

# LEGAL PATH: RULES OF RESPECTFUL PRACTICE for the National Inquiry into Murdered and Missing Indigenous Women and Girls

## Preamble

The National Inquiry into Missing and Murdered Indigenous Women and Girls (“National Inquiry”) shall be conducted in a manner that recognizes that all Indigenous women and girls, including Two-Spirit, lesbian, gay, bisexual, transgendered, queer, and those with disabilities or special needs, are sacred. Further, the National Inquiry is directed to, amongst other things, be culturally appropriate and provide an opportunity for persons, families and community members to express and share their experiences and views on matters relevant to the mandate of the National Inquiry (as defined by its Terms of Reference, issued by Canada, and replicated in the various provincial and territorial Orders-in-Council and Administrative Decree). Consistent with the National Inquiry’s mandate of conducting a trauma-informed and respectful process, the National Inquiry will operate under a guiding principle of do no further harm. Where questioning is permitted, it will be done in a manner which will enhance the ability of a traumatized individual to share the truth in a coherent and reliable manner. The National Inquiry is committed to a legal process that will be respectful of Indigenous legal principles and practices, while respecting the common law, Civil Code, and statutory requirements as may be applicable.

## Definitions

**Commissioners:** The persons appointed to conduct a Public Inquiry. Marion Buller has been appointed as the Chief Commissioner of the National Inquiry. Michele Audette, Brian Eyolfson, Marilyn Poitras, and Qaja Robinson have been appointed as Commissioners for the National Inquiry.

**Commission Counsel: Lawyers appointed by the Commissioners to assist through the public inquiry.** The National Inquiry has its own lawyers who will assist the Commissioners throughout the National Inquiry.

**Counterpart Orders in Council and Administrative Decree:** The documents issued by each province and territory which complements the Federal Government’s appointment of the National Inquiry and the individual Commissioners.

**Entity:** Entity refers to any corporate or non-corporate body other than individuals. For clarification, entity includes all governments, government agencies, organizations and institutions and includes both Indigenous and non-Indigenous organizations. It does not include family members or survivors of violence.

**Evidence:** Information submitted to the Commissioners for purposes of findings of fact through various mediums including oral, written, graphic, video and/or audio recorded, and whether or not it would meet the formal legal admissibility requirements for a court of law.

**Family:** The National Inquiry has an inclusive vision of families. Family includes biologically and non-biologically related loved ones, chosen families and families of the heart.

**Indigenous:** Indigenous means “native to the area” and applies to peoples who have occupied a territory since time immemorial.

**Indigenous Peoples:** A collective noun for First Nations, Inuit and Metis people in Canada.

**National Inquiry:** The National Inquiry into Murdered and Missing Indigenous Women and Girls.

**Parties:** Parties are those individuals and entities that are granted legal standing by the Commissioners to participate in the National Inquiry.

**Terms of Reference:** The Terms of Reference is the document issued by the Governor General in Council, on recommendation of the Prime Minister, which sets out the purpose, mandate and composition of the National Inquiry.

**Truth Finding Gatherings:** The events held by the National Inquiry to receive information to find the truth, sometimes also referred to as “hearings”.

**Statement Takers:** Those individuals appointed by the Commissioners to record the experiences of witnesses.

**Survivors:** Those who have experienced, or are still experiencing, violence.

**Witness:** The National Inquiry recognizes that in many Indigenous traditions, the term “witness” is in reference to the principle of witnessing. In many Indigenous traditions, witnesses are called to be the keepers of history when an event of historic significance occurs. However, for purposes of the Legal Path, the term “Witness” refers to the western legal context of persons or entities being called to share their information with the Commissioners for purposes of making findings of fact.

### **National Inquiry Truth Finding Gatherings**

1. The National Inquiry proceedings shall be divided into three parts. Part I will focus on the truth finding gatherings involving family members of Indigenous women and girls, Indigenous female survivors of violence, and members of Indigenous communities of those family members and/or survivors of violence on the matters defined by its mandate, including the systemic causes of all forms of violence experienced by Indigenous women and girls, and those forms of violence experienced by missing and murdered Indigenous women and girls. Part I will also hear evidence on practices and policies that have served to contribute to, or alternatively reduce the vulnerability of Indigenous women and girls to experiencing violence, enhancing their safety and ways to honour and commemorate the lives of lost loved ones.
2. Part II of the National Inquiry will focus on the truth finding gatherings involving entities, including grass roots organizations, and Indigenous and non-Indigenous institutions, governments, police authorities, and others, as well as those individuals and representatives of institutions and organizations, on the matters defined by its mandate. These matters will include examining the systemic causes and processes contributing to the high incidence of

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violence experienced by Indigenous women and girls, and the disproportionately high rate by which Indigenous women and girls are lost to violent, wrongful or suspicious death, and unexplained disappearances of those lost loved ones from their families and loved ones. Part II will also hear evidence on practices and policies that have contributed to, or alternatively reduced, the vulnerability of Indigenous women and girls to experiencing violence.

3. Part III of the National Inquiry will focus on expert evidence through witnesses, witness panels, and other processes on matters relevant to the discharge of the National Inquiry's mandate. Part III will be heard at the same time as the Part I and Part II truth finding gatherings.

## **RULES**

### **I. Truth Finding Gatherings**

4. Truth Finding Gatherings will be conducted at such locations and at such times as the Commission shall decide to address issues related to Parts I, II and III of the National Inquiry.
5. Truth Finding Gatherings shall be presided over by one to five Commissioners.
6. Truth Finding Gatherings will be held in locations where the National Inquiry is welcomed.
7. All parties and their counsel agree to follow these Rules as a condition of their standing, which may be changed or dispensed with by the Commissioners as they see appropriate.
8. Any party may raise any issue of breach of these Rules with the Commissioners.
9. The Commissioners shall deal with a breach of these Rules as they see appropriate including, but not restricted to, cancelling the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion) the truth finding gatherings by any party, counsel, individual, entity, or member of the media.
10. The National Inquiry is committed to a process that will do no further harm and is mandated to pursue a process that is trauma-informed. Accordingly, where the Commissioners decide it advisable to fulfill their mandate, they may declare any part of it is truth finding process to be *in camera*, order a publication ban, or take such other measures as they decide appropriate. Such declarations may be made on their own initiative or at the request of a party or the witness who is sharing their information. .
11. The Commissioners may receive any and all relevant information as evidence.

12. The Commissioners may receive information as evidence in many ways including but not limited to:
  - a. oral statements to the Commissioners, including oral history;
  - b. written or recorded statements;
  - c. poetry, art, song, weaving or other artistic expression;
  - d. audio and/or visual recorded statements ; and/or
  - e. audio and/or visual conferences.
13. Subject to the various governing laws the conduct of and the procedure to be followed at the National Inquiry is under the complete control and discretion of the Commissioners.
14. The Commissioners may extend or shorten any time prescribed by these Rules.
15. The National Inquiry will provide interpreters or signers, including for Indigenous languages, for witnesses providing information to the National Inquiry, as the Commissioners determine to be advisable.
16. The National Inquiry will make reasonable efforts to ensure that Elders, support people and health care providers including traditional healers and registered health care providers, will be available at truth finding gatherings and statement taking processes to provide support to witnesses.
17. The term “party” is used to convey the grant of standing and is not intended to convey notions of an adversarial proceeding.

## **II. Jurisdiction**

18. The governing laws that will apply to any particular matter will be that of the province or territory within which the truth finding gathering is held or matter under dispute arises, save for where the truth finding gathering occurs on federal lands or the matter arises under federal jurisdiction, in which case the federal *Inquiries Act*, R.S.C., 1985, c. I-11 and related laws shall apply.

## **III. Standing**

19. Commission counsel, who will assist the Commissioners throughout the National Inquiry and are to ensure the orderly conduct of the National Inquiry, have standing throughout the National Inquiry.

20. Individuals (or coalitions of individuals),, or entities, including organizations, institutions and governments may be granted standing by the Commissioners, if the Commissioners are satisfied that they,

- a. Have an interest which is directly and substantially affected by the subject matter of the National Inquiry in which event the party may participate to the extent the Commissioners determine; and/or
- b. Represent distinct ascertainable interests and perspectives that are essential to the discharge of the Commissioners' mandate as set out by the Terms of Reference, which the Commissioners consider ought to be separately represented before the National Inquiry, in which event the party may participate in a manner to be determined by the Commissioners.

19. Applicants that have common interests are encouraged to organize themselves into single collective coalition and apply as one party for the purpose of seeking single party status. The Commissioners reserve the right to unilaterally combine or group applicants into one party for standing purposes.

20. All standing applications will be received in writing. Applications for standing and funding by interested individuals and entities, including governments and government agencies, Indigenous and non-Indigenous organizations, and grass roots organizations, in relation to the truth finding gathering (Parts I, II and/or III) of the National Inquiry will be heard in writing.

21. There are two types of broad geographically based standing:

- a. Regional standing which will allow the designated applicant to participate in those events which are classified as regional, such participation to be determined by the Commissioners. *The regions are the respective Provinces and Territories, although the National Inquiry recognizes that Indigenous traditional territories have boundaries that do not necessarily fit into any one province or territory but rather are fluid throughout the country.* Applicants may apply for standing in one or more regions. For purposes of this Standing process, the regions are as follows:
  - i. Alberta;
  - ii. British Columbia;
  - iii. Manitoba;
  - iv. Newfoundland and Labrador;
  - v. New Brunswick;
  - vi. Nova Scotia;
  - vii. Northwest Territories;
  - viii. Nunavut;
  - ix. Ontario;
  - x. Prince Edward Island;
  - xi. Quebec;
  - xii. Saskatchewan;
  - xiii. Yukon.

- b. National Standing which will allow the designated applicant to participate in those events which are classified as National in a manner to be determined by the Commissioners, including truth finding gatherings involving the federal government and federal entities, and expert panels or individual expert witnesses that are declared to be National . However, National Standing will not entitle the party granted that form of standing to participate in Regional truth finding gatherings or events.
22. The Commissioners may grant standing to a person or group on the basis of region and/or national standing. Where a person or group is granted standing specific to a region, that party may only have rights to participate at truth finding gatherings which are held in that region. Where a person or group is granted National Standing, the party may only participate at truth finding gatherings that are classified as National.
23. Special standing, known as issue specific standing, will limit parties to a specific issue(s) within the Regional or National Standing category which shall be identified in the written Application and are relevant to the mandate of the National Inquiry. Issues can include, but are not limited to, areas of :
  - Police practices and relationships with Indigenous peoples and communities;
  - child welfare; constitutional issues; criminal justice system; death investigation processes; education and education systems; health and health services; impact of colonization on violence against Indigenous women and girls; and the media.
24. The Commissioners reserve the right to restrict the scope of participation by parties with standing to one or more specific issues.
25. Applications for standing must be submitted in writing to the National Inquiry within the time frame provided in the Notice announcing Standing Applications, and in the form designated by that Notice. The Commissioners have the right to extend the time for receiving Applications for standing, as they may decide.
26. The Commissioners will determined the scope and extent of rights to which a party granted standing will have ranging from:
  - a. the right to make closing written and/or oral submissions at the conclusion of the public hearings;
  - b. the right to request that Commission counsel call particular evidence;
  - c. the right to bring motions before the Commissioners;
  - d. the right to cross examine witnesses at Parts II and III hearings but not at Part I (subject to Rule 45 );
  - e. advance access and/or access to:
    - i. documents;
    - ii. summaries of anticipated statements;
    - iii. access to written statements;
  - f. any other rights to be determined by the Commissioners in their unfettered discretion.

27. Counsel representing witnesses called to testify before the National Inquiry may participate during the hearing of this evidence as provided in these Rules.
28. Parties who are granted standing accept the jurisdiction of the Commissioners and these Rules. By accepting the grant of standing, parties are bound by the National Inquiry's *Legal Path: Rules of Respectful Practice*.

#### IV. Information/Evidence

29. The Commissioners can accept any information as evidence they decide will further the objectives of the National Inquiry, including where that evidence might not be admissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
30. In the ordinary course, Commission Counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Commissioner(s) to lead a particular witness' evidence in chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.
31. The Commissioners may rely on any pre-existing reports, studies, and other substantive materials as evidence to make findings of fact as the Commissioners consider relevant to the discharge of their mandate.
32. The Commissioners may rely on any transcripts or record of pre-trial, trial or appeal proceedings before any court in relation to the proceedings and prosecutions and such other related material as the Commissioners considers relevant to the discharge of their mandate.
33. The Commissioners may rely on any transcripts or record of pre-inquest, inquest or other proceedings before any Coroner or other related material in relation to Coroner's inquests and/or investigations as the Commissioners consider relevant to the discharge of their mandate.
34. The Commissioners may rely on any documents pertaining to police investigations and related Crown briefs as the Commissioners consider relevant to the discharge of their mandate.
35. Notwithstanding Rule 41, Commissioners may accept, at the National Inquiry, evidence not given under oath or affirmation where they determine this is consistent with a trauma informed process.
36. Parties and others who believe they have information relevant to the National Inquiry are encouraged to provide to Commission Counsel the names and contact information for all witnesses they believe ought to be heard by August 1, 2017 together with a brief statement of the person's knowledge of relevance to the Inquiry, or as soon thereafter as possible. If possible, they should also provide Commission counsel with copies of all relevant documents, including statements of anticipated evidence at the earliest opportunity and if possible by August 15, 2017.

37. Commission counsel have the discretion to refuse to call or present evidence.
38. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to Part I, Part II and/or Part III, and all statements have been taken in relation to those respective truth finding gatherings, a party may then apply to the Commissioner(s) for leave to call a witness whom the party believes has evidence relevant to that Part. If the Commissioner(s) is satisfied that the evidence of the witness is needed, Commission counsel shall call the witness.

## **V. Witnesses**

39. Anyone interviewed by or on behalf of Commission counsel, including statement takers, is entitled, but not required, to have personal counsel present for the interview to represent his or her interests.
40. Witnesses will give their evidence at a truth finding gathering, or by way of a statement, under oath, affirmation, or, in the case of Indigenous witnesses, in a form recognized by that witness' Indigenous cultural and/or legal tradition.
41. If arrangements are required by a witness in order to provide a trauma-informed, safe, and/or culturally appropriate setting to enhance the witness' ability to tell of her or his experiences, the witness should provide Commission counsel with advance notice sufficient to permit the arrangements to be made insofar as the National Inquiry is able. The National Inquiry is committed to providing on-site access to Elders, counsellors, healers, and such support persons as is advisable to achieve these arrangements to the best of its ability. While the National Inquiry is committed to make reasonable efforts to meet these requests, the Commissioners retain the ultimate discretion as to whether, and to what extent, such requests can be accommodated.
42. Witnesses may request that the National Inquiry hear evidence pursuant to a summons, in which case a summons shall be issued.
43. Witnesses who are not represented by counsel for parties with standing are entitled to be represented by counsel of their own choice while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony to make any objections as believed to be appropriate.

## **VI. Order of Examination**

44. The order of examination will be as follows:

- a. Commission counsel will lead the evidence from the witness. Except as otherwise directed by the Commissioner(s), Commission counsel is entitled to lead evidence by way of both leading and non-leading questions;
  - b. parties granted standing to examine witnesses may then have an opportunity to question the witness in a non-traumatizing manner to the extent of their interest, ;
  - c. counsel for a witness, regardless of whether or not counsel is also representing a party, will, if granted permission by the Commissioner(s), examine last, unless she or he has lead the evidence of that witness in chief, in which case there may be a right to re-examine the witness;
  - d. where a Notice of Misconduct has been issued by the National Inquiry, counsel for the person who is the subject of the Notice may apply to the Commissioners for leave to question any witness that has evidence relevant to the potential findings of misconduct;
  - e. Commission counsel will have the right to re-examine any witness.
45. Where permitted, cross-examination of the witness by counsel for other parties shall be limited to matters raised in evidence during the examination in chief of the witness, except with leave of the Commissioner.
46. Notwithstanding Rule 44, the Commissioner(s) retains ultimate discretion over the rights and extent to which any counsel or person will, if at all, be permitted to question a witness
47. Except with the permission of the Commissioner, and as hereinafter specifically provided, no counsel other than Commission counsel may speak to a witness about the evidence that she or he has given until the evidence of such witness is complete. In the event the witness has personal counsel, that counsel may speak to her or his client about areas of anticipated testimony or information that have not yet been the subject of examination. Commission counsel may not speak to any witness about her or his evidence while the witness is being examined by other counsel.

## **VII. Access to Evidence**

48. All evidence shall be categorized in marked P for public sittings and, if necessary, C for sittings *in camera*, and PB where publication bans are issued
49. Subject to Rule [45], best efforts will be made to have a transcript posted to a website transcript repository which will be fully accessible to the parties within 48 hours of the evidence transcribed. It will be available by both direct access to the court reporting service's website transcript repository and via link from the National Inquiry's shared server. Full access will be available for viewing, downloading and printing capability.
50. A member of the public, media or witness may request a copy of the P transcripts on request to Commission counsel. If there is a cost associated with this request, in which case the requesting person may be expected to pay for it.
51. The P transcript will also be available on an expedited daily basis, where possible, but the cost of this service will be the responsibility of the party ordering it. The National Inquiry will not pay for expedited transcripts for any party, nor will the cost be an assessable disbursement for parties with funded status.

52. One copy of the P exhibits will be available to be shared by the media.
53. Only those persons authorized by the National Inquiry, in writing, shall have access to C transcripts and exhibits.

#### **VIII. Documents**

54. The term “documents” is intended to have a broad meaning, and includes the following mediums: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche, thumbnails and any data and information recorded or stored by means of any device.
55. The National Inquiry expects all relevant documents to be produced to the National Inquiry by any party with standing where the documents are in the possession, control or power of the party. Where a party objects to the production of any document on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party, and/or that party’s lawyer, may be present during the review process. In the event the party claiming privilege disagrees with Commission counsel’s determination, the Commissioner(s), on application, may either inspect the documents in question and make a ruling or may direct the issue to be resolved by the regional senior justice of the Superior Court in the region in which the privilege arises or his/her designate, or in the case of the Federal Court, the regional senior justice in Ottawa, or such other justice as may be designated by the relevant Superior Court or Federal Court.
56. In the event any person claims privilege over a document, the same procedure for determining the validity of the claim for privilege as outlined in Rule 56 shall be followed.
57. Originals of relevant documents are to be provided to Commission counsel upon the request.
58. Lawyers for parties and witnesses will be provided with documents and information, including statements of anticipated evidence where obtained, only upon giving an undertaking (promise) that all such documents or information will be used solely for the purpose of the National Inquiry and, where the National Inquiry considers it appropriate, that documents provided, and all copies made, be returned to the National Inquiry if not tendered in evidence. Lawyers are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record.
59. The National Inquiry may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information.
60. Documents received from a party, or any other entity or individual, shall be treated as confidential by the National Inquiry unless and until they are made part of the public record or the Commissioner(s) otherwise declares. This does not preclude the National Inquiry from

producing a document to a proposed witness prior to the witness giving her or his testimony, as part of the investigation being conducted.

61. To the greatest extent possible, Commission counsel will endeavor to provide in advance to both the witness and the parties with standing related to issues with respect to which the witness is expected to testify, documents that will likely be referred to during the course of that witness's testimony, and a statement of anticipated evidence where obtained.
62. Parties shall at the earliest opportunity provide Commission counsel with any documents that they intend to file as exhibits or otherwise referred to during the hearings, and in any event shall provide such documents no later than 24 hours prior to the day that document will be referred to or filed.
63. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this Rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced as a relevant document. This does not preclude the document from being used in questioning by any of the parties. Before such a document may be used for the purposes of questioning, a copy must be made available to all parties by the lawyer intending to use it not later than 48 hours prior to the testimony of that witness, subject to the discretion of the Commissioner(s).

#### **IX. Misconduct Notice**

64. The National Inquiry will deliver misconduct notices pursuant to the subject provisions of the relevant public inquiries legislation, including the Federal *inquiries Act*, after information about alleged misconduct has come to the National Inquiry's attention that may reasonably give rise to findings of misconduct.
65. Misconduct Notices will be delivered
  - f. on a confidential basis to the persons or parties to whom they relate,
  - g. a copy will also be provided to the subject person or party's lawyer, if the lawyer has been identified to Commission counsel.
  - h. Supplementary notices may be delivered from time to time by the National Inquiry if warranted by the information before it.
66. If any party believes that it is necessary to lead documentary evidence or to call oral evidence to respond to the allegations of possible misconduct for which a notice has been received, then that party may apply for leave to call that evidence or may request that Commission counsel call such evidence, and if relevant and responsive to the issues raised in the misconduct notice, leave will be given.

#### **X. Miscellaneous**

63. These Rules may be amended (changed) from time to time, at the discretion of the Commissioners. The Rules, including amendments as they may arise, will be posted on the National Inquiry's website at [www.mmiwg-ffada.ca](http://www.mmiwg-ffada.ca) under Legal Notices and Documents.