

April 12, 2012

Vancouver, BC

(PROCEEDINGS RECONVENED AT 9:35 A.M.)

RANDI MARGARET CONNOR: Previously affirmed

THE REGISTRAR: Order. The hearing is now resumed.

THE COMMISSIONER: Mr. Gratl.

MR. GRATL: Thank you, Mr. Commissioner.

MR. ANDREWS: Mr. Commissioner, just before Mr. Gratl starts,
if I may, my name is Mark Andrews and I act for
Richard Romano.

THE COMMISSIONER: Yes.

MR. ANDREWS: Who, as I think you have been advised, is to be a
witness before you next week sometime. And I'm
here today. I have been listening to the
proceedings, the testimony of Miss Connor, and I'm
here today because it appears to me that there may
in the course of the remainder of her testimony
come back before you the issue of the application
of the *Davies* case to lines of questioning or
perhaps the issue of the Murray report, which I
had a chance to look at yesterday. And what I
would like -- and I've mentioned this to my friend
Mr. Vertlieb and other participants today -- if
possible, is to have permission for you -- from
you to attend and participate to the extent that

1 that issue comes up in the course of the remainder
2 of Miss Connor's evidence.

3 THE COMMISSIONER: What issue?

4 MR. ANDREWS: The issue of the application of the *Davies* case
5 and the potential limitations as to inquiry into
6 prosecutorial discretion, which, sir, apply
7 equally to my client as to the present witness.
8 And what I'm trying to avoid, sir, is a situation
9 where to the extent that that debate occurs before
10 you with this witness prior to my client appearing
11 that I have an opportunity to address that rather
12 than be in a situation where I'm attempting to
13 perhaps re-raise the issue at a later date, which
14 appears to me to be inefficient and inappropriate.

15 THE COMMISSIONER: Well, Mr. Doust has already raised it and I
16 think it's common ground that *Davies* is the
17 applicable law and that governs the -- the
18 limitation of the questioning of a Crown counsel
19 who is clothed with independence under our law.
20 So we recognize that and that's the -- that's the
21 way we've been proceeding so far here as far as
22 the examination of Miss Connor's concerned. So I
23 agree with you that -- that the principle in
24 *Davies* is equally applicable to Mr. Romano.

25 MR. ANDREWS: The issue -- thank you for that, sir. And I

1 understand that and I listened to you yesterday
2 and I realize that. The issue that I'm more
3 concerned with, though, is how it be practically
4 applied to any particular line of questioning.
5 And to be frank, sir, there have been times in the
6 course of some of the cross-examinations where, in
7 my submission, had I been -- had standing, that it
8 could be argued that the line has been if not
9 crossed, then approached and I'm concerned that --
10 that to the extent there is going to be any
11 further consideration of that before you, sir, in
12 the course of this witness's testimony that it's
13 appropriate that I make my submissions, such as
14 they are, if they arise at that time rather than
15 be attempting to sort of readdress the issue when
16 my -- when my client is giving evidence.

17 THE COMMISSIONER: Well, this witness is represented by Mr.
18 Doust.

19 MR. ANDREWS: That's true.

20 THE COMMISSIONER: So I'm sure that if there are any objections
21 he'll register them. But clearly since you are
22 representing Judge Romano, you -- you'll have that
23 opportunity to address it when he testifies.

24 MR. ANDREWS: Do I take it, then, so that you will not allow me
25 to address the issue if it arises at this point?

1 THE COMMISSIONER: Well, how many lawyers does Miss Connor
2 need?

3 MR. ANDREWS: I'm not proposing to act for Miss Connor, sir. I
4 understand that Mr. Doust is doing that. It's
5 really -- it's really -- I don't seek to act for
6 her. I seek to address an issue, which is an
7 issue which affects my client.

8 THE COMMISSIONER: Yes.

9 MR. ANDREWS: And the issue, sir, it appears to me is -- is
10 arising at this time. So, for instance, it can
11 arise in the course of cross-examination of
12 this -- of this witness. And I will not object to
13 a question. I'm not proposing that I -- I'm not
14 proposing that I in any way act as counsel for
15 Miss Connor. Let me make that clear. What I
16 simply wish to be able to do is if it arises -- in
17 other words, if Mr. Doust, for instance, objects
18 to a line of questioning and you then have
19 argument before you, such as you did yesterday, as
20 to whether or not the line of questioning crosses
21 the threshold in the *Davies* case, it appeared to
22 me, sir, that it would be more efficient and more
23 fair if I were to make that submission now while
24 you are working that line out rather than sitting
25 in the back of the room and making my submission

1 only when it comes to Judge Romano's testimony.

2 THE COMMISSIONER: The difficulty with that is -- excuse me for
3 interrupting you. The difficulty is that I can't
4 make any ruling in a vacuum, but if there is a
5 line of questioning that proceeds and it's
6 offensive to the rule in *Davies* and obviously --
7 and it pertains to your client, you have the right
8 to object and I'll listen to you.

9 MR. ANDREWS: The other way in which it may arise, sir, is if
10 there's some further consideration of the role of
11 the Murray report. And you've already had some
12 indication that there is an issue raised by Mr.
13 Doust, but it applies equally to my client. And,
14 again, that may -- that issue -- I'm not sure when
15 that issue will arise. Sir, what I'm trying to do
16 is not merely to slow or impede the progress of
17 your inquiry. It's just that this issue of the
18 *Davies* issue is one which -- and you're dealing
19 with that issue. How you deal with that issue is
20 one that affects my client.

21 THE COMMISSIONER: No. I know that.

22 MR. ANDREWS: And I would ask that -- in fairness that his
23 counsel be given an opportunity to contribute to
24 that discussion if it arises. And I don't intend
25 to object to any questions, but merely if the

1 matter arises to give you my two pennies worth, as
2 it were, on that issue if I may.

3 THE COMMISSIONER: All right. Thank you.

4 MR. WARD: Just before Mr. Gratl starts, Mr. Commissioner, it's
5 Cameron Ward, counsel for families of 25 missing
6 and murdered women. I understood yesterday that
7 at some point today we would be addressing the
8 admissibility of the Murray report and I'm ready,
9 willing and able to do that at the appropriate
10 time, but if it's not going to happen today, it
11 would be helpful for me to know that as well.

12 THE COMMISSIONER: I think in light of Mr. Andrews' presence
13 here, it may be more appropriate to -- to deal
14 with it when Mr. Romano testifies and then he
15 would have an equal opportunity to argue the
16 admissibility of the report.

17 MR. WARD: My -- I hear what you're saying, of course, but if
18 Mr. Anderson is indeed here today -- I'm looking
19 around. There he is. Yes. If he's indeed here
20 all day today, it would be my preference to try to
21 do it today, but --

22 THE COMMISSIONER: That may be so, but we'll see.

23 MR. WARD: All right. Thank you.

24 THE COMMISSIONER: All right. Thank you.

25 MR. DOUST: I'd like to just make a point that we've only had

1 that a short period of time and I'm not fully
2 instructed in terms of that report. It's a
3 comprehensive report.

4 THE COMMISSIONER: I know it is.

5 MR. DOUST: And I'm awaiting the conclusions of my instructions
6 on that, Mr. Commissioner, and doing that today,
7 it seems to me, isn't absolutely essential. And I
8 didn't understand for a minute that that was going
9 to be dealt with.

10 THE COMMISSIONER: Well, I'm not going to do it without counsel
11 having a full opportunity to have prepared
12 themselves for the report. I agree. I've read
13 the report. It's comprehensive. It's lengthy and
14 he has expressed certain opinions in that report
15 and if you're not prepared to address it today, we
16 won't do it today. I want to make sure that all
17 lawyers have an equal opportunity to address it.
18 All right.

19 MR. WARD: Thank you very much. And that's helpful. I just
20 needed to know when it was on the agenda, that's
21 all. Thank you.

22 **CROSS-EXAMINATION BY MR. GRATL (Cont'd):**

23 Q Now, Miss Connor, I wanted to explore with you
24 some of the background knowledge about sex workers
25 and drug users that you brought to bear on your

1 decision to stay the charges against Robert
2 William Pickton.

3 A I'm sorry and I don't mean to be difficult. It
4 wasn't to do in any way with the occupation of the
5 complainant. It was to do with her condition, her
6 drug use. But I'm certainly happy to answer any
7 questions.

8 Q So you're saying you didn't have any regard
9 whatsoever to her status as a sex worker?

10 A No. That doesn't distinguish her from any other
11 vulnerable victim.

12 Q Okay. That's sort of what I wanted to get at. I
13 mean you appreciate that sex work involves
14 offences against the Criminal Code from time to
15 time?

16 A I suppose technically that's correct.

17 Q Sure. So it involves engagement in unlawful
18 activity which sets you in a certain relationship
19 with the criminal justice system?

20 A Yes.

21 Q An adversarial one, to be particular about it?

22 A Yes. If you're being prosecuted for some sort of
23 offence involving prostitution, it would, but in
24 this case she was a victim and a complainant,
25 certainly not an accused.

1 Q All right. But I just want to understand whether
2 and to what extent her status as a sex worker
3 might have played into your charge approval
4 decision. I mean you appreciate that she would
5 have -- in giving testimony she would have had to
6 give evidence about her sexual activity?

7 A Yes. But that's -- that's not a problem. I had
8 prosecuted -- I can think of -- one comes to mind
9 specifically, a case involving a 17-year-old sex
10 trade worker out of Surrey, and I prosecuted that
11 case to a conclusion where there was a conviction.
12 And the occupation really is not relevant. In
13 fact, the occupation makes that victim more
14 vulnerable than others just because of the
15 situations that they have to be in in order to
16 pursue that occupation.

17 Q All right. And you appreciate that having to
18 testify about sexual matters would be a cause of
19 stress for a sex worker?

20 A Well, anybody.

21 Q For a complainant?

22 A Absolutely. Like I explained over the last few
23 days, in 1985 I became a child sexual assault
24 specialized prosecutor, and those children that I
25 put on the stand had to testify about sexual

1 matters and, trust me, it's horrible. It's just
2 horrible.

3 Q Okay. So for sex workers you appreciate it might
4 be more difficult for them than the ordinary
5 person to trust people in the criminal justice
6 system such as police officers?

7 A I don't have personal knowledge of that, but I
8 can't disagree. That would appear to be an
9 appropriate perception.

10 Q Okay. I mean is that -- was that your perception
11 at the time that you made the decision to stay the
12 charges against Mr. Pickton?

13 A No. It had nothing to do with her occupation.
14 Her occupation I think in this case made it worse
15 and more serious because of the vulnerable
16 position that she was in, just like a child.

17 Q All right.

18 A They're in a worse position. In a situation like
19 this, they're extremely vulnerable.

20 Q All right. And I'm suggesting that they're
21 vulnerable to the criminal justice system; that
22 they have something to fear from the criminal
23 justice system?

24 A I wouldn't have personal knowledge of that, but if
25 that's what you say. I would imagine anyone, any

1 witness who had dealt with the criminal justice
2 system -- and, believe me, I've called lots of
3 witnesses who had criminal records -- it makes
4 sense to me that they would have a perception
5 about the justice system that other people who
6 hadn't gone through it as an accused would.

7 THE COMMISSIONER: If it helps you at all, Mr. Gratl, we've had
8 ample evidence in this hearing about how
9 vulnerable they are and the distrust they have of
10 the criminal justice system.

11 MR. GRATL:

12 Q I know that, Mr. Commissioner, and I know you know
13 that and I know we've had many other witnesses who
14 knew that, but I'm just asking whether this
15 witness knew that, and it sounds like she didn't
16 because she's saying that she's imagining, but
17 just I want to give the witness an opportunity to
18 clarify whether she knew that sex workers would be
19 reluctant to testify because they had a
20 relationship of adversity to the criminal justice
21 system at the time that she made her -- I'm just
22 having some difficulty getting clear answers.

23 A And I'm sorry. That to me makes perfect sense.
24 And I would approach it the same way I would
25 anyone who had been an accused or had bad

1 experience with the justice system. They would
2 have reasons -- it would make sense to me that
3 their dealings with police would be negative and
4 they would have that feeling, and so I agree with
5 you, yes.

6 Q So when you say -- when you previously testified
7 that you would have left it to the police to
8 provide counselling -- drug counselling or
9 rehabilitation services for the witness, you'll
10 agree with me that the police might not be the
11 best choice of agent to provide treatment services
12 to a witness such as Miss Anderson?

13 A Yes. Now -- and this is an important point, is in
14 this particular case there were two Victim
15 Services groups set up that were working on it.
16 There was the police based one and there was the
17 Crown based one. My understanding of Victim
18 Services is they provide support in a way that a
19 police officer couldn't. Now, your point is a
20 valid one. It may be that certain witnesses
21 aren't going to trust anything to do with the
22 government or anything to do with police, but the
23 rationale for setting up Victim Services is that
24 can provide support to all victims and vulnerable
25 ones in a way that a police officer investigator

1 couldn't. So -- and in this case we had two sets
2 of Victim Service people working on the file.

3 Q And so you appreciate that a person who is a sex
4 worker, because of their status of being alienated
5 from the criminal justice system, might be
6 reluctant, for example, to come in for Crown
7 interviews?

8 A That would make sense.

9 Q So if Ms. Anderson didn't keep appointments,
10 that's because she would -- she might be reluctant
11 to speak with you because of an apprehension that
12 she might be poorly treated or her credibility
13 might be dismissed just because she's a sex
14 worker?

15 A I would hope that wasn't the case. Like I say, we
16 had Victim Service people working on it. I don't
17 mean to be difficult, but I can't say what was
18 going on in Miss Anderson's mind. She would be
19 the only person that could say that. If you put
20 it to me as a possibility, as one possibility for
21 her not coming in, I'm not in a position to
22 disagree with that because I don't know what she
23 was thinking.

24 Q All right. I take it if you didn't know what she
25 was thinking, that's because you didn't ask her

1 whether she was apprehensive about testifying
2 because she was concerned about her status as a
3 sex worker?

4 A My dealings with her and the issue was her showing
5 up for the interview on drugs and me not being
6 able to communicate with her. I wasn't thinking
7 at that time that that was done deliberately or in
8 any way to avoid the interview or to avoid coming
9 to court. That didn't occur to me. What I
10 thought I was dealing with was somebody who was
11 heavily drug addicted.

12 Q All right. So people who were drug addicted, you
13 know they have -- they can have good days and they
14 can have bad days. You knew that. It was part of
15 the background knowledge you brought to bear on
16 your decision?

17 A Yes. But, again, it depends on the individual in
18 terms of whether they're using every day and what
19 drugs they're using, I would think.

20 Q All right. So they can have good days and bad
21 days; isn't that right?

22 A I would assume so.

23 Q Did you bring that -- did you bring that
24 assumption to bear on your stay decision?

25 A Well, my stay decision -- I've repeated this a

1 number of times -- was based on a number of
2 things. One, there was the criminal record that
3 showed back in 1985 this person was convicted of
4 possession of a narcotic and possession for the
5 purpose of trafficking. There was the original
6 comment under her "will say" in the report to
7 Crown counsel that said that she was a heroin
8 user. There was the nurse's -- her evidence was
9 summarized in the narrative that said that there
10 were track marks on her thigh. And there was the
11 circumstances itself where drugs were found in her
12 possession during the incident itself. There was
13 the difficulty in getting in touch with her. If
14 you go through the documents from the Victim
15 Services people, I think there's six pages of
16 attempts to get hold of her. And she was
17 offered -- I can see from those documents she was
18 offered counselling.

19 Q Miss Connor, can I interrupt you for a second?
20 The court of appeal in *Davies* indicated that
21 cross-examination is to be gentle and so I want to
22 do that.

23 A All right.

24 Q I'm trying to explore the background knowledge
25 about drug users that you brought to bear on your

1 decision to stay the charges against Robert
2 William Pickton and so I just asked you the
3 question are you aware that heroin users have good
4 days and bad days?

5 A Yes, but I don't think it's a fair question in
6 the -- in a vacuum, in a hypothetical, yes, but
7 when you're dealing with one particular person,
8 you would really need to know how much they were
9 ingesting and how frequently to say when the good
10 days and the bad days were.

11 Q And you didn't have that information, did you?

12 A At that time I -- I had what I felt was sufficient
13 information to conclude, and also when I was
14 dealing with her, that her evidence was not going
15 to be presented at that trial in a coherent and
16 accurate manner.

17 Q Miss Connor, that's nonresponsive. I asked you
18 you didn't have that information. You didn't have
19 the information about how often and how much she
20 injected, did you?

21 A I didn't, but I did have information that I relied
22 on.

23 Q All right. So you didn't have information on how
24 much she injected and how often, and you just
25 testified that that information was necessary to

1 figure out whether a person's going to have good
2 days and bad days?

3 A Well, I think that's twisting it. I can only say
4 what I actually did, which is I had the
5 information in front of me. I dealt with her.
6 She was in a terrible condition and I couldn't put
7 her on the stand. Whether other heroin users have
8 good days and bad days, I'll accept what you say
9 on that.

10 Q All right. You don't have to go with me, with the
11 logic that I'm presenting to you. I'm just
12 suggesting that that was your evidence. One, that
13 you need to know how much and how often they
14 inject in order to determine whether they're going
15 to have good days and bad days and, two, that you
16 didn't have that information. Did I have that
17 evidence wrong?

18 A I don't think that's fair because what I was
19 presented with was a person who was in very bad
20 shape. So when I dealt with her and when I had to
21 make important decisions and when I had to talk to
22 Mr. Romano, it was based on my observations at the
23 time, and that was a bad time. And I had no
24 reason to expect that there was going to be a
25 better time to talk to her or a good day.

1 Q In your "will say" statement you suggest that Miss
2 Anderson was in such bad shape that you weren't
3 even able to make a credibility assessment at all?

4 A That's right. If you're dealing with somebody who
5 is nodding off, who isn't responsive to questions,
6 then how can you assess how credible they are in
7 terms of how they can articulate what happened to
8 them? I couldn't do that.

9 Q In other words, you didn't even make an
10 assessment, then, of whether if she did take the
11 stand she would be a good witness?

12 A Well, I knew that she couldn't. I wasn't able to
13 conduct an interview with her that would give me
14 enough information to make an assessment as to
15 whether she was credible or not really. And I
16 think we're throwing around the word credibility.
17 There's sort of two aspects to it. One, a person
18 who's under the influence of drugs and can't
19 articulate evidence clearly you could conclude is
20 not credible. A judge listening to that isn't
21 going to be able to assess their evidence in a
22 proper manner.

23 Q But is there any sort of principal difference
24 between somebody showing up drunk to an interview
25 and not being coherent and your understanding of a

1 heroin user showing up under the influence to an
2 interview?

3 A The result is the same. I wouldn't put a person
4 that I thought was drunk on the stand and I
5 wouldn't be able to interview them properly. And
6 I couldn't put a person who was under the
7 influence of drugs on the stand either or conduct
8 a proper interview, depending on again how much
9 alcohol they had ingested if you're using the
10 alcohol example.

11 Q All right. So -- and I'm citing here -- I'm
12 reading from your "will say" statement. You say:
13 I did not feel that I could communicate with
14 Anderson in a manner sufficient to even
15 assess her credibility.

16 A Yes. That would be fair.

17 Q Okay. So you didn't do a credibility assessment
18 of Anderson?

19 A Well, I couldn't. I couldn't get to that point.

20 Q Okay. So you never even considered what it might
21 look like if she took the stand?

22 A My concern was, given the history I was given, if
23 I were to just stick her up on the stand, that
24 would be irresponsible. And I needed to conduct a
25 proper interview with her, get a clear version of

1 her from her as to what the -- as to what
2 happened, see if there were any inconsistencies,
3 see if she wanted to add anything, which I would
4 have to disclose to defence counsel. I couldn't
5 conduct a proper interview.

6 Q All right. So you made the assessment that she
7 was addicted to heroin?

8 A Based on all of that information. And at this
9 point, some 14 years later, there may have been
10 other factors that I just can't remember.

11 Q All right. So, Miss Connor, I take it that at the
12 time that you made this decision to stay the
13 charges against Robert William Pickton you
14 understood that drug addiction was a form of
15 disability?

16 A I knew that it was a terrible, terrible problem in
17 me proceeding with the case. I couldn't talk to
18 my witness. I couldn't prepare her for court. I
19 couldn't get a clear version of what she would
20 have said. So a disability, if that's how it's
21 categorized --

22 MR. GRATL: No, no. Miss Connor, I'm asking you a specific
23 question. I'll ask you to listen carefully to the
24 question.

25 MR. DOUST: Mr. Commissioner, I'm going to object to this line

1 of questioning. And the basis of my objection is
2 that it's really an attack on the witness relative
3 to the entry of the stay. It can do nothing more
4 than suggest by inference, clearly indirectly,
5 that there are things that she should have done or
6 should have known, factors that she didn't take
7 into account in making the decision that she made
8 and that that transgresses the ruling in *Davies*,
9 in my submission.

10 THE COMMISSIONER: I think -- Mr. Gratl.

11 MR. GRATL: I just repeat the question for clarity. I'm asking
12 this witness whether she understood at the time
13 she made the decision to stay the proceedings
14 against Robert William Pickton whether drug
15 addiction was a form of disability.

16 THE COMMISSIONER: I don't think that in itself is an
17 offensive --

18 MR. DOUST: No. That question isn't, but if it gets beyond
19 that, again, I take the position it crosses the
20 line.

21 MR. GRATL:

22 Q Miss Connor, you understood the question?

23 A Not really. Disability in terms of being able to
24 function? If that's what you're asking me, then
25 yes.

1 Q So --

2 A The answer would be yes. If drug addiction -- if
3 you're categorizing it as a disability and
4 disability means an inability to function, then
5 yes. Absolutely.

6 Q And nothing beyond that. That's the limits of
7 your understanding of the extent to which -- I
8 mean at the time you made the decision, that's
9 your understanding of the limits to which a drug
10 addiction is a form of disability, inability to
11 function?

12 A Well, for my purposes an inability to communicate,
13 an inability to recall, all sorts of problems that
14 were -- that had to be -- that couldn't be
15 overcome in order for this witness to be able to
16 talk to me properly.

17 Q It's like a medical condition, an addiction to
18 heroin?

19 A I would -- I think it would probably be emotional,
20 physical, medical and can be in certain cases all
21 consuming. That would be my understanding.

22 Q Did you understand addiction to be a condition
23 that would be exacerbated by stresses, significant
24 stresses like having to testify in court or being
25 concerned about personal safety?

1 A If -- I'm not a medical doctor and I'm not an
2 expert, but it would make sense to me that if you
3 have an addictive personality and you're using
4 substances to kill whatever pain is in you, that
5 if you're stressed out, if you're facing a bad
6 situation, it would make sense to me that you may
7 decide to imbibe in substances to try and feel
8 better. That makes sense.

9 Q Like self-medicated in fact?

10 A Yes. I'm not an expert, but that to me makes
11 sense.

12 Q Okay. And you say that you took that set of
13 concepts to bear in terms of making your decision?

14 A What I did was I had reviewed the file. I knew
15 there was a problem there. I had trouble getting
16 a hold of the witness. I had information that she
17 was an intravenous drug user. She showed up. I
18 wasn't able to interview her. My assessment was
19 that it was a drug problem, not simply that she
20 hadn't had sleep the night before. And my concern
21 at that time was not analysing her condition apart
22 from the fact that I couldn't communicate with
23 her.

24 Q Okay. And you'd stated at various points in your
25 evidence that she was nodding off?

1 A Yes.

2 Q And you attributed that to the consumption of
3 heroin?

4 A Yes. That was my -- that's my impression.

5 MR. GRATL: And not fatigue in any way?

6 MR. DOUST: Let her finish, please.

7 MR. GRATL:

8 Q Sorry. I interrupted you. Please continue.

9 A No. And what I said the other day is I've dealt
10 with a lot of police officers who have come in to
11 testify after a night shift and are exhausted, and
12 I haven't -- I mean I haven't encountered that
13 kind of behaviour. I haven't.

14 Q I mean you appreciate that sex workers and police
15 officers live very different lives?

16 A Anyone working a night shift is living a different
17 life, yes.

18 Q Okay. But -- and a police officer living --
19 working the night shift is going to be living a
20 different life than a sex worker working at night?
21 You appreciate that?

22 A Of course, they're performing different
23 activities, but the point is a police officer who
24 has a busy night and is going to call after call
25 after call and the adrenaline is running is likely

1 to be extremely exhausted in the morning.

2 Q Okay. So that's your point of comparison in
3 assessing whether Miss Anderson was fatigued in
4 front of you. You compared her -- you drew on
5 your background knowledge about police officers
6 having done the night shift and that was your
7 basis of comparison?

8 A Well, I didn't -- the analysis that you're putting
9 me through now is not something that I went
10 through at the time. I had to prepare a witness
11 for court. I had had trouble getting a hold of
12 her. She showed up in a condition where I
13 couldn't communicate with her. I didn't sit down
14 and analyse the -- whether her condition was
15 similar to a police officer or not. I was just
16 relying on my observations and focusing in on
17 trying to interview this person. I wasn't -- I
18 wasn't sitting back doing this whole analysis that
19 you're going into now. My purpose in interviewing
20 her was to try and prepare her for court and to
21 try and conduct an interview to get information
22 that I needed.

23 Q All right. I'm just trying to assess the extent
24 to which you appreciated the type of responses you
25 were getting from her and how you contextualized

1 the information you had before you. In your "will
2 say" you say that Miss Anderson was totally
3 incoherent?

4 A Yes. In terms of trying to get the evidence out
5 of her, yes. I'm not saying that she wasn't able
6 to say a few words. I'm just saying incoherent in
7 terms of trying to have a meaningful discussion
8 with her and have her responsive to questions.

9 Q All right. So you're saying you spent two or
10 three hours with her in your office in Port
11 Coquitlam with her at a time when she was totally
12 incoherent?

13 A Well, no. I think what I said originally was I
14 don't know the -- the length of that interview. I
15 know it wasn't short. I think originally I said
16 about -- my best estimate was an hour. Then I was
17 referred to Miss Anderson's statement where she
18 says she thought she came in about one or two and
19 left when it was dark and then we were working
20 from that time period. In terms of the actual
21 number of minutes she was in the office, I can't
22 be sure.

23 Q All right. So -- but the entire duration of the
24 interview she was incoherent?

25 A She was saying some words, but not -- not

1 communicating the evidence. I wasn't able to sit
2 down and do a proper interview with her in the
3 normal fashion. She wasn't responsive. She was
4 nodding off. I believe she said in her statement
5 she was falling asleep at times and I was asking
6 her if she was okay. So in terms of her saying
7 nothing, I mean obviously she would have said a
8 few things, but not in a -- I couldn't get from
9 her a clear, coherent interview.

10 Q Even on your evidence it's a one-to-three-hour
11 interview and I'm wondering why you would spend
12 that long in an interview with somebody who was
13 incoherent to that extent?

14 A Because I cared, because I cared about this case,
15 because I cared about what happened to her.

16 Q And did you ask her whether she wanted to have a
17 nap or whether she could use a nice sleep in a
18 hotel?

19 A If we spent --

20 MR. DOUST: And I'm going to object to that question.

21 THE REGISTRAR: Microphone, please. Microphone, please.

22 MR. DOUST: This is all leading to the proposition that she
23 didn't conduct herself properly. You are entitled
24 to have the facts that she had available to her
25 before you. She's given those facts probably five

1 or six times to you now at the instigation of
2 counsel. This is an attack, Mr. Commissioner.
3 Let's be clear. It leads to nothing other than a
4 challenge to the propriety of the decision in
5 terms of her thinking and why she made the
6 decision and whether she should have made the
7 decision or not. That's the foundation that
8 underlies this line of questioning in my
9 submission. The facts are what you're entitled to
10 know. As the court of appeal has said, my friend
11 is not entitled to challenge or debate with the
12 individuals the propriety of the decisions. And
13 that doesn't mean you simply cannot ask would you
14 have made another decision or do you think your
15 decision is right or wrong. It also precludes
16 this kind of an underlying indirect attack.

17 THE COMMISSIONER: Okay. I understand that. Mr. Gratl, I've
18 let you go on here perhaps longer than I should
19 have. The court of appeal has made it quite clear
20 that -- that there's a real restriction on
21 cross-examining a Crown counsel with respect to
22 her discretion. I think she's made it quite clear
23 that -- in her view that the witness was not
24 coherent. You may -- you may question that, but
25 the fact is that because of the independence with

1 which Crown officers are clothed, we are not
2 permitted to go beyond that.

3 MR. GRATL: I understand, Mr. Commissioner. I was thinking
4 that the questions I was asking were going to
5 credibility, but I'll turn to a different issue.

6 THE COMMISSIONER: All right.

7 MR. GRATL:

8 Q In terms of the policies that were at play in your
9 decision making, did you consider that your
10 decision would send a message to other sex workers
11 about how their cases would be treated in Port
12 Coquitlam?

13 A No. When I talked to Mr. Romano about the stay,
14 it was because I didn't have the evidence to go to
15 trial. I felt that there was no other choice.
16 It -- in terms of a message that it sent out,
17 unfortunately, there are cases that you can
18 proceed with and there's cases that you can't and
19 if I don't have the evidence, I can't take into
20 account the message that's going out.

21 Q Now --

22 A And it wasn't part of -- that wasn't part of the
23 decision. The decision was because I couldn't
24 take the case to trial.

25 Q Did you consider in making your decision not only

1 that you might need Ms. Anderson for the following
2 Monday, seven days from now, but that if you got
3 an adjournment, Ms. Anderson might have a year to
4 enter rehabilitation if a further trial date was
5 set down the road? Did you consider that
6 possibility?

7 A I think I've said this a number of times and I
8 will repeat it. My concern was what was the best
9 way to proceed given what had happened. I didn't
10 ask for the adjournment because I didn't feel that
11 I could go before a judge and offer any assurances
12 that Miss Anderson would be in any shape to
13 testify at a future date. I discussed things with
14 Mr. Romano. The other -- there were a couple of
15 options here. One could have been to have gone in
16 front of the judge and called no evidence and had
17 it dismissed. The door would have been closed.
18 What I felt at that time the best thing to do was
19 direct a stay of proceedings, which left the door
20 open, which meant that at a later time if someone
21 had come back to me and said this witness is now
22 clean, sober coherent, remembers the incident,
23 really good witness, would be capable of
24 testifying, at that point we could certainly have
25 revisited the file. And I did that deliberately.

1 I was aware that this was a really tough decision.

2 I was aware of how serious this person was
3 injured. I was also aware that I didn't have a
4 case, that I felt it was best to leave it open.

5 Q All right. In -- in the criminal process there's
6 an appearance before trial called a pretrial
7 conference?

8 A That was already done before I got the file.
9 We've covered that.

10 Q At the pretrial conference the Crown assures the
11 judge that the witnesses are available to testify?

12 A To the best that they can. If -- at the pretrial
13 conference what we have now are forms where we
14 tick off whether the witnesses have been served
15 with subpoenas and --

16 Q I'm just saying at the time, the purpose of the
17 pretrial conference is for each side to assure the
18 judge and the registry in effect that everyone's
19 ready to go?

20 A Yes.

21 Q And that there's no need for an adjournment?

22 A Yes.

23 Q And you're saying that was done?

24 A I wasn't part of that process. That was done
25 before I got the file.

1 Q Okay. But it would be part of the background
2 assumptions that you had made, that someone within
3 your office had already provided assurances to a
4 judicial authority that witnesses would be
5 available to testify?

6 A At that time I don't think whoever was in court
7 had any reason to believe that there was going to
8 be a problem, but -- unless they had reviewed the
9 Victim Services file, because I think if you look
10 in the report to Crown counsel originally under
11 the investigator's comments, it says that she
12 should be easy to find, and that did not turn out
13 to be the case.

14 Q You said that you drew an inference -- from your
15 review of the report to Crown counsel from the
16 absence of a request by Corporal Connor for a
17 condition preventing Mr. Pickton from having
18 weapons, you drew an inference that Corporal
19 Connor wasn't -- didn't consider Mr. Pickton to be
20 a threat?

21 A I drew the inference from all of the
22 circumstances. In that investigator's comments it
23 mentions that Mr. Pickton had been released from
24 the hospital, that he wasn't going to arrest him
25 and hold him over the weekend due to some staffing

1 issues and that he thought it would be all right
2 if Mr. Pickton just turned himself in voluntarily
3 with his lawyer at a later date. And apparently
4 that's what happened on April the 8th of 1997.

5 Q All right. In -- in the report to Crown counsel
6 at page 22 -- this is at Tab 3 of the brief.

7 A Sorry. Tab 3? Sorry. What page are we looking
8 at?

9 Q Page 22. It's the last page of the tab -- second
10 last page of the tab.

11 A Yes. I see it.

12 Q You see at points 4 and 5 there Corporal Connor is
13 indicating that he believes that a no go condition
14 for where prostitution is taking place and a no
15 contact with females for the purpose of soliciting
16 that female to undertake a sexual act is an
17 appropriate condition. You see that, where it
18 says that?

19 A Inappropriate condition? I don't know why he
20 suggested that. I can't really comment on whether
21 that's appropriate or inappropriate.

22 Q I'm not asking that. I'm asking whether you read
23 that?

24 A I would have, yes.

25 Q All right. And so you must have inferred from

1 that that Corporal Connor believed Mr. Pickton to
2 be a threat to sex workers?

3 A But when you're doing risk assessment, if you
4 believe someone to be a threat, normally you would
5 be seeking their detention.

6 Q Okay. So --

7 A And that wasn't -- he wasn't asking for that.

8 Q Did you or didn't you infer that from the document
9 when you read it?

10 A Not a serious threat because if you consider
11 somebody a serious threat, you seek their
12 detention.

13 Q Here Corporal Connor says detention not necessary
14 as long as there's no go conditions to where
15 prostitution is taking place and no contact with
16 females for the purpose of soliciting that female
17 to undertake a sexual act, correct?

18 A I'm sorry. Where are you reading from?

19 Q Well, from that exact page. I'm just repeating
20 what I read a moment ago.

21 A I'm sorry.

22 Q That Corporal Connor says, okay. Release him, but
23 only under these conditions: No go where
24 prostitution is taking place and no contact with
25 females for the purpose of soliciting to undertake

1 a sexual act.

2 A But the problem is in cases where you believe
3 somebody is truly a danger, if you believe that
4 someone is violent and dangerous and they're going
5 to commit a serious unlawful act, I don't think
6 they're going to be too worried about breaching
7 the terms of the bail. And my point there is if
8 you really believe somebody is dangerous and
9 violent, you're going to seek their detention,
10 because somebody who is dangerous and violent and
11 is going to commit an offence I don't think is
12 going to really worry about breaching their bail.
13 That would be the less serious matter to deal
14 with.

15 Q Okay. So you ignored this then, 4 and 5?

16 A No. I didn't ignore that. I'm aware that those
17 are the conditions that were asked for, but my
18 concern -- and I expressed this a couple days
19 ago -- was that when you're doing risk assessment,
20 if you truly believe somebody is violent and
21 dangerous, you seek their detention.

22 Q All right. So I take it, then, you didn't believe
23 Mr. Pickton to be violent and dangerous?

24 A That's not true. I was not the person who
25 prepared the report. I was not the person who did

1 the charge assessment. I was not the person who
2 was present at the bail hearing. I was not the
3 prosecutor who had conduct of that file until
4 after October 22nd of 1997. I was not privy to
5 any of these decisions. And if you look at the
6 facts, if you see what happened to that victim,
7 yes. I would say that he was violent and
8 dangerous.

9 Q One of the public policy factors that goes into a
10 charge approval or charge stay decision is whether
11 the offender is believed to be violent and
12 dangerous?

13 A I'm sorry. I'm not following you.

14 Q One of the factors that goes into the charge
15 approval or stay decision is whether the offender
16 is violent and dangerous; isn't that true?

17 A No. But we're not dealing with that in this case.
18 What we were dealing with, if you're talking about
19 charge approval standards, was substantial
20 likelihood of conviction. If you don't have a
21 case, then when you get to all of the other
22 factors, it doesn't matter about the -- the public
23 interest in proceeding or whether they're violent
24 and dangerous. If you don't have a case, you
25 don't have a case and you don't get past the

1 substantial likelihood of conviction. And we
2 covered that yesterday, I believe. The policy
3 says substantial likelihood of conviction and if
4 so, then you go on to the other considerations.

5 Q Could you please turn to Tab 24, the Crown counsel
6 policy manual --

7 A Yes.

8 Q -- effective May 1st, 1997?

9 A Yes.

10 Q Over to the second page, the first paragraph.
11 I'll read that to you, but, of course, you'd be
12 familiar with it.

13 Exceptional circumstances may require that a
14 prosecution proceed even though the usual
15 evidential threshold may not be satisfied at
16 the charge approval stage. Such
17 circumstances will most often arise in cases
18 of high risk violent or dangerous offenders
19 or where public safety concerns are of
20 paramount consideration. Such cases must be
21 discussed with Regional Crown Counsel or
22 designate prior to making the charging
23 decision.

24 Do you see that?

25 A Yes.

1 Q And that accurately reflects your understanding of
2 the charge approval policy in effect at the time
3 that you made the decision to stay the Pickton
4 charges; is that right?

5 A That's correct.

6 Q Okay. So this policy says that as long as you
7 discuss the issue with Regional Crown or designate
8 of the Regional Crown first, you can proceed even
9 though there might not be a significant likelihood
10 of conviction under exceptional circumstances; am
11 I reading that wrong?

12 A But in this particular case there was no way the
13 case could proceed without Miss Anderson's
14 evidence. There was no way it could proceed.
15 There was no evidence, so that wouldn't apply.
16 What that's referring to is where you have --
17 where you have the evidence, you can go to trial,
18 but it's not as strong -- or there's some question
19 about whether it meets substantial likelihood of
20 conviction. This -- at the stage that I was
21 dealing with Miss Anderson, without her there was
22 no chance of conviction. It wasn't a question of
23 substantial likelihood. There was none. The case
24 could not be run without her.

25 Q So you didn't even turn your mind, then, to this

1 branch of the policy here is what you're saying?

2 A What I did was, I was very concerned about the
3 case and I discharged my duties by discussing it
4 with Richard Romano, the administrative Crown.

5 Q That's not my question. My question was did you
6 turn your mind to this branch of the charge
7 approval stay policy?

8 A The substantial likelihood --

9 Q Did you turn your mind to this policy? And, in
10 particular, did you think about where -- whether
11 it was exceptional circumstances you were in,
12 whether this was a case of a high risk violent or
13 dangerous offender or where public safety concerns
14 were of paramount consideration? Did you consider
15 that?

16 A I wouldn't classify this file in that category.
17 We have violent or dangerous offender designations
18 and it didn't have that. This is a file where
19 this person had no prior criminal record. And
20 while the offence itself was certainly violent,
21 you can't really distinguish it from a lot of the
22 cases that we get with stabbings and injuries.
23 And, in any event, I was always very careful when
24 I was making decisions to discuss anything serious
25 with the Administrative Crown Richard Romano and I

1 did that in this case.

2 Q All right. So I'm asking you again. I'll just
3 ask you again. Did you turn your mind and
4 consider this branch of the Crown charge approval
5 stay policy before making your decision to stay
6 the charges against Robert William Pickton?

7 A When you're acting as a prosecutor, you're always
8 keeping the policies in mind. What I was thinking
9 of in particular with the policies in this case
10 was did this meet the substantial likelihood of
11 conviction standard anymore? No, it didn't. And
12 also reviewing this and discussing it with the
13 Administrative Crown Richard Romano.

14 Q That's not responsive with respect, Miss Connor.
15 Did you consider this particular exceptional
16 circumstances branch of the policy before making a
17 stay decision?

18 A Did I sit down and reread the policy before I
19 spoke to Mr. Romano and dealt with him? Probably
20 not. I was dealing with Mr. Romano discharging my
21 duties.

22 Q Okay. So you didn't read it, then, to refresh
23 your --

24 A Sit down and pick up the policy manual and read it
25 when I knew that I didn't have a case? No. I

1 wouldn't have.

2 Q So aside from reading it, did you consider it?
3 Did you turn your mind to this exceptional
4 circumstances issue in making the decision?

5 A Well, I've said this I don't know how many times
6 now. I was working under the substantial
7 likelihood of conviction test, which this no
8 longer met, and in terms of complying with policy,
9 I spoke with Mr. Romano.

10 Q All right. So --

11 A But did I take out the policy manual and read this
12 particular section? Probably not. And I've said
13 this over and over. This is the policy that I
14 applied to this decision. It didn't meet the
15 substantial likelihood of conviction test.

16 Q Maybe I'm not being clear with my choice of words.
17 When I say "consider", I mean that you make a
18 decision in your mind that this is not -- that
19 this is not exceptional circumstances. Did you
20 make that decision in your mind that these were
21 not exceptional circumstances?

22 A I can only tell you what I did was considered the
23 substantial likelihood of conviction test and went
24 to see Mr. Romano and I discussed it with him
25 before the stay was entered.

1 Q I take it, then, that because you haven't included
2 saying that it's exceptional circumstances that
3 you did not in fact do that to your recollection?

4 A I don't see that it was exceptional circumstances
5 apart from a lot of the cases that we deal with
6 where there's serious injury. There's a lot of
7 them and they're not all considered exceptional.

8 MR. GRATL: I'm not asking you what you did, what you would do
9 today. I'm asking you whether you did that,
10 whether you took that step before entering the
11 stay against Mr. Pickton, whether you decided in
12 your mind, no, these are not exceptional
13 circumstances, whether you forgot to do it or
14 whether you simply can't remember it?

15 THE COMMISSIONER: Don't answer that. Yes.

16 MR. DOUST: I am objecting once again. This is not the
17 objective facts that were before her and that she
18 was aware of relative to make the decision. Mr.
19 Commissioner, this goes to the whole heart of the
20 process of making the decision. And in that
21 regard I'm suggesting, with respect, that *Davies*
22 says this is what you can't do. You can't go in
23 depth and analyse the mental process that Crown
24 counsel went through in order to come to the
25 conclusion that we all know she already came to,

1 because doing that is attacking or challenging or
2 encroaching on the area that she is protected
3 from, in my submission. And she's made it
4 abundantly clear already that she has reasons for
5 why this did not fit.

6 THE COMMISSIONER: I think -- I think you're right. Mr. Gratl,
7 you see, the exceptional circumstances clause
8 really refers to the -- the charge approval stage
9 and we are well past the charge approval stage,
10 and which Miss Connor has said is that the charge
11 approval stage having been reached, that we still
12 needed to rely on her evidence. And she has said
13 a number of times that there was no chance of
14 conviction without her, so that's why she entered
15 a stay of proceedings.

16 MR. GRATL: Mr. Commissioner, I'll just draw your attention to
17 the bottom page 1 of that policy.

18 THE COMMISSIONER: Bottom of page what?

19 MR. GRATL: Bottom of page 1 of the policy. It says:

20 The requirement to meet the charging standard
21 continues throughout the prosecution.

22 And so these charge approval standards applied
23 throughout the prosecution, including to the
24 decision to stay.

25 THE COMMISSIONER: I know, but sooner or later -- that's true,

1 but sooner or later our experience tells us that
2 you have to call the witness, so -- just a minute.
3 What she is saying is that, okay. We'll proceed
4 and we can go into the exceptional circumstances
5 scenario, but what am I going to do if I have a
6 witness who's falling asleep and I can't rely on?
7 Those are -- I'm just paraphrasing. There was no
8 chance for conviction without her testifying in a
9 courtroom and satisfying a judge. That's what
10 she's telling us. You may disagree with that
11 assessment at the end of the day and you may argue
12 otherwise, but I don't know if we're accomplishing
13 anything by going --

14 MR. GRATL: And I also don't think that I'm going to get.

15 THE COMMISSIONER: Sorry?

16 MR. GRAT: I also don't think I'm going to get an answer from
17 this witness in any event, so I'll proceed to the
18 next --

19 THE COMMISSIONER: Well, she has said a number of times that
20 regardless of how you cut this and how you look at
21 it, the fact is she could not go into a courtroom
22 and put this witness on the stand and convince a
23 judge of the accused's guilt beyond a reasonable
24 doubt without her testimony. That's what she's
25 really saying here. So I mean you -- you know,

1 you're within your right at the conclusion of the
2 case to argue otherwise, but I don't know if we
3 can go much further in cross-examination. I must
4 say that Mr. Doust has been more than fair in not
5 objecting to some of your questions which go
6 pretty close to the line, which has been set by
7 the court of appeal in *Davies*.

8 MR. GRATL: I'm being very careful to try to confine my
9 questions to the specific decision at issue --

10 THE COMMISSIONER: I'm not suggesting anything improper.

11 MR. GRATL:

12 Q -- and not second-guess. And I read the decision
13 in *Davies* very carefully and I think I disagree
14 with Mr. Doust about the extent to which
15 questioning is limited, but I'll just leave it
16 because I want to try to make some headway on this
17 issue of defences. Could you please turn to Tab
18 4, Miss Connor?

19 A Yes.

20 Q That's the information?

21 A Yes.

22 Q And the information sets out four charges:
23 Attempted murder, assault with a weapon, unlawful
24 confinement and aggravated assault?

25 A Yes.

1 Q And I just wanted to go through portions of the
2 Criminal Code that I've excerpted and passed
3 around to all counsel and to yourself, Miss
4 Connor. I believe Mr. Giles has a number of
5 copies.

6 A Thank you.

7 Q Just to set the record clear about what these
8 charges amount to and how the analysis of charge
9 approval might have gone ahead here. And I
10 appreciate, Miss Connor, that you testified
11 previously that it all came down to what happened
12 just before the fight started, but I want to go
13 through the analysis that you would have gone
14 through in your mind, unpackage that a little bit
15 so that the public and the people that I'm
16 attempting to serve have an appreciation of what
17 that analysis might look like.

18 A Yes.

19 Q In making an assessment of significant likelihood
20 of proceeding, you would look at all of the
21 charges with which the accused is charged?

22 A Yes.

23 Q Each one of them. You wouldn't just make a
24 decision based on one charge?

25 A You mean substantial likelihood of conviction?

1 Q That's correct.

2 A Yes. You'd look at it for each count, that's
3 correct.

4 Q So you might decide not to proceed on one count,
5 but if you could -- think you have a substantial
6 likelihood on another count, you'd just proceed on
7 that second count?

8 A Absolutely. Yes.

9 Q And then criminal charges generally are thought to
10 break down into elements, that they're little
11 subpieces of a charge that you have to prove?

12 A That's right.

13 Q And each one of those has to be proved beyond a
14 reasonable doubt?

15 A That's right. Essential elements, yes.

16 Q If any one of those essential elements is missing,
17 you're not going to make out your case?

18 A That's correct.

19 Q And so that's part of the process you would go
20 through as part of the charge approval process?

21 A Yes.

22 Q So I want to go through that process a little bit
23 with you through the Criminal Code starting with
24 assault itself is not charged here formally, but
25 assault would always be what's called a lesser and

1 included charge; isn't that right?

2 A Assault with a weapon, yes.

3 Q And so if you could make out a lesser included
4 charge or a charge that's implied by the
5 information, then you would still proceed on the
6 information, wouldn't you?

7 A That's right. A couple of choices there is if --
8 if you find when you review your file that you
9 aren't going to be able to make the count as
10 charged, but you will be able to make the lesser
11 included offence, it might be fair right from the
12 beginning to do a C information and just charge
13 the lesser included offence if you're within time
14 before the trial starts.

15 Q And you can do that any time before the trial
16 starts?

17 A Before it starts you can redo the information,
18 yes.

19 Q And you can even apply for an adjournment and
20 change the information if you want to?

21 A I don't know. Well, you can always apply. I
22 don't know whether a judge would grant it. It
23 would really depend on the circumstances.

24 Q Fair enough. And so the first lesser included
25 offence is assault. That's on the first page of

1 the circular that I gave you?

2 A Yes.

3 Q There it says it's a hybrid offence. It's an
4 indictable or summary conviction offence?

5 A That's correct.

6 Q Can we go through the elements of an assault just
7 for the public there, Miss Connor? What are the
8 elements of an assault? I don't mean to be
9 pedantic here and I'm not trying to show any
10 disrespect here or anything. It's a good exercise
11 for the public interest in my view.

12 A I feel a little bit like I'm in a law school exam,
13 but the elements of an assault would be the
14 application of force without consent.

15 Q Okay. And so there are two elements there?

16 A Application of force and no consent.

17 Q Okay. And in terms of an assault on these -- so
18 you would have gone through the exercise of
19 figuring out whether there was an assault against
20 Miss Anderson before entering a stay? It's part
21 of the thought process?

22 A No. What I went through was did I have a witness,
23 and I didn't have a witness. So in terms of going
24 through each of the elements of the offence, it
25 was my opinion that in order to prove the case, I

1 needed to have a witness. So it wasn't a matter
2 of -- if you're asking if I sat down and went
3 through the elements of the offences, no. I
4 wouldn't have gone through that exercise. I knew
5 that I needed -- without her there was no case.

6 Q But you would have gone through this exercise when
7 you first opened the file?

8 A Yes. You're quite correct. When I first opened
9 the file, I would have read the file and made sure
10 that the charges that were laid -- I felt that if
11 all the evidence came out the way it's laid out in
12 the report to Crown counsel that they were
13 appropriate charges. They were the right charges
14 and that there was evidence in the report to Crown
15 counsel to support those charges.

16 Q It's basically taking your bearings with respect
17 to the file. You see what evidence you have
18 before you potentially to call to see whether you
19 can make out the elements of the offence?

20 A Yes. And at that point when you first look at the
21 charge, that's when you should make decisions
22 about do you want to proceed on all of these
23 counts; are there some that maybe should be
24 redone. That would be an exercise you would go
25 through at the beginning when you got the file.

1 Q Okay. And that's the exercise I want to go
2 through with you before Anderson arrives at your
3 door.

4 A Okay.

5 Q Okay. So in terms of an assault, there would be
6 two elements: Application of force, intentional
7 application of force?

8 A Right.

9 Q And no consent?

10 A Right. And also --

11 MR. DOUST: Mr. Commissioner, I'm going to object to this whole
12 line of questioning. Once again, what this is is
13 a process of reviewing the thought process that
14 the Crown went through in terms of the question of
15 whether or not to continue with this case. My
16 friend is entitled, as is said very clearly in the
17 judgment, to look at the facts that were before
18 the individuals who made those decisions, but
19 they're not -- he's not entitled to second-guess
20 the decision, to compel her to -- or compel her to
21 justify the decision. The analysis of her thought
22 process is not one of the facts that were before
23 her. The analysis of her thought process can lead
24 only to the issue of attempting to justify it or
25 attacking it, and that's the very thing, in my

1 submission, that the court of appeal says you
2 cannot do to a prosecutor. You can't bring them
3 in here and say, "Did you look at this section?
4 Did you consider this? Did you consider that?"
5 All of that has nothing to do with the facts that
6 were before them. That's the limited area that my
7 friend is able to analyse here by
8 cross-examination, the facts that were before her,
9 not the question of her thought process relative
10 to the decision that she made, because in doing
11 that, all you're doing is inviting her to justify
12 it or if she can't, you're challenging it, and
13 those are the two specific things you cannot do.

14 THE COMMISSIONER: I think the law is clear except Mr. Gratl is
15 entitled to ask her what factors -- what facts
16 formed the basis of her decision.

17 MR. DOUST: But he's not asking that. He's asking for her
18 thought process relative to the essential elements
19 of the charge.

20 THE COMMISSIONER: I know. Let me hear the last question
21 again.

22 MR. GRATL: I just asked the witness -- to my recollection I
23 asked the witness about whether there were two
24 elements to the offence of assault and whether she
25 turned her mind to those in --

1 THE COMMISSIONER: So you're asking her for an explanation of
2 the law.

3 MR. GRATL: No. The application of the law to the facts here
4 as she had them before when she opened up the
5 file, before she dealt with Anderson. I mean this
6 witness has already testified that she had
7 problems with the file before she spoke to
8 Anderson and I want to get at that issue.

9 MR. DOUST: Well, whether it's before she spoke to Anderson or
10 not, he's asking for the application of the facts
11 to the law. He's not asking for the facts that
12 were before her, Mr. Commissioner, in my
13 submission, and that's what he's limited to. What
14 are the facts that were before you, not what was
15 your thought process, what did you think the law
16 was. What's the point of asking what did you
17 think the law was or did you look at this section
18 or that section? That goes to the heart of the
19 decision-making process, Mr. Commissioner, in my
20 submission.

21 THE COMMISSIONER: See, at the end of the day -- I think maybe
22 we might be losing the forest for the trees here.
23 At the end of the day 4(b) says that I have to
24 look at the stay of proceedings, the propriety of
25 the stay of proceedings, and that's what I need to

1 look at and whether -- I don't know if it helps me
2 to know what the -- what the -- what the elements
3 of common assault are and all of that. I don't
4 understand where that's going to take us.

5 MR. GRATL: Well, where I want to go, Mr. Commissioner, is
6 this. What I want to do is go through the witness
7 these: That absent a defence raised by Pickton,
8 the offence of assault, the offence of aggravated
9 assault and offence of assault with a weapon are
10 made out clearly, clearly, unquestionably. And so
11 the question of whether the case should go ahead
12 turns on whether there are defences, and that
13 gives rise to the question of what do you do with
14 Pickton. Do you expect him to take the stand in
15 his own defence to explain the handcuffs and the
16 key in his pocket? And that's important in terms
17 of buttressing the credibility. This witness told
18 you, Mr. Commissioner, that there's nothing to
19 buttress the credibility of the witness; that it
20 was a he said/she said context. No. It's he
21 said/she said plus handcuffs and keys, and it's
22 the handcuffs and keys that I want to get at in
23 terms of establishing what the defences are.

24 THE COMMISSIONER: Well, you can ask her about the handcuffs if
25 you want or the key to the handcuffs. That's

1 fine. But, you know, you talk about what defences
2 are available. Her position here has been quite
3 clear that the defences wouldn't even arise if
4 she's got no case. If there's no case for Pickton
5 to meet, why do the defences even arise? She's
6 saying -- what she has told us is that the witness
7 was manifestly unreliable and that I could not
8 even get to the Crown's case; that the Crown's
9 case really was the victim.

10 MR. GRATL: Well, ultimately, Mr. Commissioner --

11 THE COMMISSIONER: Right. And how do we even get to the
12 defences?

13 MR. GRATL: Well, we get to the defences if we can get Miss
14 Anderson's conversation with Don Celle played into
15 evidence because, of course, Miss Anderson says
16 that she spoke to this witness for three hours and
17 relayed her recollection of what happened with Mr.
18 Pickton in that trailer.

19 THE COMMISSIONER: I think you missed the point of what I'm
20 saying.

21 MR. GRATL: Well, what I'm saying --

22 THE COMMISSIONER: Just a minute. What I said is that
23 according to Miss Connor, her version of the
24 evidence is -- or her evidence is that there was
25 no chance to put -- this case could not proceed

1 without her. There was no chance of conviction
2 without her, so the case was a nonstarter without
3 her. That's what she's saying.

4 MR. GRATL: And I'm trying to get at what happens -- was the
5 case a nonstarter with her?

6 THE COMMISSIONER: Pardon me?

7 MR. GRATL: Was the case a nonstarter with her?

8 THE COMMISSIONER: Yes.

9 MR. GRATL: That is to say if it's a good case with her and she
10 shows up -- even if she shows up high to a single
11 interview, that's a factor to take into account.

12 THE COMMISSIONER: To take into account for whom?

13 MR. GRATL: For Crown in deciding whether or not to stay. I
14 mean if it's a poor case anyway and the witness
15 shows up --

16 THE COMMISSIONER: Well, I don't think she said it was a poor
17 case. What she said was that -- that she could
18 not put this witness on the stand -- that's what
19 she's saying -- because -- because of her
20 condition. That's what she's saying.

21 MR. GRATL:

22 Q She also said that the case was a poor case
23 before -- Miss Connor, you remember testifying
24 that you thought it had problems. This case had
25 problems even before you met Miss Anderson?

1 A I don't think I said a poor case, but I said there
2 were some issues and there were some problems with
3 it and I outlined those, but I don't think I used
4 the word poor case.

5 Q Okay. I take it that you were of the view that
6 the handcuffs on Ms. Anderson's wrist and the keys
7 in Mr. Pickton's pocket, those would be
8 established through other witnesses other than
9 Anderson, correct?

10 A Well, the difficulty with that was there was a
11 statement in the report to Crown counsel where Mr.
12 Pickton said -- he said he used those handcuffs,
13 but the explanation he gave was it was to calm her
14 down, so --

15 MR. DOUST: Excuse me. Mr. Commissioner, you see, we're right
16 in again to this whole process of her thought
17 process relative to making the decision that she
18 made not -- I mean I say again the court of appeal
19 says you're entitled to the facts that were before
20 her. You are not -- you're not entitled, with
21 great respect, to compel her to justify it by
22 saying, "Well, did you look at this? Did you take
23 into account there was a defence? Did you take
24 this into account? Did you take that into
25 account?" That is not the process. That's the

1 very thing that is protected, with respect. The
2 process is limited severely. The process is the
3 facts that were before her. And you can get for
4 you the facts that she had before her. You've had
5 them five times now, in my submission. We're not
6 examining the facts that were before her here now.
7 My friend is asking her: "Well, what about the
8 defences?" This is all going to the very heart --

9 THE COMMISSIONER: Well, I agree with -- I agree with the
10 defence -- the evidence that -- or the questions
11 he's asking relating to defences is not relevant
12 and is not proper. I've told him that. And
13 that's not -- look, we have to be -- we have to
14 follow the law here and regardless of what you
15 think or anyone else think of her decision, the
16 fact is we're guided and we're restricted by what
17 the court of appeal said. And so, you know, if
18 you look at Melnick J decision and the
19 commissioner's statements and what the court of
20 appeal said, you know, there's a very strict line
21 of questioning that we're confined to in this
22 process.

23 MR. GRATL: It's actually -- sorry, Mr. Commissioner. It's not
24 very strict. That's exactly what the court of
25 appeal found. That this argument was made before

1 the court of appeal with the Crown had immunity
2 from being asked questions about the
3 decision-making process and the court of appeal
4 found mostly that it was a question of manner, not
5 a type of question, that there wasn't supposed to
6 be second-guessing. I'm just looking for the
7 case.

8 THE COMMISSIONER: What are the factors that formed the basis
9 of the decision? What factors were considered?
10 Which factors are more important than others?

11 MR. GRATL: Well, I'm just reading here from Section 34 of the
12 Criminal Code, which sets out the basis for
13 defences. That what's required is that in order
14 to make out the defence of self-defence that a
15 person must cause -- if a person causes death or
16 grievous bodily harm in repelling the assault,
17 it's only justified if:

18 (a) he causes it under reasonable
19 apprehension of death or grievous bodily harm
20 from the violence with which the assault was
21 originally made or with which the assailant
22 pursues his purposes; and

23 (b) he believes, on reasonable grounds, that
24 he cannot otherwise preserve himself from
25 death or grievous bodily harm.

1 And that's the section at Section 34(2) that
2 applies in this context. And I wanted to know if
3 this witness turned her mind to that subsection
4 when she made her decision to enter the stay of
5 proceedings.

6 MR. DOUST: That's the very thing I object to. What is said by
7 Mr. Justice Melnick, as you rightly point out as
8 quoted by the court of appeal and accepted by the
9 court of appeal, is that it's beyond the scope to
10 require any individual who made a decision --
11 that's clearly her -- not to charge anyone. Well,
12 the distinction is to continue -- and there really
13 isn't a difference there, a distinction -- for the
14 depth or to second-guess his or her decision or to
15 justify it. The commissioner is entitled -- and
16 here's what, in my submission, Mr. Commissioner,
17 is available: To look at the facts that were
18 before the individuals who made those decisions,
19 not to analyse and debate the law or argue about
20 or put to the witness what law she understood.
21 Even if she acted on a misconception of law,
22 that's a matter within the province of a
23 prosecutor and that's protected, in my submission,
24 by prosecutorial independence. You can't go and
25 start down the road of, well, you know about this

1 section, you know about that section, you knew
2 about the law or you didn't know or did you take
3 this factor into account in relation to the law
4 being such and such, because it says clearly that
5 you cannot challenge or debate with them the
6 propriety of their decisions. In that way you may
7 open the doors that you wish to open, but at the
8 same time minimize any transgression into the
9 lawful independence of the Criminal Justice
10 Branch. This is the very thing -- what my friend
11 is doing is the very thing that he cannot do. You
12 can't say, "Okay. Now, we're going to go through
13 all the law on the charges you had before you and
14 I'm going to ask you what you did. Did you look
15 at this element of it? How did you expect to
16 prove that element or could you have proceeded
17 under this section or that section?" Those are
18 not the facts that were before this prosecutor
19 when she made this decision. It's her
20 decision-making process that is circumscribed,
21 that you cannot look to. You can't analyse it.
22 As soon as you start analysing it, you're
23 challenging it and in terms of analysing it from
24 her perspective. You're exploring now the thought
25 process that she went through and that constitutes

1 an analysis and a challenge and an attack on it.
2 That's the whole point of doing it. There is no
3 other reason for doing it, Mr. Commissioner.

4 MR. GRATL: Mr. Commissioner, it's the paragraph 90 of the
5 decision. That's on page 17 of 22. And it's the
6 subparagraph (69) referring to Justice Melnick's
7 reasons for judgment. And there it says that:

8 The commissioner is entitled to look at the
9 facts that were before the individual who
10 made those decisions.

11 My question's confined to that. And then
12 secondly:

13 Get the facts related to the decisions.

14 THE COMMISSIONER:

15 But not to challenge or debate with those
16 individuals the propriety of their decisions.
17 In that way, the Commissioner may open the
18 doors he wishes to open but, at the same
19 time, minimize any transgression into the
20 lawful independence of the Criminal Justice
21 Branch.

22 That's the balance of the paragraph.

23 MR. GRATL: And I'll repeat the question just for clarity so we
24 know what Mr. Doust has complained about here.

25 MR. DOUST: I'm not complaining.

1 MR. GRATL: Objecting.

2 THE COMMISSIONER: You know, it's just not proper for counsel
3 to say that. He's made an objection. It's not a
4 complaint.

5 MR. GRATL: The question that I would like to ask this
6 commission -- this witness, Mr. Commissioner, is
7 whether she took into account Section 34(2) of the
8 Criminal Code in making her decision to enter a
9 stay of proceedings. That is, that these
10 requirements, these twin requirements. You have
11 to be under reasonable apprehension of death or
12 grievous bodily harm --

13 THE COMMISSIONER: I'm well familiar with 34(1), (2), 35(1) and
14 and (2) and 37. I'm familiar with all those
15 self-defence sections.

16 MR. GRATL: I'm just saying that the public may not be, that's
17 all.

18 THE COMMISSIONER: Sorry?

19 MR. GRATL: I just want to say for the record that's the
20 question I want to ask, whether this section was
21 taken into account during the charge approval stay
22 decision made by this witness.

23 THE COMMISSIONER: Okay.

24 MR. GRATL: I'm not challenging the decision. I'm looking for
25 the facts related to the decision.

1 THE COMMISSIONER: Okay. Mr. Andrews.

2 MR. ANDREWS: Mr. Commissioner, if I may -- and I appreciate
3 Mr. Doust is leading the way here and I don't want
4 to repeat what he has to say, but it seems, in my
5 submission, to be inherent in what Mr. Doust says
6 and I agree with it. And the best way to make
7 sense of what has been read to you from this
8 decision, that questions about what facts were
9 there and what facts she took into account are
10 acceptable. Questions which go to her analysis,
11 her legal reasoning, her consideration of what
12 sections, how to apply facts to the law and what
13 decision to come to are outside of proper scope.
14 And in my submission I add my voice to that of Mr.
15 Doust. That as you sit here and objectively
16 listen to what my friend is doing, his
17 cross-examination is objectively different from
18 that of the examination of Mr. Vertlieb or the
19 examination of Mr. Ward in the sense that it's
20 quite clear when you sit back and listen to what
21 he's doing that he is here to challenge the
22 decision that this witness made; that that is
23 where this is going. And I say the questions that
24 go to her analysis go beyond the scope in *Davies*.

25 THE COMMISSIONER: All right. Thank you. That's the law.

1 MR. GRATL: What's the law? I mean are you saying that I can't
2 ask her whether she --

3 THE COMMISSIONER: Well, the law is you cannot -- Mr. Gratl,
4 the law is you cannot challenge those decisions.
5 We're confined to the law.

6 MR. GRATL: All right. There's a distinction drawn here
7 between -- between challenge or debate the
8 propriety of the decision and getting the facts in
9 relation to this --

10 THE COMMISSIONER: You can ask about the facts, what went into
11 her decision. You can do that.

12 MR. GRATL: Okay. That's what I thought I was asking, was
13 whether Section 34 of the Criminal Code went into
14 her decision.

15 MR. DOUST: That's not a fact. That's not a fact before her at
16 the time. That's what he's limited to. What
17 witnesses did you have? What did the witnesses
18 say? What circumstantial evidence did you have
19 available to you? You can look at all of those
20 facts. But you can't break through into the
21 decision-making process. That's the fundamental
22 point that is made in the *Davies* case. The
23 decision-making process is what is protected.
24 Prosecutors are protected from having their
25 process in making the decision re-examined and

1 exposed. And the point of that, of course, as I
2 said yesterday, is to preclude the chilling effect
3 that would have on every prosecutor. These are
4 not facts that were before her at the time. These
5 are questions that relate to her decision-making
6 process. If -- if we put all the facts in that
7 were before her and then said to her, "Now, tell
8 us how you went through the analysis of these
9 facts and the law to come to your decision," that
10 would transgress, in my submission. That's the
11 very thing that is protected.

12 THE COMMISSIONER: You know, Mr. Gratl, I want to be as fair to
13 you as possible, but -- but the fact is that's the
14 law. We have to apply that law, so I'm asking you
15 to move on.

16 MR. GRATL:

17 Q Thank you. Now, in terms of the facts before you,
18 at Tab 3 you'll find the report to Crown counsel.

19 A Yes. I have it.

20 Q And at page 4 of the report to Crown counsel --

21 A At the narrative?

22 Q Yes. At the narrative of the report to Crown
23 counsel.

24 A Yes. I'm there.

25 Q You'll see a discussion -- it sets out a

1 discussion between Staff Sergeant Giffin, the
2 watch commander, and Robert Pickton?

3 A That's correct.

4 Q And what it says is that Staff Sergeant Giffin
5 asked Pickton what had happened tonight and
6 Pickton answered that he had picked up the girl as
7 she was hitchhiking somewhere in Vancouver,
8 British Columbia. He was driving his pickup and
9 then related that when they got to his residence,
10 the female went crazy. She broke a window with
11 her elbow. And then Giffin asks how Anderson got
12 the knife and Pickton says it was a kitchen knife
13 and it was out on a table and that Anderson picked
14 it up and was waving it around. At one point
15 Pickton says that Anderson cut him. When asked if
16 it was a prostitute thing that had gone very
17 wrong, Pickton did not say anything. Pickton did
18 volunteer the fact that the girl would have a
19 handcuff on her and that he had locate them -- or
20 located them with the intention of getting her
21 under control and she was going crazy.

22 A Yes. I see that.

23 Q Okay. And that would have been to your mind
24 admissible against Mr. Pickton?

25 A Well, wait a minute. That wouldn't have been

1 something that I would have necessarily led as
2 part of the Crown's case. What I might have done
3 with that was ask the judge to declare a voir dire
4 and got a ruling from the trial judge as to
5 whether that was admissible and then held it back
6 for cross-examination. The problem with putting
7 that in as part of the Crown's case is you've at
8 that point basically put a defence of sorts in.
9 It would be better to save it for
10 cross-examination. But, again, I'm a little --
11 I'm sorry, but the stay wasn't based on this
12 statement. The stay was based on the fact that
13 Miss Anderson was not in any shape to testify.

14 Q All right. So that didn't even -- none of this
15 statement, admissibility or anything --

16 A That -- that would have been an issue later on,
17 but not at the time of the stay. The stay wasn't
18 anything to do with the statement.

19 Q It just had to do with her drug addiction?

20 A The reason for the stay?

21 Q Yes.

22 A Yes. Completely.

23 Q Sole reason for the stay?

24 A Yes. This was a case that I was willing to take
25 to trial. I've said that. I was asked a few days

1 ago, "Well, when you read the report to Crown
2 counsel, did you think of staying it at that
3 time?" No. My intention was to take this to
4 trial and my actions confirmed that. I set up an
5 interview with the complainant and that's where I
6 hit the road block.

7 Q All right. So I'm passing forward a copy of the
8 criminal record of Miss Anderson, disclosed, I
9 might add, late last week.

10 A I'm sorry. Is this criminal record not part of
11 the binder?

12 Q Miss Connor, you testified earlier that this
13 criminal record would have formed part of the
14 information you had before you?

15 A Yes. And the reason --

16 Q At the time you made the decision to stay the
17 charges?

18 A No. The criminal record was part of the
19 information that I had attached to the -- attached
20 to the report to Crown counsel, but it wasn't the
21 reason for the stay. I've prosecuted lots of
22 cases with victims with criminal records.

23 Q I had --

24 A The only reason for the stay was because I didn't
25 have a witness. The criminal record had nothing

1 to do with it.

2 Q Now, I thought I understood your evidence
3 yesterday to be that you relied on the criminal
4 record as evidence of the depth of Ms. Anderson's
5 addiction. It's part of the reason you entered
6 the stay?

7 A Well, no. The reason that I entered the stay was
8 after my interview with her, but the criminal
9 record not in terms of her being a bad person or
10 anything. It's just when I was asked about what
11 factors did I consider in terms of was this drug
12 problem temporary or not, my concern was that the
13 drug problem started in 1985. It wasn't a
14 situation where I wasn't going to put her on the
15 stand because she had a criminal record. It was
16 something I considered in terms of the drug
17 problem; that it was a long standing one.

18 Q Sure. So you say -- do you say that a new -- if
19 it had been a new drug problem -- that you draw a
20 distinction between temporary and permanent drug
21 problems and new and long-standing drug problems
22 or --

23 A No. The question was --

24 THE COMMISSIONER: Let him finish the question.

25 THE WITNESS: I'm sorry.

1 MR. GRATL:

2 Q I hear you drawing two distinctions. One is
3 between temporary and permanent drug problems and
4 the other is between new and long-standing drug
5 problems; am I right about that?

6 A Yes. But this is the context: I was asked why I
7 didn't go into court and ask for an adjournment.
8 My -- part of my reasons were, well, could I
9 ask -- could I assure the Court that this person
10 was going to be ready to testify at a later date.
11 And part of the reason -- my concern about doing
12 that was this didn't appear to be a temporary
13 problem. And I'll give you an example. I can
14 remember several years ago having a young witness
15 in a child sexual assault case and her mother had
16 given her some tranquilizers because she knew this
17 child was upset about coming to court. The child
18 was not in shape to testify on that day. I was
19 able to go in front of a judge and say: "Here's
20 the problem. It's a temporary one. We can start
21 tomorrow." That's the difference between a
22 temporary problem where I could assure the Court
23 that it was a temporary problem and give him the
24 reasons why and this, which appeared to me for a
25 number of reasons to not be just a temporary

1 problem. That's the distinction. And it was in
2 the context of, well, why didn't I ask for an
3 adjournment.

4 Q Okay. Well, I mean in applying for an
5 adjournment, usually what you do is you collect as
6 many facts in support of your adjournment as you
7 can find?

8 A Yes. You have to have something to tell the
9 Court.

10 Q Did you undertake that process to find facts in
11 support of the adjournment?

12 A Part of the -- well, we're getting into the
13 reasons for the not proceeding, but in my
14 opinion -- and I've said this, I think, probably
15 four or five times now -- this drug problem was
16 not temporary like the example that I've just
17 given you. It was long standing and that put me
18 in a position where I didn't feel I could ask for
19 an adjournment. If I felt I was in a good
20 position to ask for one, that's likely what I
21 would have done.

22 Q All right. I'm just noting on this criminal
23 record here -- this is the only information you
24 used to find that -- in your mind that the drug
25 problem was of long standing; is that right?

1 A No. Because the report to Crown counsel also said
2 under her "will say" and the witness statements
3 that she was a heroin user. We also had the
4 nurse's evidence that there was track marks on her
5 thigh. We also had the fact that there were drugs
6 found on her in the incident, which had occurred
7 some, I believe, eight months before -- well,
8 maybe even longer, maybe even 10 or 11 months
9 before. So -- and there may have been other
10 factors that 14 years later I can't remember.

11 THE COMMISSIONER: I think we'll stop there for the morning
12 break.

13 THE REGISTRAR: We will now recess for 15 minutes.

14 **(PROCEEDINGS ADJOURNED AT 11:07 A.M.)**

15 **(PROCEEDINGS RESUMED AT 11:28 A.M.)**

16 THE REGISTRAR: Order. The hearing is now resumed.

17 MR. VERTLIEB: Mr. Commissioner, just on timing, Mr. Gratl has
18 essentially exhausted his time estimate of an hour
19 and a half. I just wanted you to hear that. Miss
20 Narbonne is a half hour. Mr. Dickson for VPD is
21 20 minutes. I'm sorry, Mr. Giles. I'll slow
22 down. Miss Narbonne is half an hour. Mr. Dickson
23 's 20 minutes and the DOJ is less than a half an
24 hour. But the reason I mention this now is we
25 need to finish so that we can deal with the

1 affidavit of Mr. MacDonald, who is here and he's
2 been waiting and I'd like to deal with him out of
3 courtesy to him. We have no questions of him.
4 The affidavit speaks for itself. But I think Mr.
5 Ward wanted to cross-examine on on the affidavit,
6 so we need to finish that today as well. Just
7 while I'm on this, next week we have a full week.
8 We have three days that Mr. Chantler and Mr. Ward
9 have requested to deal with family evidence and on
10 the Thursday, as you've already heard more than
11 once, Mr. Romano on the Thursday. Because of his
12 schedule, we'll need to finish him on Thursday,
13 however long it takes would be my recommendation
14 because of his commitments in the court
15 environment. And then the following week
16 starting -- we have more witnesses again, so we're
17 looking at needing to sit longer hours during the
18 days. I just mention that to you and all of our
19 colleagues. So the time estimates and working
20 through it become even more important. So there
21 really shouldn't be much time allotted left for
22 Mr. Gratl based on estimates.

23 THE COMMISSIONER: Mr. Gratl.

24 MR. DOUST: Might I just add so you know, Mr. Commissioner, I
25 propose to call Mr. Andrews to add a little bit to

1 the affidavit and then leave him for my friends to
2 cross-examine. They've asked me if they can do
3 that. And, secondly, back on the 6th of April we
4 sent an e-mail to -- to commission counsel
5 indicating that there was another possible
6 witness, a Ms. McCallum. She's a prosecutor who
7 was in the courthouse on the day of the interview
8 who saw the complainant in the washroom that day
9 and will describe her condition as she saw it.
10 The "will say" will be produced and passed around
11 over lunch.

12 THE COMMISSIONER: All right. Thank you. Yes?

13 MR. GRATL: I think Mr. Ward wishes to say something.

14 MR. WARD: I can't let that comment pass, Mr. Commissioner.
15 And I'm just gathering my thoughts because my
16 friend Mr. Doust's comment just now about this new
17 witness that we've -- that I have never heard
18 about reveals something that is very disturbing to
19 me and it is this: If I interpreted his comment
20 correctly, it revealed that my friend Mr. Doust,
21 the lawyer for the participant Criminal Justice
22 Branch, has concluded by this point in these
23 hearings that his client has the right to put
24 anyone on the stand his client wishes without
25 seeking any sort of direction from commission

1 counsel or yourself as to the appropriateness of
2 that. As you well know, the families who I
3 represent over a period of many months made
4 suggestions, requests, formal requests for
5 witnesses we deemed necessary and relevant for the
6 purposes of this inquiry. We finally brought a
7 formal written application to have some 20
8 witnesses called. We are awaiting an order, but,
9 as I've pointed out more than once, the newspaper
10 says that that order -- or that application is
11 going to be dismissed. And I see --

12 THE COMMISSIONER: -- interrupting you.

13 MR. WARD: I'm sorry. May I finish this point, please?

14 THE COMMISSIONER: Go ahead.

15 MR. WARD: The first day I arrived here I talked about the
16 playing field and whether or not it was level.
17 Well, this comment reveals to me with the utmost
18 clarity that we have not and are not participating
19 on a level playing field. The Criminal Justice
20 Branch seems to have a level of participant status
21 much, much more elevated and more enhanced than do
22 the families. Again, if I interpreted my friend
23 Mr. Doust's comments accurately, which certainly
24 suggested to me that the CJB feels they have the
25 entitlement to call whatever witnesses they think

1 might add to their explanation of the facts on
2 this key point. I also -- I've told other counsel
3 I want witnesses called on this point on behalf of
4 the families who I deem are considered to be
5 relevant; for instance, the lawyer who handled the
6 file before Miss Connor did for many months.
7 What, if anything, did she do to prepare for the
8 trial of this serious charge? What attempts did
9 she make, if any, to contact the complainant and
10 get her interview? I mean all of this is very
11 important, but silence. And I expect I'll have to
12 probably apply and go through all those hoops,
13 whereas it seems that counsel for the Criminal
14 Justice Branch can say we're bringing in so and so
15 who's going to say this, and that is very
16 troubling.

17 THE COMMISSIONER: Well, first of all, nobody's made --
18 nobody's made any decision about that. And I'm
19 sorry that you have to keep citing newspapers for
20 your source. I've never heard a lawyer before
21 citing newspaper sources and you continually do
22 that. You read somewhere in the newspapers that
23 this has been allowed or that's been. You know,
24 why don't you wait until the decisions are made in
25 this courtroom before relying on your newspaper

1 reporter friends? But, in any event, I don't know
2 what you're talking about the newspaper saying
3 this. And, you know, I don't know what you mean
4 that the newspaper has said one of your
5 applications has been dismissed. I don't know the
6 application of which you speak and I don't recall
7 dismissing any application. And for you to
8 suggest that it is not a level playing field
9 merely because Mr. Doust has asked that another
10 witness be called is just not right. I mean you
11 continually make this allegation. You a while ago
12 raised the spectre of a cover up and I've been
13 waiting for that. And you make these inflammatory
14 comments. And I'm prepared to listen to you and
15 produce some witnesses on that. In any event, I
16 don't know where these witnesses are. I'm here
17 listening to the testimony and I listen to all of
18 the witnesses that parties call and I'm prepared
19 to do that. But it doesn't help matters to -- to
20 have that kind of a response. I don't know what
21 Mr. Doust -- who he wants to call. No application
22 has been made before me.

23 MR. WARD: Well, I --

24 THE COMMISSIONER: Wait a minute. It might be appropriate to
25 listen to all of the arguments before jumping up

1 and making all kinds of allegations about nonlevel
2 playing fields. Mr. Vertlieb is going to -- wants
3 to say something and --

4 MR. WARD: And then I'd like to respond.

5 THE COMMISSIONER: Well, you don't even know what he said yet.

6 You know, why are you going to respond? Let me
7 hear him and if it's appropriate to respond, I'll
8 give you an opportunity.

9 MR. WARD: You, Mr. Commissioner, asked me some specific
10 questions. I'd like to respond to those and to
11 respond to anything that Mr. Vertlieb may say that
12 affects my clients' interests. My clients have
13 interests in these proceedings.

14 THE COMMISSIONER: Of course.

15 MR. VERTLIEB: All I was going to say is that we haven't seen a
16 "will say", so we've made no decision on whether
17 that witness is important or not. I just wanted
18 to say that to you. The way we try to handle all
19 the witnesses is to find out what they say, what's
20 relevant. We don't just respond if someone says
21 we'd like Miss Brown or Mr. White to come. We
22 want to find out what that person will say and how
23 it's going to help you get information that you
24 need to write your report. So no decision's been
25 made at all. As Mr. Doust said, unless I misheard

1 him, he's going to be delivering the "will say".
2 Then Miss Brooks and I can decide if that witness
3 is of importance and if we agree, fine. If we
4 don't, then Mr. Doust has options, the same as
5 every other lawyer and participant does, to make a
6 direct submission to you. No decision has been
7 made.

8 THE COMMISSIONER: Okay.

9 MR. DOUST: Mr. Commissioner, with respect to the witness
10 Andrews --

11 THE COMMISSIONER: Turn the microphone on.

12 MR. DOUST: With respect to the witness Andrews.

13 THE COMMISSIONER: I can't hear you.

14 MR. DOUST: The affiant. With respect to the affiant of the
15 affidavit, I have had discussions with my friend
16 about whether to proceed to adduce that and,
17 frankly, I did not see the issue in the file
18 destruction as a matter of relevance to you, but I
19 said out of an abundance of caution we will
20 respond and explain what happened. The options
21 that my friend and I discussed, my friend
22 commission counsel, were doing it by affidavit or
23 producing the witness. We've now done it by
24 affidavit. The witness is here and available. I
25 was asked if he would be tendered for

1 cross-examination. I agreed that I would tender
2 him for cross-examination and, having seen the
3 affidavit, I said I'll have one or two questions
4 of him and I'll turn him over to my friends to
5 cross-examine because they seem keen to explore
6 how that occurred. And in fairness to them, I'm
7 prepared to accommodate their desire to do that
8 subject to your approval. So that's the situation
9 with the affiant as a witness. I'm in your hands.
10 If you're satisfied with the affidavit and don't
11 believe that it's necessary for there to be
12 cross-examination, then so be it. I'm really
13 calling that witness at the instigation of my
14 friends.

15 Now, the other witness Ms. McCallum, I did
16 write to Mr. Vertlieb on April the 6th of this
17 year and I said this:

18 We write on behalf of the Criminal Justice
19 Branch of the Ministry of the Attorney
20 General to request that Susan McCallum be
21 added to the list of witnesses to be called
22 to testify before the Missing Women
23 Commission of Inquiry. Ms. McCallum is
24 currently the Administrative Crown Counsel in
25 Port Coquitlam. At the time the stay of

1 proceedings was entered in 1998, Ms.

2 McCallum was working at the Crown Counsel
3 office in Port Coquitlam. Ms. McCallum had
4 an encounter with Ms. Anderson at the Crown
5 counsel office in Port Coquitlam on the day
6 that Ms. Anderson came in for an interview
7 with Randi Connor in late '97 or early '98.

8 That's her recollection.

9 As such, Ms. McCallum will be in a position
10 to testify with respect to Ms. Anderson's
11 condition and demeanor on the day of the
12 interview. Should you have any questions or
13 concerns, please do not hesitate to contact
14 the undersigned.

15 Now, I've heard nothing and I have that witness
16 ready to go this afternoon, and that's what I was
17 adverting to when I said there is an additional
18 witness. It was my understanding that we had been
19 given the right to produce that witness. I'm in
20 your hands. If my friends want to argue that I
21 shouldn't be given the right to produce her, so be
22 it. But I'm just saying to you that that is
23 evidence that I felt might be helpful to you.
24 That evidence is available. The "will say" is
25 finalized. It's going to be distributed at

1 lunchtime today. There we are.

2 MR. WARD: Thank you. And now if I may respond. It wasn't my
3 intention to use inflammatory language and if I
4 did, it's borne out of the frustration, the
5 cumulative frustration I've experienced in dealing
6 with this case and the way it's been handled since
7 October of 2010. And those frustrations are well
8 documented, certainly at my end, and at the
9 appropriate time they will become crystal clear.
10 Having said that, it was not Mr. MacDonald's
11 appearance as a witness that troubled me at all.
12 It was the statement made by my friend Mr. Doust
13 that he would be calling Ms. McCallum, a person I
14 had never heard of. Now, with respect to that
15 issue, I have endeavoured to follow the practice
16 that is followed in the courts, both civil and
17 criminal, in communicating with a tribunal, which
18 is to copy all lawyers involved with
19 correspondence on material points. And, indeed, I
20 mentioned in my opening that I expected and hoped
21 that practice would be followed here.
22 Unfortunately, it hasn't and as a result of what
23 my friend Mr. Doust had said, it appears that he
24 sent privately, without my knowledge, an e-mail to
25 commission counsel about this Ms. McCallum some

1 six -- five, six days ago and that he had arranged
2 to have her take the stand this afternoon. All of
3 this is news to me.

4 THE COMMISSIONER: Okay.

5 MR. WARD: And it's not the way that my clients -- it's not the
6 field my clients have been playing on. My clients
7 have been playing on a very different field. I
8 won't say it's not level. It's very different
9 than the one that the Criminal Justice Branch
10 apparently is playing on and the one that the VPD
11 and the RCMP have been playing on. The field I
12 play on is one where I copy all the other lawyers
13 in the room with my requests for witnesses, my
14 requests for documents and my communications about
15 what I'm seeking in the way of practice
16 management -- or management of this process. The
17 other playing field is one I referred to in my
18 opening address and I said I hope this isn't going
19 to happen. I hope there won't be back room
20 communications. I hope everything will be
21 transparent and open. But there is another
22 playing field and it's been apparent throughout
23 and that's one of the sources of my frustration,
24 Mr. Commissioner, is that counsel for the police
25 interests and law enforcement interests do things

1 very differently.

2 THE COMMISSIONER: How?

3 MR. WARD: They communicate privately with commission counsel
4 and I don't hear about anything of the decisions
5 being taken that affect my clients' interests such
6 as bringing in a witness this afternoon who's
7 going to buttress the testimony of this witness to
8 the effect that Anderson was not in condition to
9 testify, all news to me at this point in time.
10 It's very, very disconcerting, not to mention it's
11 very hard to prepare.

12 THE COMMISSIONER: Is the witness coming in?

13 MR. WARD: Apparently she's here.

14 THE COMMISSIONER: Wait a minute.

15 MR. WARD: Apparently -- just, Mr. Commissioner, what I heard
16 from Mr. Doust is that he and Mr. Vertlieb have
17 arranged for her to testify this afternoon and she
18 is present in the building to do just that, and I
19 knew nothing about it even though apparently these
20 arrangements were made on April the 6th. I can't
21 cope as counsel with this kind of a playing field.
22 Whether it's level or not, I can't cope with it.
23 I had no idea this happened.

24 THE COMMISSIONER: First of all, you know, you have to -- you
25 have to give a measured response to these things.

1 MR. WARD: I'm trying.

2 THE COMMISSIONER: Wait a minute. You talk about frustration.

3 This has been a very, very difficult endeavour for
4 all of us, everybody here. You know, we're
5 examining here the conduct of an investigation
6 involving the most prolific serial killer in
7 Canadian history. There are a lot of emotions
8 involved, a lot of victims involved, a lot of
9 innocent people. The families are an example of
10 the people who have been irreparably damaged and
11 hurt, and so what happened is that we -- we want
12 to take a measured response. We have to be
13 objective. And it doesn't help if counsel in a
14 courtroom starts saying, well, I'm frustrated and
15 I can't do this. You know, we're professionals,
16 Mr. Ward. I've been in the system for a long
17 time. Every other lawyer here have been -- most
18 of us have been here for a long time. It doesn't
19 help me much when you come up with these
20 outbursts. And the reason I say this is I have
21 made no decision regarding the witness that you
22 say is being called. Mr. Doust said he wants to
23 call a witness and I didn't say that the witness
24 would be allowed. I don't even know why we need
25 more evidence on the apparent condition of the

1 complainant in this prosecution. I don't know if
2 that's even been challenged with respect to her
3 condition. So I don't even know why we need to
4 call that witness. I'll hear from commission
5 counsel on that as to whether that's going to
6 be -- but you objecting before I've even had an
7 opportunity to make the ruling doesn't help
8 matters. I expect more from you, Mr. Ward.

9 MR. WARD: Mr. Commissioner --

10 THE COMMISSIONER: Just a minute. Let me hear what the
11 arrangements have been, if any arrangements. I
12 don't --

13 MR. WARD: Mr. --

14 THE COMMISSIONER: Just a minute, Mr. Ward. I don't know if
15 any arrangements have been made. I haven't --
16 this is the first I've heard of it. I'm the one
17 who decides. So let me hear from Mr. Vertlieb as
18 to -- as to who this mysterious witness is.

19 MR. WARD: May I please respond to that comment that you expect
20 more from me?

21 THE COMMISSIONER: Yes. I expect -- you are an experienced
22 lawyer, Mr. Ward. You've done a lot of
23 high-profile cases, very difficult cases. I
24 respect what you've done. I respect your
25 expertise, your background. And the appropriate

1 way, if I may suggest, with respect, is Mr. Doust
2 said he wants to call somebody. Well, I'll hear
3 from you, I'll hear from someone else and I'll
4 decide whether or not it's appropriate to hear
5 that. That's the way to deal with it. So that's
6 all.

7 MR. WARD: All I was trying to say -- and I didn't intend to
8 make an outburst -- is that I expected that the
9 other experienced and senior counsel in the room
10 would conform to the practice that all of us
11 follow in our usual practice of communicating with
12 tribunals, keeping all counsel in the loop,
13 recognizing that it's not appropriate to privately
14 communicate with the tribunal or its staff without
15 keeping other counsel in the loop. My complaint
16 is merely this: I have been left out of the loop.
17 The loop is one which includes the counsel for the
18 law enforcement interests and commission counsel,
19 and they have throughout the course of this
20 proceeding made decisions on significant aspects
21 of the procedure and the management and the
22 calling of witnesses and the calling of evidence
23 that I have not been apprised of in any sort of
24 timely way. That happened again just now when I
25 learned that Mr. Vertlieb and Mr. Doust had

1 arranged to have another witness come this
2 afternoon for the purpose of testifying about her
3 observations of Anderson.

4 THE COMMISSIONER: Okay.

5 MR. WARD: It's the first I heard of it. I should have been --
6 my narrow point is I should have been informed the
7 same time Mr. Vertlieb was or immediately after so
8 that I could be aware of it.

9 THE COMMISSIONER: Okay.

10 MR. WARD: Now, I have another point just before I sit down,
11 and that is that at 10:32 this morning I received
12 an e-mail from Mr. Doust's office which delivered
13 a prior statement of this witness, Ms. Connor,
14 which had been reduced to writing about two years
15 ago. I -- it contains some material statements
16 and I wish at the appropriate time to seek leave
17 to recross on aspects of that prior statement.
18 This was a statement inexplicably. It was not
19 delivered prior to -- after I concluded my
20 cross-examination. It's another unfortunate
21 aspect of this -- of this hearing process. But I
22 just wanted to advise you and other counsel that I
23 would seek leave to recross -- it will take about
24 five minutes -- on four points that are contained
25 in the new statement. And as all counsel know,

1 when you prepare a cross-examination, you really
2 should have all the available disclosure before
3 you before you start, and it's just not helpful to
4 be given things after you've concluded.

5 THE COMMISSIONER: All right. Thank you. Mr. Vertlieb, Mr.
6 Ward has complained about this private
7 communication and some arrangement you have made
8 with Mr. Doust to call this witness to the extent
9 that it's unfair to Mr. Ward. Why don't you tell
10 me about it. I know nothing about this.

11 MR. VERTLIEB: Frankly, I must tell you if the e-mail came
12 April 6th, that would have been Good Friday, and I
13 had family commitments, so I don't recall the
14 e-mail. I want to say to you there's been no
15 arrangement made at all. The only understanding I
16 had -- and you've heard me say it earlier -- we
17 want to finish Miss Connor. We have Mr. MacDonald
18 on an affidavit. I haven't seen a "will say" from
19 this person. I must say my intuitive response was
20 similar to yours. There seems to be no argument
21 about the condition of Miss Anderson on the day
22 Miss Connor met with her, so I don't know that
23 evidence is needed for you, but there's been no
24 agreement at all. And I understand -- I just
25 can't tell you any more than to say there's been

1 no agreement at all and none between Miss Brooks
2 and Mr. Doust's office at all. So we'll see a
3 "will say" and then we can consider, Miss Brooks
4 and I, as we always do, whether the witness is
5 important, and then we can make a decision. And
6 if we decide not to call, as I said earlier, then
7 it will be up to Mr. Doust to press you to make a
8 ruling. There's been no decision at all.

9 THE COMMISSIONER: Mr. Ward, apparently there isn't any
10 arrangement made and you've been telling me here
11 that this private arrangement -- that nefarious
12 arrangements have been made between Mr. Doust and
13 Mr. Vertlieb and apparently that hasn't taken
14 place, so I'd appreciate it when you tell me
15 what's happened that if you're accurate about your
16 conclusions and so I -- I haven't heard of this.
17 I try to be fair here to all parties. And your
18 point that you should be apprised of any evidence
19 as being called in order for you to respond is a
20 good one. That's a fair comment to make. And Mr.
21 Vertlieb has told me here that he doesn't know
22 anything about it and I haven't heard from Mr.
23 Doust, but -- and I'm going to hear his argument
24 about calling this other witness. And I'm
25 inclined at this stage to -- to not allow this

1 subject to argument made on his behalf.

2 MR. WARD: With the greatest of respect, sir, the -- the
3 submission I've tried to make on this issue is
4 apparently not clear. Mr. Doust said -- and this
5 prompted my reaction. He said that he had another
6 witness ready to testify. Indeed, she appears to
7 be here in the building. And then he set out the
8 circumstances --

9 THE COMMISSIONER: I know what he said.

10 MR. WARD: All right. All right. What you have not touched
11 on, Mr. Commissioner, is something I raised in my
12 opening. There's been a constant theme of this
13 process. This concerned me throughout and I
14 raised it again just now and that is this: You
15 well know, Mr. Commissioner, that it is
16 inappropriate in a matter involving multiple
17 counsel in the civil or criminal justice process
18 for some counsel to communicate with the tribunal
19 to the exclusion of others. That fundamental
20 rule, in my respectful submission, ought to have
21 been followed throughout this process with respect
22 to communications between counsel and your staff,
23 commission counsel. It hasn't. As a consequence,
24 my clients, the families, have repeatedly been
25 left out of the loop and out of the

1 decision-making process throughout these hearings
2 with respect to evidentiary issues, issues of
3 calling witnesses and the like. I have followed
4 the practice that I perceive is the correct one
5 throughout by copying all counsel with my
6 correspondence on material issues that concern
7 their respective interests. It has not been
8 reciprocal. It has not. And that has given rise
9 to a perception on my part, rightly or wrongly,
10 throughout these hearing processes that the law
11 enforcement interests are receiving preferential
12 treatment from -- with respect to the tendering of
13 evidence and the calling of witnesses than the
14 families are. An example here was -- and this is
15 what caused my concern -- it appeared from
16 everything that Mr. Doust said a moment ago, as I
17 heard him -- and it may be a problem with my
18 understanding -- that he had -- he would be
19 calling a witness that would address facts
20 relating to this issue. And I heard that and
21 reflected on my extraordinary difficulty,
22 experienced for many, many months and continuing
23 today, in trying to get witnesses my clients think
24 are relevant here in the room. And at the end of
25 the day someone else may decide whether or not

1 this has been a fair process, but I certainly feel
2 it hasn't.

3 THE COMMISSIONER: First of all, the comments relating to
4 police preferences is totally wrong. You repeated
5 exactly what I said a moment ago without referring
6 to what Mr. Vertlieb said. Mr. Vertlieb said no
7 such arrangements have been made. I'll repeat
8 that. He said no arrangements were made. He
9 knows nothing about it. And, in any event, I'm
10 the one who decides, so why can't you -- can't you
11 accept that? I'm the one who decides, not Mr.
12 Vertlieb or Mr. Doust. I'm the one who decides
13 whether this witness will be called or not. I
14 don't know why it is that when counsel makes a
15 statement you run with it without hearing what the
16 whole of the argument is. In any event, let me
17 hear from Mr. Doust about this other witness he
18 wants to call.

19 MR. DOUST: Thank you. Mr. Commissioner, two points I'd like
20 to make. First of all, I have had no discussion
21 whatsoever with Mr. Vertlieb or anyone else on the
22 commission since I wrote the letter of April the
23 6th until about 15 minutes ago when I said to him
24 the witness is going to be available this
25 afternoon. The "will say" will be available at

1 lunchtime. He did not say to me you can call the
2 witness. He and I understood that I would have --
3 I'm sure he did and I did -- that I would have to
4 make application before you before I could call
5 the witness. I wanted to convey to him, knowing
6 that he wants to finish this part of the
7 commission this week, that I have taken steps to
8 have her available and I would be -- this
9 afternoon if I got your leave, I would be calling
10 her. There's been -- Mr. Vertlieb and I haven't
11 exchanged a word about it until then. I have
12 never spoken to Mr. Vertlieb about it or anyone
13 else in the commission.

14 Now, with respect to the letter that was
15 written on April the 6th, that letter is not
16 signed personally by me. It's signed by my
17 learned junior. I was out of town and instructed
18 her to send the letter. She did so. She leaned
19 over and said to me two minutes ago, "It's my
20 fault for neglecting to send it out to the whole
21 list and for that I accept responsibility. It's
22 my responsibility to make sure it happens." But
23 all it did was say that this is an available
24 witness that I intend -- that I may well apply in
25 effect to have heard. So if my friend Mr. Ward is

1 suggesting that there's some arrangement between
2 Mr. Vertlieb and I behind closed doors, you can be
3 sure there is nothing of the sort. We've never
4 even mentioned it.

5 THE COMMISSIONER: All right. Mr. Gratl.

6 MR. GRATL: Mr. Commissioner, I would like to have the criminal
7 record of Ms. Anderson marked as the next exhibit.

8 THE COMMISSIONER: Why? Because doesn't it reveal her identity
9 and why is it relevant? We know she -- we know
10 Miss Anderson had -- has a criminal record and we
11 know how vigilant she is about her privacy and the
12 fears that she has regarding her life and clearly
13 that record would identify who she is.

14 MR. GRATL: This witness testified yesterday and today, if I
15 heard her correctly, that the criminal record --
16 her past history of convictions was among the
17 factors she used to determine that the addiction
18 was so severe that she couldn't attend in court
19 the next week.

20 THE COMMISSIONER: That doesn't make it admissible. You have
21 to learn the rules of evidence, Mr. Gratl. That
22 does not make it admissible. Merely because a
23 witness refers to some documentary evidence does
24 not in and of itself make it admissible.

25 MR. GRATL: Then rule it inadmissible. Are you ruling it

1 inadmissible, Mr. Commissioner?

2 THE COMMISSIONER: How many times do I have to say it? It's
3 not relevant. It's prejudicial to her privacy.
4 It's prejudicial to Miss Anderson. It will not be
5 admitted.

6 MR. GRATL: How is it prejudicial to Miss Anderson if she's
7 anonymous? Could you explain that, please, Mr.
8 Commissioner?

9 THE COMMISSIONER: I don't have to explain everything. I've
10 already said it. Mr. Gratl, you have to accept my
11 decisions.

12 MR. GRATL: I do.

13 THE COMMISSIONER: No. You have a tendency to argue. You have
14 to learn to be a little civil in a room here and
15 you're not at times.

16 MR. GRATL: I have your ruling.

17 THE COMMISSIONER: Okay.

18 MR. GRATL:

19 Q All right. Referring, then, to the criminal
20 record. The criminal record itself doesn't
21 include any drug-related convictions except for
22 one in 1985; isn't that correct, possession of
23 narcotics for the purpose of trafficking and
24 possession of narcotics for which Miss Anderson --

25 A That's right. Actual convictions. That's true.

1 Q Yes. Okay. So there's one set of drug
2 convictions there on December the 2nd, 1985?

3 A That's right.

4 Q Okay. So she received, what, 2 days on each
5 charge and probation for 12 months and a \$75 fine
6 in 1985?

7 A That's what it says here.

8 Q Okay. So 13 years before you turned your mind to
9 the stay. 13 years -- 13 years before you turned
10 your mind to the stay?

11 A That's right.

12 Q Aside from that, no drug convictions at all?

13 A No. But --

14 Q You've got some theft unders, a theft under in '86
15 and then two in '87, three in '87. You've got a
16 theft over in '87, a couple mischief counts, a
17 theft under in 1990, failure to attend in 1990,
18 theft under in 1990?

19 A That's right. But a number of --

20 MR. GRATL: And then three offences in 1994?

21 THE COMMISSIONER: Let her finish. She was trying to answer.

22 MR. GRATL: I'm just listing out for simplicity sake.

23 THE COMMISSIONER: Sorry?

24 MR. GRATL: I'm listing for simplicity sake what these
25 convictions are.

1 THE COMMISSIONER: I know that, but she was -- you were putting
2 questions to her and she was trying to answer and
3 you kept going on. Go ahead.

4 THE WITNESS: This isn't determinative of the issue, but what I
5 found in the past is sometimes if you have a
6 number of theft under convictions, that can
7 sometimes be an indication that the person is
8 stealing to support a drug habit. I've seen that
9 with accused in the past. So it wasn't -- you're
10 quite right. There's only the one conviction for
11 drugs, but there are the theft under convictions,
12 so it would raise that as a possibility.

13 MR. GRATL:

14 Q I just want to get the list complete. What I've
15 read out is accurate, is it?

16 A The one I see here -- I'm sorry. Possession of
17 narcotic, possession of narcotic for the purpose
18 of trafficking in 1985, and then there's one, two,
19 three, four, five, six -- it looks like seven
20 theft convictions and then a conviction for
21 assaulting a peace officer and mischief in causing
22 a disturbance. So if you read all that, then
23 that's what I see here.

24 Q All right. So those might be consistent with a
25 severe drug addiction over that entire period, but

1 you don't know that?

2 A Not for sure, but in my experience I've seen when
3 you have a number of theft under convictions, that
4 can be an indication that a person's stealing
5 because of a drug habit.

6 Q Yes. Sometimes.

7 A Sometimes. I'm not saying it's determinative, but
8 that can be an indication.

9 Q Very weak circumstantial evidence of a drug
10 problem that last that entire duration, correct?

11 A I wouldn't say very weak.

12 Q Okay. So no convictions at all in the three years
13 prior -- I mean three and a half years prior to
14 the time that you made your stay decision?

15 A That's correct.

16 Q Okay. So she's been clean in terms of criminal
17 convictions for three and a half years before you
18 make your stay decision?

19 A That's right. But the point was -- and the only
20 reason I raised it was indication from a long time
21 ago, from 1985, that there was a drug conviction,
22 leading me to put as part of my thought process
23 that this is a person with a long-term drug
24 addiction.

25 Q And you didn't ask her about that?

1 A I can't recall asking her about that.

2 Q I'm just saying you brought with you a stereotype
3 of a drug addict and you had what was called a
4 confirmation bias?

5 A I don't -- I wouldn't describe it as a stereotype.
6 I would describe it as information that I had
7 about an essential witness on a case I was
8 prosecuting.

9 Q All right. Now, turning again to page 4 of the
10 report to Crown counsel. There you have a
11 situation where Mr. Pickton says that the victim
12 Anderson picks up a kitchen knife and then cuts
13 him. And then -- but the inference is from the
14 statement here that after that, Pickton gets a
15 hold of the knife and cuts her. Isn't that the
16 inference?

17 A I'm sorry. I'm going to have to read this.
18 He advised that it was a kitchen knife and
19 that it was out on a table, that the female
20 picked it up and was waving it around. At
21 one point in time he states she then cut him.

22 Q Sure. And the inference is that after that, he
23 got a hold of the knife and cut her?

24 A Yes. The inference I suppose you could draw from
25 that is that -- and we have to remember he had, if

1 I recall, a slash mark across his neck and a stab
2 wound to the back and I think one on his hand. So
3 the inference would be that she -- what he's
4 saying is that she cut him first.

5 Q Sure. And then he got the knife and then cut her?

6 A Yes. Because --

7 Q At a time when she doesn't have the knife?

8 A He's got a slash mark across his neck and stab
9 wounds and she has injuries too. So the way he is
10 describing it there from what you just read me,
11 he's saying that it was her first.

12 Q Sure. And then he slashes her while she does not
13 have the knife?

14 A I guess that's an inference that could be drawn.
15 Yes.

16 Q All right. So that sounds like a -- if -- and I
17 appreciate that you have to go through a voir dire
18 about voluntariness and it may be about Charter
19 compliance if he was under detention, but if
20 admissible, that counts as a confession against
21 his interests and could be used to convict him?

22 Q How? He had a slashed throat. See, it wasn't
23 just a statement. He was in the hospital with a
24 slashed throat and with, if I have this correct, a
25 stab mark to his back and a stab mark to his hand.

1 And the slash across his throat was a serious
2 injury too.

3 Q Sure, but once he's got the knife, he doesn't need
4 to stab her in order to get away. See how that
5 works?

6 A He's got a slashed throat.

7 MR. DOUST: Mr. Commissioner.

8 THE COMMISSIONER: You know, if you're not doing anything else,
9 one thing you are doing here is setting up a
10 defence of self-defence for Pickton with this line
11 of cross-examination. It doesn't help me much. I
12 can tell you that.

13 MR. GRATL: I'm just referring to my inference to Section
14 34(2)(b), which says that he can't get away. He's
15 got the knife.

16 THE COMMISSIONER: I'm just telling you about your
17 cross-examination. What you're really doing here
18 at the end of the day is you're providing what
19 might have been a defence for Pickton. That is
20 self-defence or raising a reasonable doubt. So I
21 don't know if you want to go that way in your
22 cross-examination.

23 MR. DOUST: With respect, he's again getting into the whole
24 area of her construction of the facts that were
25 before her and how she perceived them and what use

1 she could make of them, all again into the
2 prohibited area in my submission.

3 THE COMMISSIONER: Just tell me where we're going in this. I
4 want to be fair to you, but I don't -- I have no
5 idea where you're going in this.

6 MR. GRATL: Well, I'm saying that the Pickton statement would
7 be admissible against Pickton on the trial even if
8 the witness doesn't show up -- even if the
9 complainant doesn't show up.

10 THE COMMISSIONER: I see. Your position is that even if the
11 complainant doesn't show up, they could have gone
12 ahead with the prosecution?

13 MR. GRATL: Yes, because it looks like he -- it looks like
14 Pickton used the knife that was once in the
15 possession of the victim to stab the victim at a
16 time when he wasn't -- when Pickton was no longer
17 in danger of being stabbed by the victim.

18 THE COMMISSIONER: That's an argument you can use at the end of
19 the day.

20 MR. GRATL: It's an argument that a Crown could have used in
21 the middle of a trial.

22 THE COMMISSIONER: It's not something that you're entitled to
23 ask under the law. We have to follow the law.
24 Under the law you're not entitled to ask that
25 question, but you're entitled to maybe argue it at

1 a future date.

2 THE REGISTRAR: Mr. Gratl, may I remind you you're well over
3 your time. Thank you.

4 THE COMMISSIONER: How much longer do you want?

5 MR. GRATL: Now, I'd like to apply again, given the answers
6 given by the witness about the criminal record of
7 Ms. Anderson, to have Anderson's criminal record
8 admitted into evidence as the next exhibit.

9 THE COMMISSIONER: Well, I'm not going to change my mind and
10 I've already made the ruling. Her criminal record
11 is of no probative value for me to determine the
12 findings that I have to make and the
13 recommendations under 4(b). We know from her viva
14 voce evidence that she had a criminal record. We
15 know that. She's testified to it, that she had a
16 criminal record, that she spent time in jail. We
17 know that because she's already testified to that.

18 MR. GRATL: All right. And this area is important, Mr.
19 Commissioner, because you expressed some doubts
20 about -- and because credibility here is an issue,
21 Miss Anderson's state when she was interviewed by
22 Miss Connor is certainly an issue. I want to be
23 clear about that because --

24 THE COMMISSIONER: Well, we know credibility's an issue.
25 That's basically what -- what the witness has

1 said. She said that because of her condition, she
2 did not believe that she would be a credible
3 witness who would satisfy the test. We know that.

4 MR. GRATL:

5 Q All right. So, Ms. Connor, do you remember Ms.
6 Anderson telling you -- basically just telling you
7 what happened and telling -- telling you that she
8 went into shock and there were bits and piece that
9 she couldn't remember?

10 A No. She didn't convey the evidence to me to the
11 extent of telling me what happened, no, not in --
12 not any clear, coherent fashion at all.

13 Q No. Do you remember her providing -- telling you
14 what she said in her statement to the police? Did
15 she talk to you about what happened with the
16 handcuffs?

17 A No. As I've indicated, she wasn't -- she was
18 under the influence of drugs to a severe degree.
19 She was not conveying much to me in terms of
20 anything clear and coherent, so no.

21 Q Do you remember her telling you that she was
22 fighting Pickton, that she recalls slashing his
23 throat and that she remembers trying to get out of
24 the doors and one of the doors was cemented shut?

25 A No.

1 Q So she couldn't open it?

2 A No.

3 Q And she remembers trying to break the windows, but
4 they were all plexiglass, stuff you couldn't
5 break?

6 A No.

7 Q You don't remember any of that?

8 A No.

9 MR. GRATL: Okay. I just put that to you because of the rule
10 in *Brown and Dunn*.

11 MR. DOUST: Well, my friend, with respect, misquoted. He said
12 you don't remember any of that. She remembers.
13 She says, no, she didn't tell me. It's not that
14 she doesn't remember.

15 THE COMMISSIONER: That's what the evidence was.

16 MR. GRATL: That Miss Connor does not remember or it didn't
17 happen? I mean that's how I understood the
18 evidence to be, but I just wanted this witness to
19 have an opportunity just in case we either heard
20 this taped conversation between Ms. Anderson and
21 Don Celle or in case Ms. Anderson relented and
22 decided that she would testify here before you,
23 Mr. Commissioner. And I would say, Mr.
24 Commissioner, I have not had an opportunity to
25 read the new disclosure that was delivered by

1 e-mail this morning at 10:30.

2 THE COMMISSIONER: What was that disclosure?

3 MR. GRATL: Apparently, according to Mr. Ward, it was a
4 statement recording a prior statement of Ms.
5 Connor made a couple of years ago. So it's a late
6 disclosure about some --

7 THE COMMISSIONER: A prior statement?

8 MR. GRATL: Prior --

9 THE COMMISSIONER: Mr. Vertlieb, what's all that about?

10 MR. GRATL: It was disclosed, I understand, directly via
11 counsel for the Criminal Justice Branch.

12 MR. VERTLIEB: It came from Mr. Doust. Maybe Mr. Doust has a
13 copy for the commissioner just to see.

14 MR. GRATL: And I just -- I just say, Mr. Commissioner, that I
15 don't know if the language of level playing field
16 is the best or the most optimal language to use,
17 but certainly the principles of natural justice
18 have not been respected with respect to timely
19 delivery of documents and timely notice of
20 witnesses in respect of various moves made by the
21 Criminal Justice Branch. Natural justice is in
22 tatters, with respect.

23 THE COMMISSIONER: Well, first of all, I don't know what you're
24 talking about. How have the principles of natural
25 justice been breached?

1 MR. GRATL: Late delivery of "will say" statements, late
2 notification of witnesses, late delivery of
3 documents.

4 THE COMMISSIONER: There have been -- the disclosure in
5 inquiries is rarely ever perfect and this is one
6 of those cases where numerous documents have been
7 delivered, but I have no idea whether or not this
8 document is even admissible. I don't know what it
9 is. And for you to suggest that -- that this
10 document is going in is maybe a bit premature. I
11 have no idea what you're talking about.

12 MR. GRATL: I certainly agree, Mr. Commissioner, with the
13 description the process is imperfect, but I would
14 go a little further with respect to Criminal
15 Justice Branch's late delivery of documents and
16 late notification of witnesses. I would say those
17 fall below the standard of natural justice
18 appropriate to an inquiry.

19 THE COMMISSIONER: It works both ways. I mean I got Mr.
20 Murray's report yesterday and so that came from
21 Mr. Ward or yourself. I don't know who it came
22 from. But the fact is, you know, we do the best
23 we can under difficult circumstances. This is not
24 a trial and if it's unfair, I'll deal with it
25 appropriately. I have no idea what this statement

1 is and I don't know if anybody wants to file it or
2 what it is. Do you know what it is, Mr. Vertlieb?

3 MR. VERTLIEB: We haven't had a chance -- Miss Brooks and I
4 haven't seen it and discussed it together, so we
5 have no issue on it right now.

6 MR. DOUST: Can I just make clear that I'm not tendering it as
7 an exhibit and I'm not proposing to use it. It's
8 something that came to my attention yesterday and
9 I felt that it ought to be disclosed at the
10 earliest possible time for the benefit of my
11 friends in case they wanted to use it.

12 THE COMMISSIONER: Does that answer your concern?

13 MR. GRATL: I will say respectfully that late disclosure is
14 better than no disclosure, so I thank Mr. Doust
15 for that.

16 THE COMMISSIONER: Well, you know, I'm just saying, Mr. Gratl,
17 that before making allegations of breach of
18 natural justice you should consider all of the
19 evidence and -- I mean those are easy terms to
20 throw around.

21 MR. GRATL: Well, they're also neutral terms.

22 THE COMMISSIONER: It's not very neutral. I can tell you that.

23 MR. GRATL: Sorry?

24 THE COMMISSIONER: It's not neutral to say there 's been a
25 breach of natural justice because counsel has

1 given you late disclosure. This happens all the
2 time within trials. I don't know how many trials
3 you've been involved in, but it happens where
4 counsel are constantly exchanging documents and
5 exchanging evidence. At the end of the day what
6 you have to -- the governing factor is is any of
7 that evidence going to be used to the detriment of
8 any party. That's what we have to guard against,
9 and I haven't seen it.

10 MR. GRATL: I'm just trying to use language -- neutral,
11 clinical, administrative law language rather than
12 other terms.

13 THE COMMISSIONER: Where are we now?

14 MR. VERTLIEB: I think it's Miss Narbonne.

15 MR. WARD: Well, I am seeking -- I'm applying for leave to
16 recross-examine this witness as a consequence of
17 receiving at 10:30 this morning after I had
18 concluded my cross-examination a prior statement
19 of this witness reduced to writing some two years
20 ago, and I have four short areas of cross that
21 will take about five minutes if I do get leave.

22 MR. VERTLIEB: Why don't we do that now. It's totally
23 reasonable if Mr. Ward does that now and then Miss
24 Narbonne can start fresh at 1:45.

25 THE COMMISSIONER: Okay.

1 THE WITNESS: Excuse me, Mr. Commissioner. I haven't been
2 provided with a copy of it and I don't know what
3 it is. I'm wondering if --

4 MR. WARD: And I don't intend to provide you with a copy,
5 witness, unless I need to. I'm cross-examining as
6 a consequence of receiving that document.

7 THE COMMISSIONER: Is anybody going to do anything with that
8 document?

9 MR. WARD: I'm going to use it as a basis for these next
10 questions, Mr. Commissioner, if I'm -- now that I
11 have leave to cross-examine.

12 THE COMMISSIONER: My point is this: Is this document going to
13 be filed in evidence?

14 MR. WARD: Not by me, no. So you've earlier indicated in my
15 attempt to tender the book of Lori Shenher that a
16 prior statement doesn't meet the rules of
17 admissibility prima facie under the *Evidence Act*.
18 This is a prior statement of this witness reduced
19 to writing. It was made in 2010.

20 THE COMMISSIONER: I see.

21 MR. WARD: Given to me this morning.

22 THE COMMISSIONER: All right. Go ahead. You can
23 cross-examine.

24 **CROSS-EXAMINATION BY MR. WARD (Cont'd):**

25 Q First the four areas I wanted to ask you about,

1 Miss Connor. When you met with the complainant
2 Ms. Anderson in your office a week before the
3 criminal trial of Robert William Pickton for
4 attempting to murder her was to begin, she made it
5 clear to you that she wanted that trial to
6 proceed, didn't she?

7 A I didn't have any reason to believe that the
8 difficulty I was having with her was anything
9 other than drug induced. I was not under the
10 impression that she was deliberately being
11 reluctant. So yes. I believe she wanted that
12 trial to proceed. There was no other -- no other
13 problem other than the drugs.

14 Q So she wasn't a reluctant witness. She wanted Mr.
15 Pickton to be prosecuted for his attempt to murder
16 her, correct?

17 A Yes. And just from the fact that she showed up at
18 the office and I don't recall her ever saying that
19 she didn't want to testify, that's true.

20 Q A couple of years ago when Mr. MacKenzie was
21 inquiring of you of your recollection of your
22 handling the file, I understand you told him that
23 you had been asked to prepare a report. Were you
24 and Mr. Romano asked to prepare a report by any
25 superiors within the Criminal Justice Branch

1 respecting the handling of the 1997 file?

2 A Yes. I'm assuming what I'm referring to there are
3 the two documents that we've already referred to,
4 that is the letter to Marg Kingsbury and also the
5 fax to Geoff Gaul and Peder Gulbransen. I'm not
6 aware of any other report.

7 Q So the answer to my question that you and Mr.
8 Romano were asked by your supervisors to prepare a
9 report about the handling of the '97 case is yes?

10 A Yes. As far as I'm concerned, those are the
11 documents that we've already looked at.

12 Q You said you were assuming that. Is it your
13 recollection that the report prepared by you and
14 Mr. Romano consists solely of a one-page letter to
15 Ms. -- to Sergeant Kingsbury and a one-page
16 e-mail, both of which you reviewed the other day?

17 A Yes. Yes. That's my understanding.

18 Q All right. You said -- you know, of course, that
19 the team that prosecuted Pickton from 2003 onward
20 included Mike Petrie and Geoff Baragar?

21 A Yes. I did know that.

22 Q And they were, in fact, in your building for a
23 year on the preliminary inquiry, about a year?

24 A Yes. It might have been -- it might have been
25 more. I'm not sure. But I wouldn't disagree with

1 it being at least a year.

2 Q And you are aware that Mike Petrie, the lead Crown
3 prosecutor, the Pickton prosecutor, expressed the
4 opinion that the 1997 prosecution of Pickton ought
5 to have proceeded, ought to have gone ahead,
6 right?

7 A No. I'm not sure where that's coming from.

8 Q You told Mr. MacKenzie that in 2010, did you not?

9 A No. No. And I'm not sure in what sense. I mean
10 we all think it should have gone ahead, but if you
11 mean that -- that there wasn't grounds for the
12 stay, that's completely wrong.

13 Q All right. Now, with respect to Mr. Baragar's
14 involvement of the -- in the matter, he was tasked
15 as one of the prosecutors on the team prosecuting
16 Pickton for the murders of handling the witness
17 Anderson as a Crown witness to testify about the
18 same subject-matter that you had interviewed her
19 about, the '97 attack, correct?

20 A Yes. And I think I referred to a conversation
21 with Geoff the other day.

22 Q Yes. And when -- and you knew that at first --
23 when he first had contact with the witness, she
24 was quite out of it, meaning she was incoherent
25 and unable to -- and she was not in a condition to

1 testify, right?

2 A I wouldn't -- I'm not sure I would go that far.
3 What Geoff told me was he was having problems at
4 the interview and he was worried about whether or
5 not he could put her on the stand. And to be
6 fair -- and I really hope you do talk to Geoff
7 about this -- her -- she was -- had told Geoff
8 that her drug usage was way down when he was
9 dealing with her and it was still a problem.

10 Q Well, you --

11 A So --

12 Q I put to you, Ms. Connor, that in August of 2010
13 you had a conversation with Mr. Neil MacKenzie,
14 communications officer for the Criminal Justice
15 Branch, in which you told him that Anderson was
16 quite out of it when Mr. Baragar had his first
17 dealing with her, agreed?

18 A Okay. I think I now know where this document
19 comes from. Neil MacKenzie prepared a report to,
20 I believe, someone in Victoria, so we did have a
21 conversation. Did I use the words quite out of
22 it? If he wrote that down, then I must have.

23 Q Well, I'll show you the words he wrote down.

24 A Okay. I haven't seen any of this, so --

25 Q And I only have it on my computer because it was

1 delivered via e-mail this morning.

2 A And also to be fair here, this is not my personal
3 experience with Miss Anderson in 2000 -- what was
4 it -- 4? This is my recollection of what Geoff
5 Baragar told me, so it's --

6 Q Yes. And your recollection --

7 A Would you mind terribly if I read the whole thing?
8 I haven't been provided with this.

9 MR. DOUST: I have a written copy.

10 THE COMMISSIONER: All right.

11 MR. DOUST: I have underlined one or two things, but they're
12 not --

13 THE WITNESS: Now, I'm not sure --

14 MR. WARD: I'd ask the witness to wait for my question, please.

15 THE COMMISSIONER: Well, she's trying to answer the last one.

16 THE WITNESS: I'm trying to answer it. You know what? What I
17 see here is it says:

18 Randi was told years later that Pickton was a
19 person of interest in the prostitute
20 killings. There was nothing stated at the
21 time. Geoff Baragar joined the Pickton case
22 partway and was given --

23 MR. WARD: This is not a response to my question, Mr.

24 Commissioner. I'd ask that you stop the witness.

25 If she can give a responsive answer to my

1 question, but I'm not asking her to read the
2 document. I asked her a specific question. Did
3 you say that when the witness -- that Baragar said
4 the witness was quite out of it when he first
5 dealt with her? This witness is not answering
6 that question. She's dealing -- she's going on
7 about something else.

8 THE COMMISSIONER: Calm down. Calm down.

9 MR. WARD: I'm calm.

10 THE WITNESS: I'm sorry, Mr. Commissioner. My problem is --
11 and I will read the whole -- I haven't seen this
12 document. It looks like --

13 THE COMMISSIONER: The question is -- the question relates to
14 Mr. Baragar and how that relates to something
15 here, I don't really know.

16 MR. WARD:

17 Q Well, I'll explain it if you need.

18 A I'm sorry. I'm not sure from reading this whether
19 he didn't talk to Geoff as well because it says
20 Geoff Baragar joined the Pickton case partway, so
21 I'm really not sure whether that was me talking to
22 Neil or Geoff. That's my problem. I'm sorry.
23 I'll give you this back. And I'm not trying to be
24 difficult. It's just if Geoff talked to Neil
25 MacKenzie as well, then that may have come from

1 him. That's my worry.

2 Q Thank you. Baragar in the course of the time he
3 was at your building conveyed to you that when he
4 was -- when he was first tasked with dealing with
5 Anderson, put her on the stand for the Crown in
6 Pickton's murder case, she was quite out of it,
7 didn't he? That's what you conveyed on to Mr.
8 MacKenzie in his record of the conversation with
9 you, agreed?

10 A I'm sorry. I'm just reading this and I'm a little
11 bit concerned about the first question about Mike
12 Petrie.

13 MR. WARD: I'm not asking you --

14 MR. DOUST: May I just interrupt? Mr. Commissioner, I wonder
15 if you'd give her the opportunity to read it in
16 its entirety so she knows the full context.

17 MR. WARD:

18 Q That's fine.

19 A And this doesn't look like --

20 MR. WARD: Witness, I'd ask that you not think out loud. I'd
21 ask that you answer the --

22 THE COMMISSIONER: Mr. Ward.

23 MR. WARD: Mr. Commissioner.

24 THE COMMISSIONER: Give her an opportunity to look at -- you
25 put something to her. In fairness give her an

1 opportunity to look at it and then you can ask her
2 further questions.

3 MR. WARD: I'm giving her exactly that opportunity. What I was
4 trying to prevent, Mr. Commissioner, and asking
5 you to assist me with was avoiding having her
6 think out loud or muse to herself in the course --
7 she's here to answer questions. She's an
8 experienced lawyer who knows the question and
9 answer process from 30 years in this same arena.
10 She's not here to muse or to volunteer her own
11 thoughts. She's here to answer in a responsive
12 way to questions that counsel pose. I think she
13 knows that and I just want you to ensure that that
14 is the practice we follow.

15 THE COMMISSIONER: I think she's trying to do that. In
16 fairness, give her an opportunity. Look at the
17 document carefully and see if you can respond to
18 the question.

19 MR. WARD: I'll rephrase the question once --

20 THE COMMISSIONER: You don't have to.

21 MR. WARD:

22 Q Mr. --

23 A I'm sorry, Mr. Ward, and I'm sorry, Mr.
24 Commissioner. This is being put to me as
25 something that I said to Neil MacKenzie and I see

1 right at the top here these are not verbatim
2 notes. So it would have been helpful to have
3 known that before I was told I was being
4 questioned about what I said to Mr. MacKenzie.
5 And there are things in here that --

6 MR. WARD: Witness, excuse me.

7 THE COMMISSIONER: No, no.

8 MR. WARD: Mr. Commissioner, she's not answering any question I
9 put to her. I'll give her the full opportunity to
10 explain her answer, but it must be responsive to
11 the question.

12 THE COMMISSIONER: She's trying to be responsive.

13 MR. WARD: Mr. Commissioner, I'm conducting --

14 THE COMMISSIONER: Mr. Ward. Mr. Ward, I'm the commissioner
15 here and I'll decide whether what she's doing is
16 proper or improper. Tell us what's wrong with
17 that document or why you aren't able to respond to
18 this question.

19 THE WITNESS: I'm sorry. It's being put to me as things that I
20 said and I got the impression it was verbatim and
21 I'm seeing -- I'm seeing this document for the
22 first time and I'm seeing it's not verbatim notes,
23 so -- and also the question about Mike Petrie, the
24 way it's worded here, it's -- if I can have a
25 chance to explain later, perhaps that's the best

1 way to handle it. I'm sorry.

2 THE COMMISSIONER: Okay. What we'll do is we'll take the break
3 and you'll have the opportunity to read that
4 document. We'll come back at 1:45.

5 THE REGISTRAR: The hearing is now adjourned until 1:45.

6 **(PROCEEDINGS ADJOURNED AT 12:32 P.M.)**

7 **(PROCEEDINGS RESUMED AT 1:48 P.M.)**

8 THE REGISTRAR: Order. The hearing is now resumed.

9 MR. WARD:

10 Q Miss Connor, you've now had an opportunity to
11 review the two-page document that your counsel
12 provided you earlier this morning?

13 A Yes, I have. Thank you.

14 Q And --

15 A Yes, I have. Thank you.

16 Q You understand that this is a record made by Neil
17 MacKenzie of a conversation he had with you in
18 August of 2010. In other words, it's his notes
19 respecting what you told him on that occasion?

20 A What it says in the e-mail is:

21 These are not verbatim notes of what Randi
22 said to me. Generally I make handwritten
23 notes, which I then put into electronic form
24 if it is something that there may be a need
25 to preserve.

1 So yes. I understand from reading this this is
2 notes of a conversation, but they're not verbatim
3 and they were transferred from his handwritten
4 notes into an electronic form.

5 Q And I'm endeavouring to ask you about one portion
6 of these notes or this record and I'll read it to
7 you. And I have a couple of questions about it
8 and then I should be finished. Partway down under
9 your name Mr. MacKenzie wrote this in a statement
10 attributed to you:

11 Geoff Baragar joined the Pickton case partway
12 and was given Anderson as a witness. At
13 first she was quite out of it. The police
14 helped her get straightened out some.

15 You've read that?

16 A Yes.

17 Q Did you tell Mr. MacKenzie that it was your
18 understanding that Anderson, the woman you had
19 dealt with in January of 1998, was quite out of it
20 when Crown Counsel Baragar first dealt with her in
21 his prosecution of the Pickton case?

22 A My recollection was that when he interviewed her
23 there was difficulties with the interview. My
24 recollection of what he told me was he was worried
25 about whether he could put her on the stand. That

1 would be more accurate.

2 Q All right. And it was due to her drug addiction
3 problem, correct?

4 A Now, this is -- again, this is secondhand from my
5 recollection of what Mr. Baragar told me, but
6 that's my understanding.

7 Q All right. And you acquired the information from
8 some source that Mr. Baragar joined the Pickton
9 case partway; in other words, it was in progress
10 when he arrived as one of the Crown prosecutors?

11 A Yes. I can recall that being the case.

12 MR. WARD: Now, you know that Mr. Baragar, the Crown
13 prosecutor, dealt with Ms. Anderson, the same
14 person you had dealt with in January of 2002, that
15 he found her in a condition that -- in which she
16 was, as you apparently put it, quite out of it due
17 to drug addiction issues and that he somehow
18 managed to get her to testify for the Crown at the
19 same courthouse she would have testified at had
20 Pickton's '97 prosecution proceeded, correct?

21 MR. DOUST: Objection. She didn't accept for a moment the
22 words that she was quite out of it. She gave a
23 different description of what she said.

24 THE COMMISSIONER: I agree with that.

25 MR. WARD:

1 Q All right. Let me start again. You know Mr.
2 Baragar had difficulties in his initial interview
3 of Ms. Anderson that were attributed to her drug
4 use?

5 A Yes. And the reason I know that and what the
6 conversation was about, to the best of my
7 recollection, was Mr. Baragar was telling me that
8 her drug use was much less when he dealt with her
9 and he still had problems. I think he was trying
10 to reassure me in that conversation, but you need
11 to talk to Mr. Baragar.

12 Q Fair enough. In any event, you know that despite
13 the condition that he found Ms. Anderson to be in,
14 he was able, with the help of the police, to get
15 her ready to testify in the Port Coquitlam
16 courthouse on behalf of the Crown as a witness in
17 the Crown's case against Pickton, right?

18 A Yes. But, as I've stated, the conversation with
19 Mr. Baragar was about her drug use was much less
20 and he still had problems. That's what this is
21 about.

22 Q And you would agree that Mr. Baragar would be in
23 the best position to tell us what her condition
24 was and how it was he managed to get her ready to
25 testify, what steps he took and how long it took

1 him, right?

2 A Yes, because the evidence I'm giving is what he
3 told me and what I'm telling you, so he would be
4 the best person to give evidence about that.

5 MR. WARD: And, Mr. Commissioner, I've asked my friend Mr.
6 Vertlieb to ensure that Mr. Baragar's called as a
7 witness. And just so I can answer your question
8 about the relevance, it's the same witness
9 testifying about the same subject-matter in a
10 similar condition when Crown counsel first
11 interviews her, namely impaired by drug usage.
12 Crown counsel takes some measures in order to
13 procure her testimony under oath in the same
14 courtroom she would have testified in in the
15 earlier matter. We have the transcript of her
16 evidence, which speaks to the -- her eloquence,
17 her ability to articulate her evidence about the
18 same incident while she was on the stand. And in
19 my respectful submission it would be of assistance
20 to you in addressing term 4(b) of the terms of
21 reference to receive Mr. Baragar's evidence on the
22 point. So I just leave that for now and those are
23 my questions that arise in respect of the newly
24 delivered document.

25 THE COMMISSIONER: No. I have your point. I have your point

1 on that. But the only thing I put to you is this,
2 Mr. Ward: If we know that Mr. Baragar facing the
3 same obstacles, if you will, got her ready for
4 trial and that evidence is uncontradicted, why do
5 we need Mr. Baragar?

6 MR. WARD: Well, only -- only if there's a live issue. If
7 there's a live issue as to the degree to which she
8 was impaired when Mr. Baragar sat down with her
9 for the first time and the passage of time between
10 that day and the day she was put on the stand, you
11 see, Mr. Commissioner, arguably -- I may be making
12 submissions to you later that -- that there was
13 either time to get this particular witness ready
14 to testify at the original trial or that steps
15 could have been taken to make that time. We just
16 don't know how much time elapsed at this point.

17 THE COMMISSIONER: My point in raising that is that that's an
18 argument that you could make rather than call
19 Baragar. I'm in your hands. I'm in counsel's
20 hands as to who they want called and who they
21 don't.

22 MR. WARD: I understand. I'm just -- because we're dealing
23 with it right now, I thought it would be a good
24 time to advise you of my position and simply that
25 I believe at this juncture that the evidence may

1 assist you on this point and then leave it at that
2 for now.

3 THE COMMISSIONER: Thank you.

4 MR. WARD: Thank you.

5 THE COMMISSIONER: Miss Narbonne.

6 **CROSS-EXAMINATION BY MS. NARBONNE:**

7 Q Thank you. I'm counsel for the aboriginal
8 interest. I'm sure you're aware that a large
9 number of Mr. Pickton's victims were aboriginal
10 women?

11 A Yes. I know.

12 Q And statistically -- and I suspect you see this --
13 there's an overrepresentation of aboriginal people
14 in the criminal justice system; would you agree
15 with that from your experience?

16 A That's my understanding, yes.

17 Q Okay. How did you -- in coming to testify here,
18 how did you prepare your evidence? And I don't
19 need to know about discussions with counsel, but
20 what did you review?

21 A I was given documents. I reviewed the report to
22 Crown counsel and supporting documents. I was
23 given binders from counsel, so a lot of material.
24 And I'm sorry. I'm having trouble specifically
25 telling you what it was, but a lot of material

1 that's in the binder that we've all been provided
2 with I had already seen. I saw the victim
3 witness -- Victim Services notes that we've
4 referred to. I'm sorry. I'm having trouble
5 itemizing, but I was shown quite a volume of
6 material.

7 Q Let me take you to the Victim Service notes.
8 Those notes are a different Victim Service office
9 than where Roxanne worked?

10 A Yes. There were two Victim Service groups
11 involved. One was the RCMP police-based Victim
12 Service group. At that time we had a Crown-based
13 Victim Services and Roxanna Smith was associated
14 to the Crown-based Victim Services group.

15 Q And did you ever review any of her notes?

16 A No. Probably not. I don't have a specific
17 memory, but probably not because Roxanna was
18 around a lot, so I would have had an opportunity
19 to speak with her personally rather than review
20 her notes -- or are you talking about --

21 Q I mean in preparing to testify today?

22 A In preparing to testify. No. I was shown
23 yesterday in -- in the course of the proceedings
24 part of the statement that I believe Roxanna gave
25 to Don Celle, but I don't recall seeing her notes.

1 My understanding is that the Crown-based Victim
2 Services file doesn't exist, so --

3 Q What -- and it's hearsay and that's why I'm asking
4 to see if you know anything of it. In her
5 statement she seems to suggest -- well, she
6 doesn't suggest. She says her notes would have
7 become part of the Crown file, so the Crown file's
8 destroyed. Her notes are destroyed. Does that
9 make sense to you?

10 A No. I thought that the Victim Services file
11 remained separate, but if she says that the Crown
12 notes would have been forwarded -- or the Victim
13 Services notes went to the Crown file, you are
14 refreshing my memory because I know that our
15 system now is when they make -- they make notes --
16 they send us things. So it may very well be that
17 some of her notes were forwarded to the Crown
18 file, which we don't have. So you could be right
19 on that, yes.

20 Q In terms of preparing your evidence for today and
21 yesterday, you have not seen her notes?

22 A No. My understanding is that that file is gone
23 and, of course, the Crown file is gone.

24 Q Yes. What about back in 2002? You do -- sorry.
25 Do you have that Exhibit 133 in front of you?

1 That's that big binder, stay of proceedings?

2 A I believe I --

3 THE REGISTRAR: That's it. Yes.

4 THE WITNESS: I believe I do. I'm sorry. Is it this one?

5 THE REGISTRAR: The one to your left.

6 THE WITNESS: Yes, I do.

7 MS. NARBONNE:

8 Q Tab 20. It's an e-mail from you, "Subject:
9 Regina versus Pickton, date Thursday, 07 February,
10 2002". Do you see that?

11 A Yes.

12 Q And that's -- I take it you wrote that?

13 A I'm sorry. This is the one to the Geoffrey Gaul?

14 Q Yes.

15 A Yes. I would have typed that.

16 Q Okay.

17 A It's an e-mail.

18 Q Yes. So you had been asked, I take it, to provide
19 some information about how the file came to be
20 stayed, correct?

21 A Yes.

22 Q Is this the sum total of the information you
23 provided in that regard?

24 A To Geoffrey Gaul and Peder Gulbrandsen, yes. And
25 there is another -- I don't know if I'd describe

1 it as a letter, but we've referred to it, to Marg
2 Kingsbury that's also -- it should be with the
3 materials. So there were two that I recall.

4 Q I don't know if that's in counsel's book or not.
5 Have you seen it in your testimony?

6 A Yes, I have. I think -- I'm sorry. I'm going to
7 have a little trouble flipping to it. Counsel may
8 have it. There were two communications, one to
9 Geoff Gaul and one to Marg Kingsbury, and we have
10 referred to them.

11 Q If counsel could assist me.

12 A I'm just not sure if it's in the big binder.

13 Q I know I've seen it. I just don't recall where it
14 is. Are those -- while Miss Juba tries to find it
15 for me, and I appreciate that, are those the
16 two -- is that everything that you provided in
17 terms of information respecting that stay of
18 proceedings to those people?

19 A Yes. Although this morning I was handed the --
20 Neil MacKenzie's electronic reduction of our
21 conversation. So in a sense -- that's not really
22 a report, but it's -- I spoke to him and he --

23 Q I'm just going to show you what counsel has just
24 given me. It's dated February 6th, 2002. Is that
25 what you're talking about?

1 A The one to Marg Kingsbury? Yes.

2 Q Because you're on a mike and I'm not, can you tell
3 us what it says?

4 A

5 Further to our conversation of today's date,
6 I have been advised by Kim Sund, the
7 secretary of our office, that the Crown file
8 for the above case cannot be located. My
9 recollection of the files is that the case
10 did not proceed because the complainant was a
11 drug addict who was using drugs around the
12 time of the trial and was not in good enough
13 shape to testify. As she had stabbed the
14 accused, credibility was going to be an issue
15 in the trial. Please contact me if you
16 require anything further. Yours truly.

17 Q Okay. Thank you. And that was accurate, correct?

18 A Yes.

19 Q Those are both short memos; you'll agree with
20 that, or short letters?

21 A Yes.

22 Q What, if anything, did you review to write that
23 memo?

24 A Oh. When I was asked in 2002?

25 Q Yes.

1 A Nothing, because at that time, as it states there,
2 Kim Sund couldn't find the file, so my
3 recollection was without the file I simply had to
4 go from memory.

5 Q Okay. So did you use anything to assist your
6 memory, talk to people, look through computers,
7 anything like that?

8 A Not that -- no, because, as I explained the other
9 day, Marg Kingsbury had contacted me and wanted
10 something right away, and I was working at the
11 office at that time and then I recall her
12 contacting me again, so I just wrote out what I
13 could remember, but I -- I wouldn't have had a
14 Crown file to refresh my memory from. I don't
15 recall talking to anyone. It's just I did
16 remember the file.

17 Q Okay. Was it a busy office back in '97, '98?
18 Were you busy?

19 A Yes. Yes, I was.

20 Q How many lawyers were working in that office?

21 A I believe I've said seven or eight. I could be
22 wrong about that. But it was a small office at
23 that time. It's much bigger now.

24 Q And you described daily appearances in court
25 pretty much?

1 A I think I said -- I was running trial courts then,
2 so three to four court days a week. And it
3 would -- it would vary. I mean sometimes you'd
4 have a continuation, so you'd be in court every
5 day and sometimes maybe you wouldn't, but about
6 that, yes.

7 Q Okay. And this file, one thing we know -- you
8 don't know when you actually got the file, the
9 Anderson file, right?

10 A No. I can only say it was after October the 22nd
11 of 1997.

12 Q And by January 9th?

13 A I think we said -- I think that was the date. I'm
14 figuring that from again Mr. Ritchie's letters. I
15 believe there was something around there. Yes.

16 Q I know you appear in the record of proceedings in
17 November and I don't remember anyone showing you
18 that. And I don't know if that -- I'll just show
19 you it and see if that's going to help us any more
20 on when you actually took the file. I appreciate
21 different Crowns appear all the time for each
22 other, right?

23 A Right.

24 Q At Tab 16 in Exhibit 133, if you flip to the
25 second-last page, there's a date November 4th,

1 '97. It's clearly in the courtroom at 9:30. They
2 mixed those two things around, but it's in
3 Courtroom 1 at 9:30. It says "CTD". And it
4 appears to be you appearing for the Crown. Do
5 you -- firstly, am I right that that was you
6 appearing for the Crown?

7 A RC would be my initials. I don't think there was
8 anyone else in the office with those initials at
9 that time.

10 Q I mean I thought I knew all the codes, but I can't
11 remember what CTD is. Do you know what that is?
12 Confirm trial date possibly?

13 A That might be it. That would make sense.

14 Q Okay. And this is prior to those rules where we
15 have to do all the arraignment reports and all
16 that, right? '97 we weren't doing that yet?

17 A The criminal case flow rules I don't believe were
18 in effect then, but we did have the disclosure
19 court system, so -- and it looks like from Mr.
20 Romano's note on the file when he did a charge
21 assessment he wrote "Disco Court" on it, so -- and
22 it also looks like from the record of proceedings
23 that it went through the old disclosure court
24 system.

25 Q Okay. And you'll have to forgive me, although I

1 was practising in BC, I wasn't -- we didn't have
2 disclosure court where I worked, so on a CTD,
3 confirm trial date, what would normally be the
4 procedure? What happens that day?

5 A Normally what that would mean is that -- I can't
6 say it happened in this file, but normally what
7 that would mean is that there's a trial date set.
8 If it's an indictable matter, now we have those
9 counsel designation forms. Back then we didn't.
10 So on an indictable matter, the lawyer couldn't
11 appear as agent.

12 Q Yes.

13 A So all the trial dates would be set up, but you
14 still at some point in provincial court needed the
15 accused to appear to be directed to the trial date
16 because an agent couldn't, so I'm assuming that's
17 what that meant.

18 Q Okay.

19 A It wasn't that way in supreme court, but it was in
20 provincial.

21 Q So that also means that by November a trial date
22 must have been set?

23 A Yes. If they're confirming a trial date on that
24 date, assuming that everything was in place, then
25 that would be a safe assumption, I would think.

1 Q And were -- what was -- what kind of time frame
2 were you generally looking at to get a four-day
3 trial back then?

4 A It really varied.

5 Q Okay.

6 A In my 30 years there has been some trials that
7 I've taken on really short notice.

8 Q Right.

9 A But generally -- and Mr. Romano would be better at
10 explaining all this because he was doing the
11 schedules.

12 Q Okay.

13 A It would vary. But on a -- I think this was --
14 actually, was it a four-day trial or a five-day
15 one? It might have been five. But he would try
16 and get it to you sooner rather than later to
17 allow you some prep time and also would try and
18 schedule some time out to work on the file close
19 to the trial date.

20 Q Oh, okay. That's the next thing I wanted to know,
21 because when I look at this, it looks like this
22 file gets lateralled over to you. Is that normal,
23 that you don't assign a trial Crown until dates
24 are set?

25 A Yes. And we still have that system for a lot of

1 our files. We have red files. We have purple
2 files. The purple files you might have a
3 prosector assigned earlier and the purple ones are
4 the really complicated ones, the major crime ones.
5 The red files we have in the office -- even today
6 we have a -- an arraignment team that takes care
7 of the trials up until the trial date is set and
8 then a trial Crown is assigned.

9 Q What about -- when you've spoken to us about
10 vulnerable witnesses, you've talked primarily
11 about children and that was an area you worked a
12 lot in, right?

13 A That's correct.

14 Q When one of those was a red file, did it get a
15 Crown assigned earlier because of the more --
16 because you've got to work a rapport with the
17 child?

18 A Yes. But when I took over in 1985 as a child
19 sexual abuse specialist, I was doing everything.
20 So what would happen is I would talk to the
21 police. I would get the charges in directly to me
22 to do the charge assessment and then I would
23 follow that file through. That's no longer the
24 system. But -- so in that case I always knew what
25 my caseload was because I had done everything

1 right from the beginning.

2 Q Okay.

3 A So -- but now you're quite correct. If you've got
4 a case involving a child, a vulnerable witness,
5 yes. You want to get that assigned as early as
6 you can.

7 Q All right. So even when a file's a red file, get
8 to it sooner rather than later actually meant once
9 you're assigned the file, right?

10 A Yes. What it does is it alerts the Crown to the
11 fact that they've got something that they're
12 really going to have to pay attention to as
13 opposed to the regular provincial court work that
14 you do where you -- obviously you want to look at
15 your files in advance, but you don't have to worry
16 as much.

17 Q Okay.

18 A Like, you would spend more time obviously
19 preparing a child sexual assault case than you
20 would a standard impaired.

21 Q Okay. So things like what witnesses are we going
22 to call, stuff like that, those were not ever
23 decided by you initially on this. Actually, you
24 never decided that on this file, did you?

25 A No, because what happens -- and we still do this

1 today -- is when you do the charge assessment,
2 we -- the Crown indicates right away what
3 witnesses are required. And the reason for that,
4 of course, is that once a trial date is set, the
5 staff can go ahead and notify those people right
6 away. That's not perfect and in some cases it may
7 not be complete, but we try and do as best we can
8 right at the charge assessment stage, particularly
9 with police because you have to worry about leaves
10 and courses and that kind of thing.

11 Q Yes. Now, when you set a date, though, you get --
12 right. So you know which officers you want and
13 they're listed, and it looks like in this case out
14 of an abundance of caution just about every
15 officer was listed; don't you agree?

16 A It looks like what Mr. Romano did was he just
17 notified everybody.

18 Q Yes.

19 A And that's fair enough. I think when you're doing
20 a charge assessment -- and that's my practice too.

21 Q Okay.

22 A Is notify everyone that could possibly be called
23 because it's so much easier to denotify somebody
24 than try and notify them later.

25 Q The only denotifications that ever occurred on

1 this file were when officers phoned or wrote and
2 complained, right? You don't need my evidence. I
3 say the same thing as so and so.

4 A Yes. There was a note -- we've looked through the
5 LENSES. I think we reviewed them yesterday and
6 there was a note I couldn't read on the bottom of
7 one of them. But normally what would happen is
8 the LENS would go to the officer. He would sign
9 the confirmation saying, "Yes. I am available for
10 that trial" and send it back. Sometimes what I've
11 seen happen is the officer will write "I'm in
12 Hawaii" or "I'm on a course" or "I don't have any
13 evidence to give on this."

14 Q I don't think you need me?

15 A Or they'll call the Crown and say, "I've got a
16 conflict here with something else I'm doing. Can
17 you talk to me about whether I can be excused?"
18 And then you'd take the file, review it and see,
19 well, do I really need them or can I excuse them.

20 Q Okay. So the -- it was shown to you by my friend
21 Mr. Vertlieb the letter from the Staff Sergeant
22 Giffin complaining about the notifications. I
23 don't know if you remember that because that was
24 yesterday, but where he complained that eight of
25 his members have all been notified for nine

1 o'clock on the same day and --

2 A Right. And it would be a problem unless somebody
3 looked at it.

4 Q But you're telling us that this was basically
5 standard operating procedure, to notify a ton of
6 witnesses?

7 A Right. Because the charge assessment Crown
8 indicates which witnesses should be required. We
9 do it on the computer now in our system called
10 JUSTIN. The trial date gets set. The judicial
11 case manager, the trial co-ordinator, looks at it
12 to see which officers are involved and to work out
13 leaves and stuff so that the trial isn't set when
14 everybody's on night shift or everybody's on leave
15 or someone's on leave, and then it just goes
16 straight to the staff and they do the -- they
17 print out the notifications and the subpoenas.

18 Q So were you routinely getting complaint letters
19 from staff sergeants? It sounds like it's your
20 normal practice, so do you know where this would
21 come from yourself?

22 A I -- quite frankly, it strikes me as unusual
23 because that was the standard practice, because
24 the problem is the staff couldn't figure -- the
25 staff couldn't figure out at the time they do the

1 notification, which may be months before the
2 trial, exactly what day their officers are going
3 to be needed. They can just notify them for the
4 first day and have it sorted out later.

5 Q Now, in this particular file, I appreciate it came
6 down to Anderson and I'm not going to debate with
7 you whether you needed her, okay?

8 A Thank you.

9 Q I am still going to ask some things around this.
10 But some -- coming into it, you didn't know what
11 kind of witness she was going to be and you knew
12 walking into this file that she had some foibles,
13 correct? She had -- she was an addict or at least
14 you understood that, right, from the evidence you
15 had been given?

16 A Yes. It was clear from the report that she was a
17 heroin user.

18 Q And you knew that she had given differing versions
19 of how the whole thing started, correct?

20 A That's right. Well, not -- not so much how the
21 whole thing started. The different versions were
22 telling the civilians that picked her up that she
23 had been raped, so it came in as a rape. And the
24 second was telling the social worker at the
25 hospital that there had been no intercourse.

1 Q Right. And then when she gave her formal
2 statement to the police, she explained to the
3 police why she had said those things that she said
4 now were not true?

5 A Absolutely. And there was a reason for doing
6 that. I believe the reason was that she didn't
7 want people to know her profession.

8 Q Right. So when you walked into the file, you know
9 that there's something that defence counsel's
10 going to make something of with her, right, but
11 you also know that she has given an explanation
12 for it and that's something the charge approval
13 Crown knew, right?

14 A Yes. I mean it's never good when you've got --
15 let's be blunt about it -- lies being told, but
16 the explanation would make sense, yes.

17 Q And you also knew that Pickton's putting them both
18 at the same place, his story that he had given,
19 there was no way you -- and you've said that to
20 Mr. Gratl -- no way you would have put that in for
21 the truth of its contents, right, as -- you might
22 use it to cross-examine him, but you weren't going
23 to put that in as part of the Crown's case, right?

24 A No, I wasn't.

25 Q So if you even wanted it used, you were going to

1 have a voluntariness voir dire, right?

2 A Right.

3 Q And then if you got it admitted, you were going to
4 use it if he chose to testify?

5 A Right. Just for cross-examination, yes.

6 Q So in terms of what you could prove in terms of
7 them both being at the same place, the other
8 forensic evidence helped buttress her statement,
9 right, the blood that -- the scene that they found
10 with all the blood and broken things, right?

11 A Yes. It certainly did. And also her being picked
12 up by the witnesses originally would certainly
13 have put her at that location, so that wasn't
14 really going to be a problem, I didn't see.

15 Q But those were witnesses that you might
16 potentially need?

17 A I would have called the people that picked her up
18 just because that would put her at the -- that
19 would set the scene before the judge actually saw
20 her to see what condition she was in and where she
21 was and the fact that she had the handcuff. So I
22 probably would have called those people first.

23 Q And the medical -- the blood and that sort of
24 thing was useful for you to establish -- to help
25 you move towards identity, was it not?

1 A I didn't think identity was going to be a problem
2 because she had spent considerable time with him.
3 It wasn't like a robbery where she only got a
4 brief look at him.

5 Q I know. But had she formally ID'd him?

6 A She gave a description of him.

7 Q I know. But she never -- she'd never done a photo
8 lineup, right?

9 A That's right.

10 Q And you know what defence lawyers do? We -- you
11 have the person point the person out on the dock
12 and then we stand up and remind the Court that
13 it's the only person in the dock, that we get the
14 Court to know this is the first time she's ever
15 actually ID'd the guy, right?

16 A Yes.

17 Q So you know dock identification is something that
18 you know is not given as much weight as other
19 things often in a criminal trial?

20 A But one of the things that has to be considered
21 here is the length of time that the witness had to
22 observe the accused, and here it was a long period
23 of time. So you're quite right. Absolutely
24 you're right. You might get surprised at the
25 trial, but I wasn't anticipating identification as

1 being a problem due to the length of time they had
2 spent together. It wasn't a brief encounter.
3 Q I know. But you didn't actually know, did you,
4 that she could pick him out of a lineup?
5 A She had given a description of him.
6 Q I know.
7 A So I wasn't -- I wasn't overly concerned about
8 that. But you're right. I mean there's been
9 times in a trial where all of a sudden you don't
10 have the identification and then you have to go to
11 other sources. But I think we were in pretty good
12 shape. She had a good look at him. She gave a
13 description of him. She had his name correct.
14 Q She had Willie?
15 A She had Willie. And we could put her at that
16 location --
17 Q Okay.
18 A -- where he resided.
19 Q You had some other evidence besides just her
20 picking him out?
21 A Yes.
22 Q But do you agree with me that something she
23 probably needed to do without the medical, without
24 the blood evidence was actually point the guy out
25 in a courtroom?

1 A Yes. And I wasn't overly concerned about that. I
2 felt confident that given the length of time she
3 had spent with him that that was going to happen.
4 If -- if she had --

5 Q Sorry. Go on.

6 A If she hadn't, there were certainly
7 circumstantial. For one thing, she's wearing a
8 handcuff that he's got the key to, so there's
9 cases, believe me -- and you sound very
10 experienced too -- where identification is a real
11 issue. Here it seemed to me that that was not a
12 huge problem at all.

13 Q So what you would want is the police officer then
14 who seized the key from Pickton?

15 A Right.

16 Q And the police officer who seized the handcuffs
17 from her?

18 A Right. Those witnesses, if we couldn't get an
19 admission on that, and I imagine I would have, it
20 would have been easy to call. That's a very quick
21 interview, so --

22 Q There was evidence as well of -- besides the
23 life-threatening injuries that the complainant
24 received, there were injuries on her hands that,
25 at least in one of these medical reports, were

1 described as defensive wounds?

2 A Defensive wounds. That's correct.

3 Q And that is -- can be compelling forensic evidence
4 in a trial, correct?

5 A Absolutely. But here the difficulty was, if it
6 was just her with injuries and defensive wounds,
7 that would be more compelling than a situation
8 where the accused had a slashed throat and he had
9 knife injuries too. Like, clearly there was an
10 altercation going on.

11 Q I'm not saying you had a perfect case here, okay,
12 but I am trying to get out of you things that were
13 useful to the -- I mean if you're prosecuting this
14 case and you've got defensive wounds and you've
15 got a doctor who's going to say they're defensive
16 wounds, you're probably going to call that, right,
17 because it helps support your case, or were you --
18 did you have no intention of calling any medical
19 evidence no matter what?

20 A No. The medical evidence either would have gone
21 in by way of admission --

22 Q But what if it didn't?

23 A I had -- the doctor was on the witness list. It
24 wouldn't have been a problem.

25 Q Was the doctor subpoenaed?

1 A I could check.

2 Q Can you check because I don't see that?

3 A Well, I couldn't tell you whether he was, but,
4 again, Mr. Ritchie was being very reasonable in
5 terms of saying, "Look, we'll have admissions on
6 this."

7 Q I know, but I'm a defence lawyer and we say -- we
8 all think we agree and then it turns out we don't
9 agree at all. We thought we agreed. That's
10 why -- you'll agree with me, won't you, that
11 someone starts the admissions process and sends
12 the letter and then someone sends it back? You
13 don't always stop at one draft?

14 A Right. But I have no reason to believe -- we can
15 look for the subpoena. I have no reason to
16 believe that I couldn't locate the doctor or that
17 his evidence wasn't going to go in by way of
18 admission. Again, not a huge concern. And
19 defensive wounds, pretty much anyone can say if
20 you've got a slash on your hands that it's a
21 defensive wound. You don't really need an expert
22 to say that.

23 Q Okay. You don't think an experienced lawyer like
24 Ritchie is going to object to a doctor giving that
25 opinion evidence, but you need to establish

1 something?

2 A Well, I mean --

3 Q Or did you think that? Sorry.

4 A Well, the witness could have said these are my
5 injuries.

6 Q I know.

7 A And an argument can be made if there's an injury
8 here and an injury here that that's a defensive
9 wound, but that wasn't really the problem in this
10 case. There was no dispute that both -- both
11 people were injured.

12 Q Okay. I'm not asking what the problem in the case
13 was, okay? And where I'm -- what I'm asking you,
14 we know Anderson, even if she's having a great day
15 as a witness, you still have some issues you're
16 going to have to overcome in this prosecution,
17 right, because of her very different stories,
18 because she was stoned at the time of the
19 altercation, right, because of her addiction? The
20 defence lawyer is going to try to make a lot of
21 mileage out of those things, right? You know
22 that?

23 A Likely, yes.

24 Q Okay. So all I'm asking you is you just keep
25 coming back to, well, I had this witness and she

1 could say how she got this and the witness could
2 say this and the witness could say that, but you
3 didn't know the witness would say those things
4 prior to interviewing her, correct?

5 A I'm sorry. I would have reviewed her statement,
6 so if it's in her statement, yes. We're getting
7 into hypotheticals now, but you have a statement
8 and you assume that that's what the evidence is
9 going to be. You might interview the person and
10 they might say, "No. I never said that" or "This
11 isn't how it happened" or "I don't remember that."
12 I'm sorry. Maybe I'm not answering your question
13 responsively, but --

14 Q Okay. I'll take you back to the doctor. Did
15 you -- you don't know for sure if any doctors were
16 ever served any subpoenas, correct?

17 A I would assume -- the doctor was on the witness
18 list, so Richard Romano would have ticked him off
19 and the subpoena would have gone out.

20 Q But do you know if your subpoenas were actually
21 served? Like, I went through the file and I'm
22 seeing some were, but not very many.

23 A You're asking me 14 years later.

24 Q And say I don't know if you don't know.

25 A Well, they may very well -- the doctor may very

1 well have been served. He may very well have been
2 a doctor at RCH, that if he hadn't been, I could
3 have got a police officer out to serve him. But,
4 in any event, I understand there was a medical
5 report and I would have talked to Mr. Ritchie to
6 see are you going to admit this.

7 Q But, again, you did not at that point -- in fact,
8 you never actually had any admissions on this
9 file, correct?

10 A Not that I recall, no. But we've gone over this
11 and over this and over this.

12 Q Not with me you haven't.

13 A But the thing is there was still a week before the
14 trial was going to start. It's not unusual for
15 admissions to be done a few days before the trial,
16 particularly if they're not complicated or things
17 in dispute. And it was very usual for me with a
18 busy caseload to do admissions before the trial
19 date or interview lots of witnesses. And not only
20 a week, you've got to remember -- and I'm sure
21 you're the same way. I wasn't restricted between
22 nine and five. I was at the office at night if I
23 needed to be, on weekends if I needed to be. That
24 to me was more than adequate prep time to do what
25 I needed to do.

1 Q I know sitting on the stand for two days you can't
2 help but feel defensive, but I'm just asking what
3 you did. I'm not judging the quality of the work
4 you performed. I'm just trying to get at what you
5 actually did. The goal, at least from my
6 perspective, is let's see what we can do to try to
7 make things better down the road and that's why
8 I'm asking the questions. So try to stick with my
9 questions if you can and not worry about do I
10 think you were working hard, okay, because I
11 haven't suggested you weren't and I'm not going
12 to. With respect to the doctor, had you ever
13 actually spoken to a doctor on this file?

14 A I don't recall speaking with a doctor.

15 Q Okay. Did you anticipate having to potentially
16 tender any expert evidence if you didn't have a --

17 A I'm sorry. I didn't hear the last --

18 Q If you didn't have an admission, were there areas
19 in the evidence that you'd have had to give notice
20 of?

21 A No. Not that I can think of.

22 Q Any of the medical or any of the testing of blood,
23 things like that? Do you not think notice would
24 have been required on any of those?

25 A Now, again, I'd have to -- and I'm sorry. I'm at

1 a huge disadvantage not having the file.

2 Q I appreciate that.

3 A This had gone through the disclosure court
4 process, so I know my standard practice is when I
5 do a charge assessment and I check off a witness,
6 I'll put a note in JUSTIN this expert notice
7 required. So for the doctor, yes. We would need
8 some expert notice.

9 Q Okay. And we don't have your file.

10 A We don't have my file to see whether that was
11 done.

12 Q So we have no -- and you wouldn't necessarily give
13 a copy of your expert notice to the police. In
14 fact, you probably would not, right?

15 A The police, no. No.

16 Q Okay. You've been asked a lot about your
17 meetings -- or your meeting with Ms. Anderson. I
18 want to cover a little bit your actual
19 recollections not of that meeting -- I'm hoping we
20 don't even get there, but just in terms of your
21 contact with the family, your attempts to get hold
22 of her or anything like that, and where I'm going
23 to start is I understand you've refreshed your
24 memory from what we believe to be business records
25 of Ms. Anderson's mother, right?

1 A Yes.

2 Q And you have no reason to doubt the dates in
3 there, correct?

4 A No. I didn't make the record, but I wouldn't have
5 any reason to doubt it.

6 Q Okay. You yourself have no independent
7 recollection of those things happening on those
8 dates, correct?

9 A That's correct.

10 Q All right. And you believe, for example, the
11 first call is you because the 24-hour voice mail
12 is the kind of thing you would tell someone,
13 right?

14 A Yes. If I'm trying to get hold of somebody, I
15 would say here's my office number. There's a --
16 I'm old-fashioned, but "There's a voice mail on
17 it. You can call any time and leave a message if
18 I'm not there." That would be the thing I would
19 have said back then.

20 Q And from your "will say" -- correct me if I'm
21 wrong, but I get the impression that you get this
22 file. You don't know how to get a hold of this
23 woman. You get a hold of the police officer in
24 charge and he gets you this phone number that you
25 call?

1 A Yes. I'm basing that on the witness sheet. Under
2 Miss Anderson's name it says "Care of Corporal
3 Connor." There's no phone number, there's no
4 address, just care of Corporal Connor.

5 Q So you don't personally recall contacting Corporal
6 Connor, but you're assuming just because your
7 "will say" says you did, I think?

8 A I think I said I did based on looking at the
9 witness statement and saying that's the only
10 way --

11 Q You said "I believe I contacted him"?

12 A Thank you.

13 Q Sorry. I don't want to misstate your evidence.

14 A Thank you.

15 Q So you believe you had contacted him because that
16 made the most sense?

17 A Right.

18 Q And I don't see anything from your "will say" to
19 suggest you had a huge amount of difficulty in
20 tracking her down.

21 A No. I was able to get a hold of her through the
22 mother.

23 Q Okay.

24 A And it looks like Victim Services got a hold of
25 her through the mom as well.

1 Q But from your perspective, if you remembered it
2 being a major hurdle, that's something you would
3 have put in your "will say", correct?

4 A Yes. The mother was co-operative, yes.

5 Q And finding the mother was not difficult?

6 A Finding the mother? No. It looks like I was
7 calling her office number and it looks like from
8 the notes she was there, so -- and that -- that's
9 my recollection as well; that it wasn't a problem
10 with her.

11 Q Okay. And do you specifically have any
12 recollection of trying to meet with Anderson other
13 than the date you met with her? Now, I know
14 you've talked about I looked at other files and
15 why else would I have been at 222 and stuff like
16 that, but do you have any specific recollection?

17 A Really I know from reading this statement it said
18 that I refreshed my memory from the Victim Service
19 file.

20 Q Yes.

21 A Which I find -- and I --

22 Q I can't even find that, okay?

23 A Yes. And it -- but I have a really, really vague
24 recollection of -- I can't remember the drive down
25 or anything specific, but of being at 222.

1 Q Okay. But that may or may not have been in
2 relation to Anderson, right?

3 A Well, I wouldn't have had any other reason to go
4 down there. I wasn't prosecuting any cases out of
5 222 Main Street.

6 Q And is that the extent of your recollection of
7 that?

8 A Just going down there and her not being there.

9 Q Okay. But did you set up the meeting? Did
10 someone else?

11 A I think I've already said that I believe it might
12 have been Roxanna Smith or myself.

13 Q So you don't know?

14 A So I don't know.

15 Q Okay. The -- do you agree with me that meeting a
16 witness a week before the trial and finding her in
17 that kind of condition would have been sort of a
18 oh, great, I've got nothing now? Like, you must
19 have felt like I don't have a case, I only have a
20 week and this witness is in no shape, right?

21 A It's -- it was a big problem. It was a serious
22 file and I didn't have a witness. Not -- that's
23 not good.

24 Q Has anything changed in -- clearly I mean this --
25 this woman was vulnerable and we've covered that

1 in spades, right?

2 A Right.

3 Q Has anything changed in that regard in terms of
4 maybe trying to form earlier relationships?

5 A I believe I did. And I'm relying on that note of
6 the mom from January the 9th. So we know that at
7 least by January the 9th I'm trying to get a
8 hold --

9 Q I know that. But you don't know if she called you
10 back and you guys set up the interview for that
11 other date. You know, I mean you don't know what
12 happened on January the 9th?

13 A No. But I do know a couple of things from looking
14 at those notes and they're helpful. One, I was
15 giving her my home number as well as the office.

16 Q That's not January 9th?

17 A No. That's not January 9th.

18 Q That's the day you're staying it. You give her
19 your home phone number around the time you were
20 directing the stay. Let's just -- I could be
21 wrong. Tab 15.

22 A Thank you. January 22nd.

23 Q Yes.

24 A So what that means to me -- and I'm sorry. I'm
25 getting a little bit ahead of myself here -- is

1 that I wanted to meet with her. And I can tell by
2 giving out my home number, by seeing that there's
3 a message from me from January the 9th that I was
4 anxious to meet with her.

5 Q Right. And that --

6 A So that -- I'm sorry.

7 Q Sorry. No. You go ahead.

8 A No. I'm sorry. I just wanted to say that the
9 fact that it was close to the trial wasn't through
10 me not trying to get in touch with her.

11 Q Right.

12 A Like, I agree with you.

13 Q We're at that entry, so let's talk about it. Let
14 me suggest something to you about what that entry
15 was from your perspective. She was supposed to
16 show up for a meeting. She didn't show up in the
17 morning. You called the mother.

18 A I'm sorry. Are we on January the 23rd now?

19 Q 22. This is the only time where your home number
20 appears, isn't it? Am I wrong about that? Yes.
21 The only time your home -- well, it's necessarily
22 blacked out, but what I see is the only time your
23 home number appears in this book is January 22nd,
24 right?

25 A Yes. I would agree with that.

1 Q Okay. And you can see in the office and there's
2 some times written. Go and find her, 8:30, 9:15.
3 You see all that?

4 A Yes.

5 Q That's -- I mean that's really all that says,
6 right? I'm suggesting that that entry relates to
7 you phoned because Miss Anderson didn't make it in
8 the morning and then you said, look, this is how
9 she can get a hold of me, and then she came out
10 subsequently to see you, that day or the next day.
11 Do you know? Am I right, am I wrong or you don't
12 know?

13 A I'm sorry. I'm just trying to think here. What
14 those numbers mean -- yes. They could mean a
15 couple things. The scenario you're putting to me
16 is is it possible that she didn't show in the
17 morning of January 22nd, so I called again and she
18 showed the afternoon of the 23rd. Is that your
19 question?

20 Q Do you know what day she actually showed?

21 A No. We've been over this. It was either the
22 Friday or the Monday.

23 Q Okay. So she didn't meet you on January 22nd?

24 A No. My -- I only had the one occasion where she
25 showed up for the interview.

1 Q And why do you know it was a Friday or a Monday?
2 A We've gone over the dates. A calendar was put to
3 me when I was being cross-examined.
4 Q I know. But we went over the dates based on this
5 diary.
6 A I thought I was told that the Monday -- we're
7 trying to figure out --
8 Q Sorry. The Monday was the stay. Yes. The Monday
9 was the stay and so you're working back from the
10 stay?
11 A I mean to be accurate, I think defence counsel put
12 to me when I was being cross-examined that the
13 23rd was a Friday and that the Monday was the 26th
14 and I was asked if I wanted to consult a calendar
15 and I said no.
16 Q But how does that tell you what day you
17 interviewed her?
18 A It doesn't.
19 Q Okay. So does it even narrow it to either Friday
20 or Monday?
21 A Yes.
22 Q Okay. Why does it narrow -- why do you know you
23 either interviewed Miss Anderson on the Friday or
24 you interviewed her on the Monday? Why do you
25 know that?

1 A I think we figured that out from going through
2 these notes. I think it was put to me that it was
3 likely me calling at 9:20 in the morning on the
4 Friday and her showing up in the afternoon.

5 Q You're basing it on these notes?

6 A Yes.

7 Q Okay.

8 A In terms of what day of the week it was, I -- I
9 thought we narrowed it down to the Friday or the
10 Monday through cross-examination and I can't
11 recall now how we came to that conclusion.

12 Q My recollection is that you've kind of used the
13 note at Tab 15 to -- and the stay of proceeding
14 date to orient yourself in terms of this happened
15 this day, this happened on that day?

16 A That would be fair. Yes.

17 Q So what if I suggested Ms. Anderson met with you
18 on the Thursday and that on the -- this phone me
19 at home thing relates to I'm planning on staying
20 the charge and I want to let you know or I am
21 staying the charge and I want to let you know?

22 A I don't think so because on the Friday there's a
23 note that I called at 9:20, and the way we're
24 piecing it together is that it's likely that she
25 didn't show in the morning --

1 Q Okay.

2 A -- and then came later.

3 Q Okay.

4 A Could we -- could I be in error on that?

5 Q We're relying on someone else's notes, right?

6 A I'm trying to piece it together, but that was a
7 conclusion we came to, was the Friday or the
8 Monday based on that.

9 Q So I'm going to go back to where I was, which was
10 do you do things differently? Could you interview
11 her earlier? And I guess I was thinking a lot
12 earlier than January. In a case of a witness who
13 distrusts the system, right, who has addiction
14 issues, does -- does your office now try to
15 interview them earlier than a month before the
16 trial?

17 A It would depend on when you got the file. It
18 would depend on the work-load and it would depend
19 on the witness. If -- and we're getting into
20 speculation here.

21 Q I'm not asking for speculation.

22 A But I think, in fairness, I should tell you that
23 if she had been available and in great shape on
24 January the 9th -- the trial wasn't until February
25 the 2nd -- that was adequate prep time,

1 absolutely.

2 Q Do you still feel that way today?

3 A Yes.

4 Q That that's enough?

5 A Yes. How many -- a person like that who's
6 vulnerable, you want to meet with them early and
7 give yourself enough time to do several interviews
8 if you need to, but there's a limit to how many
9 interviews you're going to do.

10 Q I know.

11 A And if she had shown up in good condition, I don't
12 think we would have required a whole series of
13 interviews and I think that three weeks would have
14 been enough. I'm sorry, but I couldn't have
15 predicted with -- with certainty -- I mean I knew
16 there were problems, but I didn't know she was
17 going to show up in that condition.

18 Q Miss Connor, we're not going there, okay? I'm
19 just asking if even today you think a month is
20 enough time to prep a witness who's vulnerable
21 like this and your answer is yes, correct?

22 A Yes. You've got to give yourself time for more
23 than one interview.

24 Q I mean I've been practising forever. I often see
25 vulnerable witnesses, not just children, come to

1 court with an assistant, a Victim Services worker
2 who didn't just join the file. They've been
3 working with this person for months at the behest
4 of the Crown. Do you sometimes do that, ask
5 someone to start working with this person now, not
6 a month before the trial?

7 A That's supposed to happen automatically with
8 Victim Services, is the way it's set up is the --
9 there's a protocol for the Crown to notify Victim
10 Services. The police base will get involved
11 through the police. They'll figure out which
12 files are serious. So that's quite independent of
13 Crown. They just go ahead and do that.

14 Q Do you ever ask them to do it?

15 A Normally that's already covered.

16 Q I'm not asking you if it's already -- clearly it
17 wasn't happening here, right, so do --

18 A I'm sorry. It was. But there's six pages of
19 notes of Victim Service people trying to get a
20 hold of her, so they were involved.

21 Q Do you see a whole lot of bonding going on in
22 those six pages?

23 A No.

24 Q No. Do you see a whole lot of preparing of a
25 witness going on in those six pages?

1 A No. But I do see, to be fair, they're losing
2 contact with her and they're having trouble
3 getting a hold of her, but --

4 Q Well, no. Let me just -- did you have any review
5 of those notes when you were prosecuting this
6 case? Were you checking those notes?

7 A No. But I should have known that -- two things.
8 One is I knew I had Roxanna Smith involved as the
9 Crown-based Victim Service worker and in spite of
10 her statement, she was somebody that I found to be
11 experienced and really good with people and she
12 was on that to do -- that was her role.

13 Q But she didn't do it, right? You know that she
14 met Ms. Anderson for the first time the same day
15 you met Ms. Anderson?

16 A Right. There was difficulties in getting a hold
17 of her, so it was hard for --

18 Q Well, did you yourself ever have any difficulty
19 getting a hold of her or getting messages to her?
20 I'm not seeing any.

21 A No, but you're asking me -- you're mixing up the
22 roles here. There's two roles. There's a real
23 need for and it's really, really important to have
24 Victim Service workers.

25 Q Right.

1 A Both police based and Crown based. In this case,
2 both were involved.

3 Q Okay. And I am asking you -- I'm not going to ask
4 you for a bunch of hearsay because I know
5 yesterday when -- sometimes something was hearsay
6 and sometimes it wasn't. I don't want your view
7 of what Victim Services should have done. What I
8 want to know is what you knew they were doing.
9 What did you know they were doing when you were
10 prosecuting this case?

11 A I knew that Roxanna Smith was assigned to the
12 file. I knew that.

13 Q And you didn't have any idea what that looked
14 like, correct?

15 A I know what Victim Services' role is and what her
16 job was.

17 Q Okay.

18 A I didn't have to tell her that.

19 Q Right. But you didn't actually know if she was
20 building rapport with this witness, right?

21 A I would have known when I talked to her before the
22 meeting that she hadn't met with the witness
23 before that day, but the reasons for that -- and,
24 again, it's hearsay --

25 Q I don't want your explanation of why Victim

1 Services couldn't get a hold of her because it
2 sounds to me like you had no trouble getting a
3 hold of her, right?

4 A Through the mother.

5 Q Right. And there's all kinds of services in the
6 Downtown Eastside too, aren't there?

7 A That I'm not aware of. In 1997?

8 Q Yes. You're not aware of that? You don't work in
9 that --

10 A No. I'm sorry. I have never worked in that area.

11 Q Okay. Do you yourself have any knowledge of what
12 other prosecutors did on this file with Ms.
13 Anderson prior to your taking it over in terms of
14 interviews, in terms of meetings, in terms of
15 phone calls, in terms of preparing her for this?

16 A No. I don't have a file.

17 Q Okay. And you did know from a police report that
18 at least the police believed that Mr. Pickton was
19 connected in some fashion or had a good
20 relationship with the motorcycle gang, the Hells
21 Angels? It's in the file, right?

22 A The wording under investigator's comment is I
23 believe that -- well, I could find the exact
24 wording.

25 Q Sure. Because you would have known this, right,

1 if you looked at the file?

2 A Yes. Which I did.

3 Q I'm not suggesting you didn't.

4 A The wording was --

5 Q Are you at Tab 3??

6 A Yes. Tab 3 near the end.

7 The accused and brother --

8 And you used the word correctly.

9 -- do associate with members of the Hells

10 Angels Motorcycle Gang.

11 Q So you knew that?

12 A Yes.

13 Q So you knew she worked in a vulnerable job?

14 A Yes.

15 Q You knew that the accused had a relationship with

16 a criminal organization?

17 A Of some sort. That's all I knew. I don't have

18 specifics.

19 Q And you didn't inquire?

20 A No.

21 Q Okay. And as far as you can tell us, the sum

22 total of any interaction between your office and

23 Ms. Anderson was your phone calls to the mother

24 and the meeting, right?

25 A Yes. And one -- as I said yesterday and I believe

1 it's in my "will say", the message left on my
2 answering machine that was incoherent.

3 Q Right. Now, I appreciate everyone practises law
4 in their own unique way and I don't -- I think
5 that's a good thing. But in a situation where you
6 find yourself with someone, you need this
7 witness -- I mean it happens to all of us, right?
8 You need this witness. They show up. They're
9 drunk or they're incoherent or they're stoned or
10 whatever. Do you not ever say to them things
11 like, "Look, I really need you sober. I really
12 need you straight. We'll set up another
13 appointment. We can win this, but I need you"?
14 Do you do that kind of thing?

15 A I can't remember everything I said to her during
16 the interview, but my assessment was that it was a
17 long-standing drug problem. I couldn't talk to
18 her. I spoke with Mr. Romano and I decided to
19 leave the door open by directing a stay of
20 proceedings.

21 Q It's very unlikely you had that discussion with
22 her that I just -- or something along those lines
23 with her because you stayed it shortly after
24 meeting her, right, and prior to ever speaking to
25 her again?

1 A Within a few days, yes.

2 Q And prior to speaking to her again?

3 A Yes.

4 Q And I mean my experience is Crown generally
5 directs a stay just in case; isn't that true, with
6 serious matters? You're not very likely going to
7 walk in there and call no evidence on something
8 from an attempt murder, are you?

9 A That's right. Anything where you're worried that
10 you might have a chance to recommence later you
11 don't want to close the door completely. You're
12 absolutely right about that.

13 Q I only have one other thing I want to cover with
14 you and then we're done and it's brief. Who's
15 actually -- it's your file when you have it,
16 right?

17 A Right.

18 Q But after you're done with it, who's responsible
19 for the file? I mean I know if I destroy a file I
20 have to explain it because I run my office, but at
21 Crown Counsel do you know, are you responsible for
22 the missing file? Is someone else? Is no one?

23 A I'm not responsible for it, I can assure you of
24 that. I don't know whether you've been -- there's
25 discussions where there's an affidavit and Andrew

1 MacDonald is here to discuss the file destruction,
2 but if your question to me is was I responsible
3 for it, no.

4 Q Okay. And as far as you know, just as far as you
5 know, is anyone responsible? Like, does someone
6 stand up in front of the Law Society and explain
7 that they destroyed this file and they shouldn't
8 have?

9 A There are policies on it and Mr. MacDonald will
10 have those.

11 THE COMMISSIONER: I think we're going to get evidence on that.

12 MS. NARBONNE:

13 Q So you don't yourself know the answer to that?

14 A No.

15 Q All right. That's all I wanted to ask. Thank
16 you.

17 A Thank you very much

18 THE COMMISSIONER: Thank you. Mr. Dickson.

19 **CROSS-EXAMINATION BY MR. DICKSON:**

20 Q Yes, Mr. Commissioner. Tim Dickson for the
21 Vancouver Police Department and Vancouver Police
22 Board. Miss Connor, I only have a few questions.

23 A Thank you.

24 Q When you received the file, the first thing you
25 did was to review the charges to see if you agreed

1 that they were the correct ones; is that right?

2 A Yes. I would have read the file and that would
3 have been one of the first things, absolutely.

4 Q Yes. And you did conclude that those were the
5 right charges?

6 A Yes.

7 Q And Mr. Romano, as we know it, approved four
8 charges. Three of those were recommended by
9 Corporal Connor and they were attempted murder,
10 assault with a weapon and forcible confinement?

11 A That's right.

12 Q And then he approved -- he had added a fourth
13 charge of aggravated assault?

14 A Yes. We know that because it's handwritten on the
15 front of the report to Crown counsel.

16 Q Yes. And obviously neither Corporal Connor nor
17 Mr. Romano nor yourself recommended or approved
18 kidnapping as a charge against Mr. Pickton?

19 A Let's have a look here. I'm sorry. I'm just
20 going to refresh my memory.

21 Q Certainly. I think Tab 4.

22 A Yes. Attempt murder, assault with a weapon,
23 forcible confinement, which would be in a sense
24 kidnapping, and then four aggravated assaults.
25 That's what he added.

1 Q Yes. Kidnapping is not specifically a charge
2 there. It's forcible confinement?

3 A That's right.

4 Q And I just want to ask you a jurisdictional point
5 on kidnapping. You and Mr. Romano were Crown
6 counsel based out of Port Coquitlam, as we know?

7 A That's right.

8 Q And if you or he had thought that there was enough
9 evidence to support a kidnapping charge and if it
10 were thought that the kidnapping began in
11 Vancouver, you and Mr. Romano, you had the
12 jurisdiction to approve that charge, correct?

13 A That's right. You can -- you're right. In terms
14 of jurisdictions, an offence can start in one area
15 and end in another and I suppose could be laid in
16 either jurisdiction.

17 Q Yes.

18 A If I understand the question.

19 Q Yes. It's not as if only Crown counsel in
20 Vancouver could have approved that charge?

21 A That's right.

22 Q Now, I want to move to a different topic. I want
23 to ask you about a briefing note that was
24 disclosed to us earlier. It's entitled "Ministry
25 of Attorney General, Criminal Justice Branch" --

1 sorry -- "Criminal Justice, Briefing Note" and
2 it's dated August 12th, 2010.

3 A I'm sorry. What tab is that at?

4 Q Yes. It's not. I will hand you up a copy.

5 A Thank you. Yes. I'm familiar with this document,
6 although there's another signature that wasn't
7 there when I got my copy. This was prepared, as I
8 understand it, by Mr. Neil MacKenzie of our
9 office.

10 Q Yes. You can see that if you turn to the last
11 page, page 3?

12 A Yes.

13 Q Yes. And it was approved by David Loukidelis, the
14 Deputy Attorney General on September 15th, 2010?

15 A Yes.

16 Q And you were just saying that you've seen it
17 before?

18 A Yes, I have. I'm just going to review it.

19 Q Certainly.

20 A Unless there were some changes, I believe Mr.
21 MacKenzie sent me a copy of this at the time he
22 prepared it, but let me just --

23 Q Certainly. Take a moment.

24 A I'm trying to remember, if I just took a moment,
25 because I can't be positive that it's exactly

1 what -- what he sent me. I have no reason to
2 believe it's not. Yes. That's fine. Thank you.

3 Q Yes. And I would think from reading it -- and, in
4 fact, I take it also from one of the answers you
5 gave to Mr. Ward that Mr. MacKenzie consulted you
6 when he prepared it?

7 A Yes. He did.

8 Q And I think that document can be fairly easily
9 summarized by just looking at a few of its
10 passages. We see at the top there's a heading
11 "Topic" and it says:

12 Charges against Robert Pickton stayed by
13 Crown in 1998.

14 A Yes.

15 Q And then there is a heading "Issue" and it says:
16 Information released to the public has caused
17 concerns to be raised with respect to the
18 decision by Crown in 1998 to drop charges
19 against Robert Pickton in connection with an
20 attack on a sex trade worker.

21 A That's right.

22 Q And then there's an "Executive Summary/Summary
23 Recommendation" heading, and in the last paragraph
24 of that discussion there it says this:

25 The Criminal Justice Branch has reviewed the

1 circumstances and has concluded that the stay
2 of proceedings was a proper exercise of Crown
3 discretion based on the strength of the
4 available evidence at the time.

5 A Yes. I see that.

6 Q And then -- and then there's a background section.
7 And, as you can see, it sets out a number of
8 factors that were -- are relevant to that
9 determination?

10 A To Mr. MacKenzie -- Mr. MacKenzie's
11 recommendation, yes.

12 Q Yes. And you've seen this memo before. Can I ask
13 you as a general matter do you agree with the
14 statements made in it?

15 A The conclusion, yes. I think there were other
16 sources of information for Mr. MacKenzie apart
17 from just me.

18 Q Is there anything you disagree with?

19 A Let me just take a minute to read. I'm sorry.

20 Q Sure.

21 A Skimming it quickly, I can't see anything that
22 comes to mind as being not accurate.

23 Q Okay. There are a few points I want to ask you
24 about specifically. And if we turn to page 2, I
25 just want to take you to the fifth bullet point.

1 It's the one that starts "Crown counsel eventually
2 succeeded". Do you see that?

3 A Yes.

4 Q And it says this:

5 Crown counsel eventually succeeded in
6 locating the complainant with the assistance
7 of her mother. Crown arranged to have the
8 complainant brought to Port Coquitlam in a
9 taxi for an interview. When the complainant
10 was interviewed Crown found that she was
11 significantly under the influence of drugs
12 and could not communicate coherently. A
13 Victim Services worker was also present for
14 this interview.

15 That's accurate, is it?

16 A Yes.

17 Q Then the next bullet point says this:

18 Based on the circumstances as a whole the
19 Crown had no confidence that the complainant
20 would be able to provide effective, coherent
21 evidence in court. The lifestyle of the
22 complainant at that time was such that the
23 Crown also did not believe that the situation
24 was likely to improve in the foreseeable
25 future. There was therefore no substantial

1 likelihood of conviction.

2 And do you agree with that?

3 A Yes. I don't know if I would have used the word
4 lifestyle, but I can't disagree with it.

5 Q Well, what word would you use?

6 A Drug addiction maybe.

7 Q Okay. And you have testified and it's true that
8 your view was that her addiction was not likely to
9 improve in the foreseeable future?

10 A That was my assessment, yes.

11 Q And you've spoken a little bit about what you base
12 that upon. Did you speak with her mother about --
13 about her addiction?

14 A My recollection is that that was part of our
15 conversations.

16 Q And do you recall what her mother said?

17 A Not specifically, but I was left with after
18 dealing with the mom, because I had to go through
19 the mom to get to the daughter, that she was
20 living on the street and she was using drugs.

21 Q I wanted to move, then, to the last bullet point
22 on this page. It says this:

23 While the condition of the complainant was
24 the determining factor in the Crown decision,
25 even had she been able to testify the Crown

1 case was not overwhelming. The complainant's
2 recollection of aspects of the incident was
3 affected by drug use, both parties had
4 received significant injuries, and both
5 parties alleged that they were acting in
6 self-defence. At the time there was not any
7 compelling corroborative evidence to prefer
8 the version of one over that of the other.

9 Do you agree with that?

10 A Those aren't my words. That was Mr. MacKenzie's
11 conclusion, but that appears to be correct.

12 Q And then just the last bullet point I want to ask
13 you about is the last bullet point on this memo,
14 and it says this:

15 Other evidence from police reports which was
16 not in the possession of Crown counsel at the
17 time of the stay of proceedings, but which
18 was put before the court in the murder case,
19 describes incidents both before and after the
20 encounter with Pickton in which the
21 complainant acted in a paranoid, agitated,
22 erratic and sometimes violent manner
23 apparently as a result of drug abuse.

24 Do you agree with that statement?

25 A Yes. I've read information since, obviously, the

1 stay about what was going on with the complainant
2 both before my interview with her and after in
3 terms of other incidents with the police.

4 Q Yes. And there was a document included in the
5 commission counsel's binder that was put before
6 you and it was behind Tab 8. It's been removed
7 from the binder.

8 A Yes.

9 Q And I don't -- I don't want to take you to it in
10 any detail and I do not want to tender it out of
11 respect for Ms. Anderson's privacy, but did you
12 have occasion to read that document?

13 A Yes. There was a binder that I was given by
14 defence where they went through the police
15 incident, so --

16 Q I can hand you up the document if you'd like.

17 A All right.

18 Q I wish to ask you one question about it.

19 A Yes. That would be helpful. I think I have a
20 copy here.

21 Q Okay. Very well. It's blacked out mainly on the
22 front.

23 A Yes.

24 Q And the question is this: If you look at that
25 document and based on whatever other knowledge you

1 have of this issue, is it your view that Ms.
2 Anderson's drug problem continued at least until
3 the year 2000?

4 A Yes. And in addition to that, there was an
5 incident with police. It says here she was
6 frothing at the mouth May 9th of 1997, which would
7 have been before my interview. And there were
8 incidents involving drug use with police after
9 that, in June and August of 19 -- I'm sorry --
10 June of 1997, August of 1997, and there were
11 incidents after my interview with her as well
12 involving her drug use and --

13 Q Yes.

14 A It continued -- it was a problem before I
15 interviewed her and a problem after I interviewed
16 her. And when you read the descriptions by the
17 police as to what they were dealing with her, her
18 frothing at the mouth, stealing cars, that kind of
19 thing, it supports what I observed, which was this
20 is a person clearly in the throes of a really bad
21 drug problem.

22 Q And my purpose here specifically in asking you
23 about this is if we look at this document -- we
24 only have an extract of it. It only goes up to
25 page 11 and then stops, but it's clear from this

1 extract that the last date we have on this extract
2 of an incident is July 9th, 2000 and there are
3 other incidents in 2000. And so again is it your
4 view that Ms. Anderson's drug problem was
5 continuing into 2000?

6 A Based on these reports, yes.

7 Q And I just want to refer back to this Criminal
8 Justice Branch memo that I was taking you to
9 before and back to page 2 of it and the fourth
10 bullet from the problem -- sorry -- from the
11 bottom and where it says:

12 The lifestyle of the complainant at that time
13 was such that the Crown also did not believe
14 that the situation was likely to improve in
15 the foreseeable future.

16 And you said you would replace lifestyle with drug
17 addiction?

18 A Yes.

19 Q And so is it your view, then, that Ms. Anderson's
20 drug addiction in fact did not improve in the year
21 or so after you entered the stay?

22 A No. There was a pretty serious incident, like I
23 say, before my interview with her and then pretty
24 serious interviews -- incidents after. So no. It
25 did not improve according to these police reports.

1 MR. DICKSON: Those are my questions of you.

2 THE COMMISSIONER: Thank you, Mr. Dickson. We'll -- what are
3 we doing now?

4 MR. VERTLIEB: I believe the last examiner is the Department of
5 Justice and I'm told 20 minutes.

6 THE COMMISSIONER: Well, we'll take the break.

7 THE REGISTRAR: The hearing will now recess for 10 minutes.

8 (PROCEEDINGS ADJOURNED AT 3:05 P.M.)

9 (PROCEEDINGS RESUMED AT 3:17 P.M.)

10 THE REGISTRAR: Order. The hearing is now resumed.

11 **CROSS-EXAMINATION BY MR. MAKOSZ:**

12 Q Mr. Commissioner, Roy Makosz for the Government of
13 Canada. Miss Connor, I'm going to just explore
14 with you a little bit about your assessment of the
15 case and of the police investigation. I'm hoping
16 to do this in sort of a summary fashion just to
17 see if I have -- my understanding about your
18 understanding of the case is correct.

19 A All right.

20 Q Now, you received this file as trial Crown. You
21 testified that one of the first things that you
22 do, obviously, is review the report to Crown
23 counsel?

24 A Yes.

25 Q And I take it that is to learn the facts of the

1 case and as well develop a theory of the case?

2 A Learn the facts of the case and figure out a plan
3 in terms of what's going to be required time-wise
4 to prosecute it and the theory -- well, I suppose
5 I would agree with that.

6 Q And so --

7 A But in some cases it's pretty straightforward what
8 the issues are.

9 Q Certainly. And I was going to get to that because
10 some of the questions that you're looking at on
11 that review is, for example, what evidence is
12 there?

13 A Yes.

14 Q Will it be admitted?

15 A Yes.

16 Q How probative is that evidence?

17 A Yes.

18 Q What weaknesses are there in the case?

19 A Yes.

20 Q What defences are available to the accused and are
21 they viable defences?

22 A Yes.

23 Q And this is all reflected in the charge approval
24 guidelines themselves in respect to substantial
25 likelihood, you'll agree?

1 A Yes.

2 Q And, of course, we've seen those documents at Tabs
3 23 and 24. I'm not going to turn you to them. I
4 think everyone's already familiar with that. And
5 what you're looking for in the charge approval
6 context is what material evidence is likely to be
7 admissible, the weight to be attached and viable,
8 not speculative defences?

9 A Yes.

10 Q And you testified that you're always looking out
11 for the substantial likelihood of commission at
12 all stages of the prosecution?

13 A Yes. It doesn't end at the charge assessment
14 stage.

15 Q And I just want to explore your assessment of this
16 particular case and the police investigation
17 itself. You testified that this was a difficult
18 case in your view?

19 A There were some problems with it, yes.

20 Q And my take on it -- and I don't need you to agree
21 with me on this, but there's really two main kinds
22 of difficulties that can arise from a report to
23 Crown counsel. There may be difficulties arising
24 from the investigation and there may be
25 difficulties that are simply inherent to the fact

1 pattern?

2 A That's correct.

3 Q And I want to explore that with you just a little
4 bit. Now, in terms of the difficulties that may
5 arise from aspects of the police investigation, I
6 think yesterday you testified that some
7 investigations are more complicated than others;
8 for example, wiretap investigations?

9 A Yes. I would agree with that.

10 Q And so that's the type of thing I mean by a
11 complicated factor arising from the investigation.
12 The nature itself is more complicated to
13 prosecute?

14 A Yes.

15 Q And so another one might be, for example,
16 continuity issues attached with exhibits. That
17 might be a problem?

18 A In some cases, yes.

19 Q And another might be potential Charter breaches,
20 of course?

21 A That's right.

22 Q And you testified that in your view this wasn't a
23 complicated case?

24 A Factually, no. It was pretty straightforward in
25 terms of the evidence itself.

1 Q And so what I wanted to suggest to you is that
2 every case has the potential to be a complicated
3 case depending on the way in which it's
4 investigated; is that fair?

5 A That's true. And you can get surprises at trial
6 as well.

7 Q Certainly. And so, for example, in this case we
8 have Mr. Pickton in the hospital wounded, and at
9 one point the police came in to hopefully
10 interview him and he provided the information of
11 his lawyer. Are you familiar with that
12 information in the report to Crown?

13 A Yes. I've read the statement in the report to
14 Crown counsel.

15 Q And so, of course, if the police persist at that
16 point with their interview, then you've got a
17 potential Charter issue with respect to that
18 statement, correct?

19 A I would think that would be -- the statement would
20 have been at risk, yes.

21 Q And so another thing that may have become a factor
22 is warrantless seizures, for example, can be a
23 problem for you to prosecute if you have to deal
24 with that?

25 A They can be in certain circumstances.

1 Q And did you ever in this case, to your
2 recollection, receive any Charter notice from
3 Ritchie, from Mr. Ritchie?

4 A No. Not that I can recall. And -- but we're
5 relying on the correspondence, I think, that came
6 from his file, but I don't recall any Charter
7 notice, no.

8 Q And do you recall any conversation with him that
9 suggested that he was going to make any kind of
10 Charter application?

11 A Not that I recall, no.

12 Q So I mean, in any event, I guess the point that
13 I'm coming to is you didn't view Charter issues as
14 an impediment to the prosecution of this case?

15 A Well, no. But Charter issues can arise throughout
16 the course of a trial too. There could have been
17 some Charter arguments to be made. The only thing
18 I can anticipate at this point is on the voir dire
19 for the voluntariness of the statement there might
20 have been some right to counsel stuff there
21 possibly.

22 Q You don't always get Charter notice well in
23 advance of a trial?

24 A No. And you don't have to. Sometimes things
25 arise during the course of the trial.

1 Q But you didn't anticipate this was going to be a
2 problem to the ultimate outcome of this
3 prosecution?

4 A No.

5 Q And, similarly, you didn't view there as being any
6 disclosure issues that were likely to be an
7 impediment to this prosecution?

8 A Not that I'm aware of, no.

9 Q Because those obviously could derail a case as
10 well?

11 A That's correct.

12 Q And I believe my friend Mr. Ward took you to a
13 transit slip yesterday, an internal memorandum
14 from Mr. Connor to other investigators on his
15 team. Do you recall that?

16 A I do.

17 Q And he was -- I don't plan to take you to that
18 document. If you do wish to look at it, it's
19 Exhibit 2B and Tab 1.

20 A Thank you.

21 Q But the point that I was going to make was quite
22 simple, and that is that on the basis of what
23 you've seen there, you'd agree that Mike Connor
24 was very conscious of disclosure issues and the
25 effect that they could have of a prosecution if

1 members' notes were not disclosed?

2 A Just before I agree, I do recall the transit slip.

3 I just wanted to have a quick look at it. I'm

4 sure what you're saying is absolute accurate.

5 Q Certainly.

6 A I'm sorry. Tab 2?

7 Q 2B and Tab 1.

8 A I don't have --

9 THE REGISTRAR: 2B is your document.

10 THE WITNESS: Oh, I'm sorry. The other file.

11 MR. MAKOSZ:

12 Q It's a few pages in. I don't know if you have a
13 number in the top right-hand corner beginning with
14 RCMP. And there is one that finishes in 34.

15 A Oh, transit slip dated 26th of April, 1997?

16 Q That's right. Do you remember being referred to
17 that before?

18 A I do.

19 Q My friend Mr. Ward referred to the passage at the
20 top of the third paragraph where Mike Connor
21 writes:

22 Those of you who don't know Mr. Ritchie, he
23 is an extremely capable lawyer and very
24 professional at what he does. He's
25 considered without argument one of the best

1 lawyers in Vancouver. I wouldn't want this
2 case thrown out on simple things such as
3 nondisclosure.

4 A Yes. It looks like he had that in his mind when
5 he sent that communication out.

6 Q And you've also had the chance to look at the
7 documents that are contained in the commission's
8 binder at Tab 14, and that's the memos back and
9 forth between Crown, between Mr. Ritchie and
10 between Staff Sergeant Connor with respect to
11 various disclosure issues and requests that Mr.
12 Ritchie had made?

13 A Yes. I've looked at -- at these.

14 Q And you'd agree with me that Mike Connor had done
15 his job essentially following up on those Crown
16 requests for further disclosure. That's evidence
17 from those exchanges?

18 A Yes. It looks like, without referring to them
19 specifically, that I'd been asking for things and
20 he had been responsive. I'm thinking particularly
21 of the notes of the social worker, I think, is one
22 thing. So I would agree that didn't appear to be
23 a problem.

24 Q Yes. Thank you. And that's what I'm really
25 coming to, is that there were potential

1 investigative -- there are always potential
2 investigative problems; for example, complicated
3 evidence, evidence handling Charter breaches,
4 disclosure issues, but in this case you didn't
5 view any of those as being a significant
6 impediment to this prosecution?

7 A No.

8 Q And I want to turn to the other type of difficulty
9 that's often inherent in a prosecution. Those are
10 just the ones that are inherent in the facts
11 themselves. And I think yesterday you testified,
12 and you alluded to it again today, that Miss
13 Anderson had made some inconsistent statements to
14 various persons?

15 A Yes.

16 Q And this is one of those things that you can't
17 remedy through further investigation. That's just
18 the facts as they are and you're going to have to
19 deal with them at trial?

20 A Yes.

21 Q And another example of such a thing is the fact
22 that different accounts were given of this
23 incident by Miss Anderson and by Mr. Pickton?

24 A That's correct.

25 Q And the real problem for you is that Mr. Pickton

1 had given essentially an exculpatory statement?

2 A Yes. And a statement that could reasonably be
3 true.

4 Q And that's exactly the point that I see. The
5 problem that you're facing really is that you've
6 got these two differing accounts, these two
7 theories of the case, if we call it the
8 prosecution theory and the defence theory, and all
9 the corroborating evidence, all the fruits of the
10 police investigation could corroborate either
11 theory of the case?

12 A That's correct.

13 Q And I would suggest that this may be why there was
14 so much potential for admissions to be made, is
15 because, quite frankly, most of the facts that
16 might be admitted were not detrimental to the
17 theory of the case that the defence was likely to
18 present?

19 A That's correct. A lot of the facts would not have
20 been in dispute. That's true.

21 Q And so in a sense what you were able to predict
22 from your review of the report to Crown counsel, I
23 take it, was that there was a potentially viable
24 defence here?

25 A Yes.

1 Q And this is something you have to consider with
2 respect to your charge approval standard as things
3 go along and, as I understand it, this is why Ms.
4 Anderson's credibility was so central, because not
5 only does she have to be able to tell her story
6 clearly and believably, but her story is going to
7 be challenged by the defence and they're going to
8 present a different theory of the case; is that
9 fair?

10 A Yes.

11 Q And you have to establish that your theory of the
12 case or Miss Anderson's version of events is true
13 beyond a reasonable doubt?

14 A That's correct.

15 Q And so this is -- this is -- as Mr. Commissioner
16 described it yesterday, fundamentally what you've
17 got at the heart here is a he said/she said case?

18 A That would be a fair summary.

19 Q And I think you also testified yesterday that in
20 your view the police evidence was not all that
21 critical to the case. You remember giving that
22 evidence?

23 A That's right.

24 Q And you said that things like blood samples
25 weren't really going to add anything. The case

1 could have been run with just Miss Anderson?

2 A That's right. I wouldn't have run it just with
3 her, but it could have been run just with her.

4 Q And my understanding of what you meant by that is
5 that because all of the other evidence that was
6 gathered by the police was sufficient to establish
7 all these other necessary aspects of the case, it
8 still couldn't resolve that dispute between the
9 two accounts of Mr. Pickton and Miss Anderson?

10 A That's correct.

11 Q And this -- this inability to resolve that dispute
12 wasn't a result of any deficiencies in the police
13 investigation. It's simply a matter of the he
14 said/she said nature of the evidence?

15 A That's correct.

16 Q And would you agree with me that by January of
17 1998 when you are looking at preparing this for
18 trial, the police in this case had done as fulsome
19 an investigation of this incident as you required
20 them to do in order to proceed with this
21 prosecution?

22 A I would agree with that.

23 Q Now, I want to turn to the decision to stay
24 proceedings if I can. And you've talked a lot
25 about this and I don't want to belabour any of the

1 points that you've already made. And I'd like to
2 take you briefly just to this interview with Miss
3 Anderson. And you testified that Roxanna Smith
4 was present for that?

5 A That's right.

6 Q And she's, of course, a Victim Services worker?

7 A Crown based, yes.

8 Q And they work as liaisons between the Crown and
9 witnesses in the course of prosecutions?

10 A Yes. They're there to support the victims.

11 Q And are they paid employees or are they
12 volunteers?

13 A Roxanna Smith was, I believe.

14 Q And they also liaise with the police, in this case
15 the Coquitlam Victim Assistance Program?

16 A Yes. You can see from the notes that Roxanna was
17 in contact with them.

18 Q Yes. And that is an organization that is made up
19 of volunteers?

20 A I believe so. There may be the -- and the police
21 base there may be a couple of employees running
22 it, but mainly volunteers. You're right.

23 Q Fair enough. And I wanted to take you just to one
24 document in the commission's binder. That's
25 Exhibit 133 NR and at Tab 6. And you've been

1 referred to these documents before. These are the
2 Victim Services logs?

3 A That's correct.

4 Q And I'm looking at a page that is numbered 44 of
5 125 in the bottom left-hand corner.

6 A I have that, yes.

7 Q And you'll see there there's a date in the top
8 left-hand corner. It's the first entry in the
9 log. This is April 14th, 1997?

10 A Yes.

11 Q And you'll see the note there is:

12 Called Vic.

13 Meaning victim.

14 She said she was fine. Did not require
15 counselling referrals.

16 And then if we skip down a sentence -- two
17 sentences, actually, there's a passage there:

18 Told me that all she wanted from us was court
19 updates.

20 A Yes. I see that.

21 Q Do you have that? And I think you're familiar
22 enough with this document you -- if we were to
23 continue through, you'd see multiple attempts to
24 contact Miss Anderson through her mother, and
25 that's obviously proved quite difficult and, of

1 course, you've been trying to do that?

2 A That's right.

3 Q And another thing that comes -- that becomes quite
4 clear upon reviewing that is that Miss Anderson
5 herself wasn't initiating contact with Victim
6 Services either?

7 A Not that I can see from these sheets. It was all
8 Victim Services trying to get a hold of her.

9 Q Now, when you interviewed Miss Anderson, you found
10 her to be too addicted -- in your view she was too
11 addicted to provide any credible evidence at
12 trial?

13 A Under the influence of drugs, yes.

14 Q And you didn't think this was going to change
15 prior to the trial, did you?

16 A No.

17 Q And your decision to enter a stay was really not
18 because she might fail to show at the trial date.
19 It was because even if she did, she wasn't likely
20 to be in any condition to provide any credible
21 evidence?

22 A That's right.

23 Q And I think yesterday you also testified that --
24 that the Crown can't force people into rehab. Do
25 you understand that?

1 A That's correct.

2 Q And this is a challenge, I think, that the Crown
3 and the police face when they're dealing with
4 witnesses who have addiction problems,
5 particularly severe ones, is you can't force them
6 to accept that help?

7 A That's correct.

8 Q And it's not just that the Crown can't do it, but
9 Victim Services can't do it, the Victim Assistance
10 Program in Coquitlam can't do it and the police
11 can't do it either?

12 A That's correct.

13 Q And so basically the point that I want to make at
14 the end of this is really that the stay was not --
15 the stay decision as well was not a result of any
16 weaknesses in the police investigation. It came
17 down to credibility issues with the key witness?

18 A And the drug issue. That's correct. It wasn't
19 due to any problems with the police on this file.

20 Q And I just wanted to explore because once you made
21 this decision or come to the realization you were
22 likely to enter a stay and you talked to Mr.
23 Romano about this, you then made a phone call, you
24 accept, to Mike Connor?

25 A I had a conversation with him. Likely I phoned

1 him rather than him calling me. I can't dispute
2 it, but I can't specifically remember picking up
3 the phone. I know that I had a conversation with
4 him.

5 Q I think yesterday you couldn't recall if you'd
6 called him before or after the stay was entered in
7 any event?

8 A That's right. I can't.

9 Q And I just wanted to be clear because this is --
10 you weren't phoning to get his approval of your
11 decision. You were just phoning to explain the
12 basis for it, were you not?

13 A To discuss it, yes, but not to get his approval,
14 no.

15 Q Certainly. And then there's always -- there's a
16 tension always, isn't there, between the police
17 and the Crown when it comes to stays of
18 proceedings?

19 A Not always. There was no -- that I recall any
20 protest from him or him having any problem with
21 it.

22 Q And that's really the next point that I wanted to
23 take you to because I mean some police officers
24 will take it maybe a bit more personally than
25 others?

1 A That's right. But I think -- I read Lisa Casson's
2 statement and I think she said that they
3 understood the reason. I think when it's an
4 evidentiary problem police -- well, in some cases
5 they understand that.

6 Q That's right. And they may not -- they may not
7 like the decision, they may not agree with it, but
8 they may respect it nonetheless?

9 A That's right, if they think that the decision is
10 being made for a correct reason. If -- it's been
11 my experience if a police officer has a problem
12 with a decision, particularly back then, there
13 were avenues they could follow: A complaint to
14 me, a complaint to Richard Romano, a complaint to
15 the Regional if they felt strongly about it.

16 Q And so it's fair to say regardless of whether the
17 stay was entered before or after you called Mike
18 Connor, the decision to stay had already been made
19 by yourself in conjunction with Mr. Romano?

20 A That's correct. It wasn't Corporal Connor's
21 decision.

22 Q Exactly. And so in that phone conversation you
23 wouldn't have explored -- or you didn't explore
24 with him the possibility of police taking steps
25 within the next week to try and rehabilitate her

1 for that trial date?

2 A Within the next week, no, but I would have
3 anticipated that because it was a stay and not a
4 final determination that if he had information
5 that she was doing well, we could have revived the
6 case.

7 Q And that's something that -- that I wanted to move
8 to next, actually. With respect to reopening a
9 case, I think you've testified that you only
10 recall reactivating a stay once in your career?

11 A Specifically once. I may have done it more than
12 that. I'm not suggesting that this is a common
13 occurrence, but it does happen from time to time.

14 Q Now, my understanding a stay of proceedings is
15 actually common. They happen quite frequently?

16 A Yes, they do.

17 Q And so I imagine that in the course of your
18 career, which has spanned 30 years, as I
19 understand it, you must have entered hundreds of
20 stays in all likelihood?

21 A Likely, yes.

22 Q And so I think that maybe gives us some flavour of
23 how rare it is for a case that has been stayed to
24 be reopened; is that fair?

25 A It's rare, but it does happen.

1 Q And you testified yesterday -- and this is getting
2 back to the point that I think you made -- that
3 you didn't put a BF on your file; that the police
4 could come back to you if they wanted to reopen a
5 case?

6 A That's right, because they're the ones out there
7 dealing with the people.

8 Q Certainly. And you wouldn't -- but you wouldn't
9 expect them to come back to you unless there had
10 been some significant change in the circumstances
11 that went to the charge approval standard,
12 substantial likelihood of the case?

13 A Exactly. Yes. That's true.

14 Q Thank you. And, again, you also testified that if
15 Miss Anderson had come back clean and sober, you
16 would have considered reopening the case?

17 A Yes.

18 Q And my understanding of what you meant there was
19 when you say "clean and sober", you're talking
20 about more than just a temporary change?

21 A That's right.

22 Q And I think a couple of counsel have referred to a
23 good day or a bad day. So someone, if they had
24 come in on a good day, but they're still deeply
25 entrenched in addiction, that might not have

1 affected your decision?

2 A Might not. I can't say for sure because it didn't
3 happen.

4 Q That's fair. And I suppose the same concerns
5 arise if the police were to have relaid an
6 information after the one-year period for the stay
7 had elapsed?

8 A That's right.

9 Q Because I would think that the Crown who receives
10 that new information is going to learn about the
11 previous file and the first question they're going
12 to be looking at is, well, what's changed since
13 the previous stay was entered?

14 A That's right. Because there would be arguments,
15 abuse of process and that type of thing that would
16 be made if a new information was laid.

17 Q And they're thinking basically, well, if there's
18 nothing that's happened that elevates this charge
19 above a substantial likelihood of conviction, why
20 would I reopen the file or why would I approve new
21 charges?

22 A That's right.

23 Q And one thing you did testify about was after the
24 fact you would have expected the police to monitor
25 her condition and that's, as I understand it from

1 what you've just said, because they're in contact
2 with people?

3 A That's right.

4 Q And what I'm going to suggest is that this really
5 comes from an expectation that you have as a
6 prosecutor because in your experience victims are
7 going to the police with their reports, with their
8 complaints, and then the police come to you?

9 A That's right.

10 Q But, of course, if a victim doesn't come to the
11 police, the police are going to have to be
12 proactive in going out and looking after these
13 people?

14 A That's right.

15 Q So basically you've got a situation where you have
16 lots of victims from lots of stays of proceedings
17 and you've also got a lot of cases that never make
18 it to the Crown's office?

19 A That's right. The police deal with them
20 themselves.

21 Q And so these are victims that the police are
22 dealing with as well?

23 A That's right.

24 Q And so would you agree with me that it's perhaps a
25 bit unfair to expect the police to proactively

1 monitor all of these various victims in all of
2 these cases?

3 A I wouldn't agree with that. If you have a case
4 that you've been involved in such as Mike Connor
5 and Lisa Casson and you've got concerns about the
6 accused, you've got concerns about the victim and
7 you know that there's a stay of proceedings
8 because of the victim's drug problem, I would
9 anticipate that they would follow through with
10 that.

11 Q And is there any reason that the Crown or Victim
12 Services couldn't take that proactive approach?

13 A Well, we're not investigators. We're not out on
14 the street dealing with these people.

15 Q But surely Victim Services at least is building a
16 relationship with witnesses. I mean they are the
17 liaison. That is their job?

18 A But they're not investigators. They can't make a
19 decision as to whether or not a report to Crown
20 counsel should be submitted.

21 Q No. That's true.

22 A That's not their role. And it's the police that
23 decide that there's enough evidence now. There's
24 a couple of cases where that can happen. Either
25 there's a stay of proceedings or in a case where a

1 file's been rejected for lack of evidence, the
2 police can then go out and continue on with it.

3 Q I just wanted to go back to one point because I
4 think -- I think really you were facing a similar
5 difficulty at this time; that you have this
6 interview with Miss Anderson as the police would
7 have been facing in the months leading up to this;
8 you've got someone with a severe addiction and
9 you're going to have to rehabilitate them for a
10 trial date?

11 A That's right. And the previous counsel took me
12 through what Miss Anderson's condition was at that
13 time prior to the trial date and after. And she
14 was coming to police attention quite often and
15 pretty extreme circumstances. So yes. They would
16 have had a difficulty.

17 Q And that's really what I'm trying to get at here,
18 is that in the months leading up to the trial
19 date, trying to rehabilitate a witness in Miss
20 Anderson's condition is extremely difficult to do?

21 A I would agree, because if you look through the
22 document in terms of the types of files that the
23 police were dealing with, she's foaming at the
24 mouth, she's -- and afterwards stealing vehicles,
25 it's extreme.

1 Q And, again, you can't force her into any kind of
2 rehab program?

3 A No. No.

4 Q I did have one question because the document was
5 included in the commission's binders. There was a
6 policy document with respect to serious and
7 sensitive cases?

8 A Yes.

9 Q Have you seen that?

10 A Yes.

11 Q Was -- that's at Tab 26 of commission's documents
12 just for reference. But I just wanted to ask one
13 quick question, possibly more depending on the
14 answer. But was this case classified as serious
15 and sensitive?

16 A It was serious in the sense that the injuries were
17 serious, but in terms of that definition, no. But
18 at the end of the day it doesn't make a difference
19 because, as I've explained, it didn't meet the
20 substantial likelihood of conviction test.

21 Q I understand that. One thing, however, it does
22 note in that -- in that policy that a stay of
23 proceedings of a serious and sensitive case has to
24 be approved by Regional Crown Counsel in
25 consultation with the Assistant Deputy Attorney

1 General. Do you see that?

2 A So it will be a rare situation where you would
3 invoke that, that policy. That's not for -- for a
4 standard case.

5 Q Not for a case like this in any event?

6 A No.

7 MR. MAKOSZ: All right. Thank you.

8 THE COMMISSIONER: How much longer are you going to be?

9 MR. MAKOSZ:

10 Q I've just got one last area, Mr. Commissioner.
11 And I want to turn, Miss Connor, to the -- you've
12 seen evidence, I think, just on Tuesday of this
13 week with respect to a 1990 incident, which may or
14 may not have involved Mr. Pickton. Do you recall
15 that?

16 A I recall being shown, I think, by Mr. Vertlieb a
17 continuation report. Is that what you're
18 referring to?

19 Q Yes. And I wanted to take you to the evidence of
20 Mike Connor from January 6th, 2012. And I've
21 provided the documents to Mr. Giles, if the
22 witness could be shown that and then a copy to Mr.
23 Commissioner as well.

24 A Thank you.

25 THE REGISTRAR: Just to let you know, you've reached your time.

1 MR. MAKOSZ:

2 Q I should be clear. My time estimate was actually
3 half an hour. And if I can -- Miss Connor, if you
4 can turn to page 47 of that document.

5 A Yes. I have page 47.

6 Q And to line 20. You'll see a question is asked by
7 my friend Mr. Vertlieb and he says:

8 So what we'd like you to do is just discuss
9 this reference to Sergeant Don Adam and the
10 Surrey file. What were you able to learn
11 about that?

12 And Mike Connor's answer is:

13 Well, what happened is we did a background
14 check of Pickton, and through our computer
15 database system, Persons Information
16 Retrieval System, or an acronym of PIRS, we
17 were able to determine that Surrey Detachment
18 had sent us a request, I think it was 1990,
19 that asked members of Coquitlam Detachment to
20 drive by the Pickton residence on Dominion to
21 determine if there was a certain vehicle
22 located there, that they were looking for a
23 certain type of vehicle relative to a sexual
24 assault offence that occurred in Surrey. The
25 vehicle is noted -- or, sorry, Pickton is

1 noted on the PIRS database not as a suspect,
2 but he's located -- or named as an other,
3 which is kind of a -- just a basket for
4 people that we couldn't put a title to, like
5 a witness or those types of people. So we
6 didn't know whether Pickton was an actual
7 suspect. We don't know how they got his car
8 or asked us -- why they wanted us to check
9 for that car. I did call -- I did look at
10 our file. There was nothing really in our
11 file. It was just the CPIC request from
12 Surrey Detachment to the Coquitlam Detachment
13 and the member's findings that he couldn't
14 locate the vehicle on the Pickton property
15 back to Surrey Detachment. So I phoned
16 Surrey Detachment. I was interested in
17 the -- what was included in the file, and
18 they said the file no longer existed.

19 Now, obviously you weren't aware of this
20 information at all at the time you were
21 considering the Anderson prosecution?

22 A No, I wasn't.

23 Q And you couldn't consider it, obviously, because
24 it was never included in the report to Crown
25 counsel, as you've testified?

1 A That's right.

2 Q And so I'm not going to ask you to speculate in
3 respect of this information, but I am going to ask
4 you a few questions about it because what this
5 information provides you is some connection
6 between Mr. Pickton and an offence that occurred
7 in 1990. But what's clear is he wasn't convicted
8 and he wasn't charged, and at most it appears he
9 may have been a suspect. And it seems that the
10 circumstances of this offence are not clear. And
11 so really the question that I want to ask you is
12 how would this be helpful to a prosecutor in
13 assessing an offence for another -- for another
14 violent crime?

15 A It would be you want all the information that you
16 can have, but if he wasn't associated to the
17 offence, probably -- this probably wouldn't be all
18 that helpful.

19 Q And that was my thinking as well, because I mean
20 you might use it to attack his character, which
21 you can't do, of course. You could perhaps try to
22 show propensity, which you can't do. You can't
23 use it in sentencing because it's not a
24 conviction?

25 A I don't think it would add much to the file from

1 what I can see.

2 Q If I could just have a moment, Mr. Commissioner.

3 Thank you. Those are all my questions.

4 A Thank you.

5 MR. VERTLIEB: Mr. Doust has some re-examination.

6 MR. DICKSON: Yes, Mr. Commissioner. Tim Dickson for the
7 department. I neglected to ask that the briefing
8 note that I handed up and asked the witness about
9 be marked as the next exhibit. I understand my
10 friend Mr. Doust does not object.

11 THE REGISTRAR: That will be marked as Exhibit Number 134.

12 **(EXHIBIT 134: Document entitled "Ministry of**
13 **Attorney General, Criminal Justice, Briefing**
14 **Note")**

15 MR. DOUST: Mr. Commissioner, I appreciate we're running a bit
16 late, but I have had no opportunity to speak to
17 this witness for the duration of her
18 cross-examination. I wonder if I could have just
19 10 minutes to review what I propose to go over. I
20 don't expect to be long at all.

21 THE COMMISSIONER: You want a 10-minute break?

22 MR. DOUST: If I may.

23 THE COMMISSIONER: All right.

24 MR. DOUST: Thank you.

25 THE REGISTRAR: The hearing will now recess for 10 minutes.

1 (PROCEEDINGS ADJOURNED AT 3:48 P.M.)

2 (PROCEEDINGS RESUMED AT 3:58 P.M.)

3 THE REGISTRAR: Order. The hearing is now resumed.

4 **CROSS-EXAMINATION BY MR. DOUST (Cont'd):**

5 Q Miss Connor, you were asked why you didn't call
6 Ms. Anderson directly to advise her of the stay
7 and you responded by saying that you dealt only
8 with the mother, correct?

9 A That's correct.

10 Q Were you aware -- are you aware that Ms. Anderson
11 told Mr. Celle in the interview that, in fact, she
12 had a cell phone at that time, but that she had
13 told her mother not to give the number to anyone?

14 A I'm aware of that now.

15 Q Well, did anyone ever tell you that before the
16 stay was entered or give you the cell phone number
17 for Miss Anderson?

18 A No. I didn't have a cell phone number for her.

19 Q I want just to take you quickly to the Victim
20 Services log. That's in Tab 6.

21 A Yes. I have it.

22 Q At page 4.

23 A Yes. I have it.

24 Q This is the -- is this the police or the Attorney
25 General, the Crown Victim Service?

1 A This is the Coquitlam RCMP police-based Victim
2 Services file.

3 Q And if you look at the entries, there's one there
4 22nd/07. That's July 27th, but if you go down a
5 little bit further, you see 08/02, August the 2nd?

6 A Yes. I see that.

7 Q And you see that there was an effort made to
8 contact. And their contact was the mother,
9 correct?

10 A That's correct.

11 Q And there was no answer and there doesn't appear
12 to be a machine. There's no answer. There's no
13 machine. Do you see that?

14 A Yes. I see the note.

15 Q And that started on the 2nd of August. And if you
16 follow it all the way through, you find that
17 there, in fact, is no contact available to the
18 Victim Service worker until the 17th, it looks
19 like, of December. Do you see that? "Contact the
20 victim or her mother." It's not clear whether
21 that's a contact. But then on the 30th of
22 December the entry is "Sending identical fax to
23 someone else." And then we see again on the 17th
24 of January she -- someone spoke to the victim's
25 mother. Do you see that?

1 A Yes.

2 Q So in that period of time, it appears that not
3 only was the victim unavailable by contact,
4 certainly to Victim Services, but her mother was
5 unavailable as well during that whole period from
6 August -- early August until virtually the end of
7 December?

8 A I would agree there's a number of notes saying no
9 answer, no machine.

10 Q All right. And then there's a discussion, you can
11 see, on the 17th of the 1st: "Victim called back.
12 She's interested in a court escort." They were
13 arranging a court escort. They were apparently
14 able to make contact, as I say, at that time?

15 A Yes. With a note that the escort would call the
16 mother.

17 Q All right. And then you go down to the 26th and
18 you see they spoke to the mother:

19 She is still in contact with Ms. Anderson re
20 her court date February 2. Ms. Anderson is
21 to phone this office and confirm she'd
22 received the message. No subpoena seen on
23 the file.

24 Do you see that?

25 A Yes.

1 Q And then they spoke to her again on the 30th of
2 January, spoke -- and it looks like to the mother,
3 Anderson's mother. Do you see that?

4 A Yes.

5 Q
6 She is aware of court case of February 2nd.
7 Was denotified. The file was to remain open.
8 She has spoken to her daughter apparently
9 advising her of that.

10 Do you see that?

11 A Yes.

12 Q With respect to her mother, did you -- do you know
13 whether you had or were ever given a home
14 telephone number for her apart from this business
15 number?

16 A I can't say. I don't know.

17 MR. DOUST: I just want to read a portion of the statement that
18 was given to Detectives Fielding and Crook. That
19 was on the 8th of February of 2002.

20 Detective Fielding was asking her at that
21 time about her drug use and --

22 MR. WARD: Mr. Commissioner, I object. Really commission
23 counsel should be, but this is not, as I hear the
24 question, anything that arose in re-examination.
25 In evidence in chief if there was some need to put

1 Fielding and Crooks' statement to this witness, it
2 should have been done then. There was no mention
3 of this at all in the cross-examination.

4 THE COMMISSIONER: All right. Mr. Doust?

5 MR. DOUST: Well, the whole question of her condition relative
6 to drug use prior to the preliminary inquiry arose
7 in the course of cross-examination and this
8 relates to that.

9 THE COMMISSIONER: How does it relate to it?

10 MR. DOUST: Well, if you know what it says, you could see. She
11 specifically is asked about her drug use at that
12 time in comparison to her drug use earlier on.

13 THE COMMISSIONER: All right. Okay.

14 MR. WARD: Well, just -- I take it that's a dismissal of my
15 objection, but the point is this: This is not new
16 matters -- material arising on cross-examination
17 and it's not cross-examination by my friend Mr.
18 Doust. He led -- he had the opportunity in the
19 first instance to deal with this matter.

20 MR. DOUST: I didn't deal at all with her condition at that
21 stage, Mr. Commissioner.

22 THE COMMISSIONER: Because of the peculiar circumstances where
23 commission counsel does the examination, all
24 witnesses are considered the commission witnesses,
25 but everybody -- I realize everybody's a

1 cross-examiner, but I think there's got to be some
2 special rule when a particular witness really is a
3 witness of, for instance, Mr. Doust and the people
4 that you called, so I'm going to allow it. I
5 don't know if much turns on it. I think all of
6 this evidence is in and go ahead.

7 MR. DOUST: Well, there was evidence relative to her condition
8 at that time. And so Detective Fielding says:

9 Do you think that had something to do with
10 the charge not going ahead?

11 Ms. Anderson says:

12 What's that?

13 And Detective Fielding says:

14 Your drug use.

15 Miss Anderson says:

16 Well, yeah because I wasn't stable enough to
17 testify because I was an addict, but I think
18 myself they didn't have enough evidence, but
19 there was lots of even, like, blood was all
20 over his house.

21 And then Detective Fielding says:

22 What about today? How's your -- are you
23 still using today?

24 And Ms. Anderson says:

25 Yeah.

1 And Detective Fielding says:

2 About the same as you were back then?

3 Being at the time of the stay. And Ms. Anderson
4 says:

5 No.

6 Detective Fielding says:

7 More or less?

8 Ms. Anderson says:

9 Ah, less. A lot less.

10 So that bears on the comparisons that have been
11 done.

12 THE COMMISSIONER: All right.

13 MR. WARD: Is there a question or is Mr. Doust just reading
14 something into the record?

15 MR. DOUST:

16 Q If my friend gives me an opportunity. I just put
17 my book down. That's the background. Were you
18 aware that there was a comparison put to her in
19 relation to what her condition was at the time
20 that you encountered her and her condition at the
21 time that the other prosecutors were dealing with
22 her in preparation for the preliminary inquiry?

23 A Yes. Mr. Baragar had told me that she was -- her
24 drug usage was way down. She had told him that,
25 the same as she told the detectives.

1 Q Thank you. You were asked about in terms of
2 proceeding with the case the need to prove the
3 case beyond any reasonable doubt, and particularly
4 you were directed to the fact that this was a he
5 said/she said?

6 A Yes.

7 Q And proof beyond a reasonable doubt in that
8 situation, would that constitute simply the trial
9 judge disbelieving the defence?

10 A No. It goes further than that. You have to prove
11 your entire case beyond a reasonable doubt.

12 Q So the trial judge, according to WD, could
13 disbelieve what Mr. Pickton said and still have a
14 doubt about your case. The standard was that
15 high?

16 A That's correct.

17 Q You said that you had entered hundreds of stays?

18 A That's correct.

19 Q But surely not hundreds in such serious cases as
20 this?

21 A That's correct.

22 Q And in terms of the fact that the case could
23 remain alive for a year after you had entered the
24 stay of proceedings, certainly the victim herself,
25 if she were upset at the charges being laid, if

1 she felt she was in a good enough condition,
2 knowing that her drug abuse was a significant
3 factor as to why it didn't go ahead, she herself
4 could go back to the police, go to Victim Services
5 or even come back to you and say, "Look, I've
6 cleaned up my act. I'm in good shape. Can we go
7 ahead?"

8 A That's correct.

9 MR. DOUST: Thank you. Those are my questions.

10 THE COMMISSIONER: All right. Thank you. Anything else?

11 **EXAMINATION IN CHIEF BY MR. VERTLIEB (Cont'd):**

12 Q I just wanted to do this for the witness. We know
13 you've been here three days and you've been asked
14 a lot of questions and I think just to give you an
15 opportunity to ask you this open-ended question:
16 Is there anything else that you want to say either
17 to the commissioner or to any of the participants
18 about your evidence or any of the events that
19 you've been discussing?

20 A Yes. Thank you for the opportunity. Mr.
21 Commissioner, I want to thank you for giving me
22 the opportunity to be heard and I sincerely hope
23 that my evidence will be of assistance to you.

24 THE COMMISSIONER: All right. Thank you, Miss Connor.

25 THE WITNESS: Thank you.

1 (WITNESS EXCUSED)

2 MR. VERTLIEB: Now, there's two more matters. First, Mr.
3 Commissioner, the "will say" statement of Susan
4 McCallum. My colleague Miss Brooks and I have had
5 a chance to read this "will say" and we appreciate
6 it being provided, but we are not of the view that
7 at this point in time of the inquiry that this is
8 necessary evidence to help you fulfil your
9 mandate, so we will not be calling this witness.
10 Now, if Mr. Doust wishes to press the issue
11 further, of course, we have rules that will allow
12 him to do that, but I just wanted to give you that
13 commentary and leave it at that.

14 THE COMMISSIONER: All right. Thank you.

15 MR. DOUST: Well, Mr. Commissioner, I respect the views of
16 commission counsel and I've considered the
17 position and I'm not going to proceed with any
18 application to call Miss McCallum.

19 THE COMMISSIONER: Thank you, Mr. Doust.

20 MR. VERTLIEB: Now, next, Mr. Commissioner -- thank you, Mr.
21 Doust. We appreciate that. And thank you for the
22 "will say". We have the affidavit of Andrew
23 MacDonald, who was Acting Regional Crown for the
24 Fraser Region in New Westminster. This just goes
25 to the very narrow issue of the destruction of the

1 file, apparently in contradiction to the policy
 2 that was in place. And because there was some
 3 discussion earlier and we thought that this could
 4 easily fill in this one small question, the
 5 affidavit's being tendered by commission counsel
 6 because it may be of assistance to you. And the
 7 only indication of cross-examination on that that
 8 we've had is from Mr. Ward, who says he will
 9 perhaps need 20 minutes, and it would be
 10 appropriate, if you don't mind, that we just
 11 conclude it so Mr. --

12 THE COMMISSIONER: No. He's here and --

13 MR. VERTLIEB: He's here and he's been here --

14 THE COMMISSIONER: All right.

15 MR. VERTLIEB: Thank you. So I would like to have that -- it's
 16 been marked for ID as DD?

17 THE REGISTRAR: That's correct.

18 MR. VERTLIEB: Mr. Ward, do you wish to cross-examine?

19 MR. DOUST: Well, I wonder -- I have one or two questions, if I
 20 may, just at the outset.

21 THE COMMISSIONER: All right.

22 **ANDREW MacDONALD:** Affirmed

23 THE REGISTRAR: Would you state your name, please?

24 THE WITNESS: Andrew MacDonald.

25 THE REGISTRAR: Thank you. Counsel.

1 **CROSS-EXAMINATION BY MR. DOUST:**

2 Q Mr. MacDonald, I just want to clarify a few
3 things. If we look at the exhibit attached to
4 your affidavit, which is Exhibit A, you'll see
5 there are pagination numbers at the top right?

6 A Yes.

7 Q Can you go to page 06, please? I just want to
8 explain what we have here, Mr. Commissioner.

9 A Yes.

10 Q What this page represents is this is a
11 representation of some of the files that were
12 actually destroyed; is that correct?

13 A Yes. That's correct.

14 Q And on the left we have the Crown file number?

15 A Yes.

16 Q And what's blocked out in the central area is the
17 name of the individual involved in that case?

18 A That's correct.

19 Q And on the right there's a summary of the charge
20 or charges in connection with that file?

21 A Yes.

22 Q And have you reviewed them all?

23 A I have.

24 Q And in addition to the Pickton file, did you
25 discover that there were other files that if one

1 stuck to the policy, if I phrase it this way,
2 should not have been destroyed?

3 A Yes, I did. The policy generally calls for files
4 which indicate serious personal injury offences
5 and there's a list of those offences suggested in
6 the policy. They include a number of items:
7 Aggravated assault, robbery, kidnapping, for
8 instance. And, in fact, the list that I have
9 provided that were with the batch of files
10 destroyed in this -- with this batch of files
11 includes a large number, in fact, of robbery,
12 aggravated assault, assault causing bodily harm
13 files.

14 Q Let's just look at page 06 for a minute.

15 A Yes.

16 Q If you move down one, two, three, four, five, six,
17 seven, eight, nine -- about the eleventh one, you
18 see an assault causing bodily harm?

19 A Yes.

20 Q Is that one of the ones that should not have?

21 A Yes. I would say that that would certainly
22 qualify as a serious personal injury offence.

23 Q And then about halfway from that down to the end,
24 I see an aggravated assault?

25 A Yes.

1 Q Is that similarly one that probably should not
2 have been?

3 A That's correct.

4 Q So the Pickton file is not the only one that was
5 erroneously destroyed at that time?

6 A I would agree with that.

7 Q All right. Thank you. Oh, and one more question.
8 That's a lengthy list. How many boxes of files
9 were destroyed at that time?

10 A There were originally authorization granted for 50
11 boxes. The list that I provided were additions to
12 those 50 boxes in the amount of 71 boxes. So all
13 told there were 121 boxes of files destroyed with
14 that batch.

15 Q And does the list that's attached as Exhibit A
16 list most, if not all, of those files?

17 A It lists all of the files that I am aware of that
18 were destroyed with -- pursuant to that
19 authorization and it's numbered 1145. I think
20 that's -- well, that's the first page of my
21 attachments.

22 MR. DOUST: Thank you.

23 **CROSS-EXAMINATION BY MR. WARD:**

24 Q Yes. Cameron Ward, counsel for the families of 25
25 missing and murdered women. In all these boxes of

1 files, the files themselves which are listed in
2 these numerous pages annexed to the affidavit --
3 it looks like 73 pages or so. I don't know -- the
4 Pickton file is the only attempted murder file
5 that was destroyed in that batch, correct?

6 A That's correct.

7 Q And so just to summarize the content of your
8 affidavit, it appears that a number of different
9 people made a number of errors which cumulatively
10 resulted in the Crown's paper file of the 1997
11 Pickton case being destroyed contrary to the
12 written Crown counsel policy at some uncertain
13 date; is that fair?

14 A I don't know that I would say it was cumulative.
15 I think it was an error made repeatedly. In other
16 words, that the error was made when the file was
17 originally pulled from the closed file room placed
18 in a destruction box. That list would have been
19 reviewed by the designate of the administrative
20 Crown and then sent to a -- what in essence is I
21 would call a quality control -- through a quality
22 control process in Victoria for review and it was
23 missed again, along with all of the other files
24 that I've indicated. Again, the -- the same
25 mistake, I think it's fair to say, was made at

1 least twice, but probably three times.

2 Q I'll just -- if you go to those specific times,
3 but different people then made or repeated the
4 same mistake?

5 A I would agree with that.

6 Q All right.

7 A Yes.

8 Q Another way to put it, I suggest, is that the
9 Crown's written policy on file retention, which
10 required the Pickton attempt murder file to be
11 retained for 75 years, was breached and the checks
12 and balances that were in place to prevent such a
13 breach of policy from occurring failed when
14 several people made a repeated error?

15 A I would agree with that.

16 Q All right. And you've been here in the gallery, I
17 believe, watching the testimony of Ms. Connor,
18 correct?

19 A Yes.

20 Q And you're familiar with the terms of reference of
21 this inquiry and, in particular, term of reference
22 4(b) that compels this commission to review the --
23 the decision made by Crown to stay the 1997
24 charge, right?

25 A Yes.

1 Q And you would agree, based on your own observation
2 and your understanding of this commission's
3 mandate, that it's fact finding ability has been
4 compromised by the fact that the paper file could
5 not be found; is that fair?

6 A I'm not sure. I know that it's not -- it's been
7 very unfortunate for Ms. Connor. She was put at a
8 tremendous disadvantage. I having -- I've worked
9 with Miss Connor in the past and I know that she
10 is very meticulous. She would have had lots of
11 notes. She would have been much better able to
12 recall events, I suspect, and so to that extent I
13 certainly would agree. I know that the file has
14 in large measure been reconstructed. Whether
15 there are things that are missing from that, I
16 can't specifically say other than, of course, Ms.
17 Connor's notes, her -- possibly her trial
18 strategies, plans, that kind of thing, that would
19 allow her to better recreate events from 14 or 15
20 years ago, yes.

21 Q And, again, let me endeavour to summarize what you
22 just said and put it back to you if I may. From
23 your own personal experience, you know that Ms.
24 Connor, being a conscientious Crown lawyer, would
25 have had a practice of recording notes of the

1 things she was doing while handling the file and
2 keeping them on the paper file?

3 A It's certainly been my experience in the work that
4 I've done with her that she not only does that,
5 but does it very meticulously.

6 Q All right. And you know from your own personal
7 experience -- and it was probably shared -- that
8 lawyers employed by the Crown deal with many, many
9 files and if they are called upon years later to
10 recall what happened in one of those files, it
11 would be essential to review the file, especially
12 their own recorded notes, to refresh their memory
13 and be able to accurately recount what happened,
14 fair?

15 A Again, I would agree in part with that. I think
16 that certain files in my own experience live on in
17 my memory longer and with greater clarity and
18 detail than others. This would certainly have
19 been one file that I expect would have remained in
20 my own memory for a longer period than others, but
21 yes. Certainly with respect to providing Ms.
22 Connor with a better ability to recount the events
23 from 15 years ago, I can't disagree with that.

24 Q Can I ask you, just to preface the next question,
25 to please turn to Exhibit 133, Tab 26?

1 A I'm sorry. Tab 26?

2 Q 26. Yes. I think the exhibit is in front of you.

3 A Yes.

4 Q And this is a part of the Crown counsel policy
5 manual. It refers to stays of proceedings,
6 serious and sensitive cases and other cases. Do
7 you see that?

8 A I do.

9 Q And the very last paragraph says:

10 With respect to the entry of stays of
11 proceedings generally, the reasons for the
12 entry of the stay should always be noted in
13 the file.

14 You're familiar with that Crown policy?

15 A Yes.

16 Q And you yourself in your career would not have
17 stayed serious charges like attempted murder,
18 forcible confinement, aggravated assault and
19 assault with a weapon without following this
20 policy and recording in writing reasons for making
21 the decision in the file, right?

22 A Yes. I'd agree with that.

23 Q All right. Now, you still have the book in front
24 of you. If you can turn to Tab 3, I have a quick
25 question or two for you on it. You know that

1 after the search of Pickton's farm on February 5,
2 2002, there was some concern within the Crown,
3 Criminal Justice Branch, about what had transpired
4 with respect to the 1997 attempted murder file
5 that caused inquiries to be made and searches to
6 be conducted at that time, right?

7 A I think I could say I had a general knowledge
8 with -- from just talk within the office. I
9 didn't have any specific knowledge of substance of
10 the file from 1997.

11 MR. WARD: Fair enough. And it looks like -- and I appreciate
12 you didn't have any personal involvement in this,
13 but it looks like Peder Gulbransen of the Crown's
14 office found the records at Tab 3 and sent them to
15 Geoff Gaul on February 8th.

16 MR. DOUST: Of what year?

17 MR. WARD:

18 Q Of 2002. And my question for you is simply this:
19 Given your familiarity with Crown files generally
20 and, in particular, your search for records
21 relating to the destruction of this Crown file,
22 does it look, if you go to the fifth page in, that
23 Mr. Gulbransen retrieved this document from -- let
24 me put it another way. Does it look to you as
25 though Mr. Gulbransen found a portion of the

1 Crown's paper file, given the fifth page in, which
2 has the received stamp of the Crown office on it?

3 A I can't really say. It certainly appears as
4 though he had information. I can't say what --
5 whether that was an original file. I know
6 certainly from my perspective in the role of
7 Regional Crown Counsel one of the things that I
8 will often have when reviewing search warrants,
9 when I review applications for Part VI wiretap
10 applications, that I will have portions of files
11 available to me. Again, I don't know whether that
12 explains it in terms of what he possessed or how
13 much of the file he possessed, but it does appear
14 as though he had a portion of the file.

15 Q You didn't in the course of your search have any
16 discussions with him that would confirm how he
17 obtained this?

18 A I did not, no.

19 Q All right. Now, sir, I'm going to take you to the
20 1997 time frame, the year that this file was
21 opened, the Pickton attempt murder file.

22 A Yes.

23 Q And I remember that year. It was the year of the
24 APEC conference and you and I might have actually
25 worked on the same floor in the same building back

1 then.

2 A I think that's -- I think I was on the 12th and
3 you were on the 11th if I recall correct.

4 Q In any event, I remember distinctly using
5 computers in the course of my law practice to
6 generate documents. And would you agree that in
7 1997 lawyers were using computers to generate
8 documents?

9 A I can say that I joined the Crown in 1999, October
10 and it wasn't until, I believe, the following year
11 that the Crown got the first generation of
12 computers on -- on our desks. So we all had --
13 after -- and I can't recall specifically when it
14 was, but certainly after October of 1999 when the
15 first universal computer system was put into the
16 Crown offices, I was there when it happened.

17 Q And prior to that, of course, the -- the
18 assistants were using computers to generate
19 documents?

20 A I believe so.

21 Q Here's my question.

22 A Yes.

23 Q Do you know, in the course of undertaking your
24 search for the paper file -- or the records of
25 what happened to the paper file, whether anyone,

1 yourself included, went to the computers, the hard
2 drives or the back-up mechanisms in place to get
3 the Crown-generated portion of the file?

4 A Again, I'm not sure I understand the question, but
5 the Crown-generated portion of the file I -- at
6 that time the Crown wasn't on a computer system
7 that would have generated a portion of the -- of
8 that file. We received, if I recall correctly,
9 our files essentially in hard copies from the
10 police even when I started, and it was only after
11 the introduction of the JUSTIN computer system
12 program that all files were transmitted
13 electronically.

14 Q All right. Thank you. Now, do you have the
15 affidavit in front of you, Exhibit DD?

16 A I do. I have my own copy.

17 Q The first thing I want to ask you about is to
18 suggest that there's a date that needs to be
19 corrected in paragraph 6, if you could turn to
20 that. The last sentence in paragraph 6 you've
21 written:

22 Approval for destruction of all files was
23 granted on August 1, 2001.

24 And I suggest that that -- if you go to page 1 of
25 the exhibit, Exhibit A, that that's simply a typo.

1 The approval for destruction was granted August
2 31st, 2001?

3 A I was actually in making that referring to the
4 next page and that is a fax back from Will Thomas
5 whereby he indicates in that -- sorry -- the
6 e-mail:

7 Destruction of RDA #1145 may proceed.
8 That e-mail is dated August the 1st, 2001.

9 Q He's simply the bureaucrat who assesses whether
10 there's any need to keep the records for Tobacco
11 Litigation purposes, isn't he?

12 A As I understand it, they -- that is the
13 ministry -- the record -- where the record
14 management system is operated from. It's an
15 interministry program and it's part of that
16 person's ultimate responsibility to manage the
17 records. So my reading of that record was that,
18 in fact, when they had submitted the request for
19 authorization at the first page of the exhibit, in
20 fact that is submitted to Victoria to a person at
21 the Intergovernmental Discovery Centre, which is
22 part of the Ministry of Health, and then he
23 reviews it and sends back authorization
24 ultimately.

25 Q Okay.

1 A That's my understanding.

2 Q Regardless of that, what the affidavit and the
3 supporting documents are completely silent on, I
4 suggest, are the date the records were actually
5 destroyed?

6 A I believe that if --

7 Q I haven't been able to find it.

8 A Yes. The only thing I can say about that in that
9 they're not included with this is that at the
10 bottom of the record destruction authorization
11 form, which is the first page of the exhibit,
12 there is a section where confirmation is provided.
13 And you're correct. I believe that that is not
14 dated.

15 Q The last -- the last authorization, if I can put
16 it that way, the authorization of the ministry
17 records officer, the final approval on the
18 destruction process was given on August the 31st
19 of 2001 as evidenced by the preceding box, item 4?

20 A Yes.

21 Q Yes. And the -- we know who destroyed the
22 records, but, unfortunately -- or maybe not
23 unfortunately, but the date of destruction --
24 there's a space for it -- is blank?

25 A Yes. It isn't included with this batch of

1 records. What I have seen, again not in relation
2 to this group of documents, is an actual receipt
3 from the mobile shredding company that comes to
4 the site and it parks the truck outside of the
5 courthouse where the files are physically marched
6 to the truck and then put into the shredder.

7 Q And in the course of your search, you didn't come
8 up with that or any other record that would tell
9 us when the file was destroyed?

10 A I did not. What I can say is that the one that I
11 was initially provided with which led to the
12 confusion -- or my confusion perhaps in providing
13 the affidavit in the first place appeared to
14 relate to a different series of destruction -- or
15 a different series of records being destroyed.
16 Again, the process, as I was told, is that the
17 mobile shredding company was contacted and then
18 the confirmation of destruction would be
19 referenced to the actual invoice or the receipt,
20 if you will, from the destruction company and that
21 would be reflected in box 5.

22 Q All right. But all you're able to say is that
23 sometime after August 31st, 2001 it appears that
24 the destruction took place?

25 A Yes.

1 Q Okay. Now, with respect to the series of errors,
2 as I call them, or the repeated error, as you
3 characterized it, I'd ask you to look at paragraph
4 4a of your affidavit on the top of page 2. And I
5 just want to take you through the steps quickly.
6 First step is that files in the Port Coquitlam
7 office you learned would be marked on the cover
8 with a date three years from the conclusion date,
9 right?

10 A That's correct.

11 Q You've heard the evidence that the -- that this
12 was a red file, and by that it was actually red in
13 colour, correct?

14 A There's a red cover on the file jacket, yes.

15 Q And a red file by definition, you've come to
16 learn, is a file that must be archived; is that
17 right?

18 A No. Not necessarily. The policy would dictate
19 the question of whether a file needed to be
20 archived. A red file doesn't necessarily include
21 only those types of files that needed to be
22 archived. A file, certainly in my 10 years of
23 experience in Port Coquitlam, included pretty much
24 every type of offence, but rather the designation
25 was for a case that required special and extra

1 attention, advanced preparation, if you will.

2 Q All right. Now, the next step after marking the
3 date on it in paragraph c, someone would have to
4 go to the closed file room and put the files that
5 were older than three years into one or the other
6 of an archive box and a destruction box?

7 A Correct.

8 Q And whoever did that in this case mistakenly put
9 the Pickton attempt murder file in the destruction
10 box?

11 A Yes. And I should maybe just say this: I agree
12 that it was contrary to the policy, but if you
13 look at the records destruction authorization form
14 itself, in the section numbered 3, "Authorization
15 of Office Requesting Records Destruction", there's
16 a notation on that file -- or on that section of
17 the document that says:

18 All sexual assault/high profile files have
19 been pulled.

20 What I take from that, and certainly in my
21 discussion with Miss Couture of our office, is
22 that it appears that there was a misapprehension
23 of what the policy actually required. So yes. It
24 was a mistake. The policy was not complied with,
25 but I think it was a situation where that is what

1 the person who was pulling the file out believed;
2 that they needed to archive cases that were high
3 profile cases and cases that involved a sexual
4 offence.

5 Q Actually, that -- another interpretation of that
6 entry would be that in addition to the matters set
7 out in the Code and in the policy, those files
8 that must be archived, sexual assault and
9 so-called high profile files also fell into that
10 category; isn't that an equally likely
11 interpretation?

12 A I would say that high profile may be in addition.
13 I think the sexual assault cases would have been
14 part of the policy as files that needed to be in
15 most circumstances archived.

16 Q In any event, first mistake -- or first failure to
17 follow policy was made by whoever separated the
18 files into the two categories, one for archiving
19 and one for destruction?

20 A Yes.

21 Q And there was a check on that that you refer to in
22 paragraph d, making sure that the three years had
23 elapsed and crosschecking against the Crown
24 policy, and that step two was in error?

25 A Not so much that the three years had elapsed, but

1 clearly again the -- in the case of the Pickton
2 file, that it was a file that should have by
3 policy been designated for archiving.

4 Q And then someone had to write out on a list, like
5 the ones appended to your affidavit, the files in
6 both of those categories, the archiving category
7 and the destruction category?

8 A That's correct.

9 Q And the person who created the list failed to
10 recognize that the Pickton attempt murder file
11 should not be on the destruction list?

12 A That's correct.

13 Q That's another mistake?

14 A Well, the file is pulled out and it is listed on
15 the documents, as I understand it, that I've
16 attached, the file number, the accused's name and
17 the general description of the offence. So that's
18 all a single process.

19 Q And then the ministry records officer in Victoria
20 had the job of ensuring that the destruction
21 policy had been complied with and they would go
22 over the list of files and ensure that the files
23 on the list were in fact appropriate for
24 destruction?

25 A That's correct. The list was actually sent to

1 Victoria, the compiled list that -- the 73 or
2 so -- or 78 pages -- sorry -- 79 pages of
3 documents list were sent to Victoria along with
4 the request for the records destruction
5 authorization, and they would go through it and
6 ensure that it was in compliance with files that
7 should be destroyed.

8 Q And that person failed to recognize that the only
9 attempt murder file in this batch of documents,
10 the Pickton file, was one that the policy dictated
11 had to be archived?

12 A Well, I would characterize it somewhat
13 differently. That he or she failed to recognize
14 that the Pickton file, along with a number of
15 other files that met the criteria for archiving,
16 should have been removed from the destruction
17 boxes and placed into the archive boxes.

18 Q And, as you put it, in short, in one of the -- in
19 the 7th paragraph of your affidavit over on page
20 5 -- page 4 and 5, the Crown -- the written Crown
21 policy was not followed and the error was not
22 detected, firstly, by the administrative support
23 person who pulled the file nor by the
24 administrative Crown counsel, a lawyer who was
25 responsible for supervising that process, nor by

1 the ministry records office in Victoria or that
2 person's designate who was responsible for
3 reviewing the file list and ensuring that the
4 destruction policy had been complied with?

5 A The administrative -- well, the administrative
6 support person, the administrative Crown or
7 designate, I think is what the wording of the
8 policy is, and then the -- the person who reviewed
9 these matters in Victoria. I've referred to that
10 person, I believe.

11 Q Now, if --

12 A Sorry.

13 Q Presumably the Crown record retention policy has a
14 reason for its existence. Presumably there's some
15 reason why serious cases, personal injury must be
16 kept for 75 years in the archives?

17 A Yes.

18 Q Someone's made that policy decision?

19 A Correct.

20 Q My last question for you, Mr. MacDonald, given
21 your experience with Crown office and your -- the
22 efforts you made in trying to ascertain what
23 actually happened here and becoming familiar with
24 the destruction -- more familiar with the
25 destruction and archiving policies of the Crown,

1 what more can be done beyond creating a written
2 policy of the Crown, putting it in the Crown
3 counsel policy manual and then having a system of
4 checks whereby three different people are charged
5 with the responsibility of ensuring the policy is
6 followed to ensure that files like this one don't
7 get inadvertently destroyed?

8 A The system that was in place throughout this time
9 is no longer in fact used by the Crown. We now
10 have a -- a computer system called JUSTIN. It
11 automatically now designates those files which
12 according to policy are to be archived and it
13 tells us which files are able to be destroyed by
14 reference to the section numbers and the nature of
15 the charge that are set out. So it's actually a
16 much simpler task now that the file clerk -- the
17 court -- the offices -- the Crown offices now will
18 have a designated file clerk. Certainly for the
19 larger offices in the Fraser region, I'll speak
20 for, have a designated file clerk whereby, in
21 fact, lists are generated of files that need to be
22 archived and lists are generated for files that
23 need to be destroyed or can be destroyed and at
24 the appropriate times. So, again, it's not -- I
25 guess the human factors have been taken out of

1 this through the use of the JUSTIN program because
2 it automatically logs the date of the closing and
3 then three years from that time will tell the file
4 clerk which files need to be sent to archives and
5 which can be destroyed.

6 Q So in the offices of Crown counsel at least the
7 possibility for human error has been minimized by
8 taking the responsibility out of the hands of
9 humans and giving it to the computer?

10 A I guess that's certainly one way of putting it. I
11 would agree with that.

12 Q And we've moved beyond -- well, moving slowly in
13 the legal profession towards paperless record
14 retention. Certainly based on your own knowledge
15 and experience, it's much, much easier now to
16 retain large volumes of material on very small
17 chips or disks?

18 A The bulk of the disclosure on larger, complicated
19 files is done electronically now at the Crown
20 office, both from the police to the Crown and then
21 from the Crown to defence counsel. So yes.
22 You're quite right. We can store on a disk what
23 previously might have taken two, three, five boxes
24 to store.

25 Q And just one last question. You referenced the

1 fact that in your -- in your work on this case you
2 accessed the two lists, the list of the files that
3 have been created for the purpose of destruction
4 and also the one of the Port Coquitlam files that
5 have been designated for the archives?

6 A Yes. I don't know that I said I access them, but
7 what I can say is that during the initial
8 confusion of my not being able to reconcile the
9 lists that I was originally provided with the
10 record authorization form and recognition of the
11 fact that the commission needed this information
12 quickly, we actually ordered all of the -- every
13 box that had ever been archived from Port
14 Coquitlam. And I think about two or three Fridays
15 ago myself and our office managers went through
16 each and every box that had been archived.
17 There's a list in each box. I didn't preserve
18 them and we've sent them back, but we now, given
19 the request of Mr. Gratl, are endeavouring to make
20 sure that we get the complete list, which is
21 available.

22 Q And just as a class -- and I'm sorry you had to do
23 that, but as a class, the archive files, would you
24 characterize those as serious offences like murder
25 and attempted murder, things of that nature?

1 A There's not many murders -- in fact, there are no
2 murders that I came across in Port Coquitlam.
3 Their supreme court archives would certainly cover
4 that. There were other attempt murders that had
5 been archived. Again, that's a relatively rare
6 charge. Lots and lots of sex offences, some
7 serious personal violence offences like aggravated
8 assault. Again, the preponderance was sex
9 assaults, believe it or not.

10 Q Thank you, sir. Those are my questions. I
11 appreciate your sticking around for them.

12 A My pleasure.

13 MR. VERTLIEB: Perhaps that should be marked as an exhibit.

14 THE REGISTRAR: It's already marked for identification. Did
15 you want --

16 MR. VERTLIEB: Yes. As an exhibit proper now.

17 THE REGISTRAR: NR?

18 MR. VERTLIEB: Yes.

19 THE REGISTRAR: That will be marked as 135 NR.

20 **(EXHIBIT 135 NR: Formerly Exhibit DD For**
21 **Identification - Affidavit of Andrew MacDonald and**
22 **attachments)**

23 MR. DOUST: Sorry, Mr. Commissioner. There's one point I
24 didn't deal with and I'd like to take a few
25 minutes if I may.

1 THE COMMISSIONER: All right.

2 **CROSS-EXAMINATION BY MR. DOUST (Cont'd):**

3 Q Could you please, look, Mr. MacDonald, at page 32
4 of the file list and you'll see the file there?
5 It stands out because it's the only name that
6 isn't blocked out?

7 A Yes.

8 Q On a previous list of this type, the originally
9 disclosed that was provided to us, there was an
10 asterisk in the margin just to the right of the
11 words "attempt murder"?

12 A Yes.

13 Q And that's absent here. Could you explain that?

14 A I have attempted to find out why there would be a
15 difference. Again, the person that I spoke with
16 about this, Diane Siemens, who was the office
17 manager in Port Coquitlam, and although she isn't
18 responsible for having made that asterisk, what
19 she told me is that when the file was being
20 searched for, the records clerk who was searching
21 for it highlighted it and placed the asterisk
22 beside it so that it would stand out on that list.

23 Q That was her target?

24 A That was her target. And, again, the list that we
25 provided would have been the original one sent to

1 Victoria in the form that it existed originally
2 when those files had been pulled. So the one
3 that's attached to my affidavit is in fact the raw
4 form of that unaltered by subsequent persons who
5 were looking for it.

6 MR. DOUST: Thank you. Thank you, Mr. MacDonald.

7 **(WITNESS EXCUSED)**

8 THE COMMISSIONER: Thank you.

9 THE REGISTRAR: The hearing is now adjourned for the day and it
10 resume Monday, April 16th at 9:30.

11
12 **(PROCEEDINGS ADJOURNED AT 4:50 P.M.)**

13
14
15 I hereby certify the foregoing to be
16 a true and accurate transcript of the
17 proceedings transcribed herein to the
18 best of my skill and ability.

19 Kathie Tanaka, Official Reporter
20 UNITED REPORTING SERVICE LTD.

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