



Missing Women Commission of Inquiry

First Nations Summit Statement

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"The world was supposed to have learned three indelible lessons from the concentration camps of Europe:

- a. Indifference is injustice's incubator;*
- b. It's not what you stand for, it's what you stand up against;*
- c. We must never forget how the world looks to those who are vulnerable."*

("International Law and Human Rights: The Power and the Pity". Honourable Rosalie Silberman Abella, Justice of the Supreme Court of Canada. [2010] 55 McGill, L.J. 871)

ACKNOWLEDGEMENT

1. Mr. Commissioner, I want to firstly recognize the Coast Salish peoples on whose ancestral lands I stand and recognize that they continue to have legitimate land and territorial rights inherited from their ancestors, throughout all of these lands. This is what they, and we the Indigenous Peoples, know and believe. We continue to know and believe this to be so.
2. I am here today as an elected spokesman for and on behalf of the First Nations Summit and those First Nations who in this province are in a difficult and protracted negotiations process to fairly and equitably resolve these land related

rights with Canada and BC, the successors of Crown colonial governments.

3. These First Nations have been at their respective tables for some 15 years now and with very little success and very little to show for it. I will explain later what they see as the obstacles to real and genuine negotiations to reach agreements. In the colonial era of this province, authorities such as Governor James Douglas through various Proclamations and Ordinances unilaterally took those lands that now make up the Province of BC. These lands were taken without negotiating with and certainly without the knowledge, consent or agreement with our ancestors. It is as if our peoples did not exist or have any rights to their lands and territories.

INTRODUCTION

4. Although the primary mandate of the First Nations Summit is to establish and support a constructive resolution process on the land, resources and territory issues, through good faith negotiations, we are also fully engaged in the ongoing political, social, cultural and economic issues facing our people and communities and working to develop viable and practical political and policy solutions to these issues.
5. We are deeply engaged in a myriad of processes with governments to address legal, legislative, regulatory and policy issues dealing with education, health, housing, water, sanitation, technology, fisheries, forestry, mining, energy, early childhood development and so on. We also deal with local governments, industry groups and other public interest organizations. We are not directly involved in various day to day matters within our communities even though many issues are brought to us. However, we do assist in any way we can. Ultimately, all of our efforts are to advocate for and support the survival, dignity,

and well-being of our peoples and our communities.

6. In this submission, we would like to provide a "context" which we strongly believe will be instructive to this Inquiry and its understanding of Aboriginal, in particular First Nations, issues and for its subsequent report and recommendations.
7. The specific issue involving "violence and Indigenous women" is not just a local issue to this province. It is an issue that has gained national and international prominence, including at the United Nations. First Nations individuals and organizations have, for years, called for an independent examination and Inquiry into the missing, and we now know murdered, Aboriginal women. Such an Inquiry we hoped would shed some light into the dark corners of such violence, their roots, extent and impacts, and including such issues as systemic racism and lateral violence. Viable solutions built on genuine actionable political will and the necessary financial resources are desperately needed to find a way forward. We have repeatedly called on Canada and British Columbia to understand these issues and to deal with them as important public policy priorities.
8. This submission will address the following:
 - a. Situation of those granted participant standing before this Inquiry;
 - b. Independent Inquiry:
 - i. Calls for an Independent Inquiry;
 - ii. Establishing an Inquiry including the terms of reference;
 - iii. Appointment of a Commissioner;
 - iv. Conduct and operations of the Commission;
 - c. Historic and contemporary First Nations- Crown relations

Participants

9. A large number of individuals and organizations applied for and have been granted participant standing before this Commission. The First Nations Summit applied for standing and was granted Limited Participant status.
10. While some Participants will appear before the Commission, most have, for a number of very legitimate reasons, withdrawn. Many of these reasons have been submitted to the Commission in writing and are well known publicly. These have highlighted the credibility of the Commissioner and the Inquiry, including the conduct of the Inquiry itself and that of the provincial government which has, from the outset, tied the hands of the Commission by its extremely limited terms of reference and by refusing to provide desperately needed financial support to those participants who have very limited, or no, resources. Given the incredible importance of the issues before this Inquiry, the position of the BC government to not fund these participants is nothing short of astounding.
11. The fact that so many have withdrawn cannot be good for the Commission. Any report and any recommendations of the Commission will very well be received and considered with a large degree of skepticism - protecting and advancing the interests of only those able to afford legal counsel.
12. Some families have been fortunate to have financial support to retain legal counsel. This is positive, constructive and welcome. Some Aboriginal families as well will be represented through this. There are, however, many Aboriginal families who have missing and/or murdered family members who will not be represented by anyone, or in any direct way.
13. Although the Commission has appointed an individual as "independent counsel" to represent "Aboriginal peoples", this was done **without any discussions or**

concurrence with Aboriginal or First Nations peoples. This leads to the following questions – Who is this individual accountable to? Who does this individual represent? How are instructions given and by whom? While we fully respect the appointed individual and pro bono co-counsel, this is a highly unsatisfactory and difficult situation. It would have been useful if the Commission approached the First Nations/Aboriginal participants and recommended they, with financial support from the Commission or the Province, retain their own legal counsel.

INDEPENDENT INQUIRY

14. Shortly after the formation of the First Nations Summit we began to hear stories of, and receive information about, including names of, Aboriginal women going missing and/or being murdered from the Vancouver downtown eastside (DTES). It appeared to us that, despite continuous serious efforts by some individuals and organizations, no authorities were paying much attention to them or the issues they were raising. Given that we are a First Nations political organization, some of these individuals/organizations came to us for advice and support. After all, many of these missing women are Aboriginal and come from our communities across this province and country.
15. In supporting and working with them we fought for this issue to be taken seriously by the provincial government, local police and various public agencies.
16. In January 1997, the First Nations Summit Chiefs formally called for an investigation into the multiple murders of Aboriginal women in Vancouver setting out a list of 48 women believed to be of Aboriginal ancestry. The following month, we contacted the Attorney General, then Ujjal Dosanjh, seeking his intervention and support in appointing a special investigator to examine the cases on an urgent and priority basis. We also worked to raise

public awareness about this issue in the media.

17. It was not until June 1997 that the Attorney General responded to us advising that the Unsolved Homicide Unit had been established, that it had been provided the list of names we provided and that the Unit was looking into this matter. The Vancouver Police Department (VPD) advised the First Nations Summit that a number of other names had been added to the list, altogether 71, we provided and that all had been accounted for except two. However, we were advised by Aboriginal peoples that Aboriginal women continued to go missing.
18. As we know now, in 2002, it was publicly known that Robert Pickton was involved and responsible for the horrific and gruesome murders of many of the missing women for which he is now doing life in prison. It is not clear to us how many of these deaths could have been prevented.
19. Over the years, along with many others, we have been calling for inquiries into Aboriginal justice matters including an Inquiry into the death of Frank Paul, the missing and murdered Aboriginal women in the DTES, the missing women, most of whom are Aboriginal, on the Highway of Tears (Highway 16 in northern BC) and a general examination of Aboriginal peoples involved, in one way or another, with the justice system in BC. This would include the disproportionate numbers of Aboriginal peoples charged with criminal offences, those who appear in various provincial courts in the province, those in provincial or federal jails, or those who have died as a result of police actions or while in police custody, the lack of Aboriginal peoples in police forces, lack of Aboriginal peoples who are judges and so on.
20. An Inquiry into the death of Frank Paul has been completed and a report has been made public. In fact we, as representatives of First Nations and Metis, met on several occasions with then Attorney General of BC (AGBC) Wally Oppal to

discuss the terms of reference. We were presented with draft terms of reference, which in our opinion were completely unsatisfactory. In subsequent meetings and calls with the AGBC and his officials, we provided some alternate draft terms of reference which, for the most part, became the final terms. Of course, when the Commission proceeded to complete its Inquiry, the Province, (unusual in the annals of legal history), took issue with its own terms of reference and challenged it all the way to the Supreme Court of Canada.

21. Despite the fact we had long been calling for an Inquiry, it came somewhat of a surprise when the Province announced the Missing Women Inquiry. As representatives of First Nations, we were never approached by the Province regarding any aspect of the Inquiry: not the terms of reference, or the appointments of the Commission and Commissioner. While we welcomed an Inquiry, this approach by the Province was not helpful. The terms of reference were, in our opinion, extremely narrow and we felt would not cover those issues we considered important. We also felt that, if the Commission went beyond those terms of its mandate either during the Inquiry or in its findings report and/or recommendations, that it would be challenged by the Province or any of the official Crown agencies including the police.
22. In any event, in a subsequent meeting with a former AGBC it became clear to us that, while the Inquiry was established, it was an Inquiry with an extremely short leash...because, as it was explained to us, these generally go over their budgets and timelines and are not a very useful investment of limited government resources. It was subsequently further explained that limited resources could be better used in other ways such as investing in those underlying circumstances that lead to Aboriginal women coming into vulnerable situations. Unfortunately, we have not seen any of this being financially resourced yet.
23. The appointment of a former MLA, a former member of the caucus and cabinet

- of the sitting government, and also former AGBC under this same government, as the Independent Commissioner came also as a surprise to us. Given this, the perception of a lack of impartiality and independence was questioned.
24. It is acknowledged that he is a well-known and highly respected former Justice of the BC Court of Appeal. However, concerns were expressed that he had stated publicly that he did not think an Inquiry into the missing and murdered women was needed. This was, and is still is, a very difficult situation for First Nations Chiefs and leaders across the province. The concern is that the findings of fact and final report would be coloured by the views reflected in the public comments, as well as his past relations with those colleagues of his while in government.
 25. Another publicly released information item, of course, is the direct communication with the then AGBC regarding the funding for participant organizations. While highly commendable and welcome, the perception nonetheless, causes a certain degree of discomfort. With separate independent legal counsel representing the Commission and the Province, it would be fair to assume existing legal ethics would govern conduct between the parties...that legal counsel would communicate with each other on behalf of their respective clients. Presumably the provincial government publicly released this information for reasons for which we can only speculate.
 26. While these events, taken separately, may not be fatal to the Inquiry, we are concerned that together they may lead to the perception of the gradual erosion of the impartiality and independence of, and ultimately, the credibility of the findings, report and final recommendations.
 27. However, the Commission, to its credit, has recommended, and even advocated, for participants to have their costs covered. Notwithstanding this, the Province

has been unequivocal and adamant that it will not cover any costs other than for those directly impacted including those costs for the families of the missing and murdered women.

28. The Commission has in front of it many very difficult questions.
- "What happened?"
 - "What went so horribly wrong?"
 - "Could any of these murders have been prevented?"
 - "Did the fact that many of these women were Aboriginal have anything to do with their being targeted, or that the police investigations were somehow incomplete?"
 - "What role did the policing bodies have in trying to prevent any of this from happening?"
 - "What can be done to prevent the recurrence of a similar situation?"

CONTEXT FOR UNDERSTANDING FIRST NATIONS-CROWN RELATIONS

Systemic Issues and Patterns of Crown Conduct

29. We firmly believe that, to know our history and that of our historic dealings with successive Crown governments will help you understand the nature of existing relations and that of our place in contemporary British Columbia. We do not want to oversimplify a complex history of relationships, but there are certain recurring elements of past and contemporary conduct on behalf of the Crown which cannot be ignored.

30. There is an "atmosphere" in the conduct of Crown affairs that is difficult for First

Nations people to accept, or even understand.

31. At the very core of this is the continued "denial" by the Crown on behalf of BC and Canada of the very existence of Aboriginal peoples, or their rights unless and until these are proven in a court. Even to this day we continue to see this in the pleadings filed by Crown lawyers and in their written and oral arguments they submit when matters relating to the rights of Aboriginal peoples end up in a court. The United Nations Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly, in its preamble, says it best:

"Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,"

In December 2010, Canada endorsed this Declaration.

32. Since its inception as a colony, and then as a province when it joined Confederation in 1871, BC and Canada have acted with impunity regarding the land, cultural and political rights of Indigenous peoples. The Crown's underlying attitude towards Aboriginal peoples is best reflected in the June 2008 Apology issued by PM Harper to survivors (or as referred to in the document as "former students") of Indian residential schools in BC and across Canada. The Apology acknowledges the following:

- "Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were **inferior and unequal**. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our

country."

- "The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language."
 - "The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today."
33. The Apology did not come as a matter of political goodwill. It came only after long and protracted litigation and appeals to the Supreme Court of Canada during which the government of Canada denied it had any responsibilities to the survivors. The courts in the end found both Canada and the churches liable.
 34. The history of this relationship does not start nor end there. As mentioned earlier, the pattern is reflected in the taking of Indigenous lands in BC without agreement or without any compensation. In *Calder*, the first case to the SCC, the Crown argued that all Indian land rights were extinguished in the province prior to it joining Confederation in 1871. It was premised on the notion that the lands were "free for the taking" because Indigenous peoples were neither civilized nor Christian and, therefore, had no concepts of property. When First Nations stand up to protect and defend their interests they are viewed as "obstacles" and ridiculed with derision.
 35. Indians (along with Chinese immigrants) were prohibited from pre-empting Crown lands or owning lands at all. Indians were not allowed to vote in provincial or federal elections until the mid 1900s. Indian students of school age were not allowed in public schools until the 1950s. In the 1880s the federal government enacted laws to prohibit the ancient potlatch practices that were at the core of

many Indigenous peoples' cultures and political systems in BC. By law, lawyers could not be retained by Indigenous people to pursue claims relating to land in the province. This pattern by the Crown was aptly called the "conspiracy of laws" by Gary Yabsley and the late Chief Joe Mathias in a research article written by them. The laws and policies reflected an aggressive pattern of denial, of repression, of oppression and of suppression. Many other independent research, Commissions and reports have come to similar conclusions.

36. Again, the underlying point in all this is that the conduct and acts, including laws and policies, of the Crown reflect a **systemic pattern of discrimination**. If the Crown in its official capacity is able to discriminate systemically, how then are its citizens and its institutions to think or act towards Aboriginal peoples and the substantive issues they raise? These prevailing attitudes do not exist in silos; they permeate and impact on all aspects of First Nations lives.
37. First Nations fight daily to protect and defend their lands, keep their children and improve the lives of their members. They fight for safe drinking water, mould-free homes and warm clothes. Much of this fight is with the Crown, for recognition of their Aboriginal rights and inherent right of self-government, for improved Crown legislation and policy, for revenue sharing from resources on First Nations lands, for improved fiscal relationships to allow the First Nation to help its members access basic programs and services.
38. We know too well that where First Nations do not have the resources and capacity to help their own, the resulting cycle is harsh and endless: the cycle of poverty, despair, hopelessness and lateral violence. Many see this as a legacy of the Indian Residential school system. These conditions often result in many of our people ending up in desperate situations and locations outside of our communities.

39. When they reach these places, they are no better protected and become vulnerable to various forms of abuse and threat. And, they typically become more invisible and silent.
40. Across Canada, how the criminal justice system responds to Aboriginal people, and police policies and actions, remain serious issues. There have been many similar inquiries, including:
- a. the 1999 **Manitoba Justice Inquiry** which examined the handling of the 1971 murder of Norway House First Nation woman Helen Betty Osborne, the 1988 police shooting death of Wasagamack First Nation member John Joseph Harper, and the Justice System and Aboriginal peoples generally;
 - b. the **Ipperwash Inquiry Report**, released in 2007, which examined the government and police handling of a 1995 protest by the Stoney Point Ojibway over lands expropriated during WWII, during which a provincial police officer shot and killed protester Dudley George;
 - c. the 1989 **Royal Commission on the Donald Marshall, Jr., Prosecution** which looked at how the criminal justice system failed Mi'kmaq Donald Marshall, Jr. "at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983", and identified the need to "ensure more equitable treatment of Blacks and Natives in the criminal justice system";
 - d. the 2009 and 2011 **Interim and Final Reports of the Inquiry into the Death of Frank Paul**, a Mi'kmaq man who died "alone and cold in a back alley in

Vancouver sometime on December 5–6, 1998” after being left there by Vancouver police; and

- e. the **Coroner’s Inquest and Commission for Public Complaints Against the RCMP Report into the In-Custody Death of Mr. Raymond Silverfox**, a 43-year-old member of the Little Salmon Carmacks First Nation, who died on December 2, 2008, after spending 13 hours in Whitehorse RCMP cells. The Coroner’s Inquest heard evidence that Silverfox, who had been arrested for public drunkenness, lay in a pool of his own vomit and feces while RCMP officers and detachment guards watched and jeered at him during that 13-hour period. The Commission for Police Complaints also found that complacency and callousness of RCMP members contributed to Silverfox’s death and that they had "failed to act in accordance with the RCMP Act and the RCMP's core values" with regards to their conduct.
41. Such incidents do not only occur to Aboriginal people. It seems on a near daily basis we hear of yet another “police incident”. As recently as two weeks ago, the First Nations Summit, along with the Union of BC Indian Chiefs, the BC Assembly of First Nations and the Native Courtworker and Counselling Association of BC, had to publicly express shock and outrage at the RCMP beating of a 17 year old handcuffed Aboriginal girl in Williams Lake, the death of a 19 year old Aboriginal male in custody in Prince George, and an RCMP tasing of an 11 year old Aboriginal boy. The organizations also expressed support for the Gitksan in their call for action following the coroner’s inquest into the outrageous RCMP shooting of Rodney Jackson, in the back, two years ago. These types of actions are extremely disturbing and wholly unacceptable.
42. Aboriginal peoples should be able to expect that the police forces are there to protect and serve them and their communities. In fact, many First Nations

- communities do have protocols to develop constructive dialogue and relations with police forces. This needs to be encouraged and supported. However, the situation remains that members of the police forces are all too often seen as among the biggest threats to Aboriginal people. There is a serious level of mistrust.
43. There is futility in the police investigating themselves. Nothing changes. We have steadfastly called for independent reviews, investigations and inquiries into various police actions/investigations. The First Nations Summit has long called for a thorough public inquiry to scrutinize **the system that failed so many of our people.**
 44. The provincial government and police refused for years to acknowledge that women were going missing or being murdered at an alarming rate; then, when the numbers were irrefutable, they refused to acknowledge that a serial killer may be operating; then, once a serial killer was found, they refused to launch an independent Inquiry into the botched investigation; then, when they finally relented and announced the Missing Women Commission of Inquiry, they refused to allow key organizations input into the design of the Inquiry, which ultimately resulted in unduly narrow terms of reference; then, once the process was underway and a ruling on participant standing made, the Province refused funding despite the Commission's finding that each of the organizations would provide valuable information and insight to ensure that the Inquiry is thorough, meaningful and fair.
 45. All of us, who sought standing, committed a tremendous amount of time and effort to prepare and deliver our submissions. We are deeply disappointed that the Province took away voices critical to the Inquiry. It came so close to being a well-rounded, inclusive and fair Inquiry – with over 20 service and advocacy

organizations with a wealth of experience prepared to roll up their sleeves and assist the Commission to do its job. How will the Inquiry realize its full potential?

46. As legal experts concluded in a letter to the Province in September, “the result is that former Attorney General Penner’s decision in July ensures no party will be equipped or inclined to cross examine witnesses with a view to addressing or revealing systemic issues. It is difficult to conceive of a more substantive, self-interested manner of interfering with the independence of a public Inquiry than denying resources to all but police and government, and a small group of grieving families.” And, “the Commission cannot now proceed fairly or credibly.”

47. This Inquiry is the only process available to us to examine these incredibly important issues involving the missing and murdered women. Chiefs and leaders at the recent First Nations Summit Chiefs meeting discussed their involvement in this Inquiry and came to the conclusion that, for now, we need to remain in this process. There is a real fear by our leaders that the Inquiry, its findings, its report and recommendations will be incomplete, unfair, and irrelevant and will not be implemented by the Province. We will report to our Chiefs and leaders in November for their review and decision whether or not to continue in this process. Like all the others who have withdrawn, we have no financial resources to be involved in any sustained way in this process. We hope the Province will once again take a look at this serious issue involving funding for Participants and consider appropriate levels of financial resources for full and effective participation.

48. We want to be absolutely crystal clear that we are not here thinking that there are no questions about the Inquiry’s credibility. We are here however, because this process, we believe, is about the missing and murdered women and their families and the many questions which they have. While we feel we can contribute to the Inquiry’s process and ultimately its report we know it is not

about our organizations. However, regardless of what the process is or is not, the First Nations Summit's participation is to unequivocally support the need for justice for the victims and their families.

49. In this day and age, Canadian society in all its parts and as a whole should take a zero tolerance stand against indifference and racism, and establish a new reality solidly rooted in the promotion of human rights and social justice, with special attention to the most vulnerable people in our society who need the extra help.
50. We want and expect this Inquiry to scrutinize what we see as systemic intolerance towards Aboriginal peoples and advocate for a new reality where Aboriginal peoples are important and significant partners in this province and country; where Aboriginal peoples can feel safe and secure knowing that those agencies set up to protect them will do so.
51. Considering Canada's promises in its Constitution and consistent with the standards in the UN Declaration on the Rights of Indigenous Peoples we seek a future where true reconciliation by the Crown with First Nations becomes a reality and occurs at **all** levels of our relationships. For us the survival, dignity and well-being of our peoples and our cultures are critically important.