



June 21, 2019

By email only to: b.zandberg@mmiwg-ffada.ca

Bryan Zandberg
Registrar
National Inquiry into Missing and Murdered
Indigenous Women and Girls
PO Box 500, Station A
Vancouver, BC V6C 2N3

Dear Registrar:

Families for Justice
Inquiry's Notice of Intention to Issue an Order
Our File No.: 17-2525

We write on behalf of Families for Justice in respect of the National Inquiry's Notice of Intention to Issue an Order relating to its record. We are writing to provide our feedback and submissions in respect of the notice of intention to issue an order which was served upon us on June 17, 2019.

We are uncertain of the distinction between the two terms. Please consider the entirety of this letter as both feedback and submissions to the extent that we are able in the limited time available.

Our position is as follows:

1. Families for Justice is a group of 20 families. Many of the families interacted with the inquiry either by giving a statement, by attempting to give a statement, by giving testimony publicly and by giving testimony in camera, the latter of which is subject to a publication ban.
2. To start, we have received Counsel for Ontario Mr. Julian Roy's letter dated June 19, 2019 to Jennifer Cox. We agree with and adopt as part of our submissions the four concerns identified therein.

3. For our part, we have been unable in the time available to consult with the 20 families in our group. We have instructions to provide you these submissions and feedback. In order to properly get instructions on this matter and to fully respond, we would require more time in order to be able to consult with our families, to review the records, to deal with the individual issues at stake, understand where the family member's testimony would fit within the proposed draft order, give advice, get instructions and respond. The inquiry has given insufficient time for us to be able to do this, in short, violating our right to be heard.

4. Further, it is of concern to Families for Justice, that other families who are not a party with standing will have no notice of this motion and no access to independent legal advice to consider this draft order.

5. We have significant concerns about the approach taken by the National Inquiry in respect of its record. As a detailed review of the National Inquiry's proceedings would reveal, families were rushed through community hearings. If Commission counsel met with family members, it was often the day before or the day of their testimony. There was little notice or time during that process for families to understand the fashion in which their evidence would be taken, recorded and maintained. The full record of the inquiry proceedings would demonstrate this. In order for this matter to be fully and fairly considered, it would be necessary to examine the testimony given and the representations made on the record as well as any information provided to witnesses in advance of their testimony.

6. In our view, a review of each of the public record, the *in camera* record and the inquiry's operational records would reveal that the families were given limited or no information about the archival process when they were asked about whether they preferred to give that testimony publicly or *in camera*. The fact that this issue has arisen now, after the delivery of the final report, demonstrates how these considerations were not front and centre at the time families interacted with this inquiry.

7. There are many reasons why some families might have chosen to provide an *in camera* testimony. One of the reasons that many accepted a recommendation to give their testimony privately was so not to jeopardize an ongoing investigation. Otherwise, the family might have been willing to give their testimony in public. Certainly, what is now known about how the inquiry intends to deal with these records, was not known at the time the families made a decision as to whether to have an *in camera* hearing or hearing on the public record.

8. While the terms of reference of the inquiry at paragraph "D" authorize the Commissioners to "adopt any procedures that they consider expedient for the proper conduct of the inquiry", that appears to qualify the conduct of the actual hearings in terms of the manner in which the inquiry sets them, the places that it attends, the communities that it visits when it engages with families who are participating in the inquiry. We agree that this provision affords the inquiry significant discretion.

9. In contrast, paragraph "Y" of the Terms of Reference, which "directs the commissioners to file the records and papers of the inquiry with the Clerk of the Privy Council as soon as feasible after the conclusion of the inquiry" gives the Commissioners no discretion. It is absolute. It is

unqualified. It is a mandatory requirement for the record and papers to be delivered. In short, “Y” cannot be qualified by “D”.

10. Further, the inquiry suggests that it will employ a trauma informed process. The experience of the families is in fact the opposite. The majority of the families in our group found that the inquiry did not understand what “trauma informed” means. In addition, the inquiry never engaged in any authentic consultation with families and the inquiry did not serve many of the families well. Again, the testimony of family members and other witnesses would demonstrate this.

11. With respect to Schedule B, Additional Grounds, ground 5 and the reference to chapter 9 of the Final Report, we disagree that this testimony supports the proposed order. Rather than justify the importance of keeping information private, chapter 9 actually relies on public testimony and the importance of Elaine D.’s testimony in the first step of her healing journey. (Volume 1B English page 6). That chapter ought not to be relied upon to support the need to keep information private when it was public testimony.

12. We rely on our written submissions as evidence and in support of the issues we raise herein.

13. We note that the Inquiry asked for the destruction of our records at the same time as this motion was due notwithstanding that our undertaking was for us to provide our certificate at the end of the inquiry which is June 30, 2019.

14. Such further and other grounds as may arise once we are in receipt of further instructions.

All of this is respectfully submitted to the Commissioners,

Yours very truly,

Fraser Advocacy,

Per:

A handwritten signature in blue ink, appearing to read 'Suzan E. Fraser', written over the word 'Per:'.

Suzan E. Fraser

SEF/rim