
Missing Women Commission of Inquiry
Status Report #2 on Commission Progress

June 20, 2011

The Honourable Wally Oppal, Q.C.
Commissioner

The Creation of the Commission

On September 27, 2010, in recognition of the tragedy of missing and murdered women in BC, the Lieutenant Governor in Council issued an Order in Council establishing the Missing Women Commission of Inquiry (the “Commission”). The next day, the Attorney General of British Columbia announced the appointment of the Hon. Wally Oppal, Q.C. as the Commissioner. The Terms of Reference (the “TOR”) directed that the Commission would be a hearing commission and that it would address four distinct issues:

- 4 (a) to conduct hearings, in or near the City of Vancouver, to inquire into and make findings of fact respecting the conduct of the missing women investigations;
- (b) consistent with the British Columbia (Attorney General) v. Davies, 2009 BCCA 337, to inquire into and make findings of fact respecting the decision of the Criminal Justice Branch on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault;
- (c) to recommend changes considered necessary respecting the initiation and conduct of investigations in British Columbia of missing women and suspected multiple homicides;
- (d) to recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization, including the co-ordination of those investigations;

The TOR stated that “**missing women investigations**” means the investigations conducted between January 23, 1997 and February 5, 2002, by police forces in British Columbia respecting women reported missing from the Downtown Eastside of the city of Vancouver (the “DTES”).

The Commission – Phase 1

The Staff

Mr. Art Vertlieb, Q.C. was appointed as Senior Commission Counsel. The Commissioner and Senior Commission Counsel were both veterans of the commission process in related areas. Commissioner Oppal was the Commissioner of the 1994 Commission of Inquiry into Policing in British Columbia, which made sweeping recommendations for improvements in policing throughout BC.

Mr. Vertlieb was Senior Commission Counsel for the Braidwood Commission on Conducted Energy Use and the Braidwood Commission on the Death of Robert Dziekanski that looked into the use of tasers and the death of Mr. Dziekanski at the Vancouver International Airport on October 14, 2007.

During October, 2010 the Commission's core staff of six was recruited. The Commission staff comprises two lawyers, two support staff, one data manager and one administrator. Additional advisors and ad hoc help were later engaged to be used on an "as needed" basis. For the most part, their involvement has remained helpful, but peripheral.

This was the initial creation phase of the Commission. It consisted of planning and organizational functions required in creating a commission that would be able to fulfill its TOR.

Terms of Reference

In many ways, the TOR were significantly different from those of recent inquiries of a similar nature and these differences needed to be recognized and accommodated.

For example, the Braidwood Commission, with which Mr. Vertlieb had experience, focused on a review of an incident that lasted a few minutes and involved one victim. The Inquiry into the Death of Frank Paul involved one incident with one victim. By contrast, the Missing Women Commission was directed to examine a five year period and more than 50 victims. This mandate is made complex by the ongoing issue of missing and murdered women.

Commission Operations and Procedures

The Practices and Procedures Directive for the Evidentiary Hearings was established at the outset. A work plan was developed including simple logistical needs such as equipment and office space. Commission timelines were identified and project management implemented. A website was developed and launched.

In its planning and operation, the Commission needed to meet its compliance with legislated record keeping and the archiving requirements of a commission.

Volunteer Assistance

During this time, the Commission gratefully accepted the fulltime services of a qualified senior police officer, Deputy Chief Jennifer Evans, from the Peel Regional Police Service ("Peel"). Her services are provided at no cost to the Commission. Peel believes that the Commission is addressing a serious problem that will have implications for policing across Canada and wanted to be part of the process.

DC Evans is appropriate for this assignment because of her experience: homicide investigator, Inspector in charge of Peel Homicide Unit and a secondment to the Bernardo Inquiry in Ontario (which has similarities to parts of the Commission's TOR). DC Evans is a senior police officer with executive knowledge about the management and allocation of scarce police resources.

After joining the Commission, DC Evans quickly learned that the magnitude of the TOR would require additional resources and Peel volunteered two additional experienced homicide Acting

Sergeants to assist DC Evans. They were also provided at no charge to the Commission other than their travel expenses. In addition, the three seconded officers were provided separate working spaces in Peel independent of the normal Peel Police services.

The offer of volunteer services has extended beyond Peel. The Commission has received offers of *pro bono* services from a number of experts. To date, the Commission has accepted the services of four experts, university professors and doctors, who will appear on a *pro bono* basis as witnesses in the evidentiary hearing.

Disclosure

Unlike the previously mentioned Commissions that were limited in scope and time and therefore in documentary disclosure, the Commission faces a potentially massive number of documents to be disclosed. The length of time and the number of organizations involved all added to the volume of documentation. The estimates of the number of documents exceeded one million pages and the Commission needed the capability to receive, review and disclose the documents efficiently and cost effectively.

Knowing that the amount of disclosure would be significant, the Commission granted the Royal Canadian Mounted Police (“RCMP”), the Vancouver Police Department (“VPD”) and the Criminal Justice Branch (“CJB”), who would be the primary providers of disclosure, early grants of standing to expedite the disclosure process.

Significant information technology and document management capabilities had to be identified, sourced and implemented.

Internal procedures were needed for document review by Commission staff. As law students and part-time contractors were being utilized for this purpose, a training program needed to be developed, implemented and completed before document analysis could begin. Systems are in place to monitor our progress in receiving and analyzing documents.

Pre-Hearing Conferences

The Commission held a pre hearing conference in Vancouver on January 19, 2011 and in Prince George on January 21, 2011. These pre-hearing conferences gave me an opportunity to explain the purpose of the Commission and provided an opportunity for members of the community to articulate issues that the Commission should be considering, within its terms of reference. The attendance at both of these forums exceeded expectations and significant input was received.

Participants

On January 31, 2011 a hearing was held in Vancouver to hear applications by participants for standing and funding. Upon receiving the submissions it became clear that the evidentiary hearing process was not a practical option to address subsections (c) and (d) of the TOR. Alternatives were considered and in a commission update report on March 3, 2011, I requested that the Government grant the Commission powers of a Study Commission, which was done on March 28, 2011.

On May 2, 2011, I released my Ruling on Participation and Funding Recommendations. In the Ruling, addressing participation in the Commission's hearing process, I granted participation status to 18 applicants, including individuals, organizations and coalitions. Applicants were granted either Full or Limited Participation status.

Participation was divided into Full and Limited Participation to recognize the differences between the applicants and to promote their efficient participation in the evidentiary hearings. I believe the creation of two levels of participation best achieves the Commission's objective to fully explore all issues from multiple perspectives in a timely manner.

The 10 Full Participants share common interests: they are primarily focused on the factual issues under Terms of Reference 4(a) and (b). They also share characteristics: several are grass roots advocacy and service organizations that have direct and daily contact with the community, including many of the women who were reported missing.

The eight Limited Participants are those organizations primarily focused on the policy issues of the Commission's mandate. They also share common characteristics: several are experienced political or policy organizations that have demonstrated a long standing commitment to many of the policy issues the Commission will confront. I expected that these groups will be extremely valuable in assisting the Commission make recommendations for missing women and homicide investigation and the coordination of investigations by multiple police forces.

Neither Full Participations nor Limited Participants were excluded from either of the two distinct processes of the Commission - the hearing and study commission portions - but the nature of their participation will be different.

Full Participants were granted the right to participate in all phases of the evidentiary hearings and exercise all rights to participation at those hearings including cross examining witnesses and making submissions. They were also granted access to the documents disclosed to the Commission.

Limited Participants were granted the same right of access to documents as Full Participants. While they were not granted an automatic right to cross examine witnesses, they were granted leave to apply on an individual witness basis. They were also granted right to make final submissions at the conclusion of the evidentiary hearings.

In addition to granting participation status, the Ruling also addressed applications for funding recommendation. I was satisfied the 13 applicants who sought funding recommendations would not be able to participate in the hearing portion of the Commission without funding. Therefore, I recommended to the Attorney General that these participants receive financial assistance to pay for legal counsel to facilitate participation appropriate to the extent of their interest: that grants of funding be tailored to the level of participation that each applicant was granted.

Government Funding Decision

In a media release on May 19, 2001, the Attorney General announced only one group, the families of missing and murdered women as represented by A. Cameron Ward (the “Families”), would receive funding. The other 12 groups that I recommended receive funding did not receive financial assistance to participate in the hearing portion of the Commission.

Understandably, the participants who were denied funding have raised concerns regarding their ability to participate in the Commission without financial assistance. In statements to the media and letters to the government they have challenged the Attorney General’s decision.

To better understand the participants’ concerns, I asked Senior Commission Counsel, Art Vertlieb, Q.C., on May 24, 2011 to meet with counsel for the participants that were denied funding to determine what could be done to meet the participants’ needs. After Senior Commission Counsel met with participants, he instructed me to hold a pre-hearing conference to provide participants with an opportunity to make submissions to me about how the Attorney General’s funding decision affects their interests.

On June 7, 2011, I made an announcement regarding the pre-hearing conference. In it, I requested that participants address:

- Their need to be represented by legal counsel at the hearing portion of the Inquiry;
- How their interests may be impacted if funding for legal counsel is not provided; and
- A description of the communication they had with the Attorney General’s office with respect to: any input that was sought from them to help the Attorney General’s office make a decision about funding and whether any basis was provided to them for the denial of funding.

The pre-hearing conference will be held on June 27th, 2011.

I am concerned about the effect of the Attorney General’s funding decision on the Commission. The Commission is dedicated to ensuring that it is thorough and fair and that all perspectives, identified as unique, necessary and valuable in the Ruling on Participation and Funding Recommendations, are adequately represented. The Commission believes this is necessary to ensure it fulfills its mandate under the Terms of Reference. Therefore, the Commission is considering options to address the concerns that arise due to the Attorney General’s decision.

Despite the set-back that the refusal to fund participants has had on the Commission, Commission staff are continuing to carry out the work of the Commission on a number of fronts.

The Commission – Phase 2

On May 31, Phase 1 of the Commission's work ended and Phase 2 has now begun. This phase involves preparation for the hearing and study processes. The hearings are scheduled to begin on October 11, 2011 in Vancouver. The Commission had hoped to start the hearings in June 2011 in the Federal Court room in Vancouver. However, the courtroom became unavailable due to The Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River. Other facilities are currently being considered, but as yet no other suitable court facilities have been found.

Hearing Commission Preparation

It has been decided that the hearing process will be divided into four topical parts:

1. Downtown Eastside community, victims' families and government issues;
2. The decision to stay charges against Robert Pickton in 1998. An expert witness has been engaged to assist the Commission to review the Crown decision;
3. The actions of the VPD with respect to the missing women investigations;
4. The actions of the RCMP with respect to the missing women investigations.

As noted in the Commission's first Status Report dated March 3, 2011, Commission staff has worked with the RCMP, VPD, and CJB on document disclosure since shortly after the Commission was established. Each provided Commission staff with a list of document categories and a schedule for document delivery.

The Commission has received document disclosure from the following participants:

- RCMP, represented by the Government of Canada
- VPD
- CJB
- the Families
- CRAB – Water for Life
- First Nations Summit

The Commission has also received document disclosure from the following third parties:

- Justice Institute of BC
- Canadian Police College

As of May 31, 2011, Commission staff and DC Evans and her staff have begun interviewing potential witnesses for the four segments of the hearing.

	Witnesses
Persons interviewed	44
Potential Witnesses identified:	
Community/Family/Govt. Hearing session	7
VPD	1
RCMP	
Crown	Expert report is on schedule for August

As of May 31, 2011 the Commission has begun receiving and reviewing documents electronically.

	Disclosure
Pages of Disclosure Received	121,948
Pages Reviewed	80,126
Work in Progress	41,822
Participants online	7

In addition to the electronic disclosure noted above, the Commission will conduct an on-site review of 87 boxes of hard copy disclosure from participants.

The Commission requests that all participants provide documents relevant to the Commission's Terms of Reference as soon as they are able to do so in order to ensure that all participants have access to document disclosure in advance of the evidentiary hearings.

As detailed in the Ruling on Participation and Funding Recommendations, both Full and Limited Participants are entitled to access documents disclosed to the Commission. On May 5, 2011, the Commission sent out an information package to participants about document access.

To access the documents, counsel for participants must sign an Undertaking of Counsel. For that reason, documents must be accessed through counsel. As outlined in the Undertaking of Counsel, certain persons are also permitted to view the documents once they have signed a Confidentiality Agreement. In order to provide copies of documents to persons enumerated in the Undertaking of Counsel, participants' counsel must receive approval from the Commission in the approved form.

Once a participant provides the Commission with a signed Undertaking of Counsel, the Commission will set up the participant's access to the disclosure database. Each participant will be able to access the disclosure database through a user ID and password provided by the Commission; each participant will only be able to access the database from one IP address, provided to the Commission.

Documents are accessible to participants through Concordance FYI Reviewer ("Concordance"). Concordance allows participants to search and tag documents. Documents will be imported and numbered in Concordance in the order they are disclosed to the Commission.

To date, the following participants have provided the Commission with Undertakings of Counsel and been granted access to the disclosure database:

- Vancouver Police Department
- RCMP, represented by the Government of Canada
- the Families
- BC Civil Liberties Association
- Vancouver Area Network of Drug Users, Walk4Justice and Frank Paul Society
- Coalition of Sex Worker-Serving Organizations
- The Committee of the February 14 Women's Memorial March
- First Nations Summit
- PIVOT Legal Society
- Carrier Sekani Tribal Council
- Vancouver Police Union

Lay Witness Identification

For the past several months, Commission staff has worked to identify individuals with relevant information regarding the Commission's Terms of Reference. Specifically, the Commission has sought to discover members of the community who may have information about the missing women's investigations or the missing and murdered women themselves. Through this process, Commission staff hopes to identify witnesses for the Commission's evidentiary hearings.

In an email sent on May 23, 2011, Commission staff requested that participants provide a list of potential witnesses to the Commission. Unfortunately, because many of the participants lack funding, they have been unable to do the work necessary to identify potential witnesses for the Commission.

As a result, Commission staff must identify and find potential witnesses without the participants' valuable advice and expertise. This is particularly challenging with regard to community witnesses. The Commission lacks the long standing relationships of trust that some participant organizations have established with community members of downtown eastside of Vancouver ("DTES"). This means that some witnesses may be unwilling to speak to Commission staff and testify during the Commission's hearings.

Nevertheless, the Commission is trying to identify potential witnesses in other ways including information provided by participants, document disclosure, media articles on the investigation and interested individuals contacting the Commission directly. Some potential witnesses are identified through witnesses interviews themselves when witnesses provide the names of people with relevant information.

In spite of the challenges outlined above, Commission staff has conducted 23 interviews with potential community witnesses. The areas addressed in the interviews include:

- The lives of the missing and murdered women, including their vulnerability, experiences of violence and relationships with service organizations in the DTES;
- The relationship between the DTES community, particularly sex trade workers, and the police;
- The interaction between missing and murdered women's families or friends and the police, particularly in initiating and investigating missing persons reports or homicides;
- The efforts of community members or families to bring attention to the missing women case; and
- The perception of the missing women case in local government.

Expert Witness Identification

In addition to seeking lay witnesses, Commission staff has also endeavoured to identify expert witnesses who can provide a context to understand the missing women investigations. Expert witnesses, through years of dedicated study and research, will be able to explain the circumstances of sex trade workers in the DTES – the subjects of the missing women investigations and, ultimately, the victims of Robert Pickton – which will enable the Commission to make findings of fact with respect to the missing women investigation and the CJB's decision to stay charges against Robert Pickton, and above all, make recommendations that will benefit future missing women's investigations.

Commission staff has taken the same approach to identify expert witnesses as lay witnesses: through information provided by participants, document disclosure, media articles on the missing women investigations, referrals by witnesses and, as above, through direct contact from interested individuals.

To date, Commission staff has conducted interviews with six potential expert witnesses. The areas addressed in the interviews include:

- A portrait of the lives of sex trade workers in the DTES;
- The relationship between police and sex trade workers in the DTES;
- The experiences of violence against sex trade workers in the DTES;
- A portrait of drug use in the DTES and the impact of drug use on vulnerability to violence;
- Personal history of several of the missing and murdered women;
- Stereotyping of Aboriginal people and the effects of stereotyping on the quality of police protection for Aboriginal people in the DTES; and

- The issues faced by the Commission in interviewing vulnerable witnesses.

Police Witnesses

As of May 31, 2011 Commission staff and DC Evans and her staff have begun interviewing potential witnesses for the four segments of the hearing.

Study Commission Preparation

The following study commission activities are underway:

- Relevant Literature Review and Analysis.
- Policy Issues/Discussion Papers. This will be an information gathering process that will request input and pose open-ended questions. The primary issues will be:
 - Police protection of marginalized and vulnerable women;
 - The structure and operation of policing in BC;
 - The coordination and/or regionalization of policing in BC;
 - The initialization and coordination of missing women and suspected homicides;
 - Police partnerships with the media and the community.
- Major Research Papers.
 - Papers will be prepared for items (a) through € above
 - Analysis of Missing Persons reporting practices from 1997-2002 and currently
- Focused Research.
- Community Forums/Roundtables
 - Northern BC
 - West portion of the Highway of Tears (Prince Rupert and Terrace area)
 - East portion of the Highway of Tears (Vanderhoof and Burns Lake area)
 - South of Prince George (Williams Lake area)
 - Downtown Eastside

Further progress reports will be issued in due course.

Wally T. Oppal, Q.C.
Commissioner