
Missing Women Commission of Inquiry
Ruling on Document Disclosure Application

The Honourable Wally T. Oppal, QC
Commissioner

MISSING WOMEN COMMISSION OF INQUIRY

Ruling on the Document Disclosure Application

March 2, 2012

A. Introduction

Counsel for 25 of the victims' families has brought an application for further and better document disclosure from a number of participants and third parties. The application seeks both general orders compelling all relevant records in the possession or control of specific parties and the disclosure of specific documents and other materials. The Application is made under s. 22 of the *Public Inquiry Act*, S.B.C. 2007, c. 9.

At the conclusion of arguments, I advised counsel and the parties that I would give written reasons. These are the reasons.

B. Background

Robert William Pickton was convicted on six counts of the second degree murder of six women in December 2007. On July 30, 2010, the Supreme Court of Canada rendered its decision dismissing Pickton's appeal and affirming his convictions. On August 4, 2010, Crown prosecutors stayed the balance of the pending murder charges against Pickton, ending the prospect of any further trials. For many years families of missing women, Aboriginal leaders and other members of the community were calling for an Inquiry into women who were missing. Before, during and after the police investigation and trial these groups were critical of police response to missing women. It was only after all legal proceedings were exhausted was it possible to have an Inquiry.

Accordingly this Inquiry was established on September 27, 2010 with the following terms of reference:

(a) inquire into and make findings of fact respecting the conduct of the investigations conducted between January 23, 1997 and February 5, 2002, by police forces in British Columbia respecting women reported missing from the Downtown Eastside of the city of Vancouver;

(b) inquire into and make findings of fact respecting the decision of the Criminal Justice Branch on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault;

(c) recommend changes considered necessary respecting the initiation and conduct of investigations in British Columbia of missing women and suspected multiple homicides; and

(d) recommend changes considered necessary respecting homicide investigations in British Columbia by more than one investigating organization, including the co-ordination of those investigations.

(e) to submit a final report to the Attorney General on or before December 31, 2011. That date was extended to June 30, 2012.

In the hearings to date a number of very serious allegations have been made concerning police failures in the missing women and Pickton investigations. These allegations include: disrespectful and biased treatment of family members when they reported women missing and in other stages of the investigations; a refusal to accept that these women were likely murdered, not missing; failure to accept the serial killer theory; faulty risk assessment in ascertaining whether women were going to go missing from the Downtown Eastside (DTES); restrictions on the involvement of family and community members in the investigations; inadequacies in proactive strategies to prevent further harm to women in the DTES; ineffective coordination between police forces; failure to follow major case management policies and practices; poor information management practices; discontinuity and inadequacy of supervision of the investigations; inexcusable gaps and delays in the investigations; indifference to the victims and potential victims; and systemic bias in policing.

C. Overview of Ruling on Document Disclosure

The main issue to be determined on this application is whether the additional documents requested are relevant to the Inquiry having regard to the evidence already heard and the documents already produced. To date more than 170,000 pages of documents have been disclosed and further documents continue to be produced almost on a daily basis. A subsidiary issue is whether the documents sought in this application are producible. For instance copies of emails at the Vancouver Police Department (VPD) prior to 2003 are not available as they have not been archived.

There is no question that document disclosure has been a lengthy and at times trying process for all participants and Commission counsel. The disclosure has not been perfect: there have been some delays in receiving disclosure and in the launch of the disclosure database and some technical difficulties giving rise to understandable frustration. Perfection is an unattainable standard particularly given that my mandate has an extensive scope: one covering numerous investigations and investigators, involving several police forces, over an extended period of time. The events in question took place ten years ago or more.

In considering this application for further and better document disclosure, I am mindful of the approach taken by The Honourable Stephen Goudge in his Inquiry into pediatric forensic pathology in Ontario. He emphasized the principles of thoroughness, transparency and proportionality as guiding principles for the inquiry process.¹ These principles assist me in ruling on this application.

I have placed great emphasis on being thorough and on leaving no doubt that all issues relevant to my mandate have been fully explored. Commission counsel and participants have been thorough in the steps taken to identify and ensure disclosure of relevant documents. Participants have been candid and transparent in describing the steps taken and methods employed in this process and in explaining how and why certain documents cannot be produced. The question now is mainly one of proportionality: the Commission needs to focus on core issues keeping in mind the Commission's purpose. It is not feasible to collect every single document of possible relevance: we must remain focused on what is significant having regard to the terms of reference. Proportionality is particularly important at this late stage of the inquiry process. We now begin to confront the law of diminishing returns: a disproportionate amount of time and resources is required to unearth documents which are likely to have little, if any, probative value.

Relevance is addressed by the principle of proportionality and is a situational concept. Relevance will vary, therefore, from one context to another. In my Opening Remarks, I made it clear that the core issues of my mandate center on finding ways to better ensure the safety and security of vulnerable and marginalized women, particularly Aboriginal women, and to find ways to improve future police investigations of missing and murdered women so that we can address this ongoing tragedy. As a result, I review this application from this perspective.

It is clear to me from submissions made by Counsel for the families that they have a different perspective on the core issues in this Inquiry. In his Opening Statement, Counsel for the 25 families, Mr. Ward stated that the families have two main interests in this Inquiry, as expressed in these terms: "Number one, they want to know why Pickton wasn't stopped sooner; and, number 2, they want to know if Pickton had accomplices in his heinous deed who may still be walking the streets and preying on others." While the first issue is clearly important to my mandate, the second is not.

It is not the purpose of this Inquiry to retry Robert Pickton, nor is it to carry out additional criminal investigations. The terms of reference clearly are to conduct a careful and thorough examination of the missing women investigations and the Pickton investigation to uncover the impediments to these investigations and the reasons for the stay of proceedings against Pickton in 1998. The purpose of this

¹ The Honourable Stephen T. Goudge, Commissioner, *Inquiry Into Pediatric Forensic Pathology in Ontario* Report, Volume 4 "The Inquiry Process" at p. 636

examination is to develop recommendations for changes that will save the lives of the vulnerable and marginalized women who continue to be at high risk of serial predation. While I am sympathetic to the families' desires for a fuller accounting of all aspects of the criminal case, I cannot allow it to shift the focus away from the core issues.

During the course of his submissions, co-counsel for the 25 families, Mr. Chantler provided additional detail concerning specific documents or categories of documents that his clients seek to have disclosed. I am particularly mindful of the concerns expressed that the missing person files of Cynthia Feliks, Elsie Sebastian and Cara Ellis do not appear to be complete. This information was helpful and counsel for the concerned parties affirmed that they would take additional steps to find and disclose these documents.

D. Specific Orders Sought

(1) Vancouver Police Department ("VPD")

In paragraph 1 of Part 1 of this application, counsel for the victims' families have sought an order compelling the VPD to deliver to the Commission "copies of all relevant records in its possession or control". The Commission has served a summons for documents on the VPD. Other specific relief is also sought in subparagraphs (a) to (e) which I will address in turn.

(a) Members' notebooked, handwritten notes, memoranda, correspondence, emails, logs, continuation reports, database search results, surveillance reports, meeting minutes and agendas, statement and interview transcripts, audio-video recordings, photographs and all other physical and electronic records in the possession or control of the VPD;

This request clearly engages the issues of proportionality and relevance. VPD has already complied with this general request by disclosing the most relevant documents in its possession or control. Much of the material sought has already been disclosed, for instance the notebooks of 10 officers, Fell, Wolthers, Field, Clarke, Chernoff, Little, McKnight, Dickson, Hetherington and Giles have been disclosed. As well, the report of Brian Oger, a VPD intern in which he made a compelling argument that a serial killer was operating in the lower mainland, was disclosed.

To date the sheer scope and volume of documents dictates that the most relevant documents would be disclosed first but that participants could make additional, specific requests for disclosure. Commission counsel has facilitated this process.

For example, a policy for the disclosure of notebooks, applicable to both VPD and RCMP, was provided to participants in June 2011. The policy states that as the volume of notebooks of all officers is so large, only selected notebooks would be made available, however, if participants wished to review other notebooks (additional officers or different dates), they could apply to have those disclosed. As already mentioned in the hearings, requests for notes of specific officers need to specify defined time frames. There is no need for an additional general order at this time.

- (b) notes, agendas, memoranda, minutes, correspondence and all other records relating to the “brainstorming session” of May 19, 1999 (sic);**

I note that this meeting took place on May 13, 1999 not May 19, 1999. Counsel for the VPD has advised that there appears to be no written records pertaining to this meeting but that a search for any such documents continues. As such, no order is necessary. RCMP has provided notes/logs of three members related to the above meeting.

- (c) all “monthly updates” drafted and sent by Det. Cst. Lori Shenher to all sworn VPD members during her tenure as investigator on the Missing Person Unit;**

I have been advised that these communications were in the form of e-mail messages. The VPD advised participants during the hearings that e-mails prior to February 2003 do not exist as they were not archived. Any disclosure of available e-mails were from print copies kept in files or binders.

- (d) all relevant handwritten notes and “log book” entries of Cst. Dave Dickson created during the time period defined by the terms of reference;**

I am advised that several of Cst. Dickson’s notes and memos have been disclosed. Cst. Dickson has indicated that if he made any notes that were specific to a missing women’s case he would add it to her missing person file. Cst. Dickson’s counsel is conducting a search for additional documents.

(e) records of offline CPIC searches of David Francis Pickton.

The aforementioned is the brother of Robert William Pickton. While I question the relevance of any disclosure related to David Pickton, the material from other databases is available on Concordance.

(2) Royal Canadian Mounted Police (“RCMP”)

In paragraph 2 of Part 1 of this application, counsel for the victims’ families have sought an order compelling the RCMP to deliver to the Commission “copies of all relevant records in its possession or control”. Provincial commissions of inquiry are limited in their powers to compel federal institutions, including the RCMP, to disclose documents and as well, are limited in their jurisdictions to examine issues related to policies and management. The leading case on this issue is *Attorney General of Quebec and Keable v Attorney General of Canada et al* [1979] 1 S.C.R. 218, at p. 242 wherein the Court held that a provincial commission of inquiry cannot order the Federal Crown to produce documents because of inter-jurisdictional immunity.²

The applicants also seek the following in sub paragraph (a) to (h)

- (a) members’ notebooks, handwritten notes, memoranda, correspondence, emails, logs, continuation reports, database search results, surveillance reports, meeting minutes and agendas, statement and interview transcripts, audio/video recordings, and all other physical and electronic records in the possession or control of the RCMP;**

Again, this request clearly engages the issues of proportionality and relevance. In any case, I am satisfied that the RCMP has been and continues to make best efforts to disclose all relevant documents. The RCMP has already complied with this general request by disclosing the most relevant documents in its possession or control in particular through the disclosure of witness packages prepared for approximately 25 officers. Additional notes continue to be disclosed and uploaded in Concordance. There is no need for an additional general order at this time.

² *Attorney General of Quebec and Keable v Attorney General of Canada et al* [1979] 1 S.C.R. 218, at p. 242.

(b) correspondence between Sgt. Mike Connor and then Crown Counsel Mr. Peder Gulbransen relating to the investigation of Robert William Pickton as a suspect in the missing women investigations;

I am advised that communications between Sgt. Connor and Mr. Gulbransen have been disclosed. Further, copies of any correspondence, if available, would have been disclosed.

(c) correspondence between Sgt. Mike Connor and Sgt. Wade Blizard relating to the investigation of Robert William Pickton as a suspect in the missing women investigations;

I am advised that in accordance with the RCMP email retention policy these emails were deleted after 90 days. Inquiries have been made and neither officer has a copy of these emails.

(d) notes and records of Det. Cst. Lori Shenher created during her tenure as investigator on the Missing Person Unit and later provided to Project Evenhanded;

I am advised that notes made on lead sheets have been disclosed.

(e) notes and records of Cst. Sylvestri related to his attendance at the Pickton residential property on May 1, 1999;

I am advised that no notes exist for this officer relating to the above attendance.

(f) records in the possession of the RCMP relating to the well-publicized allegations of systemic gender discrimination and workplace harassment raised by Cpl. Catherine Galliford;

I am advised that the RCMP is currently conducting an internal investigation into these allegations. I am bound to respect this process and therefore am not in a position to order disclosure at this time.

(g) videotapes of interviews of Robert William Pickton conducted on February 19, 20, and 23, 2002, by members of the RCMP; and

I am advised that transcripts of these interviews are available in Concordance as part of the appendices to the Report to Crown Counsel and there is no need to disclose the videotapes themselves.

(h) videotapes of the “cell plant” of Robert William Pickton conducted on February 22, 2002 at the Surrey RCMP Detachment.

I am advised that no audio recording or transcript exists for this interaction as stated in the Report to Crown Counsel at page 160. However, the undercover officer’s notes are available in Concordance. As well, I do not see the relevance of any statement made post arrest unless it makes reference to the police investigation. It is difficult to see where this request fits within the terms of reference.

(3) Individual Police Officers

Paragraph 3 of Part 1 of the application seeks an order for the delivery of documents and other material in the possession or control of 10 current and former VPD and RCMP officers. Individual summons have been prepared by the Commission and sent to all of the individuals listed in the application.

(4) Criminal Justice Branch

The Commission has already served a summons on the Criminal Justice Branch to produce all relevant documents and material under its possession or control. I am advised that the documents related to the investigation were destroyed in June 2000 pursuant to the Branch’s document retention policy. I am advised that Counsel for the Criminal Justice Branch will be providing additional disclosure which will be made available to participants through Concordance.

(5) Province of British Columbia

(a) notes, agendas, memoranda, minutes, correspondence and all other records relating to the meeting of April 9, 1999, attended by several high-ranking members of the VPD and RCMP, Attorney General Ujjal Dosanjh, cabinet ministers and their aides;

On that date, a meeting attended by several police officers and Attorney General Dosanjh took place. It appears that the purpose of the meeting was to apply to government for more resources and to ask the Government to post a reward. While a reward was eventually posted, no commitment was made for more resources. Mr. Jones appeared for the Province of British Columbia to speak to the issue of disclosure of all relevant documents and in particular to disclose records of the meeting. He spoke to the efforts currently being made with respect to document disclosure. Mr. Chantler agreed to adjourn the application in this respect while efforts were ongoing. I am advised that documents resulting from the search of Ministry records have now been disclosed to the Commission and participants through Concordance.

(6) Counsel copies of *R. v. Pickton* (1997) Court File

Paragraph 6 of Part 1 of the application seeks an order that Commission counsel be directed to obtain and disclose to all participants' counsel copies of the Port Coquitlam Provincial Court file #52808, *R. v. Pickton* (1997). The file was produced by the Criminal Justice Branch and is in Concordance. The request was also made of the Port Coquitlam Provincial Court and the documents disclosed were identical to those disclosed by the Criminal Justice Branch.

(7) Commission Correspondence with Deputy Chief Evans

This application was withdrawn in recognition that I had already addressed it in an earlier oral ruling.

(8) Commission Correspondence with Don Celle

Paragraph 8 of Part 1 of the application seeks an order that Commission counsel be directed to disclose to all participants' counsel copies of all correspondence to and from Don Celle related to his engagement, instructions, and the preparation of the report he has allegedly produced for the purpose of this Inquiry. I am advised that the services portion of Mr. Celle's contract are available in Concordance.

(9) Organized Crime Agency of British Columbia (“OCABC”) and the Combined Forces Special Enforcement Unit (“CFSEU”)

Paragraph 9 of Part 1 of the application seeks an order that the Organized Crime Agency of British Columbia and the Combined Forces Special Enforcement Unit of British Columbia (“CFSEU”) deliver to the Commission copies of all relevant records in their possession or control including but not limited to:

- (a) records of all investigations of Robert William Pickton, David Francis Pickton and members of the Hells Angels Motorcycle Club associated with the Picktons; and**

The Organized Crime Agency of British Columbia no longer exists. It was an agency of the provincial government. Now CFSEU, or the Combined Forces Special Enforcement Unit, would have subsumed that. That is an RCMP-led joint task force, and it has a joint management board subject to RCMP policy and procedures.

- (b) records of all investigations of the establishment known as “Piggy’s Palace” located at 2252 Burns Road, Port Coquitlam, BC.**

There is no evidence of a nexus between David Pickton, the Hells Angels and Piggy’s Palace on the one hand and the terms of reference on the other.

(10) E-Comm Emergency Communications for Southwest British Columbia Incorporated (“E-Comm”)

Part 10 of Part 1 of the application seeks an order that E-Comm Emergency Communications for Southwest British Columbia Incorporated (“E-Comm”) deliver to the Commission copies of all relevant records in its possession or control, including but not limited to:

- (a) transcripts of 9-1-1 calls relating to or originating from the residential property of Robert William Pickton, located at 953 Dominion Avenue, Port Coquitlam, BC, during the period January 23, 1997 to February 5, 2002;
And**

- (b) missing person reports made by members of the public to E-Comm during the time period defined by the Terms of Reference.**

I am advised by Counsel for the RCMP that steps have been taken to locate relevant E-Comm records and reports. Commission staff continue to work on facilitating this disclosure.

(11) Document Disclosure from Other Parties

Paragraph 11 of Part 1 of the application seeks an order for the delivery of all relevant records in the possession or control of four additional parties two of which are third parties to this proceeding: (a) the City of Vancouver; (b) the Vancouver Police Board; (c) the Vancouver Police Union; and (d) West Coast Reduction Ltd.

I am advised by Counsel for the Vancouver Police Board that all relevant documents have been produced. Summonses have been served on the City of Vancouver and the Vancouver Police Union. I am further advised that West Coast Reduction has informed the Commission that they have no relevant records. It is useful to note that Mr. Roberts who is counsel to Marion Bryce, a participant, is opposed to Mr. Ward's position. In his written argument he has stated:

There has been extensive document disclosure provided by both police forces and by related boards and government offices, all of which has been submitted to this Inquiry. We have also received extensive oral evidence from a number of witnesses with oral evidence from a number of additional witnesses still to come. In addition the Inquiry has received the independent report of Deputy Chief Jennifer Evans commissioned by the Inquiry and written after extensive document review and interviews of nearly all of the involved police officers from both police forces. It is our position that this body of evidence both received and to be received will amply provide the necessary basis for the fact finding task of this Inquiry and for the Commissioner's recommendations.

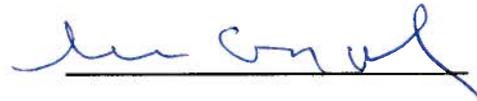
I am satisfied that all concerned parties have acted in good faith and have made best efforts to produce all relevant documents and other materials. The disclosure process is ongoing and I fully anticipate that all participants will continue to disclose documents as they are identified through the hearing process or come to their attention by other means.

D. Conclusion

I have concluded that the orders sought in this application are for the most part unnecessary as the process for disclosure is ongoing. In the sections above, I set out the status of document disclosure with respect to each of the specific orders sought

in this application. In summary, I have concluded that some of the documents and materials requested in this application have already been produced and others are only tangentially relevant or are irrelevant for the Commission's purposes. I have been advised by counsel for VPD and the RCMP that they continue to search for other identified documents and that others simply do not exist to the best of their knowledge. Based on what I heard during the proceedings, I am confident that Commission counsel will continue to work collaboratively with counsel for all participants to facilitate additional disclosure.

I am particularly thankful to Commission staff who have been very diligent in managing the document disclosure process. Six staff members were involved in handling document disclosure by identifying and requesting documents, as well as in monitoring and following up on document requests. Eight staff members were involved in reading/indexing the documents. One person managed the document disclosure process with participants. This has been and continues to be a huge task.

A handwritten signature in blue ink, appearing to read "Wally Oppal", written over a horizontal line.

Wally T. Oppal, QC
Commissioner