

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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September 19, 2011

Honourable Shirley Bond
Attorney General
Government of British Columbia
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Email: Shirley.Bond.MLA@leg.bc.ca

Dear Ms. Bond,

Re Legal Funding for groups with standing at the Missing Women Commission of Inquiry

Lawyers Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC also campaigns for advocates in danger because of their human rights advocacy, engages in research and education and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

We are writing to you to express our concern that on 22 July 2011 your predecessor, Barry Penner, refused to provide funding to pay for lawyers to represent a number of groups that were granted standing at the Missing Women Commission of Inquiry headed by Commissioner Wally Oppal, Q.C. This Commission has been viewed as an essential step to address deep public concerns about police misfeasance in the investigation of cases of dozens of missing women in Vancouver's Downtown Eastside, a great number of whom are Aboriginal.

Effective participation in a hearing of this nature requires the assistance of legal counsel. For this reason, the government has provided funding to hire lawyers (legal funding) to families of victims granted standing at the Commission. The issues under investigation at the Commission go far beyond the concerns of individual families of victims. The Commission was created under the *Public Inquiries Act* to investigate alleged systematic police failures to protect Canadians' right to life. Apparent failures of police to conduct proper investigations of the murders or disappearances of poor and indigenous women foster a climate of impunity for perpetrators of violent crimes against women—particularly aboriginal women—and others disenfranchised by poverty. This in turn encourages discriminatory public attitudes concerning whose rights and whose lives are worth protecting. These are urgent matters of *public* interest.

Commissioner Wally Oppal granted standing to additional groups that he considered had important information to offer the Inquiry. Each group with standing has the right to cross examine witnesses based

on its own interests, perspectives and knowledge so as to properly test the evidence submitted by the police and others. The opportunity to test the evidence lies at the heart of our adversarial system. The decision not to fund legal counsel for these groups unfairly compromises their ability to present and test evidence. In doing so it also compromises the ability of the Commission to elucidate the truth. Mr. Oppal recognized the importance of equality of representation when he made recommendations that the additional groups require publicly funded legal counsel in order to participate fully and equally in the formal hearings.

In early August the Commission attempted to address the resulting inequality by appointing two independent lawyers to assist the commission by helping ensure that perspectives of Vancouver's Downtown East Side community and Aboriginal women are adequately presented. However, the lawyers appointed have a mandate to serve the public interest and "take guidance" from participants -- but not to take instructions from or to directly represent -- the unrepresented groups with official standing at the Commission. However useful to the Commission such appointments may be, this measure does not ensure the ability of these groups to fully and equally participate and does not replace proper legal representation by their own counsel of choice. The Commissioner's ruling also makes it clear that the informal "study commission" without counsel is not a substitute for full participation with counsel of choice in the formal inquiry.

The BC government's refusal to follow the Commissioner's recommendation to fund lawyers to represent these groups is a discriminatory action that effectively denies the most vulnerable people equal access to the protection of the law and to remedies for violations. It does so while each police group is represented by teams of their own lawyers being paid by the public. International law binding on Canada obligates the BC government to ensure legal representation to enable people to seek protection of their rights when they cannot afford legal counsel and when the assistance of legal counsel is necessary. Groups with standing cannot adequately or equally present their evidence and concerns to the Commission or test the evidence presented by others without the help of a lawyer with whom they enjoy a solicitor client relationship.

The Government of BC, the RCMP and the Vancouver City Police are represented by publicly funded lawyers. Groups representing the concerns of poor and marginalized groups—the very groups victimized by the policing practices under examination—are not. This is an unacceptable denial of equality which, we suggest, repeats a pattern of officially sanctioned inequality and discrimination against poor women and indigenous peoples in BC identified as contrary to Canada's treaty obligations by United Nations treaty monitoring bodies.

- In 2006, the UN Human Rights Committee noted that denial of legal aid to poor and Aboriginal women at heightened risk of violent death was effectively a denial of their access to justice and of their equality rights guaranteed by the International Convention on Civil and Political Rights.
- In 2007, the UN Committee on the Elimination of Racial Discrimination noted Canada's failure to adequately provide access to justice for Aboriginal peoples and others belonging to minority groups.
- In 2008, the UN Committee on the Elimination of Discrimination Against Women noted that cuts to civil legal aid—particularly in BC—denied equality rights to low-income women.
- In 2009, the Report of the Working Group on the UN Universal Periodic Review (UPR) of Canada, noted that violence against Aboriginal women was "a significant concern" and recommended that Canada "take effective measures to combat and put an end to discrimination against indigenous population and...ensure effective access to justice, establish immediate means of redress and protection of rights of ethno minorities, in particular, Aboriginals."

The treaties under review are all binding on the Province of BC which according to Canada's separation of powers, has the constitutional responsibility for the administration of justice. For more detail, we refer

you to LRWC's submission to the Public Commission on Legal Aid entitled "International Law Obligations to Provide Legal Aid," available at www.lrwc.org/documents/International%20Law%20Duties%20to%20Provide%20Legal%20Aid%20LRWC.Oct%2025.2010.pdf

Some indigenous peoples' and women's groups have now withdrawn from participating in the Commission. Concerns have been expressed about the narrow mandate and short time frame. The appointment of a Commissioner who served as Attorney General of BC during the period of time under investigation raised public concern about the perceived impartiality of the Commission. The BC government's refusal to adhere to the Commissioner's funding recommendations for legal counsel for participants has led some organizations to withdraw.

Standing without representation is hollow. All groups given standing before the Commission must be represented by their own counsel. No other situation adequately protects the rights of all groups to present and test evidence and the integrity of the Commission. Given the mandate of the inquiry, the controversy and complexity surrounding the issues under review, the adverse position of groups with standing, the fact that all police groups and all victim groups have publicly funded legal counsel, no other result is acceptable. A refusal to provide legal funding to some groups with standing and not to others erodes public confidence in the bona fides of the inquiry and potentially undermines the reliability of any findings of the Commission.

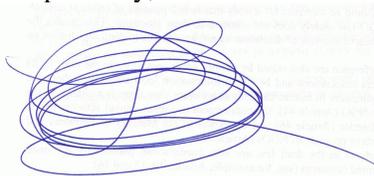
In addition, the decision to refuse funding for legal counsel for these groups is tantamount to a vitiation of the Commissioner's ruling on standing.

LRWC urges you, as the Attorney General of BC, to take immediate steps to ensure funding for legal counsel is provided to the groups identified as needing such funding in accordance with the Commissioner's ruling of 2 May 2011.

LRWC also urges you to put measures in place to ensure an impartial and independent investigation of allegations of police failure to conduct proper investigations into disappearances or deaths of women throughout BC, including an adequate mandate.

We look forward to receiving your response by September 30, 2011.

Respectfully,



Gail Davidson, Executive Director, LRWC



Catherine Morris, BA, LLB, LLM

cc. Wally Oppal, QC
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