights abuses of Indigenous women and girls and called for a national Inquiry.

Conclusion

A recurring theme in the consultation reports was the strong sense of ownership which NWAC and the PTMAs feel in the work against violence directed tot Indigenous women and in the campaign for justice for MMIWG. While welcoming the support of organizations more recently convinced of the seriousness of these issues, NWAC and its PTMAs wish to have recognition for their leading role in bringing this issue to public attention and campaigning for a national Inquiry. They also wish to continue their major contributions in this area, and provide the accumulated wisdom of over forty years, by playing a strong and consistent role in the activities of the Inquiry, a role that will require core funding from government.

APPENDIX



Native Women's Association of Canada

Speak your mind about the Inquiry

2016

A consultation kit for the Native Women's Association of Canada

In the mandate letters given to Minister of Justice Jody Wilson-Raybould, INAC Minister Carolyn Bennett and Patti Hajdu Minister responsible for the Status of Women, Prime Minister Justin Trudeau asked them to “develop an approach to, and a mandate for, an inquiry into murdered and missing Indigenous women and girls in Canada”. The three Ministers have taken up this responsibility by having meetings in locations across Canada, primarily with families of the murdered and missing women and girls, and calling for submissions on a website designed for this purpose. The website features a briefing note about inquiries and some questions about which people may wish to send in their opinions.

- **This consultation is part of the Ministers' efforts to gather opinions on the features of the inquiry.**
- **This is your chance to register your views on the important questions about the inquiry.**
- **What do you think its mandate should be? Its process? What do you hope it will accomplish?**
- **This kit sets out some of the important questions and issues about the inquiry into missing and murdered Indigenous women and girls, as an aid for discussion and decision-making.**

What is an Inquiry?

A Commission of Inquiry may be entirely about the facts of a situation or series of events, entirely about policy, or a blend of the two. There seems to be general agreement that the inquiry into disappearances and deaths of Indigenous women and girls should deal with both facts and policy. Do you agree?

A federal Commission of Inquiry is set up by the Cabinet under the *Inquiries Act*, by means of an Order-in-Council¹. In the Order-in-Council, the Cabinet names the Commissioner or Commissioners; in the past, inquiries have most often had one Commissioner or two co-Commissioners (one English, one French). The presence of other Commissioners is comparatively rare. At two co-Chairs and five other Commissioners, RCAP was on the high end of the number of Commissioners ever appointed. The Cabinet also includes in the Order-in-Council the mandate or purpose of the inquiry, and sets out what powers it will have. Cabinet may also establish an end date. There is a lot of flexibility in the *Inquiries Act* for the Cabinet to determine these and other features. It can, for example, that the inquiry may meet in places all over Canada, and use what languages it wishes.

The Supreme Court of Canada has set out some basics about inquiries:

- Inquiries are independent and should be free from partisan loyalties
- Inquiries are usually better able than Parliament to take a long-term view of the problem
- Inquiries are excellent ways of informing and educating concerned members of the public; this informing and educating goes on while the inquiry is taking place and does not wait until its conclusion and recommendations; this has been called the “social influence” of an inquiry
- One of the primary functions of public inquiries is fact-finding
- Inquiries are often given wide-ranging investigative powers
- An inquiry is not a criminal trial to determine guilt, or a civil action for determining liability to pay damages
- Rather, it is an investigation into an issue, event or series of events
- The findings of a commission of inquiry do not bind any court which may consider the same subject-matter after the inquiry is over
- An Inquiry does not have to follow the strict rules of evidence and procedure which a criminal trial would have to follow
- The findings of fact of an inquiry will be the basis for any recommendations it makes about how to address the problems it is studying

¹ An Order-in-Council is passed by the Cabinet. It has the force of law, but it does not have to be enacted in Parliament or a legislature.

The *Inquiries Act of Canada*, under which an inquiry into missing and murdered Indigenous women and girls would be established, sets out some procedural ground rules:

- The inquiry has the power to compel witnesses to appear, to testify under oath, and to compel witnesses to produce specific documents
- The inquiry can treat as perjury any deliberately false answer given by a witness
- However, witnesses testifying at an inquiry receive the protection of the *Canada Evidence Act*, that is, the evidence they give at the inquiry cannot be used to incriminate them in other proceedings
- An inquiry may make a finding of misconduct against a person or organization, but before doing so, it must give notice of that possible finding and allow for an opportunity to respond
- Any finding of misconduct must be phrased in language that does not resemble language that would be used to define a criminal offence or a civil wrongdoing

The inquiry can usually make more detailed rules of procedure for itself once it has been established. These rules would cover topics like standing, and funding for individuals or groups granted standing. These rules will also set out the kinds of hearings the inquiry will hold, and what use it will make of advisory panels, experts, and so on.

Do you want the Inquiry to have the power to make decisions about standing, and to be able to give financial support to those with standing?

How can there be a NATIONAL Inquiry?

Because both federal and provincial/territorial governments have jurisdiction over topics which are relevant to the crisis facing Indigenous women and their families, problems can arise if the inquiry is appointed only by one level of government.

Here are some examples that illustrate the importance of a national inquiry:

Policing: police forces are established by Canada, by the provinces (Ontario and Quebec) and by municipalities under provincial law (e.g. Vancouver, Saskatoon, Winnipeg, Toronto, Halifax). If

the inquiry is only established by Canada, it could inquire into policing topics with respect to forces established by Canada (the RCMP) but not the other forces.

Child welfare: this is largely under provincial jurisdiction, and could not be investigated thoroughly by an inquiry set up only under the law of Canada.

Indian Act: because the Indian Act is under the jurisdiction of Canada, its role in creating the crisis of missing and murdered Indigenous women could be investigated under an inquiry set up only under the law of Canada.

Statistics: statistics are under the jurisdiction of Canada. An inquiry established by Canada should be able to inquire into and establish rules for the keeping of statistics on crimes against Indigenous women, but as a practical matter, there still has to be adherence to those rules by all police forces in the country.

Unless the inquiry is truly national, able to investigate a wide range of topics under federal, provincial and territorial jurisdiction, its work would result in a patchwork and partial report.

For the inquiry into missing and murdered Indigenous women and girls to be truly national, it is necessary for Canada AND the provinces and territories to give it power to investigate. Only then can it investigate topics that may involve more than one jurisdiction, like policing, or that may be largely under provincial and territorial jurisdiction, like child welfare. Usually, the way an inquiry can be given the power to investigate matters that cross lines between provinces or between Canada and a province or territory is for all of the governments involved to pass *companion Orders-in-Council*. All governments name the same Commissioner or Commissioners to conduct the inquiry, and give the inquiry the same mandate.

Do you agree that the inquiry should be truly national?

- **Do you agree that Canada should work with the provinces and territories to establish a truly national inquiry?**

- *Given the past support by provinces and territories for a national inquiry, what can be done by local PTMAs and others to get them to make that support real, by joining in the national inquiry?*

QUESTIONS TO ASK BEFORE GETTING STARTED

WHAT SHOULD THE INQUIRY BE DOING? AND WHAT SHOULD THE GOVERNMENT BE DOING INDEPENDENTLY OF THE INQUIRY?

1. RECOMMENDATIONS OF PAST INQUIRIES

- There have been many inquiries and recommendations over the past twenty or more years, dealing with police behaviour, shortcomings in provincial child welfare or in federal funding of child welfare for Indigenous people, deaths in custody, deaths because of official negligence or indifference, and other subjects related to the crisis facing Indigenous women. These inquiries have made recommendations which have been, for the most part, ignored.
- Some have suggested that the inquiry should consider these reports, as a matter of first priority, and issue an interim report within a short time of its establishment, telling governments what recommendations already made should be implemented within a short time frame.
- Others have suggested that the job of reviewing all these reports and determining what recommendations should be implemented should be the responsibility of governments, and not take up the resources of the inquiry.

Do you agree that the recommendations of the many prior reports should be examined with a view to implementing them as quickly as possible?

Who should do the reviewing job: the inquiry or the governments to whom the reports were made?

Are there some inquiries or decisions that are so recent that they should simply be implemented by government right away, without going through any process of analysis by an inquiry, for example the recent decision of the Canadian Human Rights Tribunal on funding for Aboriginal child welfare, or even the Oppal Inquiry?

- It has also been suggested that a good topic for the inquiry to investigate is why governments have been so resistant to implementing these reports.

Do you think that this is a good idea?

2. COUNSELLING FOR THE FAMILIES OF THE DISAPPEARED AND DECEASED WOMEN

- The pre-inquiry process has made it clear that this inquiry is going to trigger difficult memories and experiences for the bereaved families and friends of disappeared and deceased women. There have already been many recommendations that there should be counselling for those who are involved with the inquiry, before during and after that involvement. **Do you agree with this recommendation?**

- But making the availability of counselling depend on whether a person takes part in the inquiry may, for many reasons, be unfair. What about the people who cannot bear to take part? What about those for whom taking part is too difficult, because of distance, resources, or other reasons?
- Even if there is appropriate counselling at the inquiry, it has been suggested that there should be another program of counselling available to bereaved families, independent of the inquiry, which they could access whether or not they take part in the inquiry. This program would be free-standing, not dependent on the existence or the administrative machinery of the inquiry, and

culturally appropriate. How exactly it would operate has not been fully developed, and that would have to be done as a priority matter.

Do you agree that a program of counselling for the bereaved families or loved ones should be established as a priority, independent of the inquiry, and that counselling related to the inquiry experience itself should also be available?

- **It has been suggested that the revival of the Aboriginal Healing Foundation would be a valuable measure. Do you agree?**

3. THE WELLBEING OF CHILDREN OF THE DISAPPEARED OR DECEASED WOMEN

- Some of the children of women who have disappeared or who are deceased are still quite young, while others have grown without the guidance and love of their mothers and are now facing adulthood and parenting their own families.

Should governments await the results of an inquiry before considering what assistance to make available to these orphaned children? Is it possible to identify them now, and provide them with recognition and resources?

QUESTIONS RELATED TO THE ESTABLISHMENT AND OPERATION OF THE INQUIRY

1. OVERALL, WHAT IS THE PURPOSE OF THE INQUIRY?

- *To promote healing*

If the objective of the inquiry, and the investigation of past cases, is to promote healing, *what would healing look like?* For example, is it necessary to correct past bad results (ie find a missing person, correct a characterization of suicide or accident and have it recognized as homicide) in order to achieve healing? In other words, *is justice a part of healing? Is recognition and memorialization a part of healing?*

Counselling itself might promote healing, but are there are expectations of healing and justice for this inquiry that go beyond what counselling could provide?

A clear view of what is involved in this concept of healing is necessary in order to make crucial decisions about the shape and powers of the inquiry.

- other purposes

What other purposes for this inquiry can be identified and what would look like success in meeting those objectives?

- Promoting accountability in police and public authorities
- Preventing disappearances and deaths
- Identifying the long- medium-and short-term causes of Indigenous women’s vulnerability to violence, and ending them
- Creating new relations between Indigenous peoples and the state
- Etc.

2. COMMISSIONERS

Should there be one Commissioner or more than one?

What factors should determine how many Commissioners? Is the need to represent certain interest groups? Certain regions?

If there is more than one Commissioner, should the Order-in-Council specify a lead Commissioner?

What characteristics should the Commissioner(s) have?

Who should decide on the Commissioners, if there is a *national* inquiry? Just the government of Canada or should the provinces and territories be involved somehow?

3. MANDATE

The Cabinet will put the mandate of the inquiry in the Order-in-Council which sets it up. ***What should be the mandate of the inquiry?*** Some possible elements of the mandate are set out here, with some questions about each suggested element.

a) To establish how many missing and murdered Indigenous women and girls there are

--- is murdered too narrow a term? Consider that a woman would not be included in the inquiry or any data base it establishes if the police have ruled her death a suicide or accident, not a "murder". What about using a more neutral title like Inquiry into the Deaths and Disappearances of Indigenous Women and Girls? And including in the inquiry all Indigenous women who have disappeared or died?

---Should the mandate of the inquiry set the date range for the inquiry's work (ie between 1980 and the present?) or leave it open so that the inquiry can respond to the evidence it hears about who has gone missing or died?

---Should the mandate of the inquiry use any further limiting language, for example, specify that the Deaths and Disappearances investigated should be "in Canada"?

b) To establish a data base of the disappeared and deceased women and girls

- How much detail should the mandate provide about the protocols for the establishment of this data base? How much should be left to the inquiry to determine?
- Should there be an advisory body for the data base, involving people who have been involved with other data bases?
- What should happen to the data base at the end of the inquiry? Should the mandate specify what should happen to the data base at the end of the inquiry so that we can be sure the rules of the game are clear from the outset?
- What terms for access and security of the data base should there be? How many of these should be established in the mandate of the inquiry and how many should be left for future development?

c) To inquire into police and other authorities' practices with respect to collection of statistics, and make recommendations about what statistics should be kept in the future, to make them the most useful indicator of this type of violence against Indigenous women and girls

d) To inquire into police treatment of reports of disappeared or deceased women and girls

There are, at least 1200 such cases on the basis of existing police statistics, but the most controversial are unlikely to be found in police statistics at all, because a file was never opened for them. They were called suicides, accidents, or other terms that ensured police would not have to investigate, and as a result, these cases did not enter into police data bases. Cases that did not result in a charge may also be missing from police data bases.

What is the best way to inquire into the cases that are already on the record, and to find these old cases not previously recorded by police (eg the families' evidence? Media accounts?) and to inquire into them? Should the inquiry do it? Should an independent civilian review body be established to work in conjunction with the inquiry but continue in existence after the inquiry is over? Should all cases be investigated, or only those in respect of which the families or advocates raise a complaint?

Most of the previous inquiries which have investigated police conduct have focused on one case of miscarriage of justice, or police behaviour in one region in one time period, or with respect to one series of events.

Investigating between 1000 and 4000 previous cases is an unprecedented challenge for an inquiry.

Assuming a method could be developed to investigate the cases, what is the objective of such a review? To bring closure about a particular case that has been poorly investigated, or wrongly characterized, or not dealt with at all? To find out what happened to a missing loved one? To find a perpetrator and bring him or her to justice? To establish whether there have been systemic shortcomings in dealing with cases of disappeared and deceased Indigenous women? Other purposes?

Remember the limitations of the inquiry: it cannot determine civil liability, or guilt under criminal law. So any findings of an inquiry would have to trigger a court case if civil liability or criminal responsibility is going to be established. On the other hand, an inquiry might well offer more scope to address past wrongs than would any internal police disciplinary process, which has very tight time lines on taking complaints.

It is theoretically possible for the inquiry into past cases to make findings of misconduct against a police officer or force, or some other public authority, with respect to the handling of the case, or the treatment of a family member. However, before an inquiry can do that, it must provide notice to the person or organization, and an opportunity to be heard. If there is the possibility that findings of misconduct will result, individuals and authorities are very likely to “lawyer up” early in the proceedings, and seek to cross-examine anyone who gives evidence about a past case that had gone off the rails. Certainly, they will lawyer up if the inquiry gives them the required notice of a finding of misconduct. An inquiry where all the police authorities have lawyered up would resemble Oppal, and most people would consider that outcome undesirable.

There are a number of possible ways in which to handle this problem. One is for the inquiry staff to conduct investigations and bring only a representative sample of past cases to a public hearing, where those giving evidence about these cases would be subject to cross-examination. This would spare many the ordeal of appearing in a “lawyered up” inquiry. However, it might detract from the power of the inquiry findings, since not all of the past mishandling of cases would be on the public record.

Another possible way of dealing with this problem is for the inquiry at the outset to determine that it will make no findings of misconduct. This could reduce the likelihood of police and others turning the inquiry into a massive adversarial procedure. Further exploration is necessary to determine what the inquiry could say about mishandling of past cases if it were to agree in advance not to make findings of misconduct.

Another possible approach is for the inquiry to focus on investigation of police policies and practices, bringing in details about actual cases to illustrate these. This option is discussed immediately below.

What do you think of the various methods suggested above for looking into old cases without causing a “lawyered up” adversarial process? Is representative sample only? Amnesty, ie no findings of misconduct?

e) to inquire into cases where it is alleged that police or other officials or state employees have themselves committed acts of violence or sexual violence against Indigenous women or girls and the response, if any, of responsible authorities towards that alleged violence

The same questions and problems arise with respect to doing this as arise with respect to reviewing old and cold cases, discussed above.

f) To inquire into police policies and practices

- *covering reports of deaths and disappearances and subsequent investigations or decisions not to investigate*
- *with respect to treatment of the families and friends of deceased and disappeared women and girls, including policies and practices concerning how often and in what manner updates on the status of a report will be provided and how inquiries and complaints about the conduct and progress of investigations have been handled.*
- *with respect to cooperation among police forces when dealing with disappearances or deaths with circumstances that cross municipal or provincial and territorial boundaries*

Investigating past policies and practices in this way could be done along with some way of actually looking into cold cases (see the previous section). They are not mutually exclusive.

g) To explore cooperative methods with police

Should the inquiry try to find ways of cooperating with police to find answers to some outstanding questions, like what happened in particular cold cases, or what could be done to improve service to families and friends of missing and murdered Indigenous women and girls? What kind of methods might be tried? How much of the inquiry's resources should be dedicated to this effort, and when can it be considered a success?

Should the inquiry try to discover models for cooperation between police and communities, to address long-standing issues between them and improve police response and understanding?

OTHER POSSIBLE ELEMENTS OF THE MANDATE: CONSIDER AND COMMENT UPON THE ITEMS SET OUT BELOW:

h) to document the experience of violence and sexual violence against Indigenous women and girls, including identifying the sources of such violence (family, state, stranger etc)

i) to identify stereotypes that have hindered development of an accurate picture of violence and sexual violence against Indigenous women and girls, eg the “high risk lifestyle” stereotype, the “just wandered off” or “just partying” stereotypes

k) to study the heightened vulnerability of Indigenous women and girls to human trafficking, sexual exploitation, over-incarceration, poverty and homelessness, and other phenomena that have a bearing on the incidence of violence and sexual violence against them

l) to study the role of child welfare legislation and practices, at present and historically, in creating conditions where Indigenous women and girls may be exposed to violence or sexual violence or the conditions which heighten vulnerability to such violence,

m) to study the role of the Indian Act and its administration , at present and historically, in creating conditions where Indigenous women and girls may be exposed to violence or sexual violence or the conditions which heighten vulnerability to such violence, including but not limited to, sex discrimination in registration provisions and consequent exclusion of Indigenous women from status and its benefits under the Act; residential schools; absence of protections for spouses in cases of family violence; discretionary power of the Indian agent;

n) to study the socio-economic status of Indigenous women and girls and identify its role in creating conditions where they may be exposed to violence or sexual violence or the conditions which heighten exposure to such violence,

o) to identify other elements of public policy or legislation which have had a negative impact on the safety from violence or sexual violence of Indigenous women and girls

p) to explore ways of configuring the relationship between the state and Indigenous peoples that would reduce the exposure to violence or sexual violence of Indigenous women and girls

q) to make recommendations for changes in police policy, procedures and administration that would reduce the exposure to violence or sexual violence of Indigenous women and girls, and ensure more effective investigation and solve rates for offences involving such violence, as well as promote better relations between police and the family and community of women and girls suffering such violence or sexual violence

r) to make recommendations for changes to the Indian Act and its administration, and to child welfare legislation and its administration that would promote the safety of Indigenous women and girls from violence or sexual violence

s) to make recommendations concerning means of promoting the socio-economic status of Indigenous women and girls so as to reduce their vulnerability to violence and sexual violence

t) to prepare a plan, with timetables, to ensure that Canadian legislation and policy, at the federal, provincial and territorial levels, is in keeping with Canada's international obligations towards Indigenous women and girls

u) to prepare a timetable with respect to implementation of the above recommendations, and an accountability mechanism that would require governments to report to Parliament and the legislatures on a yearly basis for five years following the submission of this report on progress being made to implement the recommendations on the timetable established in the inquiry report

4. MEASURES FOR CREATING SAFE SPACE AT THE INQUIRY

A number of measures have already been suggested in the pre-inquiry consultation process up to this point. One of the main questions is which ones of these should be specifically mentioned in the Order-in-Council, and which can safely be left in the hands of the Inquiry itself, to create pursuant to its power over its own procedure.

The suggested measures include:

- that the Inquiry and all its processes and procedures should be informed by an awareness of trauma and its effects, so that its decisions will be made in a way that takes this powerful experience into account
- that the Inquiry draw on ceremony in all of its processes and procedures, making ceremony available not just when dealing with family members and other witnesses, or having public hearings and meetings, but also in organizing its internal work, so that Commissioners and staff members will have the benefit of ceremony in dealing with the difficult work of the Inquiry
- that culturally appropriate counselling be available to families and other witnesses before, during and after their engagement with the Inquiry
- that counselling also be available, if needed, to Commission personnel
- that family members and other witnesses be given the opportunity to meet “off the record” with Inquiry personnel, or have hearings that are not in public

- that legal advice be given to family members and potential witnesses as part of their preparation to engage with the inquiry, through a sort of duty counsel available at the Inquiry, with the opportunity to engage their own counsel as needed, at the expense of the inquiry
- that Inquiry meetings be held in as many community locations as possible, not just in large cities
- that inquiry meetings take different forms, and not just be big public hearings
- that Indigenous languages be used for communications between Inquiry and families or witnesses and in the Inquiry’s communications about upcoming meetings

It has also been suggested that the Inquiry’s work in investigating police behaviour, and also human trafficking and the sex trade would require that appropriate security measures be in place for Inquiry personnel, meetings, and persons interacting with the Inquiry. *Do you agree?*

5. GETTING GOOD ADVICE

Should the Inquiry have an advisory council of family members and advocates? Elders? Should that be required in the Order-in-Council or left to the Inquiry to determine?

How should the inquiry involve youth, or get the perspective of youth on the topics it is investigating and the policies it will be considering?

Do you agree with the recommendation that the Inquiry should have a Law Lodge that would permit discussion of Indigenous law and knowledge, both as a way of informing the process and procedure of the Inquiry and also so as to develop Indigenous law approaches and analytical tools with which to address the issues of violence and sexual violence against Indigenous women and girls?

Are there any other sources of advice that the Inquiry should consult, or be required to consult, on a regular basis?
