

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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Saturday, October 22, 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: Missing Women Commission of Inquiry (Commission)
Inequality in funding lawyers for groups appearing before Commission**

Thank you for your 6 October 2011 reply to our letter 19 September 2011. We are concerned by British Columbia's continued failure to ensure equality of public funding for legal counsel between the groups with standing before the Commission. The non-government groups making allegations against state officials (with one exception) do not have publically funded legal counsel, while state officials defending the allegations do. We are also concerned by your failure to acknowledge the *Charter*¹ issues at the heart of this inquiry.

The purpose of the Commission is to examine and report on the failure of the Royal Canadian Mounted Police (RCMP), the Vancouver Police Department (VPD) and the BC Criminal Justice Branch, between January 23/97 and February 5/02, to protect the right to life of women in the Downtown Eastside of Vancouver in accordance with their legal duties to do so.

The Commission must address allegations that many women died as a direct result of the failure by public servants to provide poor and disadvantaged women from the Downtown Eastside with services equal to those provided to others for the protection of the right to life. State agents are alleged to have failed to adequately protect victims': a) right to life; b) right to equality; and, c) right to a timely and effective investigation of and remedies for, rights violations. (Your letter stated that "Government provides legal representation outside the legal aid program only in very rare circumstances, such as proceedings engaging *Charter* rights and where the outcome of the proceeding is likely to affect an individual's rights, liberty, or security.")

By funding lawyers for the police and Criminal Justice Branch while refusing legal funding for the human rights organization and groups advocating for victims, witnesses and other poor disadvantaged women at risk, the Government of BC is continuing the very practices of discrimination and inequality that are under investigation and is effectively silencing the voices of the people from whom the Commission must hear.

We note that the police and Criminal Justice Branch are represented by 14 lawyers paid for with public money. These groups will be, we presume, defending the allegations made against them. We further note that of the groups seeking to give evidence supporting the allegations, the government refused to provide legal funding to all except for two lawyers representing the families of 8 of the 26 murdered women. Public funding for lawyers to represent other human rights organizations and groups granted standing has been

¹ Canadian Charter of Rights and Freedoms <http://laws.justice.gc.ca/eng/charter/FullText.html>

refused despite the Commissioner's recommendation that these groups be granted legal funding needed in order to participate fully.

Since that decision, 18 groups with standing have withdrawn from participation in the inquiry, because lack of funding limits their ability to participate effectively. Groups that have withdrawn include: Amnesty International, British Columbia Civil Liberties Association, Pivot Legal Services Society, Frank Paul Society, Women's Memorial March Committee, BC Indian Chiefs, Carrier Sekani Tribal Council, Native Courtworkers and Counselling Society, Downtown Eastside Women's Centre, Assembly of First Nations and a coalition of sex-trade workers that includes the WISH Drop-in Centre Society, the PACE (Providing Alternatives, Counselling & Education) Society and the SWUAV (Sex Workers United Against Violence) Society.

Commissioner Oppal had granted these groups standing on the basis that each had a leading role to play in the review of either factual or policy issues germane to the inquiry. A direct result of these organizations' having to withdraw their participation is that the Commission will be deprived of the valuable contributions anticipated by Commissioner Oppal. In particular, the Commission will no longer benefit from the following factual information:

- the Downtown Eastside Women's Centre would have provided direct evidence about the missing and murdered women between January 23/97 and February 5/02;
- the Frank Paul Society had offered to marshal otherwise unwilling witnesses and locate expert witnesses;
- the British Columbia Civil Liberties Association, Amnesty International, and Pivot Legal Services Society would have each offered extensive experience and research with respect to critical issues of police accountability, human rights, and non-discrimination.

Commissioner Oppal found that each of these organizations would also have contributed to the conduct and fairness of the Commission by representing diverse perspectives. The following perspectives identified by Commissioner Oppal will no longer be represented, thereby further undermining the fairness and legitimacy of the Commission: that of, *inter alia*,

- sex trade workers represented by the Coalition of sex-workers serving organizations (WISH Drop-in Centre Society, the PACE Society and the SWUAV Society);
- women and children of the Downtown Eastside represented by the Downtown Eastside Women's Centre and the Women's Memorial March Committee;
- illicit drug users and urban Aboriginal people represented by the Frank Paul Society;
- northern, provincial, and national Aboriginal groups represented by the Assembly of First Nations, the Union of BC Indian Chiefs, the Carrier Sekani Tribal Council, and the Native Courtworker and Counselling Society of BC.

Commissioner Oppal reviewed each of these groups' need and capacity to pay for legal counsel and made recommendations to the Attorney General about each of the above noted groups. He concluded,

"I am satisfied they would not be able to participate in the hearing part of the inquiry without funding. I therefore recommend to the Attorney General that these applicants receive financial assistance to pay for legal counsel to facilitate participation appropriate to their interests."²

The Commission is engaged in reviewing the most critical *Charter* issues:

- The state's duty to protect the right to life (a prior condition for realization of all other rights) is fundamental.
- Equality rights—the right to equality before the law, the equal protection of the law and equal access to remedies for violations of rights—are the keystone of the rule of law.

² Missing Women Commission of Inquiry Ruling on Participation and Funding Recommendations, May 2, 2011, p. 25. <http://www.missingwomeninquiry.ca/wp-content/uploads/2011/05/RulingonParticipationandFundingRecommendations.pdf>

- The right to a remedy for violation of the right to life which includes the right to an effective investigation of an extra-judicial killing.

The duty to investigate is considered an inseparable part of a state's duty to protect the right to life. The failure to do so is itself, considered a violation of the right to life. In addition, where—as in the case—there is a pattern of extrajudicial killings, the failure to conduct effective investigations creates an environment of impunity, which promotes further killings and human rights violations.

These right, in addition to being guaranteed by the *Canadian Charter of Rights and Freedoms*, are protected by international treaties binding on Canada including, but not limited to the: International Covenant on Civil and Political Rights, Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination against Women. The Province of British Columbia is obligated to implement these treaties in its areas of constitutional responsibility. BC's failure to provide equal protection for the rights of aboriginal, poor and disadvantaged women at risk of violence has been identified by a number of international human rights bodies.

In the aftermath of the Attorney General's decision not to proceed with prosecutions in the cases of 20 of the murdered women, the Government of British Columbia clearly has a duty to effectively investigate the underlying violations of victim's rights to life, to non-discrimination and equality and to remedies for rights violations. We assume the Commission was created to address, in part, this duty. However, the Commission's mandate cannot be adequately fulfilled unless groups and organizations with standing that represent the interests of the victims and other poor and disadvantaged women are provided with legal funding in accordance with the recommendations of Commissioner Oppal.

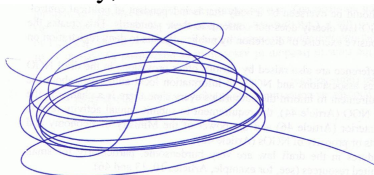
The ultimate purpose of the Commission is to not to identify whether the murdered women's rights were violated—that is already known. Rather the purpose is to identify what policies, practices, oversights, prejudices, systemic discrimination and institutional deficiencies caused those violations and then to make recommendations as to how the police and Crown should act in the future to more equally and more effectively protect the lives of similarly disadvantaged women. The Commission cannot do this with the voice of the complainants silenced through absence of necessary legal representation.

Your suggestion that that the rights to life of some women in British Columbia must be balanced by financial constraints is disturbing and suggests your government may not appreciate the gravity of the allegations being made against state officials. We trust that you would deplore, as we would, the other suggested alternative that your government *does* recognize the seriousness of the allegations and seeks to ensure those making them will not be properly heard, thus impeding the Commissioner's mandate to address the issues of impunity we have noted.

The state must provide legal aid when rights cannot be adequately protected in the absence of the assistance of a legal representative. Clearly, in this situation, the Province of BC has determined that the police and Crown need assistance from lawyers to adequately protect their interests. Equal legal funding must be provided to the groups and organization protecting the interests of the murdered women and other women at risk by providing evidence of the failures under investigation.

LRWC urges you to reverse the decision made by your predecessor and fund the groups granted standing as recommended by Commissioner Oppal.

Sincerely,



Gail Davidson, Executive Director, LRWC



Catherine Morris, BA, JD, LLM

CC.

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