

## **LEGAL PATH: RULES OF RESPECTFUL PRACTICE for the National Inquiry into Missing and Murdered 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 empowered 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, Orders and Administrative Decree, collectively the “related instruments”). 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, safe 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 throughout the various legal jurisdictions. One of the objectives of these Rules is to use plain language in place of technical legal terms. Another important objective is to incorporate Indigenous legal processes and concepts as part of the Truth Gathering Process. The National Inquiry can and will incorporate “informal” processes where this will improve the ability of the National Inquiry to receive information from families, survivors and others. The Legal Path recognizes these are challenging objectives as the National Inquiry has been created by the federal, provincial and territorial governments as a technical legal public investigation that is subject to the laws of those respective jurisdictions while at the same time empowering the National Inquiry to be culturally appropriate and trauma informed in its processes.

The National Inquiry has, for the first time in Canadian history, been vested with legal powers and obligations from all of the public inquiry acts across the country. This means that the Commissioners have the legal power to generally compel production of documents from, and witnesses to testify in, every region of this country. However, the respective public inquiries statutes across the country are not uniform in substance. Accordingly, the Rules recognize the differences amongst the various public inquiries statutes and/or related instruments.

### **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 Qajaq Robinson were appointed as Commissioners for the National Inquiry. Commissioner Marilyn Poitras resigned effective July 15, 2017.

**Commission Counsel:** Lawyers appointed by the Commissioners to assist in the conduct of this public investigation through the public inquiry. The National Inquiry has its own lawyers who will assist the Commissioners throughout the National Inquiry, and will have the primary responsibility

for presenting information to the Commissioners as evidence throughout the Truth Gathering Process in Part I, Part II and Part III.

**Crown Brief:** The collection of documents held by the Crown (criminal) office that contains the information relating to criminal charges against an accused and which will generally include a copy of the police synopsis, criminal record, a copy of police notes, and any evidence such as videotapes and will says.

**Counterpart Orders in Council, Orders and Administrative Decree:** The companion documents issued by each province and territory that established the National Inquiry in each province and territory and appointed the individual Commissioners, in a manner comparable (but not always identical) to the federal government's Terms of Reference. These government documents will be collectively referred to as the "related instruments" throughout the Legal Path.

**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 who are referenced as individuals or family members and survivors throughout the Legal Path.

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

**Misconduct:** Misconduct shall have the same meaning as used in the respective Public Inquiries legislation in those jurisdictions where findings of misconduct by the National Inquiry is permitted by the governing legislation. For clarification, findings of misconduct do not include findings of civil or criminal liability or legal fault. Where the governing legislation or the related instruments do not permit findings of misconduct to be made, that will be respected. Findings of misconduct will not be made where that would jeopardize an ongoing criminal investigation or criminal proceeding.

**National Inquiry:** The National Inquiry into Missing and Murdered 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 in a role other than as a witness, as further specified in the Rules. Family members and survivors who wish to share their stories with the National Inquiry do not require standing to do so. Standing is a technical legal process to allow entities and individuals to have certain procedural rights such as asking questions of witnesses and making legal arguments to the Commissioners.

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**Terms of Reference:** The Terms of Reference is the document issued by the Governor General in Council, on recommendation of the Prime Minister that established the National Inquiry as a federal Public Inquiry and sets out the purpose, mandate, powers, obligations and composition of the National Inquiry.

**Truth Gathering Process:** The Truth Gathering Process encompasses the methods and processes by which the National Inquiry will gather information, including oral, written and recorded statements from witnesses, artistic expression and documentary evidence at events held by the National Inquiry to receive information, sometimes also referred to as “hearings” or “Truth Gatherings”.

**Sharing Circles:** Sharing Circles are gatherings recognized by Indigenous tradition in which individuals are invited to share their experiences and express their truth. The National Inquiry recognizes that there are different protocols involved in the use of Sharing Circles, and will incorporate those protocols into Sharing Circles which will form part of the Truth Gathering Process.

**Statement Takers:** Those individuals appointed by the Commissioners to record the experiences of witnesses, and in particular family members and survivors, to be used as part of the Truth Gathering Process.

**Survivors:** Those individual Indigenous women and girls who have experienced, and may still be experiencing, violence.

**Violence:** Violence has a broad definition consistent with the Terms of Reference and related instruments, and includes physical, sexual, emotional, colonial, cultural, and institutionalized forms of 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, recommendations for change, and ways to commemorate the lives of the lost loved ones.

### **National Inquiry Truth Gathering Process**

1. The National Inquiry proceedings shall be divided into three Parts. Part I will focus on the truth gatherings involving family members of missing or murdered 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 examining the systemic causes of all forms of violence experienced by Indigenous women and girls, and those forms of violence that were 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.

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2. Part II of the National Inquiry will focus on the Truth 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 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 to hear from experts from many disciplines and experts who are those who have lived life experience on matters relevant to the discharge of the National Inquiry's mandate. Part III will be heard over the course of the Truth Gathering Process, concurrent with Part I and II Truth Gatherings.

## **RULES**

### **I. Truth Gathering Process**

1. Truth Gatherings, sometimes referred to as hearings, will be conducted at such locations and at such times as the Commission shall decide and form part of the Truth Gathering Process.
2. Truth Gatherings shall be presided over by one to four Commissioners, with the exception of Quebec where, consistent with Quebec's legislation, a minimum of three Commissioners will preside.
3. Truth Gatherings will be held in locations where the National Inquiry is welcomed.
4. 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. However, neither this Rule nor Rule 29 prevents a party from challenging a material change to the Rules on the basis of jurisdiction.
5. Any party may raise any issue of breach of these Rules with the Commissioners.
6. 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 Gatherings by any party, counsel, individual, entity, or member of the media.

7. The National Inquiry is committed to a process that will do no further harm and is empowered to pursue a process that is trauma-informed. Accordingly, where the Commissioners decide it necessary to fulfil their mandate, or they deem it necessary to protect a witness from public exposure, they may declare any part of it is Truth Gathering Process to be *in camera*, order a publication ban, impose an anonymity order, or take such other measures as they decide appropriate including excluding parties with standing from a Part I hearing where their presence would be inconsistent with a trauma informed approach or would impede that witness' ability to share her/his information with the National Inquiry. Such orders may be made on the presiding Commissioner's own initiative or at the request of a party or the witness who is sharing their information. However, Parties with the relevant standing who are excluded from hearings under this Rule will have access to the resulting transcript. In addition, and notwithstanding this Rule, any rights as may be triggered by Rule 70 will prevail for any Party who may have received a Notice of Misconduct.
8. The Commissioners may receive any and all relevant information as evidence, whether or not that information would be admitted in a court of law, subject only to the law of privilege, immunity as it relates to cabinet confidences and any statutory bars. The Commissioners will receive information as evidence whether or not that information has been provided under a formal oath or affirmation.
9. 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.
10. 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.
11. The Commissioners may extend or shorten any time prescribed by these Rules and will provide notice to the Parties who are directly affected.
12. 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.
13. 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 Gatherings and statement taking processes to provide support to witnesses.

14. The term “party” is used to convey the grant of standing and is not intended to convey notions of an adversarial proceeding.

## II. Governing Laws

15. The National Inquiry will exercise its authority in accordance with the federal and provincial/territorial laws applicable in the province or territory in which the Truth Gathering is held or the matter under dispute arises, including the related instruments. In the event that there is a conflict between the federal and provincial/territorial laws, the doctrine of paramountcy will be applied by the Commissioners to resolve the conflict.

## III. Standing

16. 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.
  17. 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.
  18. Applicants that have common interests are encouraged to organize themselves into a single collective coalition and to 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.
  19. 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 Gathering Process (Parts I, II and/or III) of the National Inquiry will be heard in writing.
  20. 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*
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*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 Gatherings involving the federal government and federal entities, expert panels or individual expert witnesses, and special family and survivor hearings that are declared to be National, meaning national in scope . However, National Standing will not entitle the party granted that form of standing to participate in Regional Truth Gatherings or events.
  - c. Applicants may apply for standing in National and/or in any of the Regions.
21. The Commissioners may grant standing to a person or group on the basis of regional 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 Gatherings that are held in that region. Where a person or group is granted National Standing, the party may only participate at Truth Gatherings that are classified as National (as opposed to Regional).
22. 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.
23. The Commissioners reserve the right to restrict the scope of participation by parties with standing to one or more specific issues.

24. 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.
25. The Commissioners will determine 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 (except when a notice of misconduct has been issued in which case Rule 45d applies);
  - e. where available, advance access and/or access to:
    - i. documents;
    - ii. summaries of anticipated statements;
    - iii. access to written statements; and
  - f. any other rights to be determined by the Commissioners in their unfettered discretion.
26. Parties must sign a confidentiality undertaking as an ongoing condition of their standing.
27. The scope and extent of rights to which a party granted standing will have is subject to the Commissioners' overriding discretion to restrict or withdraw particular rights in the course of a Truth Gathering where they determine, in their unfettered discretion, that this is advisable to achieve their mandate, including conducting a process that is trauma-informed, and is also culturally appropriate and acknowledges, respects and honours the diverse cultural, linguistic and spiritual traditions of Indigenous peoples, and in the interests of efficiency.
28. Counsel representing witnesses called to testify before the National Inquiry may participate during the hearing of their client's evidence as provided in these Rules.
29. 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*.

## V. Information/Evidence

30. 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, except with respect to the law of privilege, immunity with respect to cabinet confidences and statutory bars
31. 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 that 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.

32. 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 they believe to be appropriate.
33. 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.
34. 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.
35. 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, subject to a valid legal claim of privilege or a statutory bar
36. 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, subject to a valid legal claim of privilege, immunity relating to cabinet confidences or a statutory bar.
37. Notwithstanding Rule 42, Commissioners may accept evidence not given under oath or affirmation as may be set out by the respective Evidence Acts where they determine this is consistent with a trauma informed process, or where Indigenous laws and practices provide for another process or protocol.
38. 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 at their earliest opportunity together with a brief statement of the person's knowledge of relevance to the Inquiry. They must also provide Commission counsel with copies of all relevant documents, including statements of anticipated evidence at the earliest opportunity. The names and contact information of proposed witnesses, including a statement of the relevance of that witness' anticipated information, must be provided no later than 30 days before the conclusion of the relevant Part in order to be considered by Commission Counsel. Commission Counsel will give more than 30 days' advance notice of the last date of hearings for each Part.
39. Commission counsel have the discretion to refuse to call or present evidence.
40. 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 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**

41. Anyone interviewed by or on behalf of Commission counsel (including by statement takers) is entitled, but not required, to have personal counsel present for the interview to represent his or her interests.
42. Witnesses will give their evidence at a Truth 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, or under no oath.
43. 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.
44. Witnesses may request that the National Inquiry hear evidence pursuant to a summons, in which case a summons shall be issued.

## **VI. Order of Examination**

45. 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 in Parts II and/or III 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, or the person if self-represented, may apply to the Commissioners, in camera, for leave to question any witness that has evidence relevant to the potential findings of misconduct; and

- e. Commission counsel will have the right to re-examine any witness.
46. 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, and restricted, where applicable, to issues upon which standing was granted, except with leave of the Commissioner.
  47. While it is not the intention to unduly restrict a party's ability to question a witness, in order to respect the time and resource limited mandate of the National Inquiry, 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.
  48. Except with the permission of the Commissioner(s), 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**

49. All evidence shall be categorized and marked P for public sittings and, if necessary, C for sittings *in camera*, and PB where publication bans are issued. If an anonymity order has been ordered, the fact of the Order will be reflected in the transcript.
50. Best efforts will be made to have a transcript posted to an electronic transcript repository which will be fully accessible to the parties with standing in that hearing within 48 hours of the evidence being transcribed. Directions will be provided to the Parties on how to access the transcripts and related exhibits. Full access will be available for viewing, downloading and printing capability.
51. 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, the requesting person will be expected to pay for it, including the cost of translation, if requested.
52. 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.
53. One copy of the P exhibits will be available to be shared by the media.
54. Only those Parties granted standing for the hearing in question, and who have signed Confidentiality Undertakings shall have access to C transcripts and exhibits.
55. The National Inquiry has the discretion to redact private information of a sensitive nature where it is not material to the evidence to be given before distributing the information to the Parties.

The National Inquiry will consider the public interest in releasing this type of information against the potential harmful impact on the individual whose personal information is at issue.

## **VIII. Documents**

56. 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.

57. 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 which is the subject of a subpoena, on the grounds of privilege, immunity based on cabinet confidences or statutory bars, the following steps will apply:

- i. The party asserting the claim will identify the document or part thereof over which privilege, immunity or statutory bar is being asserted, together with the type being asserted, and the grounds supporting the claim, to Commission counsel;
- ii. Commission counsel will work with the party asserting the claim to try to resolve the issue;
- iii. Where resolution is not possible, Commission counsel or a Party will seek to have the issue resolved by application to the regional senior justice or regional senior judge of the superior court, as the case may be, in the region in which the privilege, immunity or statutory bar arises or their 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. The application will be brought on notice to the affected parties and individuals, unless the court orders notice to be dispensed with;
- iv. In Ontario, an application should be made in writing to the Superior Court of Justice in the region in which the privilege, immunity or statutory bar arises. The applicant will notify the Chief Justice of the Superior Court about the application by letter and the Chief Justice shall designate a judge in the region to hear the application. The application will be brought on notice to the affected parties and individuals, unless the court orders notice to be dispensed with.

58. In the event any person claims privilege, immunity based on cabinet confidences or statutory bars to production over a document, the same procedure for determining the validity of the claim for privilege as outlined in Rule 57 shall be followed.

59. Originals, or certified true copies, of relevant documents are to be provided to Commission counsel upon the request. Where available, original documents must be produced to Commission counsel upon request for inspection.

60. Lawyers for parties and witnesses will be provided with documents and information, including statements of anticipated evidence where obtained, only upon giving a confidentiality

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, subject to any legislative obligations preventing the Party from returning the subject documents to the National Inquiry. 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.

61. 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. However, where such an application is received, notice must be given to the document owner, if known, to provide an opportunity to make submissions.
62. The National Inquiry will issue summons, also known as subpoenas, to witnesses to appear and/or to produce documents, in accordance with the governing legislation, where it is deemed warranted. The National Inquiry may also issue summons where it is requested and warranted. The form of summons for documents will include two schedules to be filled out by the recipient. Schedule 1 will list all documents or parts thereof over which a claim of privilege or other bar is being asserted, the type of privilege or bar being claimed, and the basic grounds underlying the claim. Schedule 2 will list all documents that were formerly under the power, possession or control of the recipient but which is no longer under their power, possession and control, and will state when that event occurred and, if not destroyed or lost, where the document is, to the best of the recipient's knowledge, information and belief.
63. 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.
64. Commission counsel will make best efforts to avoid public release of private information of a sensitive nature, including through redaction of this information in documents to be referred to during hearings or entered as Exhibits, providing the information is not material to the discharge of the National Inquiry's mandate. Again, in making the determination of whether to redact personal information of a sensitive nature, the National Inquiry will consider the public interest in releasing this information against the potential harmful effect on the individual whose personal information is in issue.
65. 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.

66. 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 48 hours prior to the day that document will be referred to or filed.
67. 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**

68. To the extent permitted by the governing legislation, and the related instruments, 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 or, in the case of Saskatchewan, to allegations of misconduct, where such findings are required to carry out the mandate of the National Inquiry. The National Inquiry will not make findings of civil or criminal liability or legal fault. The National Inquiry will not make findings of misconduct where the governing legislation, or the related instruments, prohibits the making of such findings.
69. Misconduct Notices will be delivered on a confidential basis to the persons or parties to whom they relate. A copy will also be provided to the subject person or party's lawyer, if the lawyer has been identified to Commission counsel. Supplementary notices may be delivered from time to time by the National Inquiry if warranted by the information before it.
70. Notwithstanding Rules 27 and 47, upon receiving a Misconduct Notice, the person will be given the opportunity to meet the allegations by calling evidence, cross examining witnesses, and/or requesting Commission counsel to call evidence or ask questions, providing relevant and responsive to the issues raised in the Misconduct Notice.

#### **X. Miscellaneous**

71. 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.
72. Where there are inconsistencies between the Rules and the counterpart governing legislation or related instruments, the legislation or related instruments, as the case may be, will prevail to the extent of the inconsistency, and the balance of these Rules will remain in full force and effect.

