



May 11, 2018

Marion Buller
Chief Commissioner
National Inquiry on MMIWG
Via email: m.r.buller@mmiwg-ffada.ca

Dear Commissioner Buller:

We write to you today to express our serious concerns about the process undertaken by National Inquiry into Missing and Murdered Indigenous Women and Girls (“the Inquiry”) to address systemic causes of violence experienced by Indigenous women, girls, and two spirited people. In particular, we are deeply concerned that the systemic mandate of the Inquiry cannot be fulfilled by the rushed, incomplete, and procedurally flawed hearings currently scheduled to run in May and June of this year.

West Coast LEAF is a BC-based legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender-based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to make change. In particular, we aim to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender based violence; justice for those who are criminalized; and the right to parent. We are participants in the Inquiry with standing in Parts II (institutional) and III (expert).

As you know, the mandate of the Inquiry is focussed on identifying and examining systemic causes of violence against Indigenous women and girls. Specifically, the Terms of Reference for the Inquiry:

- (a) direct the Commissioners to inquire into and report on the following:
 - i. systemic causes of all forms of violence – including sexual violence – against Indigenous women and girls in Canada, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of Indigenous women and girls in Canada, and
 - ii. institutional policies and practices implemented in response to violence experienced by Indigenous women and girls in Canada, including the identification and examination of practices that have been effective in reducing violence and increasing safety.

Over a year and a half into the Inquiry, Parts II and Part III hearings to identify and examine systemic causes of violence against Indigenous women, girls and two spirited people are only now getting

underway. The systemic hearings planned in the remaining time fall far short of what is necessary for the Inquiry to meet its mandate, much less to do so meaningfully.

We understand that the Inquiry is facing a time crunch, and we have written to Minister Bennett to support your request for an extension. Although the two year time frame was never sufficient, knowing the short time frame, we are disappointed that the Inquiry chose not to plan the systemic hearings until a year and a half into the process. However, at this point we are aware that we must all work within the time frame until such time as an extension is granted.

Putting aside the issue of an extension, the procedural problems with the upcoming hearings are many. They roughly fit into two larger concerns:

1. Failure to plan hearings in a timely way with sufficient notice, resulting in:
 - a. Many key witnesses being unable or possibly unwilling to appear. This has meant that there are many experts that the Inquiry should be hearing from that they are not. For example, the international human rights experts who have investigated the murders and disappearances, analyzed the social and legal context of the violence, and identified the violations that are occurring have significant contributions to make and yet are not appearing.
 - b. Late notice of witnesses to parties, providing inadequate time for participants and their counsel to prepare for questioning. This may well compromise the effectiveness of the hearings.
 - c. Late notice of hearing dates, excluding many who do not have the resources to mobilize quickly, or cancel work and personal commitments for weeks on end, or ensure that external counsel's schedules can accommodate these hearing dates.
 - d. Limited scope of the scheduled hearings that cannot possibly cover all jurisdictions or cover the most significant systemic issues. For example, in relation to government services, surely the functions, practices and policies of both the prosecution service and corrections are key institutional responses referenced in subsections (a)i and ii of the Terms of Reference, and yet neither institution is included in the institutional hearings. How can we possibly understand or address the experience of women and their families in reporting violence and seeking redress without exploring these two key elements of the criminal justice system response? By further example, racism is the subject of a dedicated hearing, but not sexism or intersectional discrimination. In our view, this is a fundamental misunderstanding of the intersectional systemic issues leading to the high rates of gender based violence against Indigenous women, girls, and two spirited people.
2. Failure to communicate effectively, including:
 - a. Failure to communicate about timelines and workplans in an accurate or timely way (the recent NWAC report card gave the Inquiry a failing grade on this score).
 - b. Failure to disclose notice of evidence in a timely way, including requiring parties to file Notices of Appearance before knowing the scope of evidence or witnesses to appear at hearings.
 - c. Failure to communicate about the ongoing work of the Commission. We understand from your website that the Inquiry is engaging in a forensic file review, although this process has not been communicated to those with standing, nor has it been explained how this fits within Parts II and III of the Inquiry. We also understand from the NWAC report card that the Inquiry is in the process of establishing Advisory Boards, but this has

also not been communicated to those with standing, nor has it been explained how these Boards will fit within Parts II and III of the Inquiry.

We share the concern of many community participants that this process seriously undermines the administrative law principle of procedural fairness. The result of this flawed process is that many organizations with standing are not able to participate meaningfully in the systemic hearings and are therefore not attending. Most importantly, Indigenous organizations are being excluded from the hearings by the unfairness of this process. In fact, 20 of the 34 Indigenous organizations granted standing are not coming to the first hearing, which is nearly 60% of the Indigenous service providers, advocates, and governance organizations the Commissioners originally thought worthy of inclusion. These are the perspectives you need to be hearing from most in order to answer the systemic questions that are at the heart of this Inquiry – and yet, the process itself is excluding them.

We are deeply concerned that the Inquiry will not be able to achieve its systemic mandate using this flawed approach to systemic evidence. In our view, if the Inquiry fails to properly address systemic causes for violence against Indigenous women, girls, and two spirited people, this will be an enormous waste of potential for change, do a disservice to those who have already provided their evidence to the Inquiry, and seriously undermine national momentum towards reconciliation with Indigenous peoples.

Many families have participated in the Inquiry process by providing evidence, often at great emotional cost, and many of those who have participated report positive experiences with the Commission. As has been repeatedly emphasized by both Commissioners and government spokespeople, families are central to the Inquiry's truth telling function. However, the Commission's responsibility to ensure that family and survivor witnesses are not re-traumatized by giving testimony does not end when those witnesses walk out the door. In order to ensure that their efforts are not wasted, the Inquiry must craft strong systemic recommendations to address the systemic causes of violence that they faced. Prioritizing the families – as has been repeatedly stated as a key goal of the Inquiry – mandates prioritizing the systemic hearings as well.

After considerable deliberation within our organization and in consultation with our community allies, we have decided at this time to participate in the hearings to try to make the Inquiry as useful as possible. Please do not interpret our participation as an endorsement of the process to date. However, we are committed to working with you and other community participants to ensure that this Inquiry is meaningful and centralizes the perspectives and expertise of Indigenous women.

Thank you for considering our perspective in this matter. There is considerable urgency to your answer: we are calling on you to address these issues before proceeding any further with this flawed process. We look forward to hearing from you.

Yours truly,



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Executive Director



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