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**SUBMISSION TO THE PRE-INQUIRY DESIGN PROCESS  
FOR A NATIONAL INQUIRY ON MISSING AND MURDERED  
INDIGENOUS WOMEN**

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## **BACKGROUND**

The Office of the Federal Ombudsman for Victims of Crime (OFOVC) was created in 2007 to be an independent resource for victims in Canada and to ensure the federal government meets its responsibilities to victims of crime.

The mandate of the OFOVC relates exclusively to matters of federal jurisdiction and enables the Office:

- to promote access by victims to existing federal programs and services for victims;
- to address complaints of victims about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of crimes committed by offenders under federal jurisdiction;
- to promote awareness of the needs and concerns of victims and the applicable laws that benefit victims of crime, including to promote the principles set out in the *Canadian Statement of Basic Principles of Justice for Victims of Crime* with respect to matters of federal jurisdiction, among criminal justice personnel and policy makers;
- to identify and review emerging and systemic issues, including those issues related to programs and services provided or administered by the Department of Justice or the Department of Public Safety and Emergency Preparedness, that impact negatively on victims of crime; and
- to facilitate access by victims to existing federal programs and services by providing them with information and referrals.

## **INTRODUCTION**

The OFOVC has long supported the call for a national inquiry into missing and murdered Indigenous women and girls in Canada. The Ombudsman has expressed support for an inquiry to national and international audiences, including in January 2014 before the House of Commons Special Committee on Violence Against Indigenous Women, in September 2013 to the UN Committee on the Elimination of All Forms of Discrimination Against Women and in August 2013 to the Inter-American Commission on Human Rights, among other forums.

The OFOVC believes that the inquiry could help address these ongoing tragedies by developing strategies that are tailored to meeting the needs of Indigenous women in Canada and the specific factors that contribute to their victimization.

The OFOVC is pleased to learn that the Government of Canada is taking steps to ensure the voices of families and communities are heard and considered from the

very start with inclusion in the pre-inquiry design consultation process. This process has provided an important opportunity for the voices of victims, survivors, their families and communities to contribute to determining the scope and structure of the inquiry in order to address the root causes of violence and victimization. As a contribution to the pre-design consultation, the OFOVC has developed considerations based on the discussion questions provided. This submission includes responses to all of the discussion questions, except for identifying who should lead the inquiry as this would be best informed by the consultative process currently underway.

This submission is informed by stakeholder analysis, a review of previous inquiries, and best practices related to victim services. Through this submission, the OFOVC seeks to share its recommendations for consideration in the pre-inquiry design as it relates to the involvement and participation of victims, survivors, the families and communities of victims and survivors and the non-governmental organizations and advocates who support and often represent the interests of victims, survivors and their families. It should be noted that this submission is not intended to deal exhaustively with all aspects of the inquiry, but focuses largely on practical ways to ensure the voices of victims and their families are meaningfully heard.

Accordingly, the overall objective of this contribution is to assist the Government in ensuring that the families of victims, survivors and communities are at the center of the inquiry. The OFOVC believes that supporting the families will be of utmost importance throughout the inquiry and over the long term.

As a general consideration, the inquiry should incorporate the principles of the *Canadian Statement of Basic Principles of Justice for Victims of Crime* (Statement), 2003.<sup>1</sup> The 10 principles outlined in the Statement should be embedded as primary considerations in establishing how participants should be treated and considered throughout the inquiry, recognizing that not all elements of the principles are applicable in an inquiry context. These principles are that:

1. Victims of crime should be treated with courtesy, compassion, and respect.
2. The privacy of victims should be considered and respected to the greatest extent possible.
3. All reasonable measures should be taken to minimize inconvenience to victims.

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<sup>1</sup> *Canadian Statement of Basic Principles of Justice for Victims of Crime*, 2003. Retrieved from: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/03/princ.html>

4. The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
5. Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
6. Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.
7. Information should be provided to victims about available victim assistance services, other programs and assistance available to them, and means of obtaining financial reparation.
8. The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
9. The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.
10. Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.

These principles also guide the basis for the *Canadian Victims Bill of Rights (CVBR)*, which came into force on July 23<sup>rd</sup> 2015. The CVBR provides victims in Canada the right to information, protection, participation and restitution. Although the inquiry will not be a criminal justice process, the rights and protections provided for in the CVBR should be considered where applicable.

Ensuring the safety, well-being and meeting the needs of victims, their families and communities throughout the design of the inquiry, as well as through the delivery to the implementation of its recommendations, should be paramount.

## **WHO DO YOU THINK SHOULD PROVIDE VIEWS OR HAVE AN OPPORTUNITY TO PARTICIPATE IN THE INQUIRY?**

The inquiry into missing and murdered Indigenous women has received attention for quite some time from the families of victims, communities, non-governmental organizations, advocates, media, parliamentary committees, and the general public. As such, there may be a lot of individuals and organizations expressing interest to participate in the inquiry.

Given that the Government announced a pre-inquiry engagement process, the OFOVC has not undertaken a rigorous stakeholder outreach on who should and should not be able to participate in the inquiry. However, from the OFOVC's perspective, and based on what we have heard from victims, the inquiry should ensure that at the very least, the families of the victims are able to participate. Further, it is important to recognize that some victims were estranged from their families at the time in their lives where they went missing or were murdered, and accessed front line services from non-governmental organizations and groups. It is therefore important that these organizations and groups are given an opportunity to have their voices heard throughout the inquiry, to ensure their perspective in understanding the unique needs and circumstances of victims is considered.

Ensuring diverse representation for victims identified as having particular needs should also be included, not limited to, women with disabilities, those that identify as LGBTQ2S, women involved in sex work, trafficked women, etc.

Further, it will be very important to provide information on: clear eligibility criteria for participation, procedures for applying to participate, any available funding for travel costs and/or legal representation for eligible participants. Proactively providing this information in plain language will minimize confusion and uncertainty and ensure that victims, survivors, their families and others are able to participate and be supported in all the ways in which they are entitled.

The parameters for participation should also account for any factors that may prohibit or challenge someone's ability to participate, including, but not limited to: distance, inability to travel, language, finances, addictions and or mental health, disability, elder care or child care. Creating plans to ensure that there is capacity to support individuals with a wide array of life circumstances will be crucial in building an inclusive process.

## **WHAT ARE THE KEY ISSUES THAT NEED TO BE ADDRESSED BY THE INQUIRY?**

The inquiry should be structured in a way that both allows for a systemic focus on the root causes of missing and murdered Indigenous women specifically, and the issues of violence and victimization of Indigenous women more broadly.

We know from the research that Indigenous women face disproportionately high levels of violent victimization and homicide in Canada. The 2014 Homicide survey “marks the first year the survey has had complete police-reported data on Aboriginal identity of victims.”<sup>2</sup> As such, the survey found that “the rate of homicide for Aboriginal females was six times higher than for their non-Aboriginal counterparts.”<sup>3</sup> Additionally, the 2014 General Social Survey on self-reported victimization revealed that Aboriginal people in general, and Aboriginal women in particular, continue to face higher rates of violent victimization than non-Aboriginal people.<sup>4</sup> Accordingly, the inquiry should employ a systemic focus.

In its March 2015 report,<sup>5</sup> the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) included some recommendations for examination and consideration in order to combat violence against Aboriginal women. These recommendations resulted from the CEDAW’s own inquiry into the treatment of missing and murdered Aboriginal women in Canada. The Ombudsman met with the visiting delegation to discuss issues of victimization and to support the call for an inquiry when the group visited Canada in September 2013. Recommendations specific to combating violence against Aboriginal women were advanced by CEDAW, which the OFOVC supports as key issues that need to be addressed, namely:

- Review criminal justice responses, practices and investigations in cases of missing Aboriginal women;
- Review and improve data collection to better understand the scope and nature of the problem;
- Ensure culturally appropriate victim services are improved and available across the country and coordinated across jurisdictions, including access to shelters, counselling and rehabilitation programs to address the harm and community impacts of violence against indigenous women and girls;

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<sup>2</sup> November 2015. Statistics Canada. *Homicide in Canada, 2014*.

<sup>3</sup> Ibid.

<sup>4</sup> November 2015. Statistics Canada. *Self-reported victimization, 2014*.

<sup>5</sup> United Nations Convention on the Elimination of All Forms of Discrimination against Women. *Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. March 6, 2015.

- Examine both the causes and consequences of sexual exploitation and trafficking of indigenous women and girls, including an examination of the needs of women who have been trafficked or who are engaged in sex work;
- Identify measures to overcome the legacy of the colonial period, to address stereotyping, systemic racism and help protect Aboriginal identity, and;
- Improve the socio-economic conditions of Aboriginal women who are disadvantaged socially and economically in areas of housing, education, child welfare, employment, food security and incarceration.

Building on the work of CEDAW will help to ensure Canada meets its obligations to pursue appropriate means to condemn and eliminate discrimination against women and girls, as provided by the *UN Convention on the Elimination of all Forms of Discrimination Against Women*,<sup>6</sup> and will also allow the inquiry to benefit from a human rights based approach. This in turn, will help to ensure that Canada meets its obligations to fulfill the rights of Indigenous women and girls.

**HOW CAN THE PROCESS BE SET UP SO IT RESULTS IN PROVIDING CONCRETE AND PRACTICAL RECOMMENDATIONS FOR SPECIFIC ACTIONS?**

The OFOVC commends the Government of Canada for recognizing its leadership role in responding to the crisis of missing and murdered Indigenous women and girls by prioritizing the inquiry. While the OFOVC supports the inquiry, it also recognizes the need for immediate and concrete action. Accordingly, measures to address the ongoing victimization of indigenous women and girls, and relevant evaluations and results should be reported on publicly, including measures falling under the *Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls*.

Further, we hope that the findings and recommendations of the inquiry will be specific and targeted to allow success or progress to be measured and reported. Releasing the recommendations along with a list of corresponding commitments and timelines would make it easier to track and demonstrate progress towards meeting the recommendations.

The findings of the inquiry are likely to uncover complex issues, which means meeting recommendations may be a long and multi-staged, multi-jurisdictional process. As a result, it would be useful to create a National Action Plan outlining

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<sup>6</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, Available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>

commitments to addressing the inquiry's recommendations, outlining responsibilities, funding sources and timelines. This could then provide the basis for the release of periodic progress reports to the public, outlining any work done in relation to meeting specific recommendations. This would be similar to the Canadian Armed Forces (CAF) response to the March 2015 External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces. In response to the recommendations made in the external review, the CAF committed to releasing progress reports every six months.<sup>7</sup>

This type of commitment would allow the families of victims, communities, other participants and the general public to be informed of the Government's progress towards meeting its commitments in a way that is transparent and expected. Knowing when to expect updates and progress reports would ease the stress of the unknown for individuals who participate in the inquiry, while simultaneously providing the foundation for action and accountability.

#### **HOW CAN CULTURAL PRACTICES AND CEREMONIES BE INCORPORATED INTO THE DESIGN OF THE INQUIRY?**

Indigenous cultural expressions were suppressed on a large scale during the process of colonization, including through residential schools. Incorporating Aboriginal ceremony and rituals into the inquiry can help to foster a sense of community and belonging, by ensuring Aboriginal culture and identity is both recognized and honoured. Seeking out the guidance of cultural advisors and elders could be a helpful starting point in order to ensure the inquiry incorporates ceremony and practices in a culturally appropriate way, while recognizing the specific cultural and ceremonial practices of different groups of Indigenous peoples.

Further, cultural practices should be informed by the input of Indigenous peoples who have participated in the roundtables or who have otherwise participated in the pre-inquiry design consultation.

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<sup>7</sup>National Defence and the Canadian Armed Forces. *Canadian Armed Forces Progress Report on Addressing Inappropriate Sexual Behavior*. February 1, 2016. <http://www.forces.gc.ca/en/caf-community-support-services/sexual-misconduct-progress-report.page>

## HOW IS IT BEST TO INVOLVE THE FAMILIES, LOVED ONES AND SURVIVORS IN THE INQUIRY?

The inquiry should provide the space for the voices of victims, survivors, victim's families and communities to be heard, respected and considered at every stage of the process. However, one priority for involving families, loved ones and survivors would be to provide opportunity for memorializing and honouring victims.

As a process, memorializing is marked by activities and actions done to mourn and remember people, places, and things of importance in society. These practices provide the opportunity for people to “celebrate the lives of those who died, to mourn their passing, and to inscribe memories of the deceased in the public consciousness.”<sup>8</sup>

The Air India Inquiry included multiple stages, with Stage 1 dedicated to hearing directly from the families of Air India bombing victims. A report titled *The Families Remember* was released in early 2008 to memorialize the victims of the Air India bombing. The report was made up of testimony, printed, audio and video materials submitted to the inquiry. An excerpt of this report reinforces the aim of entering the memories of loved ones, as well as the tragedy and loss into public consciousness:

*“What was different this time was that the families were invited by this Commission, mandated by the Government of Canada, to express their feelings in a formal public hearing before a government-appointed Commissioner. It is hoped the process of relating such personal grief will bring some healing to them. By speaking before the Commission, family witnesses have become the public conscience. By listening, the audience validates their experiences. Transcription in an official record makes their tragedy a part of our history. In this way, the further passage of time cannot erode the public memory of the enormity of what happened. The pain and loss it inflicted upon the families and communities of those who perished cannot be erased.”<sup>9</sup>*

Given the broader context of the dialogue around indifference surrounding missing and murdered Indigenous women and issues related to a perceived lack of action, designing the inquiry in such a way to provide an opportunity for families to honour and memorialize the victims will be crucial.

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<sup>8</sup> Foot, K., B. Warnick, and S. M. Schneider. 2006. Web-based memorializing after September 11: Toward a conceptual framework. *Journal of Computer Mediated Communication* 11:72. Retrieved July 11, 2008, from Scholars Portal database.

<sup>9</sup> 2008. *Time flies- Suns rise and shadows fall let it pass by- Love reigns over all: The families remember*. Commission of Inquiry into the Investigation of the Bombing of Air India 182. Retrieved from: <http://terrorvictimresponse.ca/docs/Phase-1-report-The-Families-Remember.pdf>

## **HOW SHOULD INDIGENOUS GROUPS (NATIONAL ABORIGINAL ORGANIZATIONS, FRONT-LINE WORKERS, BAND COUNCILS, ETC.) BE INCLUDED IN THE INQUIRY?**

These groups should play a key role in the inquiry. While victims, survivors and victims' families should play a central role in the inquiry, it is important to recognize that some victims are not in contact with their families. Advocates have raised concerns over some women and groups not having a voice at the inquiry if they are not recognized as being a family member of a victim.<sup>10</sup> The inquiry must recognize that the women and victims at the heart of this inquiry have different life experiences and circumstances. The OFOVC often hears from victims about the value of advocacy organizations, and how often they are the door to the voices of the otherwise unheard. As such, it is important to have an inclusive process for advocates, non-Governmental organizations and other allies to ensure that all women and victims that are the subject of the inquiry are represented in the process. Funding to ensure access to legal representation to allow for the meaningful and quality participation of these groups must also be provided to the greatest extent possible.

## **WHAT SUPPORTS MAY BE NEEDED DURING THE INQUIRY FOR INDIVIDUALS WHO ARE PARTICIPATING?**

Ensuring the wellbeing of participants in the inquiry, and providing individualized, culturally-sensitive support should be of utmost importance. The supports identified below are suggested particularly for victims, families and loved ones. Recognizing that each victim is unique, providing participants with choices and options related to their participation and associated supports required, would further demonstrate a commitment to creating an inclusive and individualized process.

### **Access to information**

The importance of providing individuals with timely and accurate information cannot be overstated. Efforts should be made to provide individuals with as much information as possible related to the inquiry, and its subsequent proceedings, should they wish to receive it. Identifying how and what information will be disseminated, to which individuals or representatives, and at what intervals, will be a critical task of developing the inquiry in a way that is respectful to victims, survivors and the families of victims. Every effort should be made to provide

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<sup>10</sup> January 31, 2016. *Missing, murdered women inquiry must go beyond just federal jurisdiction*. iPoliticsNews. Retrieved from: <http://ipolitics.ca/2016/01/31/missing-murdered-indigenous-women-inquiry-must-examine-provincial-issues/>

information to these individuals first, before other stakeholders or the general public.

Information should be available in plain language formats and in different languages. The scale of this inquiry will likely be quite large, and ensuring individuals are kept informed related to progress is vital. One way of accomplishing this task would be to assign staff specifically responsible for communicating with participants and assisting them with navigating the inquiry. Ensuring the consistency in staff responsible for this role, where possible, is important to ensure an ongoing relationship is created and maintained.

### **Live streaming proceedings/Remote real time technology**

Live streaming proceedings, where possible would facilitate the participation of victims, survivors and families in circumstances where they face barriers to attend in person. Consideration of live streaming proceedings, where possible could significantly serve to reduce inconvenience and disruption to families wishing to stay informed on developments in the inquiry. These options could help family members residing outside of the location where hearings are held, or those who may face difficulty traveling, such as elders. However, efforts should also be made to hold hearings in remote communities in order to provide the opportunity for in-person participation from diverse communities.

The British Columbia Missing Women Commission of Inquiry included a number of policy forums open to victims, families, experts, academics, front line workers and other civil society representatives to examine broad policy areas relevant to missing women. The forums were live streamed to allow interested individuals to watch them online in real time, if they were unable to attend in person.

### **Testimonial/participation aids**

Another important consideration is the provision of testimonial or other participation aids, as outlined in the *Canadian Victims Bill of Rights*. Some examples of these aids include: being able to provide testimony via closed-circuit television, or having a support present (i.e. support person or trauma assistance dog). These types of accommodations could be of great benefit in providing psycho-social support to individuals attending inquiry proceedings or providing testimony.

### **Protecting privacy**

It is important to recognize that while some individuals will want to appear in person to participate in the inquiry, some participants may not want to be identified as such. For various reasons, some victims and/or their family members may be uncomfortable with being publically identified as a participant in the inquiry. In order to accommodate individual needs, the inquiry should provide these

individuals with the option to participate anonymously, or with other accommodations to protect their privacy and minimize public exposure.

### **Culturally appropriate victim services**

Another crucial consideration for the participants involved in the inquiry will be the provision of culturally appropriate services for people who may be experiencing trauma and other impacts as a result of the victimization of their loved one. Contact with families of missing and murdered women has revealed that some victims, survivors and families are dealing with concurrent issues, including past victimization, housing instability, mental health problems, addictions, as well as other issues.

Knowing that these issues may make it more challenging for individuals to participate in the inquiry, and that speaking about the victimization of loved ones can be a painful and traumatic experience, it will be very important to have victim service providers on hand and designated quiet space in recognition that participation in the inquiry may be a very difficult process.

One such program that exists currently is the Medicine Bear Counselling, Support & Elder Services Program at Ka Ni Kanichihk Inc, which “provides families of murdered and missing women the opportunity to heal from complicated grief and trauma within a culturally safe and supportive environment. Medicine Bear was developed at the request of the families of missing and murdered Aboriginal women and girls, as well as Manitoba Justice’s Victim Services branch, and funded in part by the Department of Justice Canada’s Victims Fund.”<sup>11</sup>

Services provided include:

- Individual counselling sessions (trauma, complex, trauma, grief, family wellness, anxiety, depression etc.)
- Developing supports with weekly circle checks
- Referrals and advocacy
- Support within the Justice System, Child and Family Services, and other Agencies
- Elder Support Services (when requested)
- Traditional Ceremonies and Teachings
- Training and workshops

Further, they have also developed a Tool Kit of information to assist Families of Missing Persons and Persons at Risk.

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<sup>11</sup> [http://www.kanikanichihk.ca/?page\\_id=1108](http://www.kanikanichihk.ca/?page_id=1108)

More information is available at 1 888-953-KANI or <http://www.kanikanichihk.ca>.

The families of victims should remain at the center of the inquiry, and their needs related to information, participation and support should be considered and addressed throughout.

### **Funding to facilitate participation**

In order for individuals to participate meaningfully in the inquiry, it will be necessary to make funding available to them. The funding for legal representation should be available to secure independent legal counsel, rather than Government provided counsel. This will ensure there is no actual or perceived conflict regarding the interests of the participants and those of the Government. For example, the Air India Inquiry included in its Terms of Reference that the commissioner be authorized to recommend to the Clerk of the Privy Council that funding be provided to ensure the appropriate participation of the families of the victims of the Air India Flight Bombing.

Furthermore, the B.C. Missing Women Commission of Inquiry also made funding available to victims' families to attend hearings as participants. The Province of British Columbia provided the families of missing and murdered women with funding for legal counsel while attending the inquiry hearings as participants with standing. However, it should be noted that the paperwork to apply for funding was perceived to be long and complicated. Attention should be paid to ensuring applications for funding, should they exist, be as plain language as possible and that families have access to assistance in completing the applications.