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FILE NO. 3197-000

May 29, 2012

VIA COURIER

**PRIVATE AND CONFIDENTIAL**

Mr. Wally Oppal, Q.C.  
Commissioner of Missing Women Commission of Inquiry  
c/o Mr. Peter Gall, Q.C.  
Heenan Blaikie LLP  
2200 – 1055 W. Hastings St.  
Vancouver, BC V6E 2E9

Dear Mr. Oppal:

**Re: Missing Women Commission of Inquiry  
Workplace Investigation**

Further to your request, we have conducted an investigation into allegations of sexism in the Commission workplace. As mandated by the Terms of Reference, we provide this confidential report to you regarding our findings of fact and our conclusions in respect of allegations of gender discrimination in the Commission workplace contrary to the B.C. *Human Rights Code*, R.S.B.C. 1996, c. 210 as am. (the "Code").

We provide this Reporting Letter which sets out our investigation process, findings and conclusion for your review.

I. Terms of Reference and Investigation Process

The Terms of Reference under which we were retained required us to conduct a confidential investigation into reports regarding sexism in the Commission's workplace. Our mandate was to determine whether conduct constituting workplace discrimination or harassment in violation of the B.C. *Human Rights Code* had occurred. We were also requested to report our findings of fact and make any recommendations we deemed appropriate.

Our investigation process included a meeting with current staff of the Commission at the Commission's office to describe the scope of our investigation, how we would proceed with the investigation and our reporting obligations. We described to staff that our investigation and report would be kept confidential to the extent possible. We also informed staff that to

ensure a fair investigation, particulars of allegations, including the identity of a complainant or witness, may need to be disclosed to those about whom the allegations were made. We invited the staff to contact us if they wished to provide information regarding their experiences and observations while working with the Commission.

We also obtained the names and contact information, where available, of former staff of the Commission. Some former staff worked for the Commission for limited periods of time, such as summer law students, others were infrequently in the Commission's Vancouver office, as they provided their services from other parts of the province.

Subsequent to our meeting with staff at the Commission office and after obtaining the list of former staff of the Commission, an email was sent to current and former staff members, inviting them to contact us if they wished to meet or speak with us for the purposes of the investigation. Throughout this reporting letter we will refer to current and former staff collectively as "staff".

We received responses from most, but not all, of the staff contacted. Many staff members wished to speak with us and did so by telephone or in person interviews. Former staff members were advised of the scope of the investigation, the investigation process and our reporting obligations, in the same way that present Commission staff were advised during our meeting with them. Some staff members declined to participate, advising that they did not believe they had any relevant information to provide. Other staff declined to participate without explanation or because they were not satisfied with our investigation process, in particular, the fact that we could not guarantee the information gathered by us would not be attributed to them.

## II. The Evidence

Since the appointment of the Commission, the composition of Commission staff has been predominantly female. Other than the Commissioner, Senior Commission Counsel Art Vertlieb, Q.C., Executive Director John Boddie and a few past and present Commission staff, the majority of contractors who have provided service to the Commission have been and are women. The most senior Commission positions have been held by Mr. Oppal, Mr. Vertlieb and Mr. Boddie. Other Commission Counsel positions are held by women. Both male and female lawyers and law students have been contracted to work with the Commission.

The evidence received during the investigation did not corroborate allegations of inappropriate sexual remarks, comments, or behaviour occurring at the Commission workplace. None of the staff provided direct evidence of inappropriate gender based remarks or comments in the Commission workplace or inappropriate or harassing behaviour which was linked to gender.

None of the staff interviewed alleged any negative personal experiences in the Commission workplace which they attributed to gender.

None of the staff interviewed alleged that they had observed or witnessed negative conduct or interaction which they considered related to gender between any Commission staff. None of the staff interviewed witnessed any derogatory gender based comments or remarks.

Many of the staff interviewed expressed that they were “very surprised” or “shocked” to learn of allegations of sexual harassment or gender based discrimination at the Commission. These staff said they had never experienced or witnessed any conduct or communication which made them feel uncomfortable while working with the Commission.

Some of the staff interviewed complained of poor communication and other concerns and challenges in the workplace. However, when specifically questioned on the point, none of the staff who expressed such concerns attributed them to gender bias. As a result, we have not further particularized those concerns for purposes of this report and can make no finding as to the accuracy of those characterizations given that they are beyond the scope of this investigation.

### III. Analysis

The Terms of Reference for this investigation require that the Investigator determine whether conduct constituting workplace discrimination or harassment in violation of the BC *Human Rights Code* occurred in the Commission’s workplace. For the purposes of the investigation, Commission staff have been considered employees of the Commission and within the scope of the prohibition against discrimination in employment set out in the *Code*.

Section 13(1) of the BC *Human Rights Code* prohibits discrimination in employment on the basis of sex:

**13. Discrimination in employment – (1)** A person must not

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person regarding employment or any term or condition of employment

Because of the...sex...of that person...

The evidence obtained during the course of the investigation has been considered in the context of section 13(1) of the *Code* and jurisprudence regarding sex/gender based discrimination in employment, which includes sexual harassment.

Our analysis of the evidence is based on the law and legal principles developed by the BC Human Rights Tribunal (the “Tribunal”). When the Tribunal considers complaints of discrimination in employment on the basis of sex, it first considers whether the complainant is able to establish a *prima facie* case of discrimination. If the complainant is able to overcome this threshold test, the Tribunal then considers the respondent’s evidence in respect of the alleged discrimination. The Tribunal will not examine the respondent’s evidence unless the *prima facie* test is met.

To establish a *prima facie* case of discrimination in employment on the basis of sex, the complainant must establish she (or he) embodies one of the protected characteristics of the *Code* (in this case, being of the female sex); that she suffered adverse treatment in her employment; and that it would be reasonable to infer from the evidence that the complainant’s sex was a factor in the adverse treatment. It is not necessary that the complainant’s sex be the sole factor in the adverse treatment, provided that it is at least a factor.

This investigation was unusual in that there was no identifiable complainant. The investigation was undertaken after anonymous reports of sex based discrimination in the Commission workplace. The purpose of the investigation was to determine whether such discrimination had occurred.

In light of the fact that there is no specific complainant, our analysis of the *prima facie* test for discrimination in employment on the basis of sex is based on the evidence obtained from the witnesses we interviewed.

As noted there was no direct evidence of gender-based discrimination in employment on the basis of sex. Further, other concerns or challenges communicated by some of the staff interviewed were not attributed, even by those staff, to gender bias. Accordingly, one cannot reasonably infer that any alleged adverse treatment in employment was based, even in part, on gender. In short, while evidence of differential treatment may, at times, provide a basis for a finding of discrimination, there is insufficient evidence to draw any such a conclusion here.

We conclude that there has been no evidence presented during this investigation which establishes that conduct constituting workplace discrimination or harassment in violation of the B.C. *Human Rights Code* occurred in the Commission workplace.

#### IV. Conclusion

We have concluded there is no basis upon which to find that conduct constituting a violation of section 13(1) of the *Human Rights Code*, in particular discrimination in employment on the basis of sex, occurred in the Commission workplace.



If you have any questions regarding our investigation or this reporting letter, please do not hesitate to contact us.

Yours very truly,

**Roper Greyell LLP**

Per:

A handwritten signature in blue ink, appearing to read 'DS', written over a light blue horizontal line.

Delayne M. Sartison, Q.C.\*

Yours very truly,

**Roper Greyell LLP**

Per:

A handwritten signature in blue ink, appearing to read 'GMS', written over a light blue horizontal line.

Gabrielle M. Scorer

GMS/DMS:bmb