

Native Women's Association of Canada



Women's Legal
Education and
Action Fund

Fonds d'action et
d'éducation juridiques
pour les femmes



January 20, 2016

The Honourable Carolyn Bennett, P.C., M.P.
Minister of Indigenous and Northern Affairs,

The Honourable Jody Wilson-Raybould, P.C., M.P.
Minister of Justice and Attorney General of Canada

The Honourable Patricia Hajdu, P.C., M.P.
Minister of Status of Women
House of Commons
Ottawa, Ontario
K1A 0A6

Re: Preliminary comments concerning the pre-inquiry consultation phase of a National Inquiry into Missing and Murdered Indigenous Women and Girls

Dear Ministers,

Thank you for moving ahead to establish a national inquiry on murders and disappearances of Indigenous women and girls, and for engaging first in a pre-inquiry consultation process, which we consider essential to establishing the appropriate focus, mandate and process for the inquiry.

We welcome your government's recognition that this inquiry must be done right and your assurances that you are prepared to take as much time as necessary to address these urgent and complex issues in the depth that they require and with the care and respect that affected families and communities deserve. We are aware of the schedule for meetings with family members. We would appreciate being informed of

the schedule for similar pre-inquiry face to face consultations with civil society groups, as we consider this essential to a full and effective pre-inquiry consultation process.

We are writing now to bring to your attention issues that we consider central to the success of the national inquiry, and key questions that we believe must be answered. Our organizations are closely following the concerns and recommendations that are being brought forward in the pre-inquiry consultation. Many of our own initial comments echo and underline concerns that have already been raised by Indigenous women, family members, frontline organizations and others. As organizations that have been deeply engaged in these issues over the last decade and more, we hope to have the opportunity to engage in dialogue with you about these concerns in the course of your consideration of the design and mandate of the inquiry.

- **Violence against Indigenous women and girls.** It is crucial that this inquiry be understood to be about, and be focused on, the extreme violence, including murders and disappearances, that Indigenous women and girls in Canada face. The brutality of the violence, the fact that it is perpetrated by both Indigenous and non-Indigenous men, and that Canadian institutions and governments have been complicit in it, must be acknowledged at the outset. The first goal of this inquiry must be to bring the violence to an end, by identifying the steps that Canadian governments and institutions can take to ensure that Indigenous women and girls fully enjoy equal protection of the law and their rights to life, equality, and security of the person.

This will require examination of 1) the failures of governments to prevent and remedy the violence by addressing its root causes, including the past and present institutional and structural inequalities confronted by Indigenous women and girls in Canada, and their social and economic marginalization, which is many-faceted and 2) the failures of the police and justice system to respond adequately to the violence.

- **Violence against Indigenous women and girls harms families and communities.** Indigenous women and girls have the right to equality and equal protection of the law, with all that that entails. The family members of missing and murdered Indigenous women and girls have the right to effective and diligent investigation of disappearances and murders, to timely and complete information regarding the development of investigations, to social supports and legal aid, and to redress for their loss. In order for the inquiry to be conducted in a manner consistent with these rights, every effort must be made to

ensure the full and effective participation of Indigenous women and families in its proceedings and to ensure that the inquiry provides the answers that they seek.

The national inquiry will need to ensure a safe and supportive space in which family members can tell their stories about the loss of a woman or girl from their family, and how police, justice officials and others responded to this loss. As has been pointed out by organizations involved in British Columbia's inquiry into missing and murdered women in Vancouver, serious failings in that inquiry provide important lessons which must be incorporated into the design of the national inquiry.

The national inquiry must also establish a safe, supported and independent procedure for family members to obtain answers about investigations that they feel were incomplete or unsatisfactory.

Additional comments around the structuring of the Inquiry to meet these needs follow below.

- **Federal or National Inquiry.** There is broad agreement on the need for a comprehensive national inquiry that can examine the actions of police and government institutions in federal, provincial and territorial jurisdictions and make recommendations relevant to all levels of government. The Inter-American Commission on Human Rights and the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) have stressed that failures to co-ordinate among institutions, among police forces, and between levels of government have contributed to the increased risk of violence faced by Indigenous women and girls. Indeed, the CEDAW Committee found that Canada stands in violation of Article 3 of the *Convention on the Elimination of Discrimination against Women* because of "insufficient coordination between the different jurisdictional powers of the State party...which exposes Aboriginal women to gaps with regard to both social and judicial protection." The problems of failed police response, and entrenched structural inequality, cannot be solved by the federal government acting alone. These problems can only be solved by federal, provincial and territorial governments acting together and collaborating on solutions and implementation.

The background document on inquiries posted on the national inquiry website states: "A federal inquiry would not be able to look at purely provincial matters, such as policing and child welfare in urban centres, etc. unless the provinces and territories agreed to be a part of the inquiry." The question therefore is how can we ensure that this is a

truly national inquiry, and not merely a federal inquiry? Will the provinces and territories agree that the Commission of Inquiry can examine police and justice system practices, and social policy and social service delivery, in all jurisdictions? This is a key question to be answered before the inquiry begins.

Notably all provincial and territorial governments have been on the record for more than two years in pressing the federal government to move forward with an inquiry. That bodes well for securing their cooperation now that an inquiry is planned. We expect and urge the federal government to work closely with other levels of government at this early stage to ensure that this inquiry is truly national in scope.

- **Human Rights Framework.** It is essential in our view that a human rights framework be built into the mandate of the National Inquiry. The new Government of Canada has promised to implement the *United Nations Declaration on the Rights of Indigenous Peoples*. Canada is also bound by other relevant treaties, declarations and agreements, including the *Declaration on the Rights of Man* and the *Convention on the Elimination of Discrimination against Women* which require Canada to act with due diligence to protect, prevent, investigate, prosecute and remedy violence against Indigenous women and girls. The inquiry should be assessing and evaluating evidence and solutions against this framework of rights throughout its work, in order to ensure that, when implemented, the inquiry's recommendations and plan will result in fulfillment of the rights of Indigenous women and their families, and fulfillment of the obligations of Canadian governments.
- **The need for robust examination of policy or systemic issues.** For this inquiry, the examination of policy or systemic issues will be crucial and central. It is in this phase of the Inquiry that the Commissioners will be able to identify the changes needed to correct the current, ongoing, country-wide human rights violations. The policy stream of the inquiry will need to examine the systemic functioning of police institutions, including standards of conduct, training, complaint mechanisms, discipline, and police culture. It will also need to examine the systemic functioning of child welfare, welfare, legal aid, and criminal law as they affect the vulnerability of Indigenous women and girls to violence and their access to protection.

The examination of policy or systemic issues is usually one of two streams in any public inquiry. The other stream is fact-finding. We wish to stress the importance of striking the right balance between the policy or systemic stream and the fact-finding stream which must necessarily also be part of this Inquiry. Unfortunately, it is often the

case in Canadian inquiries that the fact-finding stream dominates the proceedings, with the result that the examination of systemic issues is often under-resourced, and overly compressed or shortened. Furthermore, the fact-finding stream of an inquiry usually requires compliance with traditional rules of evidence and as a result often takes on a more adversarial nature, with proceedings resembling that of a trial and governments and other parties such as police represented by large teams of lawyers to protect their interests. As we saw in the BC Missing Women Inquiry, the antagonistic nature of the usual fact-finding process can put the families of missing women and other important voices at a severe disadvantage throughout the entire inquiry.

We believe it is crucial that the systemic stream be conducted with rigor and care, and that it not be, or be seen to be, a secondary or “soft” part of the process. We also believe that it is possible to structure the inquiry in such a way that a rigorous systemic review is conducted without the constraints or other disadvantages imposed by the rules of evidence or other formal measures that may be adopted for the purposes of fact-finding. There are in fact relevant and successful precedents from previous inquiries which were structured such that fact-finding and policy aspects of the inquiry received strong and separate attention while still maintaining the overall coherence of the inquiry. Crucially, the systemic stream must be adequately resourced, including the capacity to commission research.

- **Review of cases.** There is widespread concern among families and communities that too many cases of disappearances, suspicious deaths, and confirmed homicides were not fully or adequately investigated. The research done by our own organizations, and the investigations by international human rights bodies, have supported these concerns. Families of missing and murdered women have repeatedly called for independent review of unresolved cases where such concerns exist. Independent case reviews carried out in the context of the inquiry could provide vital information on police practices and the reforms that are needed, as well as provide families with greater assurance that justice has been done. We acknowledge the need for such reviews to be conducted in a manner that does not jeopardize the potential to identify and bring to justice the perpetrators of these crimes. We are confident that an appropriate structure can be created to address these concerns. Two crucial factors to be considered are 1) the accountability of such a review to the independent oversight provided by the Commissioners and 2) the possibility, given the potentially large number of cases, that such a review should also continue beyond the timeframe of the inquiry.

- **Police statistics.** Accurate statistics are vital to understanding the scope and nature of the violence faced by Indigenous women and girls. The Native Women's Association of Canada began its own research on murders and disappearances in 2005, and until 2010 NWAC's was the organization carrying out this research. As you know, NWAC's work on this crucial database was de-funded by the previous administration. It was not until 2014 that there was any official national reporting on the numbers of missing and murdered Indigenous women and girls. The homicide reporting which began with the 2014 RCMP report is being continued through Statistics Canada. But reporting on the numbers of missing Indigenous women and girls is in limbo and there has been no reporting on suspicious deaths. Furthermore, the release of data by the RCMP was highly politicized, with some data released to, and publicly commented on by government ministers, but never released to the public where it could be subject to scrutiny. In addition, media reports, based on independent efforts to identify the numbers of missing and murdered Indigenous women and girls, have called into questions aspects of police reporting including claims about the solve rates for such crimes. It is crucial that the research component of a national inquiry include capacity to credibly assess available data and identify gaps and shortcomings in this data. Feminist experts on data on violence against women and data on violence against Indigenous women and girls need to be a part of this key examination.
- **The need for timely action.** No one wants to see an inquiry become an excuse for further delay in meaningful government action to ensure the safety of Indigenous women and girls. Indigenous women's organizations, families of missing and murdered women and girls, and many others have already brought forward many recommendations to address factors putting Indigenous women and girls at risk. A review of outstanding recommendations should be one of the first tasks of the Inquiry, and the inquiry should be structured to allow periodic interim reports setting out those recommendations where immediate action is possible.

We would like to meet with you to discuss these issues and questions, the components of the inquiry, and its mandate, at your earliest convenience.

Work on this crisis has absorbed our organizations for more than a decade. We offer our thoughts, knowledge and expertise because we wish to ensure that the inquiry leads to improving and saving the lives

of Indigenous women and girls, and to preventing more families from suffering humiliation, damage and loss.

Thank you for your attention.

Sincerely,



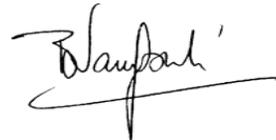
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