



ORDER PURSUANT TO THE TERMS OF REFERENCE E TO PROTECT THE PERSONAL AND CULTURAL INFORMATION IN THE POSSESSION OF THE NATIONAL INQUIRY

- A. WHEREAS the short title of this order is the Cultural Safety Protection Order.
- B. AND WHEREAS the records and papers received or produced by the Commissioners in meeting their mandate to inquire into and report on the systemic causes of violence involved hearing the truths of witnesses
- C. AND WHEREAS those witnesses may require additional protections to prevent the public sharing of their truths that further victimizes them or causes harm to them, to their families or to their communities.
- D. AND WHEREAS section d. of the Terms of Reference established pursuant to the Order in Council PC 2016-0736 authorizes the Commissioners of the National Inquiry into Missing and Murdered Indigenous Women and Girls (the "**National Inquiry**"), to adopt any procedures that they consider expedient for the proper conduct of the National Inquiry.
- E. AND WHEREAS section e. of the Terms of Reference direct the Commissioners to take into account, in conducting the National Inquiry, that the National Inquiry process is intended, to the extent possible,
- i. to be trauma-informed and respect the persons, families and communities concerned,
 - ii. to provide an opportunity for persons, families and community members to express and share their experiences and views, particularly on ways to increase safety and prevent and eliminate violence against Indigenous women and girls in Canada,
 - iii. to be culturally appropriate and to acknowledge, respect and honour the diverse cultural, linguistic and spiritual traditions of Indigenous peoples, and
 - iv. to promote and advance reconciliation and to contribute to public awareness about the causes of and solutions for ending violence experienced by Indigenous women and girls in Canada;
- F. AND WHEREAS the Commissioners did establish procedures in the *Legal Path: Rules of Respectful Practice for the National Inquiry into Missing and Murdered Indigenous Women and Girls* (the "**Legal Path**") pursuant to the Terms of Reference to fulfill their mandate.



- G. AND WHEREAS the Commissioners did from time to time, declare part of the Inquiry's Truth Gathering Process pursuant the *Legal Path* to be in camera, order publication bans, issue sealing orders impose anonymity orders, and take such other measures as they decided appropriate, to gather information including oral, written and recorded statements from witnesses.
- H. AND WHEREAS Chapter 9 of *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (the "**Final Report**") speaks to witnesses expressions of how the National Inquiry provided them with a space to share their truth for the first time and due to their immense courage to share, they were able to begin their healing journey.
- I. AND WHEREAS the private in camera environment gave witnesses the freedom to share their truth and begin their healing in an honest and candid way without limitations or fears of public repercussions.
- J. AND WHEREAS these truths and healing journeys need to be protected so witnesses are not further victimized by breaches of their confidentiality.
- K. AND WHEREAS the National Inquiry is required to meet the diverse legislative obligations of fourteen jurisdictions.
- L. AND WHEREAS there is only one record of the National Inquiry.
- M. AND WHEREAS an Indigenous perspective of privacy (cultural safety) exists independent of any statute or legislation which may govern the treatment of the records of the National Inquiry.
- N. AND WHEREAS evidence and the truths of National Inquiry witnesses included community knowledge, which is a collective Aboriginal right.
- O. AND WHEREAS the Government of Canada has a duty to consult with, and where appropriate, accommodate Indigenous groups when it considers conduct that might adversely impact potential or established Aboriginal or treaty rights.
- P. AND WHEREAS the Supreme Court of Canada in *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 recognized at paragraph 47, how further disclosure of sensitive, private and devastating information related to an Indigenous person or community causes heightened



DRAFT JUNE 17 11:00 PM



privacy and serious safety risks in Indigenous communities and that “such knowledge even in future generations would continue the legacy of dysfunction and trauma” experienced by Indigenous communities. Therefore, the release of sensitive and confidential information many decades later can still traumatize Indigenous persons and communities, despite the passage of time.

- Q. AND WHEREAS it is consistent with the National Inquiry’s mandate that all governments which receive the National Inquiry record respect and defer to Indigenous laws or perspectives of privacy to preserve the dignity of all witnesses who shared their truth.
- R. AND WHEREAS the “Family of the Heart” is an inclusive term used to articulate a broader sense of family that extends beyond the nuclear or even extended family to, includes individuals chosen as family members. “Chosen families”, or “families of the heart”, are people who may not be biologically related, but who have chosen to stay closely involved and support each other out of mutual love and respect.
- S. AND WHEREAS the National Inquiry has heard powerful evidence regarding the need to rebuild and create space for restoring dignity in decision making and Indigenous laws so that they are understood, accessible and applicable.
- T. AND WHEREAS it is important to acknowledge that the truths and stories shared with the National Inquiry contain community knowledge and Indigenous Laws that are part of managing behaviour and relationships and that help solve problems.
- U. AND WHEREAS it is also important to recognize the need for collaborative and collective efforts on rebuilding Indigenous Law principles and tools.
- V. AND WHEREAS there is a need to balance the desire to provide a full record of the National Inquiry for the benefit of present and future generations with the need to preserve the dignity and privacy of witnesses.
- W. AND WHEREAS the terms of this order help assist the implementation and interpretation of the paradigm shift required to dismantle colonialism within Canadian society, and within all levels of government and public institutions.
- X. AND WHEREAS the National Inquiry was given a two-and-a-half-year time frame and received a six-month extension to fulfill and satisfy all legislative requirements and obligations as well as to meet the trauma-informed and families-first standards.



AFTER REVIEWING ALL WRITTEN SUBMISSIONS, THE COMMISSIONERS HEREBY ORDER THE FOLLOWING:

- 1) Records of the National Inquiry shall be kept, protected and preserved in a trauma informed manner, using a families first approach, incorporating Indigenous perspective and laws pursuant to sections a, b, d and e of the Terms of Reference, the Legal Path, the guiding principles of the National Inquiry, the Final Report and Indigenous laws as additional safeguards and to preserve the dignity and privacy of witnesses while providing a full record of the National Inquiry's proceedings for the benefit of present and future generations.
- 2) Records of the National Inquiry may be marked as protected A, B, C or C (Trauma Informed).
- 3) Records classified as protected A include:
 - a) Operational records of business value produced as work products by employees of he National Inquiry that do not contain any confidential information or information that was created or received through a trauma-informed approach;
 - b) Evidence or exhibits of a sensitive nature provided in public forums or with the expectation of being made public and marked by the National Inquiry as P. Although these records may include sensitive information, records marked as protected A may be produced to the public upon request, in accordance with federal, provincial, or territorial access, privacy, and archiving laws.
- 4) Records classified as protected B are:
 - a) Operational business records of business value produced as work products by employees of the National Inquiry that contain personal identifying information;
 - b) Records requesting legal advice or giving legal advice:
 - i) by outside counsel
 - ii) by commission counsel.
- 5) Records marked as protected C or protected C (Trauma-informed) are:
 - a) Records subject to any protective order of the Commissioners, with the exception of Part I statements, subject to an anonymity order, where the statement provider has consented to their statement to be made public;
 - b) Records subject to an in camera order (identified by the National Inquiry as In camera);
 - c) Records subject to an anonymity order;
 - d) Records subject to a sealing order (identified by the National Inquiry as "sealed");



- e) Records subject to a publication ban (identified by the National Inquiry as “Publication Ban”);
 - f) All audio and visual recordings of testimony subject to an in camera order, a publication ban on the entirety of the testimony, or a sealing order;
 - g) All audio and video recordings of public testimony subject to an anonymity order;
 - h) All un redacted evidence (transcripts, exhibits and documents otherwise submitted by witnesses) where that testimony is subject to one or more protective orders as noted in sections a-e;
 - i) Any documents of deliberations by the Commissioners, including minutes;
 - j) All Ringtail files, information or meta data which has been hosted by Shared Services Canada unless the document is classified otherwise;
 - k) Operational records that contain in camera or confidential witness information;
 - l) Any data within the control of Shared Services Canada that may be found in the future (the transfer of e-mails etc.); and
 - m) Any record not marked, unless evidence exists that it was intended to be marked otherwise.
- 6) All records marked protected C or protected C (Trauma informed) shall not be released to the public in accordance with applicable privacy legislation and for an additional:
 - a) for a minimum ## years; or
 - b) for a minimum number of ## years AND only after meaningfully consulting and accommodating surviving next of kin or families of the heart, and communities AND such consultations must include the perspectives and participation of Indigenous women, girls, and 2SLGBTQQA people with lived experience who may be impacted by the public release of such information.
 - 7) All record holders shall follow and defer to the trauma informed classification, description of the classification and the treatment of all records with a particular classification provided by the Commissioners.
 - 8) The Commissioners of the National Inquiry will deposit a single record of the National Inquiry with PCO and a copy of the record may be provided to any province or territory that requests the record.
 - 9) The record for the National Inquiry shall not include works of artistic expression, meaning visual, audio or written material or performative art, such as paintings, sculptures, drawings, photographs, ceramics, films, quilts, baskets, music, dance, theatre and poetry that are identified by the National Inquiry for inclusion in the Missing and Murdered Indigenous Women and Girls Legacy Archive.



- 10) A copy of this order shall accompany and attach to any National Inquiry record transferred to PCO or provincial or territorial governments.
- 11) Any breach of this order shall be considered a breach of a lawful order of the Commissioners of the National Inquiry.
- 12) This order shall be effective June ____, 2019

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