

June 4, 2012

Vancouver, BC.

(PROCEEDINGS RECONVENED AT 9:30 A.M.)

THE REGISTRAR: Order. The hearing is now resumed.

THE COMMISSIONER: Yes, Mr. Vertlieb.

MR. VERTLIEB: The list of closing arguments has been distributed to all counsel and the first member would be Mr. Ward on behalf of the families.

THE COMMISSIONER: Yes. Thank you.

MR. WARD: Mr. Commissioner, Cameron Ward appearing today with my colleague Neil Chantler as counsel for the families of 26 missing and murdered women.

I have to say, just at the outset, that I'm a little bit taken aback or surprised by the fact that commission counsel hasn't followed what I understand to be the established practice of delivering the first set of closing submissions. You will recall that commission counsel did the first opening and I certainly would have expected, consistent with past experience, commission counsel to deliver the first closing, which, in my experience, is then supplemented or augmented by counsel for the other participants. That hasn't happened here. It seems unusual. I'll proceed if that's your wish.

1 THE COMMISSIONER: Mr. Vertlieb?

2 MR. VERTLIEB: Mr. Ward has different experience than I do and

3 I think Mr. Ward is scheduled to commence, as has

4 been known for some time. Thank you.

5 MR. WARD: Thank you.

6 THE COMMISSIONER: I note you haven't filed a written argument.

7 Do you intend to do that?

8 MR. WARD: I do, yes.

9 THE COMMISSIONER: Okay. All right.

10 MR. WARD: As I say, Mr. Commissioner, Mr. Chantler and I are

11 counsel for the families of now 26 of the murdered

12 women, those women whose disappearances and

13 murders are the subject of this proceeding. And

14 because this will be likely the last time their

15 names are heard in this room, I want to remind you

16 that I represent the families of Dianne Rock,

17 Georgina Papin, Marnie Frey, Cynthia Dawn Feliks,

18 Cara Ellis, Mona Wilson, Helen May Hallmark, Dawn

19 Crey, Angela Hazel Williams, Jacqueline Murdock,

20 Brenda Wolfe, Andrea Joesbury, Elsie Sebastian,

21 Heather Bottomley, Andrea Borhaven, Tiffany Drew,

22 Angela Jardine, Stephanie Lane, Tanya Holyk,

23 Olivia Williams, Debra Jones, Janet Henry, Marie

24 Lorna Laliberte, Sereena Abotsway, Dianne Melnick,

25 and Marcella Creison.

1 It has been a honour for us to represent the
2 families of these 26 departed women at this public
3 inquiry. The families, Mr. Commissioner, in my
4 submission, are an impressive and resilient group
5 of people from right across this country. They've
6 shown enormous courage by participating in this
7 process, which for many has been done at great
8 personal sacrifice to their own family life, their
9 jobs, and in some cases their emotional health.
10 They've made these sacrifices because they for 10,
11 15 years or longer have been doggedly seeking the
12 truth. There's no other reason for them to have
13 participated and followed this process.

14 And I have to tell you, given the sacrifices
15 my clients have made and given the hopes and
16 expectations they had for this process, that it is
17 with the greatest regret that I must deliver the
18 unanimous message from our clients that this
19 public inquiry from their perspective has been
20 almost a complete failure. I say almost because
21 there has been one aspect of this public inquiry
22 that has had some merit to the families, and that
23 is that there has been some public exposure of
24 some of the evidence relating to the criminal
25 justice system's handling of this tragic --

1 enormously tragic case.

2 The reason I say this public inquiry has
3 essentially failed is that a public inquiry's
4 supposed to be an uncompromising public search for
5 the truth. In my submission this one wasn't. A
6 public inquiry is supposed to be independent. In
7 my submission this one wasn't. A public inquiry
8 is supposed to be thorough. In my submission this
9 one wasn't. A public inquiry is supposed to be
10 open and transparent. In my submission this one
11 wasn't. And a public inquiry is supposed to be
12 fair and in my submission this one wasn't.

13 From the perspective of my clients, the
14 families of the murdered women, this commission
15 has not nearly finished its work. It has shut
16 down the hearings prematurely, having failed to
17 hear from critical witnesses and having failed to
18 compel the production of critical documents from
19 the institutional participants whose conduct is
20 under scrutiny. This could be called a missing
21 evidence inquiry.

22 As a result of these failures, this
23 commission, in my respectful submission, has
24 failed to uncover the true reasons why this
25 enormous tragedy was allowed to happen and exactly

1 how it was that the criminal justice system and
2 those charged with the responsibility of
3 administering it utterly failed these women and
4 their families in this case.

5 With respect, this commission made a number
6 of significant procedural errors that caused it to
7 lose its way. In my submission, it erred in
8 assigning or delegating its fact finding
9 responsibility to Police Officers LePard, Williams
10 and Evans. It fell into error when it allowed
11 their work to control its agenda and in my
12 submission it erred again when it rushed to
13 complete the hearings in accordance with a
14 government deadline that caused it to put
15 witnesses on the stand in groups, that caused the
16 commission to limit the time participants had to
17 cross-examine those witnesses and, most
18 importantly, by failing to call critical witnesses
19 at all.

20 We maintain that at this stage there are
21 many, many documents and classes of documents
22 relevant to the issues contained in the terms of
23 reference that we applied for, that we sought to
24 have requested and which have never been
25 disclosed. We maintain on behalf of the families

1 the manner in which this commission's process has
2 been handled, the reliance on LePard, Williams and
3 Evans to in effect adduce and manage the evidence,
4 has enabled the police and government participants
5 to withhold information from the public inquiry
6 that may have reflected on them -- would have
7 reflected on them in a negative manner.

8 In our respectful submission, the commission
9 has enabled the institutional participants to tell
10 their story in a way that's most favourable to
11 their interests and to keep back aspects of the
12 story that would be embarrassing to them. We
13 point to the fact that the commission did not
14 issue subpoenas in a timely way to compel the
15 institutions to produce their documents.

16 And clearly the commission through its former
17 executive director entered into back room
18 arrangements with the institutional participants
19 with respect to the production of documents and,
20 most significantly, with respect to their
21 redaction. Huge portions of documents were
22 covered or redacted before they were made
23 available to us, counsel for the participants.
24 They were redacted for such things as people's
25 names, names of witnesses, police investigative

1 techniques, other facts that were deleted or
2 covered or blacked out before we could see the
3 documents, according to an agreement reached
4 between the office of commission counsel and the
5 institutions without any consultation whatsoever
6 with the families as a participant with equal
7 standing. That, in my respectful submission, was
8 absolutely wrong and that led to the commission
9 finding its way -- losing its way for we, counsel
10 for the families, were handcuffed, unable to
11 really conduct our own investigations into the
12 facts because so much was blacked out and
13 redacted.

14 Before I go any further, Mr. Commissioner, I
15 consider I have a responsibility to advise you
16 that the families consider this commission to have
17 breached the rules of natural justice and
18 procedural fairness and I once again urge you,
19 even at this late date, to remedy these errors by
20 affording more time for evidentiary hearings, call
21 the additional necessary witnesses and to complete
22 this inquiry properly. I have no expectation that
23 you will do that given all the past history even
24 though the government has given you five months
25 from now, as I understand it, to complete and

1 deliver the final report.

2 My clients, Mr. Commissioner, to a person are
3 disappointed, discouraged and, most of all, angry
4 at the way this commission's process has unfolded.
5 They feel that this commission has perpetuated the
6 attitude of indifference and disrespect that they
7 themselves first experienced when they reported
8 their loved ones missing and encountered sheer
9 indifference on the part of the authorities.

10 They also feel that this commission has
11 failed to undo the harm that was caused to them
12 when you yourself, Mr. Commissioner, as the
13 Attorney General in 2008 stated publicly that it
14 would not be in the public interest to put Robert
15 William Pickton on trial for 20 counts of
16 first-degree murder. We are unaware of any other
17 case in the civilized world where 20 first-degree
18 murder charges were dropped because a trial of the
19 accused would not be in the public interest or
20 might be too expensive. None of us in this room,
21 I suggest, can imagine the permanent pain that
22 that decision caused the families of 20 murdered
23 women. This commission had a chance to try to
24 address some of that pain, but we feel -- our
25 clients feel that this public inquiry has in fact

1 raised more questions than it has answered.

2 I turn next to some of the evidence and some
3 of the highlights of my submissions with respect
4 to the conduct of the institutional authorities in
5 this matter. I know that I have limited time. I
6 have to only touch on the highlights.

7 Mr. Commissioner, as you know, over the
8 course of at least five years a man named Robert
9 William Pickton and his associates took at least
10 32 and perhaps as many as 49 impoverished women
11 from Vancouver's Downtown Eastside to the suburb
12 of Port Coquitlam, which is some 34 kilometres or
13 45 minutes away by car, where those women were
14 slaughtered, presumably one by one, although we
15 don't know, in probably the most gruesome and
16 horrific ways imaginable.

17 The criminal justice system that each of us
18 in this society rely on for our safety from
19 predators like Pickton, in this case the Crown,
20 the Vancouver Police Department and the RCMP,
21 allowed the carnage to occur by taking no action
22 to intervene and stop the murders. The big
23 question is why? It's not because they were
24 unaware. To the contrary. This inquiry has
25 received plenty of evidence that each of those

1 institutions, the Crown, the Vancouver Police
2 Department, and the RCMP, had ample information
3 pointing to Pickton as someone who was likely
4 involved in the perpetration of these heinous
5 crimes throughout the entire five-year period
6 covered by the terms of reference. However, their
7 inaction, their inability to act to stop him and
8 his associates allowed the murders to continue
9 unabated until a rookie cop named Nathan Wells
10 finally stepped in, exercised the search warrant
11 and put a stop, at least temporarily, to the
12 crimes on February 5th, 2002.

13 I want to address the conduct of the Criminal
14 Justice Branch or the Crown. And I'm addressing
15 it first because we have maintained since the day
16 we became involved that your term of reference
17 4(b), the term of reference that enables you and
18 requires you to inquire into the conduct of the
19 Criminal Justice Branch, was and is of utmost
20 importance to the families. Its conduct occurred
21 near the beginning of the terms of reference and
22 in our submission -- we've made this submission
23 before to no effect -- this issue should have been
24 front and centre in these proceedings.

25 The evidence is clear that the RCMP and the

1 Crown knew in March of 1997 that Robert William
2 Pickton had handcuffed and gutted and nearly
3 killed a half aboriginal, drug-addicted sex trade
4 worker from Vancouver's Downtown Eastside, a woman
5 that we've called Ms. Anderson, on a junkyard-like
6 property Pickton shared with his brother David.
7 Both Picktons, Willie, David, were well known to
8 the police by March of 1997.

9 Willie had been the subject of a sexual
10 assault investigation in 1990 and six more offline
11 CPIC queries in the following years, including one
12 by a Vancouver Police Department member made at
13 12:19 in the morning on March 2nd, 1994. We don't
14 know what Willie Pickton was doing, resident of
15 Port Coquitlam, humble pig farmer, in downtown in
16 Vancouver in the early hours of that date. Nobody
17 does now because everybody's forgotten apparently
18 and the records aren't available. But he was
19 known to police. His brother David, David Francis
20 Pickton, was on March 23rd, 1997 known to be an
21 associate of British Columbia's most prominent and
22 notorious organized crime organization, the Hells
23 Angels Motorcycle Club, who himself, David
24 Pickton, had been the subject of 59 offline CPIC
25 queries as of that date.

1 Now, we only got the offline CPIC searches
2 very late in these proceedings. LePard, as far as
3 we can tell, didn't look at them. Deputy Chief
4 Evans didn't have the benefit of them. Because
5 they came in so late, we don't know why the police
6 in the Lower Mainland, Vancouver and other
7 suburbs, were so interested in David Francis
8 Pickton prior to his brother's attempted murder of
9 Anderson that they queried his name 59 times. We
10 should know. We should have inquired into that.
11 We should have found out.

12 But we do know that -- from the evidence that
13 the Crown approved four serious criminal charges
14 against Willie Pickton, David's brother, for what
15 happened on March 23rd, 1997. They, of course,
16 were attempted murder, forcible confinement,
17 aggravated assault and assault with a weapon,
18 charges approved after the Crown determined that
19 it had sufficient evidence to meet the familiar
20 two-part test. That is, prosecution of Pickton
21 was in the public interest and there was a
22 substantial likelihood of conviction.

23 Just by itself, an attempted murder charge
24 would be an extremely serious and, at least in
25 Coquitlam or Port Coquitlam, a relatively rare

1 serious charge. An attempted murder charge by
2 itself would require sustained attention and
3 preparation on the part of Crown lawyers to get
4 ready for trial.

5 Given that there were three additional
6 serious charges, the Pickton prosecution in March
7 of 1997 demanded careful advanced preparation by
8 the Crown prosecutors as denoted by the so-called
9 red file designation that office gave it.
10 Unfortunately, in our respectful submission, it's
11 unfortunate for Ms. Anderson, it's unfortunate for
12 the public, it's unfortunate for the nearly two
13 dozen families whose loved ones would later be
14 murdered and disposed of at the Pickton's property
15 the Crown failed to prepare the case for trial.

16 By January 22nd, 1998 with a five-day trial
17 about to start on February 2nd, six business days
18 away, the Crown prosecutors on the evidence before
19 you had not begun their preparation. They had not
20 sat down and interviewed any Crown witnesses or
21 prepared minutes of evidence for them. They
22 hadn't interviewed the two people -- civilians who
23 picked Anderson up, bleeding and dying from the
24 road. They hadn't interviewed the doctors or
25 nurses who treated her at the hospital and saved

1 her life. They hadn't interviewed any of the
2 police officers involved in the investigation.
3 They hadn't even interviewed the victim herself.
4 They had not started any preparation of Pickton's
5 cross-examination in the event he took the stand
6 in his own defence. They had not prepared a draft
7 of the admissions of fact they would be seeking
8 from his defence lawyer, Peter Ritchie. They had
9 not obtained certified copies of the documents
10 they would need to tender as exhibits or
11 apparently even made photocopies of those
12 documents. They had apparently done no legal
13 research into any of the issues that may be raised
14 at trial. They had not drafted an opening
15 statement. They had made no efforts to negotiate
16 a plea with Mr. Ritchie.

17 In short, in our respectful submission, the
18 Crown was handling this serious file, four serious
19 charges against Mr. Pickton, including attempted
20 murder, in a cavalier fashion with none of the
21 diligence the public is entitled to expect from
22 those charged with the heavy responsibility of
23 enforcing and administering criminal justice in
24 the province.

25 I have no doubt, Mr. Commissioner, that Mr.

1 Ritchie, a capable and experienced lawyer, would
2 have been very busy by January 22nd preparing for
3 such a serious trial. We don't know that because
4 the commission, of course, refused our application
5 that he be called as a witness so we could ask
6 him. But perhaps his evidence wasn't necessary
7 because I submit every lawyer in this room knows
8 that you don't leave preparation for a five-day
9 trial on charges of attempted murder, forcible
10 confinement, aggravated assault and assault with a
11 weapon to the last minute. Maybe you can do that
12 on a run-of-the-mill shoplifting or common assault
13 case, but not an attempted murder.

14 The evidence discloses that the Crown finally
15 arranged an interview with Ms. Anderson either on
16 January 23rd or 26th, 1998 -- it's not clear --
17 and decided to drop the case that very day without
18 even consulting the RCMP investigators involved.
19 What was the Crown's excuse? Ms. Anderson was a
20 drug addict.

21 MR. DOUST: Mr. Commissioner, I'm always very reluctant to
22 intercede when there's an argument, but I have an
23 objection to this line of argument. The law
24 precludes guessing or debating about a decision
25 that falls within the scope of prosecutorial

1 discretion, as does charge approval clearly or the
2 entry of the stay, as a matter of the exercise of
3 the Crown's discretion. Any argument along those
4 lines, in my submission, is therefore irrelevant
5 and inappropriate to this commission. The issue
6 was not dealt with in evidence because of the
7 rules and without the appropriate evidence, my
8 friend should not obliquely make an attack on the
9 Crown's decision because that's exactly what he's
10 doing here. He's leading up to saying that this
11 decision to stay was inappropriate, it was wrong,
12 and that the Crown did not do its job. All of
13 that is to say they should not have entered the
14 stay of proceedings. That's a clear attack. It's
15 a second-guessing process, in my submission, and
16 it clearly falls within the rules in *Davies*.

17 The issue, as I say, was not dealt with in
18 evidence because of the rules and without the
19 appropriate evidence, no argument or conclusion
20 should be heard. Efforts to do so now, in my
21 submission, are improper and they're unfair
22 because there was no proper opportunity to deal
23 with the entirety of the basis of the decision and
24 whether or not the decision was right or wrong.
25 No evidence that challenges the propriety of these

1 decisions was allowed and no evidence to support a
2 finding of misconduct against any individual or
3 any criticism of that decision to enter the stay
4 was allowed. Clearly if you can't lead evidence,
5 then obviously, in my submission, you can't make
6 findings on it because you haven't got the
7 evidentiary basis and you can't make argument
8 about it either.

9 This whole process of leading up to the Crown
10 didn't do this, didn't do this, didn't do this is
11 all designed for no other purpose -- it has no
12 other relevance than to lead you to the conclusion
13 or attempt to lead you to the conclusion that the
14 entry of the stay, the decision made by the Crown
15 within the parameters of their constitutionally
16 protected prosecutorial independence, was wrong or
17 was inappropriate or was a mistake. Those are
18 issues that you ought not to hear evidence on and
19 you ought not to hear argument on and you ought
20 not to make findings on. Thank you, Mr.

21 Commissioner.

22 THE COMMISSIONER: Thank you. Yes.

23 MR. NATHANSON: Mr. Commissioner, Andrew Nathanson. I appear
24 as counsel for Mr. Romano. With your leave, I
25 just wish to adopt Mr. Doust's submissions. In my

1 submission where Mr. Ward is going and where some
2 of my other friends may go clearly offends the
3 rule in *Davies*. And you, sir, have already
4 concluded that in your ruling on the Murray
5 report. And the only thing I would differ from in
6 what Mr. Doust said is I don't think Mr. Ward was
7 being oblique at all. I think he was mounting a
8 full on challenge to the propriety of the decision
9 to stay, and in my respectful submission, for all
10 the reasons we've already given you, that is not
11 somewhere where participants are permitted to go.
12 I don't wish to interrupt any of my other friends'
13 closing submissions, so I simply will make this
14 objection now and ask you to note it.

15 THE COMMISSIONER: All right. Thank you, Mr. Nathanson. Mr.
16 Ward?

17 MR. WARD: Yes. In my submission, it was completely
18 inappropriate for my friends Mr. Doust and Mr.
19 Nathanson to interrupt my closing submission to
20 you. They, of course, have full and ample
21 opportunity to reply to any submissions I make
22 and they have their opportunity then. If people
23 are going to jump up and object to closing
24 submissions, I certainly won't finish in an hour
25 and it's completely inappropriate. I am entitled

1 to make these submissions. You, Mr.
2 Commissioner -- and I notice your counsel hasn't
3 objected, but you, Mr. Commissioner, have a duty
4 to hear all of the submissions, including the
5 submissions made on behalf of the families, and to
6 write a report that accords with the terms of
7 reference. The concern of my friends, as I
8 understand it, is one reflected in the terms of
9 reference and if I have stepped over any
10 boundary -- and I do not concede I do -- that is a
11 job for you and you alone. You have
12 responsibility of hearing these submissions, in my
13 respectful submission.

14 THE COMMISSIONER: I'm well aware of what *Davies* says. I'm
15 well aware of what the Supreme Court of Canada has
16 said prior to *Davies*. And Mr. Doust's point is
17 well taken, and that is that those are areas that
18 I'm not permitted by law to go into, that is
19 broach upon the independence of Crown counsel in
20 reaching their particular decisions. So I'm going
21 to let you go on, but you have to keep in mind
22 that you are using up time on issues that may not
23 be relevant at the end of the day. You can deal
24 with this evidence, but I am confined, as I ought
25 to be, by the law, and the law is quite clear in

1 *Davies.* And so you can proceed.

2 MR. WARD: Just before I -- thank you.

3 THE COMMISSIONER: Mr. Doust?

4 MR. DOUST: Mr. Commissioner, hearing argument is -- it's
5 really not even one step removed from hearing
6 evidence on the issue. The whole concept is to
7 protect the Crown and Crown counsel from that kind
8 of criticism in evidence and I submit with
9 respect, Mr. Commissioner, to say, well, we can't
10 hear the evidence, but we can hear argument on it
11 is to transgress the rule in the same way.

12 THE COMMISSIONER: Well, not really because he's quite
13 permitted to deal with facts and I'm confined to
14 dealing with the facts as to what was done and
15 what was not done. That's as far as it goes. I
16 fully realize the limitations that are imposed on
17 me by the law when it comes to making a decision
18 on term 4(b) of the terms of reference, but if he
19 wants to make comments on what was done, he's
20 entitled to do that. Where you draw the line is
21 that you can't -- I can't make a finding at the
22 end of the day that the Crown counsel ought to
23 have done something else instead of what she did
24 in the circumstances. So I'm well aware of that.
25 But he's within his rights to make submissions on

1 what was done at the time.

2 MR. DOUST: It's one thing, though, Mr. Commissioner, to say
3 here's what was done. It's quite another to draw
4 from that a conclusion of impropriety, and that's
5 my complaint.

6 THE COMMISSIONER: Well, I'm the one that will have to draw the
7 conclusion at the end of the day. I'm well aware
8 of the -- of the constraints put upon me as far as
9 the inferences that I draw from the arguments.
10 I'm sure you will point that out to me in your
11 closing arguments.

12 MR. DOUST: Yes. I understand the limitation on what you can
13 do, Mr. Commissioner, but what I'm saying is the
14 underlying reason for denying you the opportunity
15 to come to a conclusion is the inability to
16 criticize and it's inappropriate, in my
17 submission, to simply allow my learned friend to
18 say, well, you can't come to this conclusion in
19 effect because of the law, but I can stand here
20 and argue that you should come to such and such a
21 conclusion, which is clearly inappropriate.

22 THE COMMISSIONER: That's not the point I'm making. The point
23 I'm making is that he's quite within his right
24 to -- to tell me what was done in the
25 circumstances by the Crown, what the police did

1 and because, as you know, I am confined at the end
2 of the day, constrained at the end of the day to
3 make findings of fact, nothing more. I cannot
4 second-guess the Crown as to what they ought to
5 have done and so I'm aware of those -- of those
6 constraints that are placed upon me by what the
7 Supreme Court of Canada said and what the Court of
8 Appeal in the province has said.

9 MR. DOUST: See, I'm not objecting to adverting to the facts,
10 Mr. Commissioner. It's his conclusion that
11 something was wrong or something else should have
12 happened or it should have been done in another
13 way. Those are the kinds of conclusions which
14 you're precluded from coming to. Surely it
15 follows like the night to day that if you can't
16 come to those conclusions, my friend can't stand
17 here and argue them or make his observations about
18 them.

19 THE COMMISSIONER: Well, at the end of the day I have to decide
20 what conclusions ought to be made and I'm well
21 aware of that. So I'm going to let him go on.

22 MR. DOUST: All right.

23 THE COMMISSIONER: Go ahead, Mr. Ward.

24 MR. WARD: Thank you. You were, I remind you, Mr.

25 Commissioner, hampered in your duty to inquire

1 into and make findings of fact respecting the
2 decision of the Criminal Justice Branch to enter a
3 stay of proceeding on these charges as a result
4 of, according to the evidence, the Crown's file
5 being destroyed contrary to its file retention
6 policy. Nonetheless, I am going to address some
7 of the evidence and urge you to make certain
8 findings of fact based on the available evidence
9 that you did hear on this issue.

10 You heard evidence, Mr. Commissioner, that
11 Crown lawyers deal with drug-addicted witnesses
12 all the time. You probably know that yourself
13 from your prior career. You heard evidence that
14 if a witness is important to the Crown's case,
15 Crown lawyers have ample resources, including the
16 police, with whom they work, to ensure that
17 witnesses can be prepared to testify. The
18 evidence in this case adduced in respect of this
19 matter shows clearly that the Crown had between 10
20 and 13 days to get the witness Anderson, Ms.
21 Anderson, ready to take the stand if you assume
22 that her testimony could have been led later than
23 the first day of the trial, and I submit it could
24 have. And you heard evidence, Mr. Commissioner,
25 that even if Ms. Anderson was unfit to testify due

1 to drug consumption or addiction when she was
2 called to the stand, a remedy available to the
3 Crown lawyers would have been to apply for an
4 adjournment to allow time for her to receive the
5 treatment required and to enable her to recover
6 sufficiently to offer testimony on behalf of the
7 Crown.

8 You've heard evidence, Mr. Commissioner, that
9 this same witness, Ms. Anderson, still drug
10 addicted some years later, was called by the Crown
11 to testify at Mr. Pickton's preliminary inquiry.
12 You heard evidence that Geoff Baragar was the
13 Crown prosecutor charged with the task of getting
14 her ready to take the stand then. How long did it
15 take Mr. Baragar to get Ms. Anderson ready to
16 testify? A day perhaps, two, three?
17 Unfortunately, we can't say because, Mr.
18 Commissioner, you and commission counsel refused
19 our requests to call Mr. Baragar as a witness.

20 About two dozen of my clients' loved ones
21 were killed after the Crown stayed the charges
22 against Willie Pickton. I will let that speak for
23 itself.

24 Had Mr. Pickton been prosecuted, not even
25 convicted, just prosecuted, he may well have

1 appreciated that he couldn't murder prostitutes
2 from the Downtown Eastside with impunity; that
3 someone would get involved and try to stop him.

4 Ms. Anderson herself, who unfortunately
5 didn't testify at this hearing, is reportedly
6 living a clean, sober and productive life today.
7 It's obvious and I submit to you that any or all
8 of our clients' lost loved ones could well be
9 living similar lives like Ms. Anderson's today as
10 well. They didn't get the chance.

11 I want to turn to making some observations on
12 the evidence you heard about the families.
13 Fourteen family members, whom we represent, took
14 the witness stand over the course of a two-week
15 period, separate weeks commencing October 24th,
16 2011 and April 16th, 2012. Each family member who
17 testified had a unique story to tell you, but many
18 common themes emerged. One after another they
19 testified about their sheer frustration and
20 disappointment at how the police had handled their
21 family's report of the lost loved one. With very
22 few exceptions these family members reported that
23 the police displayed attitudes of indifference,
24 disrespect or outright prejudice and racism.
25 These family members reported being left with the

1 sense that their loved one's personal
2 circumstances beset by drug addiction, poverty or
3 their social status or occupations of sex trade
4 workers clearly affected the willingness of the
5 police to do proper investigations of their
6 disappearances. Many felt that their loved ones
7 were treated as second-class citizens. Some
8 reported their offence by comments made to them by
9 Vancouver Police Department civilian employees and
10 others. And one family member went so far as to
11 file a formal complaint.

12 Some of the family members, you will recall,
13 Mr. Commissioner, reported being told by police
14 that their loved one might be on a cruise, a
15 vacation or perhaps avoiding contact with their
16 family, which they knew, they knew because these
17 were their daughters, their sisters, was nonsense.
18 Some of them were told, "She'll turn up. They
19 always do," the word "they" fairly dripping with
20 contempt. But our family, our clients' loved ones
21 didn't turn up and the comments made by the police
22 personnel they dealt with and the attitude that
23 those personnel displayed to them were deeply
24 hurtful.

25 One of the family members who had reported

1 her sister missing to the RCMP said it was like
2 reporting a lost wallet. That's how seriously the
3 case would seem to be taken. In other cases
4 families were obliged to practically beg and plead
5 with police to take their missing person report
6 seriously.

7 You heard, of course, about the experience of
8 the Freys. They had the mayor of Campbell River
9 assist them in trying to get some action by
10 writing the Mayor of Vancouver, the Attorney
11 General of the Province of British Columbia, to no
12 avail.

13 Even when the police listened, according to
14 the family witness, sometimes weeks or even months
15 went by before they were informed of a single
16 investigative step pertaining to a search. Other
17 family members testified that investigative leads
18 that they provided the police simply weren't acted
19 upon at all. The most obvious step in any missing
20 person investigation, going to the last known
21 place of residence, sometimes took the police
22 weeks, months or even years to get around to
23 doing. In many cases the family members were
24 never even interviewed as next of kin with
25 knowledge of the missing person's habits and

1 whereabouts. The same applied to ex-boyfriends,
2 friends, associates of the missing women. Even
3 where there was some investigation into a woman's
4 disappearance, the lack of dedicated family
5 liaison officers, an aspect of major case
6 management principles left the family members
7 completely in the dark.

8 There was also a lack of communication
9 between the police office -- police departments
10 according to the evidence. Information wasn't
11 shared or if it was shared, it was only passed on
12 after lengthy delays. Many of the families did
13 what the police should have assisted them with or
14 done themselves. That is, they conducted their
15 own searches. They put up posters. They called
16 hospitals. They called the morgue. They called
17 jails. They were obliged to -- well, not obliged
18 to because they loved their relatives. They --
19 they searched. They couldn't get help from the
20 police. The police are supposed to be there to
21 help people like our clients and in these cases
22 they didn't.

23 The Vancouver Police Department, because it
24 received the vast majority of the complaints, is
25 the institution I propose to address next.

1 Detective Kim Rossmo confirmed in his sworn
2 testimony what most reasonable people discern to
3 be obvious. If the women had gone missing from
4 the west side of Vancouver instead of the Downtown
5 Eastside, the Vancouver Police would have been on
6 the cases right away and they would have responded
7 in a completely different manner. He said that on
8 January 24th of this year.

9 Detective Constable Lori Shenher, who on the
10 evidence knew more about the missing women
11 investigations and the Vancouver Police
12 Department's institutional attitude about the
13 disappearances, pulled no punches. She described
14 the Vancouver Police Department as a dysfunctional
15 boys organization. One quote was, according to
16 her, "It didn't know its ass from a hole in the
17 ground," an organization that was permeated with
18 sexist attitudes that precluded proper
19 investigation of the disappearances. As she put
20 it, many of her male colleagues -- and I apologize
21 for the graphic nature of her quote -- many of her
22 male colleagues wouldn't have pissed on the women
23 if they were on fire. Even once the enormity of
24 the tragedy, all these women, dozens of them taken
25 from the east side and killed, even when that

1 became apparent to all after Pickton's property
2 was being searched, Detective Constable Shenher's
3 colleagues, male colleagues, according to her,
4 were making disgusting pig jokes about the case.

5 The VPD for its part concedes mistakes were
6 made. It acknowledges it failed to warn the
7 public about the information it had. It was
8 suggesting a serial killer may be preying on the
9 women. That concession amounts to negligence on
10 the part of the VPD. Women's lives were put at
11 unnecessary risk by the department's failure to
12 issue a warning. And given all the evidence, in
13 my submission, the department's treatment of the
14 issue has to be chalked up to the police culture.
15 In that day the VPD, especially the male members
16 of the force, as an institution was indifferent to
17 the plight of these disadvantaged women. They
18 never received the benefit of a response like the
19 one that ensued when Graham McMynn was snatched
20 from his west side neighbourhood.

21 There's some very telling evidence about the
22 way the Vancouver Police Department as an
23 institution treated the impoverished and
24 vulnerable women of the Downtown Eastside, and one
25 stark example stands out in my submission. It was

1 very late in the testimony you heard when Deputy
2 Chief LePard returned to the stand, and it was in
3 connection with the -- what I'll call the girl in
4 the 7-Eleven. According to Deputy Chief LePard,
5 the VPD's handling of her case was a proud shining
6 example of the professional attitude the police
7 department brought to bear and the sympathy it
8 showed when women in the Downtown Eastside needed
9 help. The case, as you will recall, because it
10 was just a few days ago, involved a 14-year-old
11 girl who had just been raped, was seriously
12 injured, bleeding, completely traumatized when she
13 showed up in the early morning hours at an all
14 night convenience store, 7-Eleven, desperate for
15 help. The manager called 911 for her and was
16 assured that police and ambulance would be on the
17 way immediately. You heard the evidence that it
18 took the Vancouver Police Department over three
19 hours, three hours and eleven minutes to be exact,
20 to attend on this 14-year-old girl. That, Mr.
21 Commissioner, in our submission is unspeakable,
22 but it actually speaks volumes because it reveals
23 everything you need to know, Mr. Commissioner,
24 about the Vancouver Police Department's attitude
25 as an institution to the plight of the

1 impoverished and disadvantaged women and girls of
2 the Downtown Eastside who were forced by their
3 drug addictions, their illnesses to resort to
4 selling their bodies.

5 There's another good example of Vancouver
6 Police Department indifference and, indeed,
7 disdain for and scorn for these women, and that
8 pertains to what happened after Pickton had been
9 charged with some murders, during a time when the
10 police were literally finding bits and pieces of
11 the missing women's bodies and dirt at the Pickton
12 brothers' property. Now the families' worst fears
13 had been realized and their knowledge confirmed.
14 Their loved ones had indeed been taken by a
15 predator or predators and had been killed. And
16 this was May of 2002. And the exhibit references
17 are Exhibit 194, Tab 39 and 198, May the 15th,
18 2002.

19 Inspector Chris Beach apparently delivered a
20 presentation to the Vancouver Police Board to an
21 audience that included the mayor, Philip Owen, the
22 professionals who comprised the board, Chief
23 Constable Terry Blythe, Deputy Chief John Unger,
24 Deputy Chief Daley and Deputy Chief Greer in
25 attendance with the VPD spokesperson Scott Driemel

1 and an RCMP communications strategist, Eli Sopow.
2 Inspector Wayne Holland was there and others came
3 and went, including Inspector LePard. And
4 according to the record of the presentation,
5 Inspector Beach and his colleagues, Driemel and
6 Sopow, prepared a public presentation for
7 information that made the most disparaging,
8 demeaning and probably defamatory statements about
9 the family and friends of Sarah de Vries, Dawn
10 Crey, Sereena Abotsway and Helen Hallmark.

11 The Vancouver Police Department as an
12 institution after the remains of the missing
13 women's -- women were being found on Pickton's
14 property were deriding their loved ones and their
15 attempts over the years to get the police to take
16 action. Those remains, of course, were being
17 found in the dirt around the home of Robert
18 William Pickton, the same Robert William Pickton
19 who four years earlier was the subject of
20 Detective Constable Shenher's focus as the likely
21 culprit.

22 The Vancouver Police Department should in
23 short, Mr. Commissioner, be ashamed of itself for
24 treating the families that way throughout the
25 piece.

1 I want to say some remarks in the limited
2 time I have about the RCMP. And I know my hour's
3 up, but given my friend Mr. Doust's interventions,
4 I would ask that I get another 15 minutes.

5 THE COMMISSIONER: I'll give you another five.

6 MR. WARD: Five? Five?

7 THE COMMISSIONER: We have other people lined up after you, Mr.
8 Ward.

9 MR. WARD: I note --

10 THE COMMISSIONER: And nothing precludes you from putting in
11 writing all of these things. I can tell you that
12 written arguments will be far more valuable to me.
13 And that's not to discount the value of oral
14 argument. When I'm writing this during the
15 summer, I can tell you that the written arguments
16 will have a greater impact than all of the oral
17 ones.

18 MR. WARD: I note in the schedule, just on this point, my
19 friend Darrell Roberts QC, who represents the
20 family of one missing woman, had received exactly
21 the same amount of time as I have, one hour. I
22 just don't understand that, Mr. Commissioner.

23 THE COMMISSIONER: Well, look, you're all participants and it
24 depends on the various degrees of participation
25 and so everybody's given an hour. Time limits

1 aren't unusual, you know. I mean the Supreme
2 Court of Canada, the United States Supreme Court,
3 courts set time limits all the time and so it's
4 not -- you know, these are not unusual. And if I
5 give you more time, then what happens to the other
6 lawyers that are here? So I'm going to carry on.

7 MR. WARD: Mr. Commissioner, the families have journeyed here
8 from far and wide --

9 THE COMMISSIONER: I know that.

10 MR. WARD: -- to be here today. You have been given by the
11 Minister of Justice Shirley Bond five more months
12 to complete this inquiry's work. All I ask you is
13 to listen to the families' finally summation, to
14 give them the respect that they deserve, to allow
15 them an audience, the kind of audience they never
16 got when they went to the police 15 years ago. I
17 ask for more time, please.

18 THE COMMISSIONER: I'm giving you more time, Mr. Ward. It's
19 got nothing to do with the respect of the families
20 and stop saying that. You've been saying that
21 throughout. The fact that we set time limits and
22 we have rules, somehow that translates into a lack
23 of respect. I can tell you no one has more
24 respect for the families than I do. At the same
25 time we have a process that we have to go through.

1 So go ahead. Proceed. It doesn't help when you
2 start out your submission and you spend 10 minutes
3 on what you see as the witnesses that should have
4 been called. We've dealt with all of that before.
5 This is the time to give me your closing
6 arguments, that along with your written
7 submissions. I want them from you because I need
8 to know the position of your clients. Go ahead.

9 MR. WARD: All right. Thank you. The RCMP. I'll just touch
10 on some highlights of the evidence. The RCMP,
11 Mike Connor in particular, considered Robert
12 William Pickton to be the only suspect from their
13 point of view in the disappearances and murders of
14 the women in the summer of 1998. Mike Connor held
15 that view throughout his entire time at Coquitlam
16 while he worked on this file, which ended with his
17 transfer on August 19th, 1999. He was convinced
18 Robert William Pickton was the man responsible.
19 He was so convinced that even after he was
20 transferred off the file, he parked on Dominion
21 Avenue late at night between 20 and 30 times to
22 see if he could catch Pickton in the act.

23 It's not very clear what happened after
24 Connor departed, but we do know from evidence just
25 received by you that on February 14th, 2000, six

1 members of the Coquitlam RCMP, Corporal Dave
2 McCartney, Constable John Cater, Corporal Marg
3 Kingsbury, Corporal Nicole St. Mars, Corporal
4 Scott Filer and Staff Sergeant Keith Davidson met
5 for the sole purpose of discussing the
6 investigative steps they were going to take in
7 pursuit of Pickton. That's February 14th, 2000,
8 two years before Wells executed the search
9 warrant.

10 Corporal McCartney was tasked, assigned the
11 job of getting an authorization to intercept
12 Pickton's communications and to get a search
13 warrant for his property. We don't know what, if
14 anything, he did. He wasn't called as a witness.
15 Neither was Corporal Filer, Corporal Kingsbury,
16 Corporal St. Mars or Constable Cater. We don't
17 know why those six members of the Coquitlam RCMP
18 apparently didn't follow through. It's a factual
19 gap that is unaddressed because this inquiry
20 didn't finish its job.

21 Corporal Filer was tasked with preparing an
22 indirect personality assessment on Pickton, and he
23 did report a little bit later that year, May of
24 2000, and that document couldn't have been more
25 compelling, Mr. Commissioner, in identifying

1 Pickton as the man responsible. It disclosed
2 that, according to the RCMP, both of his parents
3 had died in a psychiatric institution. He lived
4 -- he had been living off and on with various
5 prostitutes and drug users, was quick to anger.
6 He was deceitful in his dealings with police.
7 Bizarrely, he had a horse's head mounted on his
8 wall. He held cock fights on his property and, of
9 course, he had nearly killed a Downtown Eastside
10 sex trade worker, Anderson, three years before.

11 Sergeant Don Adam, whose Project Evenhanded
12 formed in early 2001, did absolutely nothing to
13 advance the case. He spent a lot of money, had a
14 lot of meetings, accomplished nothing.

15 In the few moments remaining I want to
16 address the major shortcomings of this inquiry
17 process that, in my respectful submission, the
18 families take such issue with. This process
19 lacked independence and transparency and,
20 secondly, it is incomplete as we stand here today.
21 We had two previous provincial public inquiries
22 into policing issues before this one was struck.
23 They were, of course, the Braidwood Commission
24 into the inquiry of the death of Robert Dziekanski
25 and the Davies Commission of Inquiry into the

1 death of Frank Paul. Both of them concluded that
2 it is undesirable to have police investigate the
3 actions of police.

4 Despite the conclusions of those commissions,
5 this commission inextricably relied heavily,
6 almost solely, upon police investigations of
7 police. Your commission counsel elevated the
8 LePard report to a stature that it simply did not
9 deserve. It was Exhibit 1, offered in the
10 opening, and he was put on the stand for some -- I
11 don't know -- 12 or 14 days. Your commission
12 counsel staff apparently delegated most of its
13 investigative powers that it should have exercised
14 themselves to a police officer from Ontario, a
15 woman named Jennifer Evans. And on the evidence,
16 the commission's former executive director, a
17 former VPD police sergeant named John Boddie,
18 worked closely with both those witnesses, LePard
19 and Evans. LePard testified last week that he and
20 Evans met with Boddie at Vancouver Police
21 Department Headquarters. Why? Deputy Chief Evans
22 testified that she and Boddie drove to and from
23 Mission, a round trip of about four hours in a
24 car, to meet with Willie Pickton in jail. Why?

25 With the greatest of respect, assigning its

1 executive director a major role in dealing with
2 witnesses was in all of the circumstances an error
3 that compromised or destroyed this commission's
4 independence. It is not the executive director's
5 role. According to the learned author Professor
6 Ratushny and others, to work with witnesses, the
7 executive director of a commission of inquiry like
8 this one fulfils an administrative function
9 handling finances, but does not wade into the
10 evidence and deal with witnesses. That was
11 completely wrong, in my respectful submission.

12 We asked for copies of the e-mails that were
13 referred to in evidence that passed between Boddie
14 and LePard and between Boddie and Evans. We were
15 unsuccessful. We submit the failure to disclose
16 those e-mails does violence to the concepts of
17 openness and transparency that are supposed to be
18 the hallmarks of a public inquiry like this one.
19 The failure to disclose those e-mails raises
20 serious questions about the independence of this
21 tribunal.

22 Today, on behalf of my clients I request that
23 appropriate steps are taken that all of the
24 commission's e-mails and files be preserved and
25 retained for later scrutiny, if necessary, on this

1 important issue that goes to the very heart of the
2 commission's work.

3 We also submit this commission was not
4 thorough at all. The police were allowed and
5 enabled to control and manage the evidentiary
6 agenda. LePard and Evans were allowed and enabled
7 to manipulate the hearings and cover up the degree
8 of police misfeasance. LePard's report is a
9 patently unreliable document and we'll go over
10 that in length in our written submissions. And we
11 submit he is a patently unreliable witness. He
12 lacks credibility. Over two days, separate days,
13 he took pains to assert that in the one meeting he
14 had dealing with the case, Pickton's name never
15 came up, the so-called brainstorming session of
16 May 13, 1999. That testimony stands in stark
17 contrast with Shenher's sworn testimony and a
18 contemporaneous document disclosing that another
19 attendee, Bev Zaporozan, noted that Pickton was
20 discussed there. The later evidence should be
21 preferred over LePard's.

22 As for documents, we submit that many
23 essential documents are missing. The Department
24 of Justice conceded that of the two million pages
25 of Project Evenhanded documents, documents that

1 should be relevant to this inquiry, only 200,000
2 pages, which still is a lot, or 10 percent were
3 disclosed. And, as I mentioned before, those that
4 were disclosed to the commission were heavily
5 redacted, parts covered up before we saw them, all
6 in furtherance of a protocol we weren't consulted
7 about.

8 Witnesses are missing too. We've heard
9 virtually no witnesses about the activities at
10 Piggy's Palace. And I submit to you that those
11 activities that occurred at the Pickton's unlawful
12 party establishment involving them, the Hells
13 Angels and drug-addicted sex trade workers from
14 the Downtown Eastside, are critical to the fact
15 finding process. The nexus between organized
16 crime, the Picktons and Piggy's Palace was well
17 publicized before these hearings began. Noted
18 author Stevie Cameron's book devoted a chapter to
19 that nexus and it was published before these
20 hearings began.

21 You heard Deputy Commissioner Gary Bass, the
22 former head of "E" Division, just last week say
23 that he would expect the police were monitoring
24 the members of that organized criminal
25 organization in the Lower Mainland, including the

1 well publicized attendances at Piggy's Palace for
2 pig roasts and New Years Eve parties and other
3 activities and that their files would likely
4 disclose the extent to which there was an
5 intersection between such activities and the
6 missing women.

7 Bev Hyacinthe knew all about those
8 activities. She worked in the RCMP. I
9 practically begged you to call her as a witness so
10 that that subject would be disclosed.

11 THE COMMISSIONER: Your extra 15 minutes are now up.

12 MR. WARD: Thank you. I'll speak to any member of the public
13 who wants to hear the full submission outside.

14 THE COMMISSIONER: I just want to say that all relevant
15 evidence was called. Thank you for your advice.
16 But the fact is that all evidence that we think
17 was relevant in the circumstances has been called.
18 There's no evidence at all that the Hells Angels
19 had anything at all to do with the missing women's
20 commission of inquiry. It's important that we
21 confine ourselves to issues and the relevant work
22 here is relevance. Thank you.

23 MR. WARD: I need to respond to that, Mr. Commissioner. No
24 evidence was called. It was kept out of the room
25 by LePard and Evans and Boddie.

1 THE COMMISSIONER: Okay.

2 MR. WARD: My point -- and I want to be very clear -- is that
3 given that it was published at large to the world
4 prior to the hearings beginning that there was an
5 interconnection, a relationship, a nexus, call it
6 what you will, between the Pickton brothers,
7 organized crime and the missing women from the
8 Downtown Eastside, all occurring at Piggy's
9 Palace. It was incumbent on this commission of
10 inquiry to either -- to receive evidence that is
11 in files and to either rule it out for the public
12 so they could be satisfied or confirm that it was
13 true, and this commission just simply refused to
14 go there.

15 THE COMMISSIONER: Okay. Thank you.

16 MR. WARD: And that was an error.

17 THE COMMISSIONER: Thank you, Mr. Ward. You have your views
18 and the rest of us have ours. All right. Mr.
19 Roberts.

20 MR. HERN: Before Mr. Roberts speaks, if I could just have a
21 moment, Mr. Commissioner. Sean Hern for the VPD.
22 What we just heard, in my experience, were some
23 extraordinary submissions and we have a lot of
24 people here in the room and we have a lot of press
25 and I think for the record and for the public it

needs to be noted that in this part of the process submissions are not evidence and that's why as lawyers we generally don't object to them. And counsel here are supposed to use the opportunity not just to say anything they want, but to refer to matters that have been heard in evidence. And given what we've just heard, in my respectful submission, that's not necessarily being observed. Many things Mr. Ward said as facts I will say are false. But, nevertheless, we sit here and listen to that and we don't object because that's part of the process, but I don't want there to be any confusion about what we're doing here. These are submissions by counsel and not evidence.

THE COMMISSIONER: Well, I know that. I think I made that clear to Mr. Ward, that I have to decide this inquiry and make findings of fact based upon the evidence and not on some allegations about Piggy's Palace or Hells Angels or all of that. We have terms of reference. This is an inquiry dealing with the police investigation of missing women and not about organized crime or some other foray that we might get into. That isn't what this inquiry is about and I think the public realizes that. Mr. Roberts.

1 MR. ROBERTS: Mr. Commissioner, I'm having Mr. Giles hand up
2 another copy of my submission, which I have
3 prepared in court of appeal style with the text on
4 the left side so that you have writing space on
5 the right side, something you are familiar with.
6 And there is the binder of back-up documents. I
7 don't intend to get into the documents themselves
8 in the time available, but there they are for you.
9 And I have prepared identical material for Ms.
10 Buckley.

11 THE COMMISSIONER: I can tell you that I have read your written
12 argument.

13 MR. ROBERTS: Thank you, sir.

14 May it please this commission of inquiry,
15 murder, the wanton killing of another human being,
16 is a most evil crime. Murder tears at the very
17 fabric of families and society. In Canada and in
18 all of the civilized societies in the world,
19 murder is deserving of the harshest punishment.
20 That is why suspected murder must be competently
21 investigated by the police. That is why suspected
22 serial murder must be intensively and competently
23 investigated by the police, to stop the killing
24 and protect the public. That is why when
25 suspected serial murders continue for a year, for

1 two years, for three years, for four years before
2 the killer is caught, the public demands a public
3 inquiry.

4 The missing women were, unfortunately, all
5 addicted to drugs and were sex trade workers in
6 the Downtown Eastside of Vancouver, making
7 bargains with cruising johns for sex in exchange
8 for money and drugs or both. As one RCMP officer
9 -- I think it's Staff Sergeant Davidson -- said in
10 1999, it should be assumed that all of the missing
11 women got into vehicles and were transported to
12 somewhere else.

13 By July of 1998 at least it was concluded by
14 some Vancouver Police officers, at least some,
15 that the missing women were victims of foul play.
16 I define that in the dictionary term of violent
17 crime resulting in another's death, usually by a
18 treacherous behaviour.

19 At the end of 1997 there were nine missing
20 women as defined in our terms of reference. By
21 September, 1998 there were 10 more. By July 27,
22 1998 -- 1999 -- I'm sorry -- when the reward
23 poster went up in the Downtown Eastside, there
24 were 31. By the end of 2000 it was over 40. And
25 when Pickton was caught in February, early

1 February, 2002, by an extraneous act, he expressed
2 regret later in a jailhouse statement that he
3 didn't get to 50.

4 In this inquiry we were told by police
5 witnesses that there were many suspects. Some
6 counsel, it seemed to me, seemed to almost trip
7 over themselves to get out through their witnesses
8 that there were many suspects. One counsel went
9 so far as to say in his question there were many,
10 many suspects as if one many wasn't enough.

11 There was, however, only one suspect who in
12 March, 1997 picked up a sex trade worker in the
13 Downtown Eastside of Vancouver and tried to murder
14 her at his trailer in Coquitlam. That was Robert
15 Pickton. There was only one suspect identified in
16 July, 1998, tipster information from Mr. Hiscox,
17 information later described as unique and
18 compelling, that said the suspect had women's
19 identification papers, jewelry, purses, bloody
20 clothing in his trailer and who said that he could
21 get rid of a body without a trace by grinding it
22 up and feeding it to his pigs. That was Robert
23 Pickton. There was only one suspect about who it
24 was said in 1998, again in 1998 in September -- it
25 was said that he, this suspect, wanted to pick up

1 Miss Anderson, the victim of the 1997 attempted
2 murder so he could finish her off and wanted
3 syringes to assist him. That was Robert Pickton.
4 There was only one suspect who was identified in
5 1999 by Caldwell and others, Caldwell who lived in
6 the suspect's trailer for 10 days, that the
7 suspect kept handcuffs under his bed or between
8 the mattresses and an automatic rifle and a clip
9 and wigs, blond and red or brown one, which he
10 wore when he went downtown Vancouver, and through
11 Ellingsen was told as well that he kept women's
12 jewelry, purses, identification papers, et cetera
13 and that he could grind up bodies, the same as the
14 statement in '98. That suspect was Robert Pickton
15 and yet he was not caught and many women died.
16 There's the right use of the many. Many women
17 died because he wasn't caught.

18 The purpose of this inquiry, in my respectful
19 submission -- and I turn now in my material to
20 page 8 of my prepared material. The purpose of
21 this inquiry -- and there's only one purpose in
22 the order for this inquiry, page 8, is to inquire
23 into and report on the conduct of the missing
24 women investigations. It again is captured in the
25 first term of reference: To inquire into and make

1 findings of fact respecting the conduct of the
2 missing women investigations. That purpose, in my
3 submission, is the main purpose and the only
4 purpose before us. Everything else, in my
5 submission, is secondary to making that inquiry
6 and making those findings of fact. Possible
7 systemic factors, however valuable they may be,
8 and recommendations into some matter or other
9 which is encouraged by term of references (c) and
10 (d) must await those findings of fact.

11 And I pause here. I feel compelled to pause
12 here to say, Mr. Commissioner, that I distance
13 myself entirely from the remarks I heard this
14 morning from Mr. Ward. This commission has not
15 failed. It has received ample relevant evidence
16 from a wide range of sources, from police officers
17 across the spectrum of both police forces, the
18 Vancouver Police Department and the RCMP. And
19 it's received expert evidence from an acknowledged
20 expert in policing, in my submission, Ms. Jennifer
21 Evans, Deputy Chief of Police of Regional Police
22 Force. It has also received evidence from social
23 science experts and from the families and
24 conducted laudable forums for the latter purpose.
25 It has also been assisted by a wide range of

1 counsel, experienced counsel. It's even had
2 Canada's most prestigious or recognized criminal
3 law counsel attend us, Edward Greenspan, QC, who
4 graced us with his presence.

5 In my respectful submission, this commission
6 of inquiry only has to complete its job of making
7 the requisite findings of fact and then, of
8 course, looking at the other matters of the terms
9 of reference, and that is what I have always
10 intended to do to assist this commission to do.

11 And so the focus of my submission this
12 morning is in assisting the commission to make
13 those requisite findings of fact. And I start
14 with the duty of the police to investigate crime.
15 And I turn to page 10 of my submission. I may
16 have gone too quickly. No, I haven't.

17 It is, of course, the duty of the police to
18 investigate crime and to investigate crime at the
19 suspected stage. I note a passage in my prepared
20 submission by Chief Justice McLachlin where it is
21 stated the police must -- that's her word --
22 investigate crime. That is their duty. And, of
23 course, that begins at the suspicion of crime.
24 Where does that duty begin? In my submission it
25 begins by the direction that is given statutorily

1 to the police, not just unique for this province,
2 but across Canada. There are statutes similar to
3 the *Police Act of British Columbia*. And in the
4 *Police Act of British Columbia* -- I'm on page
5 11 -- Section 26(s) of that *Police Act* says:

6 The duties and functions of the Municipal
7 Police Department are under the direction of
8 the Municipal Police Board.

9 In Vancouver that's the Vancouver Police Board.

10 (A) To enforce in the municipality the
11 criminal law and the laws of British
12 Columbia.

13 So *a fortiori* we must focus on -- we are required
14 to focus on, it is our duty to look at the
15 obligation, the duty of the police to investigate
16 crime and enforce the criminal law in their
17 respective jurisdictions. That means Vancouver
18 and so far as there may be crime involved in
19 Coquitlam, that means the RCMP in Coquitlam.

20 And I turn to the question of Vancouver's
21 jurisdiction. It is my respectful submission that
22 the common sense of it always was that the women
23 are missing from Vancouver likely in relation to
24 some crime, one crime or another, likely only one.
25 People don't go missing off the streets of a city

1 or town, a village unless there is some likely
2 crime by which they -- they've gone missing.

3 Coquitlam's task was to investigate, if it
4 was the case, whether there was murder that was
5 committed in Coquitlam. The logical place to
6 start, therefore, is where the police -- where the
7 victims went missing, and that takes me to a
8 discussion of Vancouver's crimes. And I'm on page
9 15 of my prepared material.

10 I'm not going to take this commission through
11 what I've done before, what the law of kidnapping
12 is. It's well defined. It is set out in Section
13 279(1) of the Criminal Code. Contrary to some
14 people's understanding, it is not a very difficult
15 crime to understand. I'll say briefly that the
16 basic crime is simply unlawful confinement and
17 transportation from A to B. An unlawful
18 confinement can be achieved by either force or
19 fraud. And that's not Darrell Roberts'
20 definition. That is the dictionary definition.
21 That's in all of the dictionaries and I hasten to
22 say it's in all the law of all the western world.

23 Kidnapping occurs by either force or fraud
24 and when the aspect -- the means by which it most
25 logically applies in Vancouver, because there's a

1 total absence throughout of any of the sex trade
2 workers being bodily picked up and forced into any
3 vehicle, it occurs by fraud, by being induced by
4 some stratagem of some kind into a vehicle and
5 then transported somewhere and then attacked. How
6 does one know that the representation by which
7 they willingly got into a car is a stratagem, a
8 deceit, a ruse? It's not that difficult, not for
9 counsel and not for a police officer. As soon as
10 foul play is suspected, that means treachery.
11 That means something contrary to the basis upon
12 which the woman got into the car. Then you have a
13 case of suspected kidnapping by fraud. That, of
14 course, is the foundation of what Vancouver's
15 crime was and it only remained for the police to
16 be able to see it.

17 Let me just move further to identifying that
18 kidnapping was indeed Vancouver's crime. And I
19 don't need to take too long with this because, in
20 fact, as we got into the hearing, it was
21 established through the evidence of two parties in
22 particular: The evidence of Mr. Blythe or Chief
23 Blythe and the evidence from the resolutions of
24 the Vancouver Police Board both in establishing
25 the reward for \$100,000, \$30,000 of Vancouver's

1 money and \$70,000 of the Province's money, to
2 investigate the crimes of unlawful confinement,
3 kidnapping and murder in relation to the missing
4 women, offering that reward for information
5 leading to the arrest or conviction of anyone for
6 -- for the disappearance of such women under those
7 crimes for anyone disappearing, not just all of
8 them.

9 I turn in my submission to paragraph 54 and
10 55 and 56. We got into this in the evidence of
11 Mr. -- Chief Blythe when Mr. Greenspan was here
12 and which he said that the crime was Vancouver's
13 crime. And you'll see that over on page 19 of my
14 submission. He said:

15 Q Did you agree that this was primarily a
16 Vancouver's case?

17 And he said:

18 The missing individuals we're dealing with
19 were all from our jurisdiction, specifically
20 the Downtown Eastside.

21 And in his last answer he said:

22 The fact that this project --
23 That's the joint forces.
24 -- involved other locations is really
25 irrelevant.

1 And then in cross-examination he gave all the
2 answers we see at the bottom of 19 and over and 20
3 that these -- what he meant by Vancouver's case
4 was that these were Vancouver's crimes. And,
5 indeed, he said at paragraph 57 that they were
6 Vancouver's crimes in 1998 as well, of course, so
7 they had to be. The nature of the women going
8 missing hadn't changed between 1998 and 1999.

9 In my submission there can be no contest with
10 the proposition that kidnapping and murder, which
11 is death caused during kidnapping, is deemed by
12 the statute Section 231(5) paragraph E to be
13 first-degree murder, were Vancouver's crimes.
14 And this confirms the common sense of the matter
15 that I spoke to earlier. It also confirms, in my
16 submission, the evidence of Ms. Jennifer Evans.

17 And I want to turn for a moment to something
18 that Ms. Evans said which I feel needs some
19 clarification. I don't know whether Ms. Evans
20 received, Mr. Commissioner, the minutes from the
21 Vancouver Police Board, but that doesn't matter
22 for purposes of my submission. I suspect she did
23 not, but I frankly don't know. She said that the
24 crime began in Vancouver. You will remember that.
25 And there was much to do about that in examination

1 of her, including by myself. And my
2 cross-examination is set out in part on page 22.
3 And in one of the answers she said -- middle of
4 page 22 of my prepared submission. She said:

5 I didn't say specifically what crime.
6 I asked her, "Why didn't you say kidnapping if
7 that's what you meant," because it is what she
8 meant.

9 But I felt it was due to the number of women
10 that had gone missing, that it was my opinion
11 that investigators could have come to the
12 conclusion that Pickton was targeting women
13 in the Downtown Eastside, so in his mind he
14 was going looking (sic) as to the offence
15 would start in Vancouver.

16 I turn the page in the interests of time. She
17 acknowledged in my cross-examination that the
18 crime she had in mind when she wrote that sentence
19 "In my opinion, in my experience the crime began
20 in Vancouver was kidnapping," she says, "Yes, it
21 was."

22 I turn to paragraph 64. The italicized words
23 need to be addressed before acknowledging the
24 correctness of Deputy Chief Evans's opinion.
25 First, it's not necessarily the numbers of missing

1 women that drive the opinion. It's how the women
2 went missing: Being picked up in cars in sex
3 trade bargains and transported elsewhere and then
4 being suspected victims of foul play. That is the
5 key in identifying the crime of kidnapping, in my
6 submission.

7 Second, it's not that the police could have,
8 but they should have come to the conclusion that
9 Pickton was targeting Downtown Eastside sex trade
10 workers, should have because it was their duty to
11 investigate the crime. Therefore, it was their
12 duty to do so, as I've stated, looking at the
13 facts, as I submit, with trained eyes, not lazy
14 eyes that failed to get past the willingness of
15 the women to get into the cars of sex purchasers.
16 Kidnapping was Vancouver's crime to investigate
17 for the disappearance of the missing women.

18 And, third, it was not the task of the police
19 to figure out what was in Pickton's mind. This
20 notion is erroneous. The offence of kidnapping
21 does not require proof of any specific intention.
22 The intent requires a legal presumption of
23 intention. In a case of potential kidnapping by
24 means of fraud of a sex trade worker, suspected
25 foul play presumed the sex bargain was a stratagem

1 to get confinement. This approach coincides with
2 the duty of the police to investigate suspected
3 crime. They cannot delay an investigation by
4 sitting back and wondering what's in the accused's
5 mind.

6 I turn then to my first finding of fact. And
7 I have drawn, in my respectful submission, Mr.
8 Commissioner, a finding of fact this commission
9 ought to make and that's at page 24. While there
10 was a delay in establishing Vancouver's crimes to
11 investigate before this commission, I can put that
12 aside. That's fine. They have been established.
13 They are the crimes of unlawful confinement,
14 kidnapping and murder. And I submit this ought to
15 be found as a fact by this commission of inquiry.

16 I turn next to the conduct of the Vancouver
17 Police in investigating their crimes. And I will
18 be very brief with this too because, in fact, all
19 the evidence establishes before this commission
20 that Vancouver from beginning to end never
21 investigated the crime of kidnapping in Vancouver.
22 They didn't do so through Constable Shenher when
23 she was actually doing an investigation by -- for
24 the Vancouver Police Force and they didn't do it
25 afterwards.

1 I start off -- and I'll skip over the
2 paradoxical remarks that we started this hearing
3 with the report that doesn't -- of Mr. LePard that
4 makes no mention of Vancouver's crimes and then
5 said, as I'm over at page 25 -- I think I need to
6 identify this just for a moment, Mr. Commissioner.
7 He said both in his report and identified the page
8 number, 296 and 299, that Vancouver was simply
9 assisting the RCMP. And then further in his
10 evidence he said that Constable Shenher was
11 assisting Corporal Connor.

12 I say over on page 26 that this evidence is
13 wrong in two respects: First, as Staff Sergeant
14 Connor made clear in his testimony at this
15 inquiry, he and the Coquitlam RCMP were not
16 investigating Vancouver's crimes at any time
17 during the period of the missing women. Depending
18 on whether there was sufficient evidence, they
19 were investigating the suspected crime of murder
20 at Pickton's property in Coquitlam. The crimes by
21 which the women went missing from Vancouver's
22 Downtown Eastside were Vancouver's crimes to
23 investigate.

24 Second, in 1998 with respect to the unique
25 and compelling information from Mr. Hiscox,

1 Detective Constable Shenher was not assisting
2 Corporal Connor of the RCMP. As a member of the
3 Vancouver Police Department and working with the
4 information source Hiscox, she was embarked --
5 embarked on a criminal investigation, which the
6 brief excerpt from her cross-examination makes
7 clear. Of course, a source always goes or, to
8 turn it the other way around, an investigation --
9 a criminal investigation goes with a source.

10 So we have it that Constable Shenher was in
11 1998 investigating a crime, a suspected crime in
12 Vancouver in relation to the source, but she
13 didn't know, according to her evidence,
14 particularly what crime it was except a general
15 homicide.

16 I will not take you through on this oral
17 submission her timeline for that investigation,
18 but I assure you, Mr. Commissioner, beginning at
19 page 27, paragraph 78 all through those
20 alphabetical paragraphs that exactly sets out the
21 work that Constable Shenher did to investigate the
22 information from Mr. Hiscox right through to her
23 meeting with Corporal Connor on October 15, 1998.
24 And during the course of all of that she found Mr.
25 Hiscox to be very credible. She told us in this

1 inquiry that he never asked for anything. She
2 believed him. She thought he was really out to do
3 the right thing. There wasn't any suggestion
4 anywhere in her evidence that she did not find him
5 to be a credible source. And so too did Corporal
6 Connor, parenthetically, find him to be credible.
7 Nevertheless, she was the one investigating
8 Vancouver's crimes and, as it turns out, according
9 to the evidence of everybody here and particularly
10 Sergeant Field, that Shenher was self-directed
11 pretty much. We really don't know what
12 interaction she had with any other officer after
13 Sergeant Field left in -- I think it was in
14 September to go to CLEU, from which she did not
15 come back until March of 1999.

16 So what did Constable Shenher do or know
17 about the crimes that she was investigating? I
18 turn to page 33.

19 Q But the women were not killed on the streets
20 of Downtown Eastside Vancouver, so did you
21 put your mind to what kind of murder?

22 A No, I did not.

23 Q And did you know then that the kidnapping,
24 the basic kidnapping crime is simply
25 confinement plus transportation?

1 A I did not know that. I had never worked on a
2 kidnapping.

3 I'll drop down a bit.

4 Q So my basic question to you, as you were out
5 there on the street working as a constable in
6 1998, you did not know that the crime of
7 kidnapping was confinement and
8 transportation, the basic crime?

9 A As I said, I have no experience with
10 kidnapping, so I don't know what I thought
11 about kidnapping at that time.

12 One more. Over at page 34:

13 Q So let me make this more precise. You didn't
14 have knowledge for you to be able to identify
15 a crime of kidnapping in relation to women
16 from Downtown Eastside having sex bargains
17 and getting into cars, that didn't trigger
18 anything in you as to whether there might be
19 a kidnapping going on?

20 A I didn't consider kidnapping.

21 Q You did not think of it?

22 A I did not. No. I didn't think of it.

23 And, similarly, when it comes --

24 THE COMMISSIONER: I'll stop you there, Mr. Roberts, for the
25 morning break.

1 MR. ROBERTS: Thank you.

2 THE REGISTRAR: The hearing will now recess for 15 minutes.

3 (PROCEEDINGS ADJOURNED AT 11:12 A.M.)

4 (PROCEEDINGS RESUMED AT 11:30 A.M.)

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

6 THE COMMISSIONER: Yes, Mr. Roberts.

7 MR. ROBERTS: Mr. Commissioner, may it please the commission, I
8 was at the point of discussing the actual conduct
9 of the Vancouver Police Department in their
10 investigation of their crimes. I had taken you
11 through the lack of knowledge of Constable
12 Shenher, the only person for Vancouver
13 investigating crime for -- in Vancouver in
14 relation to Pickton in 1998 and her lack of
15 knowledge of the crime of kidnapping in all
16 respects.

17 And for purposes of note taking, I'm at page
18 35 with respect to another aspect of her lack of
19 knowledge, and that is her knowledge on the basis
20 for getting a search warrant and the question I
21 put to her:

22 Q And did you know that you could get a search
23 warrant even though it was based on hearsay?

24 A I did not know that.

25 Q And did you know that what you're doing is

1 not getting corroboration in any legal sense
2 but what the case law calls verification, to
3 verify the credibility of your informant?
4 Did you know that's really what you have to
5 do?

6 A None of that was ever communicated to me by
7 colleagues or a supervisor, no.

8 So in addition to her lack of knowledge of
9 kidnapping, she really was quite untrained on the
10 subject matter of search warrants under Section
11 487 of the Criminal Code.

12 And then another aspect of her lack of
13 knowledge or in relation to her lack of knowledge
14 of search warrants is the -- her evidence about
15 her dealings with witness Anderson and what she
16 could use that evidence for. And I'm again at
17 page 35. She told us in her evidence that she
18 found Ms. Anderson -- she went to visit her at the
19 hospital and she found -- where she found her at
20 least, and she found that Ms. Anderson, the victim
21 of the 1997 attempted murder, was very believable
22 and compelling. So I asked her a question.

23 Q You found her evidence compelling?

24 A Yes.

25 Q What were you looking for?

1 I'm sorry.

2 You said this is what you were looking for?

3 And she said:

4 Yes. That's correct.

5 So I asked her why. And her answer over page,
6 which I've reproduced from the transcript, is very
7 interesting. She said:

8 Because, as I testified, Mr. Commissioner,
9 that the circumstances around the incident
10 seemed to indicate that Ms. Anderson had --
11 that she was a Downtown Eastside sex worker,
12 that she fit the profile of our investigation
13 and of our other missing women in terms of
14 being street involved, drug dependent and
15 working from the Downtown Eastside and she
16 had an interaction with Mr. Pickton that he
17 took her away from the confines of Downtown
18 Eastside to a residence and that they had a
19 violent interaction there and that, in my
20 view, could have very, very, very likely
21 could have possibly ended in her death. So I
22 felt this was the type of scenario --

23 And these are the words I would focus on.

24 -- that could conceivably be applied to some
25 of these other women.

1 Q This kind of scenario could be applied?

2 And she says:

3 Yes.

4 Q All right. I understand that. How?

5 She didn't understand my question, so I asked her
6 again.

7 Q I just want to know why you say it was
8 compelling in the sense of what did you
9 propose to do with this statement?

10 A The statement of Ms. Anderson?

11 Q Yes.

12 A It informed my investigation. Unfortunately,
13 it didn't inform her investigation enough to
14 be used in any way to try and catch Pickton.
15 And that is because of her lack of knowledge of
16 the law of kidnapping, of the crime of kidnapping
17 and how that might be used to commence or to
18 pursue an investigation based on a search warrant
19 where, of course, the Anderson statement would
20 have a very compelling use.

21 In the result, over on page 37:

22 Q This compelling credible evidence from Hiscox
23 never got used, right?

24 A No. I suppose not.

25 I'll skip over the evidence of Sergeant Field.

1 She agreed that Ms. Anderson -- Corporal -- start
2 again. Field agreed that Constable Shenher was
3 self-directed and that she really had no knowledge
4 of what was going on from the time she left in
5 September of 1998 and came back in March of 1999.

6 Now, there are two aspects before I go to
7 suggested findings of fact. There are two aspects
8 I want to address in the evidence of Mr. LePard.
9 And I'm at page 38. He said -- there was a
10 repeated refrain in his evidence -- and I feel I
11 must address it here -- that it was not known at
12 the time just how the missing women got to the
13 Pickton's property. It's submitted this assertion
14 is not valid. It's wrong. It was known at the
15 time that at least some of the missing women went
16 missing by getting into cars of cruising sex
17 purchasers, Ms. Anderson being a case in point.
18 This likelihood in how the women went missing is
19 picked up in the language of the \$100,000 reward,
20 which offers the reward for information leading to
21 the arrest and conviction of the person or persons
22 responsible for the unlawful confinement,
23 kidnapping or murder of any or all of the missing
24 women.

25 As for sex trade workers finding other ways

1 or means to Pickton's property, lured there by
2 easy access to drugs, while it is uncertain, in my
3 submission, that this was known by the Vancouver
4 Police Department officers at the time, the common
5 sense of the matter is that Pickton was clever
6 enough to appear friendly to sex trade workers as
7 a cover for his evil, predatory agenda. Staff
8 Sergeant Connor agreed with this.

9 Q But the Piggy's Palace reference, that seems
10 to me a distraction that shouldn't have
11 stopped the search warrant process, all else
12 being equal. Staff Sergeant Davidson had
13 pointed to that and said that a clever
14 stealth killer could be using his
15 friendliness to sex trade workers, whether
16 or not killing everyone or whether
17 familiarizing himself with them at some other
18 location as a cover for his stealth killings.
19 It's possible to view it that way, isn't it?

20 A Absolutely.

21 The second aspect of Mr. LePard's evidence
22 that needs to be addressed, in my submission, is
23 his repeated assertion, both in the Vancouver
24 Police Department internal review report and in
25 his oral testimony, that even if the Vancouver

1 Police Department should have investigated the
2 crime of kidnapping in the disappearance of the
3 missing women, the Coquitlam RCMP legally had and
4 accepted the jurisdictional responsibility for the
5 Pickton investigation. That is not true. They
6 only accepted jurisdiction to investigate murder,
7 suspected murder in Coquitlam, and they made that
8 very clear, particularly in an exchange of
9 questions both with yourself, Mr. Commissioner,
10 and with commission counsel, learned counsel Mr.
11 Vertlieb.

12 By the way, I pass over a very useful article
13 from the Dalhousie Law Journal by Richard Bell,
14 which identifies how important it is that police
15 officers must pay attention to their own
16 jurisdiction. That lies behind Corporal Connor's
17 evidence when I asked him this question over the
18 top of page 40:

19 Q What about the missing women in Vancouver and
20 how they got missing?

21 Poorly phrased.

22 Did you accept jurisdiction over that?

23 A Absolutely not. That was something that
24 Vancouver City Police, in my view, is that
25 was what they were dealing with.

1 Mr. Commissioner, I end up with, in my
2 respectful submission, three findings of fact that
3 ought to be made. And I have kept the findings of
4 fact that I respectfully submit to a minimum, but
5 number 2 is this one: During the period of the
6 missing women, the Vancouver Police Department
7 failed to investigate their crimes of unlawful
8 confinement, kidnapping and murder with respect to
9 suspect Pickton or at all. At all material times
10 the Vancouver Police Department regarded the
11 Pickton investigation as the obligation of the
12 Coquitlam RCMP and that the Vancouver Police
13 Department were merely assisting the RCMP. That's
14 fact finding -- finding of fact number 2.

15 Number 3, in my submission, should be --
16 before I go to this one, I want to go to -- in my
17 own submission here -- would you humour me a
18 moment, Mr. Commissioner, and turn to page 53 in
19 my prepared submission?

20 THE COMMISSIONER: Yes.

21 MR. ROBERTS: Keep your finger on the other spot, please. This
22 is a passage from the evidence in chief of Mr.
23 LePard in day one of his testimony at page 53
24 where he says:

25 The nature of the information is obviously --

1 The question was about how do you go about
2 corroborating an informant, a source's
3 information, Mr. Commissioner. They were dealing
4 with Mr. Hiscox at the time. Counsel asking the
5 questions was Mr. Vertlieb.

6 A So the nature of the information is
7 obviously very important. And then after
8 that it's about how much corroboration is
9 there for the information and so that's
10 something that you do with informant's
11 information, is you try to corroborate it so
12 that you can see whether there's any
13 credibility that can be attached to it,
14 because police --

15 This is my italics.

16 -- police resources are valuable and so you
17 don't want to waste them. So there are many
18 ways to go and corroborate --

19 I'll leave it there. You don't want to waste
20 them. I go back to my findings of fact suggested
21 or submitted at page 40, please. Number 3.
22 Constable Shenher was the only Vancouver Police
23 Department officer to investigate the information
24 from Mr. Hiscox received by the Vancouver Police
25 Department on July 27, 1998, and although she

1 found it compelling and Mr. Hiscox credible, she
2 did not know the crime of kidnapping, nor the law
3 with respect to search warrants, nor the law with
4 respect to informant privilege for that matter,
5 nor was she given any supervision by an
6 experienced officer. In the result, she lost
7 contact with Mr. Hiscox. That's the evidence
8 before this commission.

9 And the information was wasted.

10 I use Mr. LePard's own word, was wasted.

11 Fact finding number 4. Constable Shenher
12 interviewed Ms. Anderson, victim of Pickton's
13 unlawful confinement and attempted murder on March
14 23, 1997, and although she believed Ms. Anderson
15 and found her witness statement compelling -- and
16 I quote her, "quite conceivably could be applied"
17 to the missing women, not knowing the law of
18 kidnapping or the law with respect to search
19 warrants, Constable Shenher did not know what to
20 do with it and it too was wasted.

21 Now, I'm then going to go -- before I embark
22 on the next part of my submission, which is the
23 catching of Pickton in 1998 by a competent
24 investigation, I respectfully make these
25 observations. They can even be put into a finding

1 of fact. I have not typed them up, but it's this
2 Mr. Commissioner: The lack of an experienced
3 trained police officer -- the lack of experience
4 and training, I should say, of Constable Shenher
5 for the task at hand in 1998 in investigating the
6 tip information from Mr. Hiscox in relation to
7 Pickton is hard to imagine, but it's true. That
8 she was the only officer assigned to this task is
9 equally hard to imagine, but it's true. This
10 incompetence of the Vancouver Police Department,
11 in my respectful submission, is the great tragedy
12 of the missing women investigation of the women
13 being continually murdered. And, in my respectful
14 submission, this commission should so find. To
15 not make this finding may in some eyes at least
16 fail the public of this province of British
17 Columbia just as the Vancouver Police Department
18 failed the public of this city and of this
19 province, because the women are from all over, in
20 the failure to perform their duty to investigate
21 their crimes.

22 I go to page 41 of my prepared submission.
23 It is my respectful submission that it's essential
24 for this commission to address this question:
25 When should Pickton have been caught? I know for

1 some that seems to be troublesome to try and
2 address this. In my opinion, in my submission it
3 should not be. Deputy Chief Evans said that
4 Pickton ought to have been caught quicker. Mr.
5 LePard said in his report that 1998 was the best
6 chance to catch Pickton. Anyone who doesn't
7 believe me Mr. LePard said that, turn to page 42,
8 please. Here's the page from Mr. LePard's report,
9 top of page 42:

10 Although women went missing from the Downtown
11 Eastside from the mid-1990s throughout 1998,
12 by the time a more suspected-focused
13 investigation began in May, '99, the
14 suspicious disappearances had apparently
15 stopped, with the last one occurring in May,
16 1999.

17 Quite apart from that being probably a problem in
18 record keeping. Nevertheless, that's what he
19 said.

20 The fact that there were no new suspicious
21 disappearances added to the immense
22 challenges because proactive strategies that
23 might have led to the suspect, if employed,
24 would not have succeeded.

25 And I have bolded what he then wrote:

1 The best chance of catching the killer was in
2 1998 when he was active. By the time he
3 became active again in 2000 and so on, the
4 investigative capacity to maximize the
5 chances of catching him did not exist.

6 I take him as his word. The best chance to catch
7 him was in 1998. I agree with him. Unfortunately
8 for the Vancouver Police Department view, however,
9 that best chance was Vancouver's chance.

10 A properly trained officer or officers,
11 knowing the crimes that they were to investigate
12 and knowing the procedures available to pursue an
13 investigation, ought to have pursued in relation
14 to the information from Hiscox an ordinary garden
15 variety, centuries established search warrant to
16 find the things that related to Vancouver's
17 crimes.

18 I skip over the knowledge of the crime of
19 kidnapping to page 47 -- 46. I'm sorry. As Mr.
20 LePard himself said in evidence before this
21 commission, search warrants are not the hardest
22 search device to obtain. At the top of page 46
23 I've set out the search warrant section 487(1) and
24 the particular subsection that applies is (b):

25 A justice who is satisfied --

1 That means a justice of the peace.

2 -- by information on oath in Form 1 that
3 there are reasonable grounds to believe that
4 there is in a building, receptacle or place
5 (b) anything that there are reasonable
6 grounds to believe will afford evidence with
7 respect to the commission of an offence
8 against this Act or any other Act of
9 Parliament.

10 Focus on the words "will afford evidence with
11 respect to the commission of an offence". They
12 issue a warrant under his hand authorizing person
13 named therein or a peace officer.

14 I skip over subsection (2), of course, so you
15 can get a search warrant in Vancouver to search in
16 another jurisdiction. You simply get the warrant
17 issued on proper grounds and then take it to the
18 other jurisdiction for it to be endorsed.

19 What was the basis for obtaining a search
20 warrant in Vancouver? I don't shy away from this
21 question. I may be the only person before this
22 commission of inquiry that has addressed it, but I
23 respectfully believe I am right to do so. And I
24 am speaking without reference to my notes for the
25 moment.

1 Here's what we had or what you have to have.
2 You have to have the specific place to find
3 something. Let me back up. You, first of all,
4 have to have an offence. You have to have the
5 specific offence. It can't just be homicide. It
6 has to be a crime that relates to what it is you
7 are searching for. Vancouver had that crime. It
8 was kidnapping. That is to say death caused
9 during kidnapping, which is their crime. That's
10 first-degree murder. You have to have that
11 specific crime. Second, you have to have a
12 specific place. Third, you have to have detailed
13 items to find, not just some general allegation of
14 criminal activity, things to be found which will
15 afford evidence. It must be current. And you
16 have to have, as I say, a nexus, connection, a
17 link between those things. Vancouver had all of
18 that, but they also needed what they clearly had:
19 A credible informant who had reliable information
20 that would would meet the test of reasonable
21 probability.

22 Now, I stop there for a moment. Reasonable
23 probability. That's not a momentous task. That's
24 not a task that's beyond any lawyer in this room.
25 We all address issues, levels of proof in the work

1 which we do. Lawyers who are involved in criminal
2 law must address the issue of burden of proof
3 beyond a reasonable doubt. They don't call expert
4 evidence for that. They make submissions about it
5 before the Court in accordance with the
6 authorities and in accordance with reason and in
7 accordance with how the evidence shapes up in
8 relation to that test of beyond a reasonable
9 doubt.

10 We also do the same thing in a civil case.
11 And the standard in a civil case is higher than
12 here to get a search warrant. It's on a balance
13 of probabilities. I.e., it must be more than 50
14 percent. Here it's not that high. It's
15 reasonable probability. As I heard someone say --
16 I think it was my good friend on behalf of the
17 Department of Justice -- that it's sometimes said
18 there has to be sufficient evidence, something to
19 which you can give a reason that you believe in.
20 And that's why police officers then go about
21 trying to verify the information from somebody who
22 can be anonymous and remain anonymous and
23 therefore not a hearsay informant.

24 In this case we had a credible informant,
25 believed to be credible by both Shenher and

1 Corporal Connor, who had information that Corporal
2 Connor at least believed to be reliable in a
3 couple of respects, who Pickton was, what his
4 connection was with sex trade workers; that he
5 knew all about the charge against Pickton with
6 respect to Ms. Anderson; that there was -- there
7 was a request for syringes, while there were
8 syringes strewn all over Pickton's trailer from
9 the video and photographs of the 1997 crime. He
10 went back and looked at those and came to a
11 conclusion, as stated in his affidavit, which was
12 never used at the time, but got used in 2002, that
13 Pickton had a need for syringes to control his
14 victims, he not doing drugs. He went and checked
15 to see the allegation about there being bloody
16 clothing and found that the clothing from the 1997
17 matter was still in the detachment locker and felt
18 it should be taken on face value that there's
19 bloody clothing there. He knew about the
20 relationship between the informant Miss Yelds, who
21 gave a lot of this information to Mr. Hiscox, the
22 relationship with Pickton. He had Buff Hyacinthe,
23 who worked in his office, who confirmed much of
24 that, what kind of person she was, that she was a
25 cop hater, that she fixed her Harley-Davidson in

1 her living-room, that she wouldn't talk to the
2 police. All of that unique relationship was there
3 and confirmed that they were friends and that she
4 got her meat -- Yelds got her meat from Mr.
5 Pickton and had ample reason to have been in his
6 trailer to have seen what she saw, said she saw.

7 And then we have that unique relationship
8 between Hiscox and Yelds. They had been in foster
9 care together and she had a soft spot for him and
10 he was the one person that she might reveal things
11 to that she might reveal to no one else. These
12 are all circumstances that would go into a search
13 warrant, which, in my view, would add immensely to
14 that search warrant.

15 And then the coup de grace, in my respectful
16 submission, is Ms. Anderson's statement. Even if
17 the police might have had difficulty in persuading
18 a justice of the peace of the reasonable
19 probability of the source's information on its own
20 absent Ms. Anderson's statement, Ms. Anderson's
21 statement puts it over the top.

22 I rely on the law of the Supreme Court of
23 Canada in the *Debot* case, which identifies that
24 you don't have to verify so many details. You
25 don't have to verify them all provided what you

1 have actually observed accords with what you
2 believe you will find out in your investigation.
3 It accords with the anticipated evidence that
4 you're looking for. And Ms. Anderson's statement,
5 as Constable Shenher put it, it could very well be
6 applied. I thought it could very well be applied
7 to the missing women. It was exactly what she was
8 looking -- we were looking for. She is absolutely
9 right. If she only knew about the law of
10 kidnapping and working with other knowledgeable
11 people, that could have been marshalled into an
12 application for a search warrant, which, in my
13 respectful submission, is most likely to have
14 succeeded.

15 And so I -- before I get to that conclusion,
16 though, there are other strategies which it would
17 have led to, Mr. Commissioner. And I don't know
18 where I am in my prepared submission, but I will
19 address it with you now. It is in all likelihood
20 that that sort of application for a search warrant
21 would have been assisted by having Corporal
22 Connor's affidavit as well. I mean he was working
23 with her. It ought to have been a joint forces
24 investigation and Corporal Connor's affidavit with
25 his 35 years of experience would have assisted it

1 immensely. He's the one who also felt that Hiscox
2 was credible.

3 But in addition, even if there is some
4 difficulty with getting that search warrant, they
5 were -- would then be at a point with asking for
6 trying to obtain a consent search warrant. On top
7 of that, it ought to have led Vancouver, if they
8 are investigating kidnapping, to go back and look
9 at the Anderson transaction to see if they had a
10 kidnapping crime to charge there which was not
11 stopped by the stay of proceedings in New
12 Westminster or in Coquitlam with respect to the
13 unlawful confinement charges. There are a number
14 of ways in which the co-operation of the two
15 police forces working with their crimes ought to
16 have brought about the capture of Pickton in 1998
17 in my respectful submission.

18 Now, in my prepared submission, Mr.
19 Commissioner, I went back and I decided that
20 because of the evidence in this case, I should
21 re-examine such a conclusion. That might be too
22 tough for some -- some of us here to accept
23 without looking at some of the evidence and so I
24 re-examined it in the light of Mr. LePard's
25 evidence, Deputy Chief Evans' evidence and Mr.

1 Connor's evidence, and I've concluded still, in my
2 respectful submission, that such finding of fact
3 should be found. You will recall I examined Mr.
4 LePard based upon an aide-memoire, a draft search
5 warrant as if it were prepared in 1998 by
6 Constable Shenher. And I took her through that --
7 him through that affidavit.

8 First I preface it with this: Mr. LePard
9 acknowledged in my cross-examination that
10 kidnapping by fraud was Vancouver's crime to
11 investigate. I think I put it in my question.
12 "It was quintessentially Vancouver's crime, would
13 you not agree," to which he said, "Yes."

14 Now, when I took him through the
15 aide-memoire, he acknowledged that it would have
16 been sound to put into the application the
17 kidnapping and death caused during kidnapping with
18 respect to the 10 missing women suspected to be
19 victims of foul play. He acknowledged the force
20 of putting into that application the statement
21 from Ms. Anderson. He acknowledged the
22 correctness of putting into that application all
23 the circumstances in the work that had been done
24 with Mr. Hiscox, including the difficulty with him
25 not coming forward sometimes because he was in a

1 men's shelter somewhere and he hadn't always
2 responded in a timely way to Constable Shenher.
3 He agreed as well that it would have been
4 supported by an affidavit from Corporal Connor.
5 Throughout that cross-examination, however, he
6 seemed to have some difficulty as to whether he
7 was looking at a real document or a hypothetical
8 one despite my telling him a number of times that
9 it was an aide-memoire hypothetical document.

10 Then at a break -- after the break he came
11 back and said -- with respect to the nexus
12 question between Vancouver's crimes and the things
13 to be searched for, he said I see where you're
14 going with this rather than say, yes, you're
15 right. There has to be a nexus. Nevertheless,
16 his evidence continued, in my submission, as you
17 will see in my submission, to be supportive of the
18 idea that this was a viable thing that ought to be
19 done. I didn't conclude, however, by putting the
20 ultimate question to him and we broke for the
21 weekend.

22 On the weekend -- and I take some
23 responsibility for this -- I was approached by
24 counsel, Mr. Hern, whether he could look at the
25 document that I was dealing with. And because I

1 said -- to be fair to make sure any difficulty is
2 cleared away so he knows what it is, said of
3 course, I didn't realize he was going to take it
4 for the weekend and prepare a response to it,
5 which is what he did, a long, in my respectful
6 submission, diatribe in which he retreated to a
7 prior position that there were no crimes in
8 Vancouver and that kidnapping was not Vancouver's
9 crime to investigate and said that the material I
10 had been working with was false.

11 In my respectful submission, the
12 cross-examination which I conducted of Mr. LePard
13 simply supports the validity of a search warrant
14 investigation that ought to have been conducted in
15 1998 and there should be no credit given to that
16 memorandum which Mr. LePard prepared.

17 I turn to the second witness, which is Ms.
18 Evans. In my cross-examination of Ms. Evans --
19 and here I'm at page, for reference, 72. And I
20 have to be quick because I'm almost done. I was
21 stopped during that cross-examination in part.
22 Ms. Evans agreed that it was a worthwhile thing to
23 do, to try and see when Pickton might have been
24 caught, but then she said she would have some
25 difficulty with that. And I'm at page 71,

1 actually, paragraph 171. But the difficulty she
2 had, Mr. Commissioner, was simply determining the
3 exact time -- sorry. I'm at the bottom of page
4 72.

5 I agree, but I think it's difficult to
6 determine the exact date.

7 Well, I'm not asking anyone to determine the
8 exact date, but I am asking this commission to
9 address the question of whether Pickton could have
10 been caught in the fall of 1998. In my submission
11 this must be done. At least an effort must be
12 made to look at that. And I should say that when
13 I was stopped in that, it was because there was
14 some suggestion it was going to be speculative.
15 In my respectful submission, to address the
16 question of whether evidence meets a reasonable
17 probability is not speculative. It's what lawyers
18 and judges are trained to do. It's four square,
19 if I can put it this way, Mr. Commissioner, in
20 your wheelhouse, you having sat for many years on
21 the BC Supreme Court conducting trials in many
22 criminal cases. We are all trained to do these
23 things and, in my submission, that I should not
24 have been put off. I should have pursued that
25 line of cross-examination more vigorously, but I

1 didn't.

2 And the third witness was Corporal Connor,
3 and he said that the aide-memoire material is
4 something he would have wanted to have a very,
5 very serious look at.

6 I go to the conclusion, which is stated at
7 the bottom of page 74. It is my submission that
8 the best chance of catching Pickton in the fall of
9 1980 by search warrant investigation led by the
10 Vancouver Police Department remains sound and
11 undiminished by any re-examination of that
12 conclusion with reference to the evidence of Mr.
13 LePard, Deputy Chief Evans and Sergeant Connor.
14 If anything, their evidence supports the
15 conclusion that Pickton ought to have been caught
16 in the fall of 1998.

17 And I drop down to the finding of fact which
18 I ask this commission to make. In our submission
19 the Vancouver Police Department pursued a strategy
20 such as these: A search warrant-based
21 investigation in the fall of 1998 would have had a
22 better than even chance, which is the level of
23 proof from this inquiry, balance of
24 probabilities -- it's a test on a public
25 inquiry -- of catching the killer Pickton in 1998

1 and I respectfully ask, as does my colleague, Mr.
2 Nathanson, this commission to so find.

3 I am not going to take the commission through
4 1999. I make similar submissions with respect to
5 the Caldwell information for 1999. He should have
6 been caught then as well.

7 I rely on the material I put forward that
8 Vancouver Police Department, including all the way
9 up to Deputy Chief McGuinness, did not do anything
10 to investigate Vancouver's crime of kidnapping and
11 murder in 1999 or at any time.

12 And I turn, then, a couple of minutes
13 remaining and maybe even ask for leeway for a
14 couple of minutes to address the RCMP. I'm at
15 page 82. I do not -- in my respectful submission,
16 we do not absolve them from all responsibility for
17 the missing women. I'm at paragraph 205. I do
18 say in paragraph -- in that paragraph that the
19 passive response by Corporal Connor to the stay of
20 the charges that he laboriously put together and
21 he and his other fellow officers believing Ms.
22 Anderson to be a truthful witness and then have it
23 all put to one side on that stay, that perhaps
24 it's my own vigorous nature, but I find his
25 passive response hard to take.

1 Anyway, when we come to 1998, he receives a
2 tip information. Shenher communicates it to him.
3 Part of that tip is that there are syringes that
4 Pickton wants and it's in context of finishing off
5 Ms. Anderson. He wants her picked up to finish
6 her off. And there's a lengthy meeting with
7 Hiscox on October 15th where this is reviewed,
8 amongst other things, and he finds Hiscox to be
9 credible. I take that matter and the stay, the
10 subsequent reaction to the stay or non-reaction in
11 1998 individually. It is my respectful submission
12 that he ought to have pursued an investigation of
13 the crime of uttering a threat, and he didn't
14 because he had the crime or misunderstood it.

15 The crime is set out on the top of page 84.
16 It was changed, I believe, by the Parliament of
17 Canada in 1985 so that the individual crime of
18 simply uttering a threat is a crime. It's all
19 about the context, the circumstances in which it
20 is made. And here to utter a threat in context of
21 Ms. Anderson that he wants to finish her off
22 couldn't be more compelling. His evidence with
23 respect to his knowledge about this is on page 85,
24 middle of the page:

25 Q I heard you say that the problem with

1 considering that, such a charge, is that you
2 didn't have evidence that he said it to Ms.
3 Anderson?

4 A Correct.

5 Q If you look at the commentation on the
6 section, I don't believe that's required.
7 It's an objective test and she may not have
8 even heard it, and still a person can be
9 convicted for threatening.

10 And he goes on to say, well, that's what he has
11 done for years.

12 And then over at page 86 towards the bottom,
13 I asked him in the long running paragraph about
14 pursuing that kind of investigation or going back
15 and having the stay lifted to pursue the
16 prosecution of the crime of attempted murder and
17 kidnapping, particularly in context with all of
18 this information on the table from Hiscox about
19 missing women's purses and identification in
20 Pickton's trailer; that he was duty bound to try
21 and pursue what the RCMP could pursue on an
22 investigation against Pickton. And his answer is:

23 No. These things were not considered.

24 In paragraph 213 I say in the circumstances
25 in which the words were uttered by Pickton to have

1 Ms. Anderson picked up so he could finish her off
2 is plainly a criminal threat to cause the death of
3 Ms. Anderson and he made a mistake in not
4 investigating this utterance. And I also submit
5 he made a mistake in not working diligently to try
6 and lift the stay and to do so in context with
7 Vancouver's crimes.

8 And I want to address just one more thing
9 before I finish with the RCMP, and that's this
10 silence by a police officer when working with a
11 police officer from another force. And, Mr.
12 Commissioner, that's in paragraph 218. Late in
13 the hearings Inspector Moulton of the RCMP said in
14 answer to a question from Mr. Hira that it's just
15 not done, to talk to another police force about
16 their crimes. And you heard my cross-examination,
17 I think, of Superintendent Bass about that -- or
18 Deputy Commissioner Bass, I should say. Had that
19 been done -- I mean Corporal Connor -- I know I
20 picked on him laterally with respect to the crime
21 of uttering, which he didn't seem to know, but had
22 that been done, surely there would have been some
23 positive interaction with Constable Shenher, maybe
24 even causing Connor to go to Mr. Pickering,
25 somebody else he knew in the Vancouver Police

1 Force. One would like to think that police forces
2 can talk about these things with each other
3 without their egos getting in the way. Indeed,
4 Deputy Chief Bass said that should be so. But
5 when I look back at the evidence in this case,
6 which I sat along with everybody else and listened
7 to for these long months, I've always been struck
8 by the fact that they didn't talk to each other
9 about their crimes and had that been done, it may
10 well be together with adequate knowledge of their
11 crimes or it might even assist in getting that
12 adequate knowledge. There would have been a
13 quicker response in catching Pickton.

14 I go to finding of fact number 7 and that is
15 on page 89. I respectfully submit the failure of
16 the RCMP to investigate the crime of threatening
17 in relation to the utterance of Pickton -- let me
18 just pause here to say the evidence was that it
19 was said to more than Ms. Yelds. He wasn't
20 confined in any investigation to only going to Ms.
21 Yelds. Hiscox said he heard it around being said.
22 Yes. It would take an investigation to find
23 somebody who heard Pickton say that. He ought to
24 have tried to do that. The failure to do that --
25 their failure to pursue a search warrant for

1 syringes in relation to the crime of threatening
2 and in relation to the tip information as to
3 Pickton's ability to dispose of a body by grinding
4 it up -- here I'm at risk of going too quickly
5 again. I only want to identify this, Mr.

6 Commissioner: That one aspect of the tip in both
7 cases in 1998 and 1999 that's not neutral to -- it
8 doesn't just look to Vancouver and kidnapping. It
9 also looks to Coquitlam. A body can be ground up
10 at Pickton's farm. Well, evidence of that, all
11 one needs is a little gruesome imagination. That
12 might be body parts or particles and so on, as
13 there were, which would identify and help identify
14 for Coquitlam the crime of murder in Coquitlam.

15 And so the tip information about grinding up
16 a body and feeding it to pigs in the feed and so
17 on, if that's what it was, is not divorced from
18 the investigation of Coquitlam's crime, and I
19 think that should be kept in mind. And that's why
20 I put it in here, a search warrant in that regard
21 which could have assisted Vancouver in their
22 investigation.

23 The failure to pursue these things, in my
24 submission, contributed to the failure to catch
25 Pickton in 1998. And, Mr. Commissioner, I use the

1 word "contributed" in the civil law causation
2 proof sense. You will know the case from the
3 Supreme Court of Canada called *Hehey v. Leonati*,
4 H-e-h-e-y, and Leon-a-t-i, a decision in the
5 nineties by Justice John Major for the Court.
6 Something which materially, materially contributes
7 to is a legal cause. And I use that word
8 "contributed to" in the legal sense -- in that
9 legal sense there.

10 And I say -- make the same submission with
11 respect to 1999, the failure to follow up on the
12 Caldwell information for their own crimes in 1999,
13 and that's finding of fact number 8 on page 91.

14 THE COMMISSIONER: All right.

15 MR. ROBERTS: Mr. Commissioner, I think I'm done with my time.

16 I want to ask your indulgence for one moment, one
17 minute, to address the issue of recommendations.
18 I'm not going to address term of reference 4(b).
19 I rely on my written submission for that, as I do
20 for the crimes in 1999.

21 You might ask -- or someone might ask why,
22 Mr. Roberts, have you focused so much on 1998 and
23 a little bit on 1999. You haven't focused at all
24 on 2000 and 2001. My answer to that is very
25 simple. It is the duty of this commission of

1 inquiry in investigating into the conduct -- an
2 inquiry into the conduct of investigations to make
3 a determination as best it can as when -- as to
4 when a proper police investigation ought to have
5 caught Pickton. It is most important for my
6 client. Her daughter went missing in 2001.
7 Focusing on all these fancy names like Evenhanded
8 and Amelia and so on is not going to help her one
9 iota. I'm not suggesting there aren't mistakes
10 made then, but in my respectful submission, there
11 is ample evidence -- there's ample support for the
12 proposition -- assertion by Mr. LePard in his
13 report that the best chance to catch Pickton was
14 in 1998 and that's what this commission needs to
15 address.

16 In the recommendations section you will find
17 some observations by me that with respect to a
18 regional police force, there is a distinct
19 absence. I use the word lacuna of evidence to
20 support it in the sense that there's no failure of
21 the police in the sense of not having the tools to
22 investigate Pickton that they would be better off
23 with if they had a regional police force. The
24 failure is fundamental of Vancouver Police
25 Department failing to investigate their crimes

1 coupled with a failure by the RCMP to assist in
2 that investigation by talking and communicating a
3 little bit and investigating offences that were
4 available to them to investigate, both working
5 together. And there's no reason why we have to
6 go, in my respectful view, to a regional police
7 force to achieve that. I know others may be of a
8 different view, but on the basis of the evidence
9 in this case, that's where I come down.

10 And then the only recommendation I would
11 make, which I believe is supported by the
12 evidence, is that it appears that for some police
13 officers, although I'm told today the Vancouver
14 Police now take seriously the idea that a sex
15 trade worker bargain could be a ruse for a
16 predator, but, nevertheless, I was struck by the
17 fact of the complete consistent lack of knowledge
18 of the crime of kidnapping by means of threat, by
19 means of a stratagem or deceit or fraud in this
20 hearing from the chief of police all the way down.
21 And nothing captures it more than the evidence of
22 Deputy Chief McGuinness. He kept wanting to use
23 the word force or coercion. I set it out in my
24 submission. And only when I put an example, well,
25 once the person is attacked, then that would

1 suggest that the bargain was simply a ruse to get
2 confinement so they could be attacked, he sat and
3 thought about it for a bit and said, "Well, I
4 guess when I think about it, that's so," which
5 tells one, of course, he never thought about it
6 before.

7 Now, I know many years have passed. These
8 gentlemen are retired. But his evidence captures
9 the complete lack of knowledge of the crime that
10 they were to investigate, and that's tragic and it
11 was tragic for all the missing women. That's the
12 real tragedy of this hearing in my -- I said this
13 was the elephant in the room last December. I
14 don't mean to be the person who said I told you
15 so, but here I'm doing it anyway. Sorry about
16 that. But I truly believe the tragedy of the
17 missing women is a failure of the Vancouver Police
18 Force to understand the crime of kidnapping by
19 means of fraud. Had they known that, then the
20 women would have stood a chance.

21 Mr. Commissioner, thank you for hearing me.
22 And I want to express my appreciation for being
23 involved in this commission of inquiry. I didn't
24 know it would take this long, but I've done my
25 best to be of help. Thank you.

1 THE COMMISSIONER: Well, I want to thank you -- I want to thank
2 you, Mr. Roberts, for being involved. I know that
3 you're -- you've done this on a pro bono basis and
4 you have given voluntarily your time to assist the
5 inquiry, and that's clearly in the finest
6 traditions of the bar. I just want you to know
7 that's appreciated when a lawyer volunteers his or
8 her time to do this public endeavour. Thank you.

9 MR. ROBERTS: I appreciate that. Let me just add this one
10 point, and that is I would be remiss if I didn't
11 say, you know, that I happen to be in a large law
12 firm and they had to consent to my doing this, so
13 the credit really goes to my firm Miller Thomson.
14 Thanks very much.

15 THE COMMISSIONER: Thank you. Mr. Gratl.

16 MR. GRATL: Yes, Mr. Commissioner. We are, by my estimation,
17 13 minutes from the usual lunch break and so I'm
18 asking for an early adjournment, that we return at
19 1:30 and I can commence my closing statement then.

20 THE COMMISSIONER: Okay. That's fine.

21 MR. GRATL: Thank you.

22 THE REGISTRAR: The hearing is now adjourned until 1:30.

23 **(PROCEEDINGS ADJOURNED AT 12:15 P.M.)**

24 **(PROCEEDINGS RESUMED AT 1:30 P.M.)**

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

1 THE COMMISSIONER: Mr. Gratl.

2 MR. GRATL: Mr. Commissioner, as you know, my name is Jason
3 Gratl and I serve in the role of independent
4 counsel for individuals and groups in the Downtown
5 Eastside who may be affected by these proceedings.
6 I intend in these submissions to concentrate on
7 the answers that this inquiry can provide rather
8 than the questions that the process itself raises.

9 THE COMMISSIONER: Okay.

10 MR. GRATL: In my opening statement, Mr. Commissioner, I
11 emphasized that the exercise of discretion by
12 police forces in dealing with survival sex workers
13 in the Downtown Eastside was influenced by the
14 enactment of a criminal prohibition against sex
15 work, a criminal prohibition against drug use and
16 influenced by judicial pronouncements that accord
17 with those laws and support those laws and the
18 rationale for them: That the police discretion
19 was influenced by vehement advocacy on the parts
20 of residents associations and merchants
21 associations and all done within the community
22 policing framework that encourage the police to
23 drive survival sex workers as far away from the
24 public view as geography and police power would
25 allow.

1 THE COMMISSIONER: You're relying to a large extent on what Dr.
2 Lowman told us. That's basically what he said, is
3 that because of the complaints of the residents in
4 that area, they were -- sex trade workers were
5 sent to an area north of Hastings Street where the
6 conditions were unsafer.

7 MR. GRATL: Yes. And I went into some detail in that -- about
8 that in my opening statement.

9 THE COMMISSIONER: I know that.

10 MR. GRATL: And I'm pleased -- I suppose it's a mixed blessing
11 that the evidence bears those opening submissions
12 out in their -- in its fine detail, so I won't go
13 into further detail on those issues.

14 But overall what the evidence bears out, in
15 my respectful submission, is that what was needed
16 and what was lacking in the Vancouver Police
17 Department during the period of reference was a
18 leadership that prioritized the right of all
19 people, all people, whether they're sex workers,
20 drug users, aboriginal people or women or met all
21 or none of those descriptions. What was missing
22 was a commitment to the right of all people to
23 equal protection of the law in proportion to the
24 risks they face and in priority over notions of
25 propriety and enhancement of property values.

1 That leadership and commitment to equality
2 was absent from the Vancouver Police Department
3 leadership during the period of reference.
4 Instead -- instead of that commitment, the
5 Vancouver Police Department leadership swam hard
6 in the direction of the political tide. Every
7 resource and innovation deployed by the Vancouver
8 Police to suppress sex workers and contain them in
9 dangerous industrial areas was at the behest of
10 and with the concurrence of established Vancouver
11 residents, merchants and institutions.

12 The displacement and containment strategies
13 which forced survival sex workers either to work
14 in industrial areas at night or to face criminal
15 prosecution demonstrate that the safety and lives
16 of survival sex workers ranked below street optics
17 in the registry of public values. The will of the
18 majority enforced by the police was to push
19 survival sex workers out of the public eye and to
20 leave them isolated and unprotected.

21 It was a public concern over appearances and
22 property values that led to the creation of what
23 the Vancouver Police Department called in their
24 own documents containment zones, what Professor
25 Lowman called orange light districts and what

1 Jamie Lee Hamilton referred to as killing fields.
2 Call it what you will, serial predators were
3 effectively granted a level of immunity from
4 prosecution in those areas.

5 Now, concurrent with the creation of
6 containment zones, Vancouver Police devoted
7 tremendous resources to suppressing sex workers
8 and sex work. Vancouver Police Department
9 facilitated community patrols that agitated
10 against sex workers, supported a Court Watch
11 program to promote harsh sentences in provincial
12 courts, liaised with Vancouver Engineering to
13 disrupt traffic, parked in front of sex workers
14 when they were working, and it goes on. They
15 issued bylaw and *Motor Vehicle Act* tickets. They
16 worked undercover stings against sex workers and
17 their customers. They encouraged Crown counsel to
18 seek no go conditions. They sent Dear John
19 letters to the families of customers, created a
20 registry of sex workers with photos, took sex
21 workers on involuntary starlight tours to UBC and
22 other remote locations, dumped sex workers' purses
23 on the ground and confiscated their condoms and
24 clean needles.

25 In addition, from 1999 to 2002 the Vancouver

1 Police Department and City Hall together funded a
2 \$7.4 million special project, the Downtown
3 Eastside Extraordinary Policing Program, to crack
4 down on drug transactions and street disorder,
5 including sex work, deploying 36 constables and 4
6 sergeants, civilian analysts, researchers and
7 administrative support full time for three years.

8 Mobilization against sex workers had the
9 blessing and approval of the police board,
10 Vancouver City Hall citizens groups and broadcast
11 and print media encouraged that work with what the
12 academic literature describes as a discourse of
13 disposal.

14 In short, the VPD were not alone in their
15 approach to street level sex work. But simply
16 saying that the biases and discriminatory
17 attitudes of the criminal justice system were
18 shared by a broad section of established and
19 respectable society does not excuse it. This
20 inquiry should not shy away from criticism of the
21 police and prosecution even if that criticism
22 holds a mirror up to established sectors in the
23 community.

24 In 1994, Mr. Commissioner, you recommended
25 the implementation of a community policing

1 strategy within British Columbia. At that time I
2 take it you did not anticipate that a community
3 policing strategy that incorporates the wishes of
4 established residents and merchants is at risk of
5 articulating their biases, their discriminatory
6 attitudes and their basis motives.

7 A community policing model that makes
8 policing priorities a matter of local politics
9 will always be at risk of suppressing politically
10 disadvantaged sectors, including drug users and
11 sex workers. Fortunately, this inquiry provides
12 you with an opportunity to improve that policing
13 model.

14 A critical component, Mr. Commissioner, of a
15 successful community policing model, the component
16 missing in the community policing strategy
17 deployed by the Vancouver Police Department during
18 the period of reference is policing leadership
19 that adopts the principles that persons are
20 entitled to police protection commensurate with
21 the risks that they face with priority on crimes
22 against the person over crimes of consent and
23 administering of offences.

24 What was required in this context was
25 leadership from VPD senior management to refuse

1 community demands to crack down on sex workers and
 2 drug transactions. What was required was a
 3 leadership that refused the offer from City Hall
 4 for extraordinary allocations to fund a crackdown
 5 in the Downtown Eastside. And what was required,
 6 I repeat, was police leadership that would
 7 prioritize a woman's right to equal protection of
 8 the law in proportion to the risks she faces over
 9 propriety and property values.

10 Now, Mr. Commissioner, it appears that a
 11 mantra is emerging from the individual
 12 institutional police interests with participant
 13 status at this inquiry. It's emerging from their
 14 written submissions. The mantra that's emerging
 15 is a mantra of hindsight. Hindsight, it is said,
 16 is something that the inquiry should avoid. And
 17 to be fair, a concern about hindsight is in part a
 18 real concern. We should refrain from criticizing
 19 police officers for failing to respond to risks of
 20 which they were unaware or for being unaware of
 21 risks of which they had no obligation to become
 22 aware. However, this inquiry has a mandate to
 23 judge these officers and institutions in
 24 retrospect and should not be driven away from that
 25 mandate by cries of hindsight.

1 At its core the argument that we should not
2 judge officers in hindsight amounts to an
3 assertion that the institutions and officers were
4 unaware of the risks faced by sex workers, and
5 that assertion in very large measure is
6 inaccurate. The policing institutions and
7 specific officers were well aware of the risks
8 faced by sex workers and they were well aware of
9 the risk that a serial killer was preying on them.

10 The findings of fact that this inquiry should
11 focus on is the failure of the Vancouver Police
12 Department to deploy the resources in proportion
13 to the risks of serious bodily harm and deaths
14 faced by sex workers in the Downtown Eastside.
15 Now, I pause to note that there's a great deal
16 of -- aside from failure to deploy resources,
17 there's a great deal of incompetence. There are
18 many decisions that were failed decisions. There
19 was information that was inappropriately digested.
20 But it's the failure to devote appropriate levels
21 of resources and appropriate quality of resources
22 that ought to be at the focus of this inquiry.

23 There are two stages to such an analysis:
24 Firstly, assessing the police force's awareness of
25 the risks faced by sex workers and, secondly,

1 assessing whether the resources deployed were
2 commensurate with that risk. And, of course,
3 there are distinctions between institutional
4 knowledge and individual knowledge, between things
5 that are known and things that ought to be known
6 and between degrees of certainty, and those
7 distinctions I will address in written argument.

8 But it can be clearly and with certainty said
9 that the VPD knew two things perfectly well:
10 Firstly, the Vancouver Police Department knew that
11 survival sex workers in the Downtown Eastside were
12 at extraordinary risk of serious assault and rape.
13 And, secondly, the Vancouver Police Department
14 knew that there was a significant risk that a
15 serial killer was preying on sex workers in the
16 Downtown Eastside. These are quite apart from the
17 considerations about the evidence dealing
18 specifically with Robert William Pickton.

19 Firstly, the Vancouver Police Department was
20 aware of extraordinary risks to sex workers'
21 safety generally. The police were aware of and
22 had access to and had reviewed the reports of
23 violence set out in the bad date sheets
24 distributed by the sex worker advocacy
25 organization in lieu of making reports to the

1 police. Reports were prepared for the Department
2 of Justice by Professor Lowman and others and
3 circulated to the Vancouver Police Department.
4 Extraordinary risk to sex workers' safety was
5 notorious. There were numerous media reports, a
6 PACE report delivered to the Vancouver Police
7 Department -- Board on December, 2000 and ongoing
8 marches and demonstrations about the -- by the
9 memorial marchers, Jamie Lee Hamilton and others.

10 As Detective Constable Lori Shenher very
11 quickly realized upon being assigned to locate
12 missing women, there was no end to the number of
13 strange, violent men who were prepared to harm sex
14 workers. Her awareness of that risk was
15 documented and widely circulated to all the
16 relevant decision makers. If any member of the
17 Vancouver Police Department senior management team
18 did not know of the extraordinary threats to sex
19 workers' safety from customers, boyfriends and
20 others, those officers were not doing their jobs.
21 At the very least, the officers and institutions
22 as a whole ought to have known of those risks.

23 In the face of knowledge of extraordinary
24 risks to sex worker's safety, the VPD had no
25 general response. Not only did the VPD fail to

1 implement a safety or outreach program, the VPD
2 actively resisted any such program. When the BC
3 Civil Liberties Association warned of
4 extraordinary danger to sex workers in September
5 of 1998, the VPD ignored the problem and a memo
6 was circulated to Inspector Greer to the effect
7 that sex workers do not deserve extraordinary
8 protection. When PACE circulated its study on
9 violence against Vancouver sex workers to VPD
10 senior management and the police board in December
11 of 2000 and advocated that resources be shifted to
12 a sex worker liaison position, the VPD argued
13 strenuously against the sex worker liaison
14 position in the face of assault and rape rates
15 that were multiples of the rates in the rest of
16 the population. They did so on the basis that
17 they felt they were doing enough.

18 The failure to deploy protective resources
19 commensurate with the risk of sex workers of
20 serious violence and rape was a failure of
21 leadership.

22 Secondly, in addition to the knowledge of
23 extraordinary risk to sex workers of serious
24 violence and rape, the VPD was aware of a
25 significant risk that one or more serial killers

1 was responsible for the disappearances of sex
2 workers from the Downtown Eastside. There was no
3 need for the Vancouver Police Department to be
4 absolutely certain that there was a serial killer.
5 An awareness just of the risk of a serial killer
6 was sufficient for them to act. And there were
7 ample indications of that risk. Project Eclipse
8 concluded in 1992 that there was such a serial
9 killer. There were a string of serial killers of
10 sex workers known to be operating in the late
11 nineties. In the Pacific Northwest the risk of a
12 serial killer was recognized and publicized by
13 Professor Lowman and also there were ongoing
14 public statements to that effect by numerous
15 advocates in the Downtown Eastside.

16 Awareness of the risk of a serial killer was
17 sufficient for Inspector Greer and Deputy Chief
18 McGuinness, along with Detective Inspector Rossmo,
19 to support the formation of a missing women's
20 working group in September of 1998. At the time
21 there was sufficient information to justify a
22 comprehensive assessment of how to approach the
23 missing women cases and whether to initiate a full
24 scale serial killer investigation. The work --
25 the working group was disbanded without any

1 decrease to the risk of -- to sex workers with the
2 concurrence of Deputy Chief McGuinness.

3 Awareness of a risk of a serial killer
4 preying on sex workers was sufficient to create a
5 supposedly suspect-focused investigative team
6 after the Vancouver Police Department -- after the
7 Vancouver Police Board created support for a
8 reward for information into potential kidnapping
9 and murder of sex workers in late April of 1999.
10 The team, which became Project Amelia, was
11 underresourced, disorganized, insufficiently
12 experienced and trailed away over a very short
13 period of time as the already sparse investigators
14 were reassigned and not replaced. Again, Amelia
15 trailed away without any decrease in the risk that
16 a serial killer was preying on sex workers.

17 Awareness of a risk of a serial killer
18 preying on sex workers was again sufficient in
19 November of 2000 to create Project Evenhanded, a
20 joint forces operation. But it was apparently not
21 sufficient to get Evenhanded to actually
22 investigate. By November of 2001, Evenhanded had
23 not even concluded its review of missing persons
24 files. It spun its wheels until January of 2002
25 when a dozen investigators were finally deployed

1 to interview sex workers about potential suspects.

2 So then apart from the important question
3 why, there's no doubt, none at all, that the
4 police were aware of a significant risk that a
5 serial killer was preying on sex workers in the
6 Downtown Eastside. Again, certainty is not
7 required. A significant risk is sufficient or
8 ought to be sufficient to mobilize the police.
9 And although some resources were deployed, those
10 resources were inadequate to properly investigate
11 the missing women cases or pursue a serial killer
12 at any stage during the period of reference.

13 Very few investigators were assigned and
14 those who were assigned were inexperienced and out
15 of their depth like Detective Constable Shenher,
16 who had never investigated a complex case much
17 less commanded one, or they were busy with other
18 matters and distracted like Detectives Lepine and
19 Chernoff and Sergeant Don Adam, or they were both
20 distracted and inexperienced like Sergeant Field.

21 That brings us to the important question why.
22 Why did the police forces fail to deploy adequate
23 resources to investigate the missing women cases
24 and fail to deploy resources adequate to conduct a
25 serial killer investigation?

1 I wish to highlight three types of misconduct
2 that I submit should be denounced by you, Mr.
3 Commissioner: Firstly, the active suppression of
4 the serial killer theory; secondly, reliance on
5 discriminatory attitudes and biases against sex
6 workers and drug users; and, thirdly, management
7 failure to respond to biases and discrimination.

8 First, Mr. Commissioner, you should denounce
9 the active suppression of the recognition of the
10 risk of a serial killer within and outside the
11 police forces. Deputy Chief Constables LePard and
12 Evans conclude in their words that the police
13 forces were too slow to accept the serial killer
14 theory. This, in my respectful submission, is too
15 charitable a description of the facts. It is
16 clear that the Vancouver Police Department
17 actively attempted to suppress widespread
18 recognition of the risk of an active serial killer
19 on an ongoing basis throughout the terms of
20 reference both within and outside the force.
21 There are many examples. I will mention a few of
22 the most damning.

23 After he began to act on the risk of a serial
24 killer in September, 1998, Detective Inspector
25 Rossmo's access to missing persons and homicide

1 files was throttled by Sergeant Field acting under
2 orders from Inspector Biddlecombe. That decision
3 killed the Missing Person's working crew.

4 In early April of 1999 VPD senior management
5 lobbied the Attorney General with a memorandum
6 written by Detective Constable Shenher, not --
7 against supporting a reward for information
8 regarding the missing women. The campaign
9 extended to deceiving the Attorney General by
10 advising him there were no tips or suspects and
11 that the investigations to date had been as
12 thorough and as equipped as homicide
13 investigations. The campaign suppressed support
14 for a real task force to investigate missing
15 women's cases within the office of the Attorney
16 General in 1999.

17 In late April of 1999 VPD senior management
18 actively campaigned at the police board level
19 against the creation of a task force and against
20 the reward. This campaign also involved the
21 similar deception of the Vancouver Police Board
22 with a memorandum authored by Sergeant Field.
23 Although Vancouver Police Department management
24 were unable to stop the police board from
25 supporting a reward, the campaign effectively

1 suppressed police board support for a real task
2 force to investigate missing women in 1999.

3 In May of 2000 when Detectives Fell and
4 Wolthers resisted the winding down of the Missing
5 Women Review Team on the basis that there was a
6 serial killer and on the basis that they wished to
7 continue to investigate the suspects and
8 personally brought the high probability of a
9 serial killer and the reality that the review team
10 was not meaningfully a suspect-based investigation
11 to the attention of the chief constable, Fell and
12 Wolthers were removed from the review team and
13 they were sidelined. Their careers were
14 sidelined. VPD senior management suppressed Fell
15 and Wolthers and allowed the review team to be
16 reduced to Detective Constable Shenher
17 investigating alone. This decision eliminated the
18 last vestiges of a suspect focus at Project
19 Amelia.

20 In mid 2001 the Vancouver Police raided Jamie
21 Lee Hamilton's Grandma's House, which was the only
22 non-profit brothel available to survival sex
23 workers at the time. The raid appeared to be --
24 appears to be retribution for Miss Hamilton's
25 public insistence of a high probability of a

1 serial killer and a high probability that the
2 serial killer was active in the Downtown Eastside.
3 This decision suppressed one active voice and
4 intimidated many others.

5 Throughout the period of reference, with very
6 few exceptions the VPD propagated the message that
7 there is no evidence of a serial killer, knowing
8 it to be false, knowing that there were tips about
9 Pickton from Hiscox, Caldwell, Best and Menard as
10 well as the attempted murder of Anderson by Robert
11 Pickton. The purpose of this deception was to
12 prevent or limit any public outcry for a true
13 serial killer investigation.

14 I'm not done. It goes on. Throughout
15 Project Evenhanded the RCMP and VPD suppressed all
16 information that the serial killer was active.
17 The names of women who went missing after
18 December, 1999 were deliberately concealed from
19 public view, even after Robert William Pickton was
20 apprehended, Inspector Beach with what must have
21 been the concurrence of other members of senior
22 management engaged at the police board level and a
23 smear campaign of critics who asserted that the
24 risk of a serial killer was apparent during the
25 period of reference. This smear campaign involved

1 a deliberate and inaccurate attack on the
2 reputations of family and friends of the deceased.

3 The overall picture, Mr. Commissioner, is of
4 a senior police management of VPD battling to
5 control their resources by refusing publicly to
6 acknowledge the risk of a serial killer even after
7 the serial killer is caught.

8 Now, the unintended by-product or likely
9 unintended by-product of the attempt by VPD and
10 RCMP to control their resource deployment by
11 deceiving the police board, the Attorney General
12 and the public was that they failed in their duty
13 to warn sex workers that they were at special risk
14 of being killed. In fact, the police did the
15 opposite of warning the women. The police
16 reassured them that they had been investigating
17 the matter and there was no evidence of a serial
18 killer.

19 Specific and useful information obtained in
20 August of 1999 from informants believed by
21 Vancouver Police Department investigators to be
22 reliable about Robert William Pickton's method of
23 using female accomplices to persuade sex workers
24 to attend the farm was withheld from sex workers.
25 It is not an exaggeration to say that distributing

1 that information to sex workers could have saved
2 lives.

3 You, Mr. Commissioner, should firstly
4 denounce this widespread deception and
5 misinformation about the risk of a serial killer
6 and denounce the marginalizations of those who
7 spoke out in favour of a serial killer
8 investigation in the strongest possible terms.

9 Secondly, you should condemn reliance by
10 decision makers on adverse stereotypes and
11 preconceptions about sex workers and drug addicts.
12 Stereotypes about transient sex workers and
13 binging drug users were the basis of the decision
14 to squander resources by attempting to locate
15 missing women. Misinformed perceptions about the
16 capacities of drug users to attend in court formed
17 a factual basis for Crown counsel's decision to
18 stay the attempt murder and aggravated assault
19 charges against Robert Pickton in January of 1998.
20 And I appreciate that denunciation of that -- the
21 use of preconceptions in that context is not
22 available to you, but a finding of fact that
23 preconceptions informed the decision would be, in
24 my respectful submission.

25 Stereotypes were the basis of a pretext for

1 Port Coquitlam investigators to discount the
2 information provided about Robert Pickton and Lynn
3 Ellingsen by Ross Caldwell. Stereotyping of sex
4 workers and drug users consistently derailed the
5 criminal justice system and immunized Robert
6 William Pickton from accountability for his crimes
7 during the period of reference. Reliance on
8 stereotypes amounts to more than just ignorance.
9 It amounts to discrimination. At its foundation
10 is the attitude that sex workers are not entitled
11 to equal protection of the law. You, Mr.
12 Commissioner, should, secondly, denounce reliance
13 on stereotypes.

14 And, thirdly, you should denounce the failure
15 by senior management to address repeated instances
16 of discriminatory conduct.

17 This inquiry heard evidence of abusive
18 treatment of sex workers' families and aboriginal
19 people by Sandy Cameron. Testimony was given by
20 Ms. Dicks regarding racist attitudes and jokes and
21 there were admissions of widespread and
22 inappropriate use of derisive terms to refer to
23 sex workers. There was testimony about
24 inappropriate racial jokes, testimony that the
25 directions of female supervisors were ignored and

1 that female co-workers were not respected. And
2 there was also testimony about homophobia in the
3 force.

4 We can expect a measure of biased,
5 discriminatory, bigoted behaviour will always crop
6 up in any large organization, but when senior
7 management fails to do anything about that, the
8 entire organization becomes biased, discriminatory
9 and bigoted. It is telling that Deputy Chief
10 LePard did not prioritize an analysis of
11 discrimination or bias against sex workers in
12 conducting his review of the missing women
13 investigation.

14 There was no evidence at this inquiry of a
15 measured rational, consistent response by senior
16 Vancouver Police Department management to respond
17 to any of the biased conduct proven at this
18 inquiry notwithstanding the well understood and
19 sedimented human rights law that prevailed in this
20 province at the time. This failure should be
21 denounced.

22 So, thirdly, Mr. Commissioner, you should
23 denounce the failure of VPD senior management to
24 take effective action to respond to racism and
25 discrimination within the department.

1 Mr. Commissioner, when making findings of
2 misconduct or criticizing police forces, I urge
3 you to assign responsibility at the highest
4 possible level. In a hierarchy new recruits take
5 direction and absorb values from above. In
6 particular, the failure to deploy adequate
7 resources rests with Inspector Earl Moulton,
8 Deputy Chief -- Deputy Commissioner Gary Bass,
9 Sergeant Don Adam, Deputy Chief Brian McGuinness
10 and Chief Constables Bruce Chambers and Terry
11 Blythe. Responsibility rests and should rest with
12 those who have assumed it.

13 In making findings of facts I also urge you
14 to recognize the good work done by some of the
15 investigators, including Corporal Connor and
16 Detectives Chernoff and Lepine and Fell and
17 Wolthers as well as compassion exhibited to sex
18 workers and their families by some police
19 officers, including Detective Constable Shenher
20 and Dave Dickson.

21 Mr. Commissioner, I would like to propose a
22 few recommendations to you and end as much as
23 possible on a constructive note, but you'll
24 recognize that implicit in some of these
25 suggestions are findings of fact that may be

1 critical and will be elaborated further in my
2 written submissions. I don't -- I don't pretend
3 that this is a comprehensive list.

4 Firstly, there's a need for a province-wide
5 reform of a missing persons intake and
6 investigation system. It needs a single 800
7 number and it needs civilian staffing. Missing
8 persons is an inter-jurisdictional matter
9 requiring an inter-jurisdictional solution.

10 Secondly, there is a need for an appraisal of
11 the current rates of violence against sex workers
12 in the strolls within the Lower Mainland. I say
13 strolls because Burnaby, New West, Surrey and even
14 smaller centres like Port Moody have strolls and
15 all of these strolls should be appraised for their
16 current rates of violence against sex workers. A
17 corresponding appraisal should be done of whether
18 the police resources expended to investigate and
19 prevent that violence are adequate to respond to
20 that violence.

21 Thirdly, there is a need to alleviate the
22 conflict between the police mandates to prosecute
23 sex workers and their mandate to protect sex
24 workers. This could be done in a variety of ways,
25 including decriminalizing or not enforcing sex

1 work laws. Even short of a recommendation to
2 decriminalize it may be of assistance to make
3 findings of fact, making a connection between
4 enforcement of Section 213 of the Criminal Code
5 and harm to survival sex workers.

6 Fourthly, there is a need to expand the sex
7 worker liaison program to ensure, firstly,
8 investigative coverage and, secondly, community
9 liaison. The sex worker liaison should be
10 available to sex workers 24 hours a day and 7 days
11 a week because those are the times during which
12 sex work is carried on in Vancouver.

13 Fifthly, there is a need to restore the
14 Native Liaison Society, ensuring that it is
15 properly staffed and given a clear policing
16 mandate.

17 Sixthly, there is a need to create a formal
18 policy granting immunity from arrest or
19 prosecution for any person who is reporting an
20 offence against the person, including crimes of
21 violence or sex crimes. That means no enforcement
22 of warrants. That means no arrest for confessions
23 of drug use or sex work. That means no searches,
24 no frisk searches, no searching of persons, just
25 acceptance of the report of a crime of violence or

1 a sex crime against a person.

2 Seventh, there is a need to conduct an
3 equality audit of the police forces in British
4 Columbia. Police forces need formal, progressive
5 hiring policies, formal discrimination-free
6 workplace codes, formal training systems and
7 formal disciplinary remedies. The evidence that
8 we've heard justifies a province-wide audit and so
9 I say with respect so does the evidence that we
10 haven't heard.

11 Eighth, there is a need to conduct an audit
12 of management systems within the Vancouver Police
13 force. With a few small exceptions, each level of
14 management appears consistently to have failed to
15 hold its charges to account for its errors. While
16 there is much evidence of officers being praised
17 by their managers, there is very little evidence
18 of corrective action of any kind for any reason.

19 And, last but certainly not least and perhaps
20 most important, there is a need, in my respectful
21 submission, for compensation for the children of
22 the missing women. Mr. Commissioner, a
23 recommendation like that could lift the missing
24 women's children up. Not only with your findings
25 of fact, but also with your recommendation can you

1 improve their lives.

2 Those are a few suggestions as to
3 recommendations, but the problem is this, as you
4 know, Mr. Commissioner: There are many, many more
5 than that and they are serious.

6 THE COMMISSIONER: All right.

7 MR. GRATL: I'd like to conclude, then, on a personal note by
8 recalling the words of the late Rick Sugden, QC
9 who wrote that an aspect of advocacy is to
10 disagree without being disagreeable. And I know
11 that things have been disagreeable from time to
12 time during this process. In retrospect, much of
13 this was unnecessary and I regret my part in it,
14 but I leave this room, Mr. Commissioner, with
15 respect for your role and its challenges and a
16 better understanding that lawyers, no less than
17 other segments of society, are subject to the
18 passions and frailties that animate us all.

19 I wish to thank my colleagues from Farris,
20 Mr. Hern, and Mr. Dickson as well as my colleagues
21 Ms. Tobias, Ms. Hoffman, Mr. Majawa, Mr. Makosz
22 and Mr. Brongers, all from the Department of
23 Justice, a hefty team, indeed, whose positions I
24 say this: The positions of the Government of
25 Canada and of the Vancouver Police Department have

1 throughout been most at odds with the position
2 that I have taken on behalf of Downtown Eastside
3 community, but we've managed to maintain very
4 respectful relations throughout this difficult
5 period.

6 I'd also thank all the counsel who worked for
7 aboriginal interests. It was a most excellent
8 experience having dealings with them and sharing
9 thoughts and counsel for families, similarly. And
10 I extend the same gratitude to many of my other
11 colleagues acting for individual police officers
12 and other institutions.

13 I need to thank as well my articulated student
14 Seth Cooper for his competence and perseverance
15 and my associate, Mary Sedominika (phonetic), who
16 held the fort in my absence, and my fiancé Mary
17 Kessler for stitching me up after every round and
18 still being my fiancé.

19 And, lastly, I wish to thank the advocates
20 from the Downtown Eastside who kept sending me
21 back into the ring. Aside from those I have been
22 asked not to mention, there's a long list of
23 advocates and contributors to the life of the
24 Downtown Eastside who took time out of their lives
25 to provide me with their insights and guidance.

1 I'm grateful to each of them. And, in particular,
2 I wish to express my gratitude to Ann Livingston,
3 Don Larson, Gladys Radyk, David Dennis, Gordon
4 Murray, Wayne Leng and Jamie Lee Hamilton, all of
5 whom, in my view, brighten Vancouver with their
6 inner light.

7 So, Mr. Commissioner, I urge you to honour
8 and mark the memory of the missing women with your
9 word and provide the relatives with some solace
10 with your findings of fact and recommendation.

11 Thank you.

12 THE COMMISSIONER: Thank you, Mr. Gratl. I want to thank you
13 not only for your submission here this afternoon
14 but for the -- your advocacy for those people who
15 need to be heard. And you have mentioned some of
16 the people like Miss Radyk and Leng and various
17 other people who are involved in making the
18 Downtown Eastside a better place in which to live,
19 and I think all of us need to know that, and I
20 just want to thank you for being their advocate
21 and bringing their interests to this inquiry
22 because we need to hear about their concerns.

23 Thank you.

24 MR. GRATL: Thank you, Mr. Commissioner.

25 THE COMMISSIONER: Yes. Miss Hunt? So you're each going to

1 take 30 minutes; is that correct?

2 MS. NARBONNE: We are.

3 MS. HUNT: If that's all right with you.

4 THE COMMISSIONER: That's fine. Thank you.

5 MS. HUNT: Good afternoon. My name is Elizabeth Hunt and, as
6 you know, I'm co-counsel with Suzette Narbonne and
7 we are representing the aboriginal interest before
8 this inquiry. I'm going to follow along closely
9 with the outline. And I know that there's been
10 much discussion about the aboriginal interest at
11 this inquiry and I just want to go through the
12 lead up to the terms of reference to find the
13 Vancouver Police Department and the First Nations
14 women, where they find themselves before they were
15 senselessly murdered.

16 I want to start at the beginning of this
17 commission and talk about when Eugene Harry opened
18 this up and the leaders from the First Nation
19 Summit, they blessed this process and they
20 provided a detailed summary of the relationship
21 between the aboriginal peoples and the Government
22 of Canada and British Columbia. And we know that
23 we're here to talk about the Vancouver Police
24 Department and the RCMP and these institutions as
25 it relates to the terms of reference into the

1 missing and murdered women from the Downtown
2 Eastside of Vancouver, British Columbia. And it's
3 also within the traditional territory of the Coast
4 Salish people.

5 A disproportionate number of the missing and
6 murdered aboriginal women are descendants from
7 tribal nations originating not from the Downtown
8 Eastside. If you look at that map up there,
9 you'll see -- sorry.

10 THE COMMISSIONER: Yes. Do you want a minute?

11 MS. HUNT: No. I'm just going to go back. You'll see up there
12 a map and you'll see the territories of where the
13 First Nations come from that we can find the
14 women. And they're from the Sto:lo Nation.
15 They're from Fort Nelson up in Treaty 8. They're
16 from the In-SHUCK-ch. They're from Mount Currie.
17 They're from Takla Lake. They're from Hobbema.
18 They're from the O'Chiese First Nation. They're
19 from Lethbridge and the Cree Nation, the Manitoba
20 Pince Creek First Nation, the Nisga'a Nation. I'm
21 going to get to the next one. Excuse me. The
22 Kwakwaka'wakw Nation, the Green Lake Nation, the
23 Nuchatlaht. I think Jason's passionate closing
24 got to me. The Pacheedaht First Nation, the
25 Wet'suwe'ten, the Chilliwack community out in the

1 Sto:lo, the Semiahmoo and the Nisga'a Nation.
2 There's also First Nation women from Colorado. We
3 don't actually know the origin of the First
4 Nation. And we had descendents that were from
5 Mexico as well.

6 So I just wanted to say that these First
7 Nation women weren't from the Downtown Eastside;
8 that they had families. They have families that
9 come from nations and it's within that context
10 that each and every aboriginal woman was brutally
11 and senselessly murdered and you need to
12 understand the much larger aboriginal struggle.
13 And this struggle for aboriginal women is
14 inextricably woven into the greater widespread
15 struggle for all aboriginal people.

16 Where we believe Canadian Society has gone
17 seriously wrong is with the notion of using this
18 social evolution to justify the oppression of
19 indigenous people. The independent counsel for
20 the aboriginal interest takes this careful
21 position that the idea of social evolution
22 legitimizes the idea that races and cultures exist
23 on a hierarchical scale from primitive to
24 civilized and is therefore acceptable to -- for
25 so-called civilized races to dominate the

1 uncivilized races because they believe them to be
2 inferior. As aboriginal community, I think when
3 we talk about whether aboriginal people experience
4 racism, we have to go turn to the history of
5 Canada to the time that these women were murdered.

6 Franz Boas, one of the most famous founders
7 of anthropology, talked about this. He says he
8 doesn't agree with that. He says we're influenced
9 by close associations to neighbouring cultures.

10 Canada and BC are founded on this
11 hierarchical concept and values that are
12 ethnocentric and destructive to any other people
13 and cultures that do not share these same views.

14 To carry on this aggressive program of
15 economic development without first resolving these
16 serious issues faced by aboriginal women and
17 aboriginal people is to nation build on a faulty
18 foundation, and this error will continue to have a
19 serious impact on everyone involved.

20 We submit that Canada and British Columbia
21 through their various agencies are responsible for
22 the greatest Charter violations to occur to these
23 women. These violations have resulted in the loss
24 of a generation of women, women who have children,
25 women who have family.

1 Death by rejection. And it's evident from
2 the witnesses at this inquiry that the Government
3 of BC, including the Attorney General, including
4 the police boards, including the Vancouver Police
5 Department and the RCMP, they had great knowledge
6 about the status of aboriginal people in this
7 country during the terms of reference.

8 The testimonies of the families of the
9 murdered women show that there is a strong
10 evidence of -- pattern of evidence that many, if
11 not all, of the aboriginal women have suffered
12 incredible social, physical, spiritual suffering
13 and abuse in every facet of society, largely as a
14 result of the oppressive colonial ideologies and
15 policies and laws enacted by both the Government
16 of Canada and British Columbia.

17 The role of the independent counsel for the
18 aboriginal interest, it is submitted, is to
19 present an aboriginal viewpoint on the issues
20 raised in this inquiry, relying on the common
21 history of aboriginal people in BC and Canada.
22 This viewpoint is -- the aboriginal viewpoint of
23 these issues and these submissions must be
24 qualified with a summary of the deficiencies of
25 this process. There's been much criticism of the

1 process and we think that there is value in
2 outlining them as a stepping stone and preserving
3 the things that could be of assistance to the
4 children and the families and women and children
5 that are still down on the streets.

6 It's further submitted that a summary of the
7 facts respecting the beneficial and the diligent
8 activities of various organizations granted
9 participation status but not funding must be
10 included to appreciate the context of the
11 investigations, what the police knew in addition
12 to what was going on with the actual paper pushing
13 of the investigations, but what was the context of
14 society at that time.

15 We allege many things in our submissions, but
16 we allege that there was racism. And when we talk
17 about racism, I think we need to put ourselves in
18 the feet and the shoes of aboriginal people to see
19 whether they -- before police officers feel
20 discriminated. Do they feel like the colour of
21 the skin has something to do with the way they are
22 being treated? Do they feel disrespected? Do
23 they feel like they're suspicious because they're
24 brown? Do they feel like they're suspicious
25 because they're being devalued -- a devaluation

1 and dehumanized because of where they are in --
2 located in the downtown Vancouver area?

3 There's also -- do you believe in the things
4 that were said during this inquiry that these
5 racial slurs weren't true, these nickname calling
6 and rejections by people that gave evidence
7 weren't true? We think they are true. We think
8 that there was, in fact, racism experienced by
9 aboriginal people in the Downtown Eastside.

10 There's many -- many other violations we
11 believe committed by the police, the systemic
12 oppression -- and we're going to talk about that
13 shortly -- with the Royal Commission, the violence
14 against women, the disrespectful and biased
15 treatment of family members, refusal to accept
16 that the women were going missing, the failure to
17 accept the serial killer theory and continuing --
18 serial killer theory when we have not exact
19 numbers of how many women have gone missing and
20 been murdered. We know up to 60. We know
21 aboriginal maybe 26, but more. We have
22 inconclusive information or research that's been
23 done by the commission on who's actually even
24 status, so that goes to -- we hope will go to
25 further work that will be done to know exactly who

1 our aboriginal community is.

2 But we feel that the Government of British
3 Columbia and Canada and the representatives failed
4 towards their obligations to aboriginal people by
5 breaching their duty and the honour of the Crown.

6 And, in conclusion, we present
7 recommendations to be considered by the commission
8 and the participants and also the aboriginal
9 community as a whole. And we do know that, you
10 know, this inquiry has experienced great
11 criticism, and much of it justified, it's
12 submitted, but hopefully this will be a catalyst
13 of change as needed to address these issues raised
14 at this inquiry.

15 This inquiry is part of a journey to find
16 justice that's demanded by the families of the
17 missing and murdered women, the aboriginal
18 community, supporters domestically and
19 internationally, the general public -- the general
20 public from any party that was or is exercising
21 jurisdiction or governmental authority in the
22 investigations of these women. And that's not
23 just limited to, but will include at least the
24 Vancouver Police, the police boards, the City of
25 Vancouver.

1 I want to go back and talk about the
2 aboriginal experience. And I'm just going to
3 bring it up to today's date to talk about prior to
4 contact. And I know these are things that have
5 been said over and over again, but we continue to
6 say them over and over again to find its rightful
7 accommodation within Canadian society. But
8 aboriginal people have been living here and they
9 did have extensive networks and systems of
10 governance and relations.

11 And I actually just can share with you that,
12 you know, from the aboriginal community, they
13 weren't included in this process, but I was at a
14 birthday party yesterday. And I'm from the Gwayok
15 Nation (phonetic) and I was down at Ambleside Park
16 and my grandmother's sister was celebrating her
17 91st birthday and the family said, "Oh, you know,
18 you're legal counsel for the aboriginal interest."
19 And she says, oh, well, she's been married into --
20 she's 91. She's been married into the Baker
21 family down here for over 70 years. And she says,
22 "Oh, I know one of our relatives from the
23 Kwakwaquewak Nation and Kinkum (phonetic), who's
24 Sandra Gagnon's relative, who Janet Henry, of
25 course, is her sister, and we haven't included the

1 aboriginal community, but it's been a disservice
2 to not include them because the networks are so
3 extensive. Here's a 91-year-old woman with
4 important information about this woman, the
5 whereabouts of the networking.

6 So through this, though, we have the
7 evolution of oppression, I guess you'd say, of
8 aboriginal rights. And I know people don't like
9 to talk about this at these inquiries because it
10 brings up a whole host, but it's not. We need to
11 look at it in the context of where aboriginal
12 women were at the time these investigations were
13 going on by the police.

14 So we find ourselves within Section 91(24),
15 aboriginals becoming wards of the state. Then we
16 have the Charter of Rights and we move into
17 Section 35 and then we can talk just a few minutes
18 about the fiduciary obligation.

19 And we know from as early as 1906 in St.
20 Ann's Island Shooting & Fishing Club where the
21 Court said aboriginal peoples are wards of the
22 state whose care and welfare are a political trust
23 of the highest obligation.

24 We talk again about Section 35 and *Sparrow*,
25 the first Charter case, and the Court said:

1 The "general guiding principle" for Section
2 35 is that "the Government has the
3 responsibility to act in a fiduciary capacity
4 with respect to aboriginal peoples. The
5 relationship between the Government and
6 aboriginals is trust-like, rather than
7 adversarial, and contemporary recognition and
8 affirmation of aboriginal rights must be
9 defined in light of this historic
10 relationship.

11 I just want to make a point that during this
12 inquiry not once did Canada step forward to take
13 responsibility for any of its fiduciary
14 obligations. As a matter of fact, I think in
15 Canada's submission I only saw aboriginal -- the
16 word stated once. We do have a critical nexus
17 that should be observed or recognized at least
18 that aboriginal affairs provides a host of
19 services. Even those aboriginal people from an
20 aboriginal status under the *Indian Act* that may be
21 on a reserve and found their way down to the
22 Downtown Eastside, Department of Indian Affairs is
23 still providing critical health services on
24 disease, health conditions, funding for noninsured
25 health benefits and substance use and treatment

1 for addictions.

2 So we submit that Aboriginal Affairs is
3 tasked with addressing policies and regulations
4 relating to aboriginal peoples in Canada that are
5 compromised of Inuit -- Indians, Inuit and Metis.
6 Among other services, the department administers
7 services such as status and health benefits and we
8 submit that this should be recognized as a
9 fiduciary obligation, the safety and lives of
10 aboriginal women.

11 And if that all by itself doesn't raise the
12 issue of fiduciary obligations, let's talk about
13 the Royal Commission on Aboriginal Affairs in
14 1996, one year prior to the terms of reference.
15 And there we have a very extensive -- I think it's
16 over 4,000 pages and it examines the social and
17 economic situation of aboriginal Metis and Inuit
18 people in Canada. It looks at the relationship of
19 aboriginal people and related to Canadian society
20 as a whole, and what that found, which shouldn't
21 be any surprise to the government, is that by
22 comparison to non-aboriginal Canadians, aboriginal
23 people can expect the following: Higher rates in
24 sickness and illness, lower life expectancy,
25 suicide rates five to seven times higher for

1 aboriginal youth than for other Canadian youth.

2 Suicide rates among Inuit are among the
3 highest in the world, at 11 times the national
4 average, high -- higher alcohol and drug abuse
5 rates, less -- less children graduating from
6 school, even less children going to university,
7 the housing conditions, the water. I'm sure these
8 are all things we know about in our aboriginal
9 communities in this country.

10 From that we go to the Truth and
11 Reconciliation Commission of Canada, which was
12 dealing with the residential schools and, again, I
13 think it's important evidentiary evidence. It's
14 laid out in the history of this country that this
15 inquiry was carrying on. It did -- it's doing its
16 work. But I think the Truth and Reconciliation
17 has pointed out that there was high numbers of
18 missing and dead children while at residential
19 school. The information of their deaths was
20 sometimes not recorded or the child's death was
21 not recorded back to the families.

22 In Canada there is a history of, amongst
23 other atrocities, marginalizing aboriginal
24 children and family. We're experiencing it again.

25 There's widespread social dysfunction that

1 results from over 150,000 aboriginal Metis and
2 Inuit children who were taken from their families
3 to attend more than 130 residential schools from
4 across Canada from 1870 to '96. The primary
5 function of the residential school was to convert
6 indigenous children into Christians and to
7 civilize them. It was a system of assimilation
8 that prohibited and often punished children for
9 speaking their language. Again, I'm not going to
10 go into details about that, but I think it should
11 be noted for this inquiry that the last school
12 closed in 1996. If these aren't foundations of
13 racism, if these aren't institutions based on
14 racism, if we need to have reports that Vancouver
15 Police Department suggests to show racism, I don't
16 think we really understand what racism is.

17 I think that the Government of Canada has
18 actually apologized in 2008. The prime minister
19 in 2008 made an apology to all the individuals
20 that went to the residential school. We're almost
21 up to the terms of reference now. So we're
22 getting up to the apology by the RCMP. It's set
23 out in the submissions where the RCMP apologized
24 for their part in the residential schools and the
25 prime minister of Canada.

1 Now, I just want to go -- there's other
2 things that were going on at the time. The
3 Assembly of First Nations was busy reporting on
4 the Royal Commission's efforts to implement the
5 Royal Commission on Aboriginal Affairs report and
6 out of all of the -- they've prepared a report
7 card to just summarize it that way and say that
8 they receive one A, and that was for establishing
9 National Aboriginal Day, and they received 37 F's.
10 And it's in the submissions there, but we can see
11 that at that time there's also other minority
12 interests in the Charter that are ramping up
13 beside the aboriginal interest of things that are
14 going wrong in our society. And then we have to
15 move towards the National Aboriginal Women's
16 Association of Canada.

17 The important parts I would like to submit
18 about the work that was done here was that they
19 had been recording the injustices and the
20 inequalities of aboriginal women for over 30
21 years. And, again, this is just another point
22 about what we need to see when we look at the
23 police departments and what we need to see when
24 we're talking about the old boys club. It's not
25 just the old boys club that we're talking about.

1 We're talking about a very perverse subculture of
2 oppression that has been experienced by aboriginal
3 people since the beginning of time. We look at
4 aboriginal women who marry non-aboriginal men who
5 became white women and lost their rights. We look
6 at white -- I shouldn't say white, but
7 non-aboriginal women who married aboriginal men
8 and became native, and that sort of is the
9 underlying basis upon which men and women were
10 viewed in Canadian society, the evidence of Lila
11 Purcell's family where she talked about being a
12 whole family with all seven children, a man and
13 wife living in their community, a traditional
14 lifestyle, and the father passed away and she
15 remarried and was dislocated from her community
16 and had another seven children. All those
17 children ended up in care and, of course, one of
18 those grandchildren was Tanya Holyk.

19 And I just have to say that getting --
20 working through the National Aboriginal Women's
21 Association, they have done extensive work on
22 women missing in Canada. They have over 600
23 recorded aboriginal women who are missing or who
24 have been murdered.

25 There is -- in the submissions on page 16

1 there's a long list from a to h about presently
2 how we know aboriginal women to be in society
3 right now. That's not taking in the history that
4 I was just talking about. But aboriginal women
5 experience much higher rates of violence. 15
6 years and older are three and a half times more
7 likely to experience violence. This all ties into
8 this extra duty, fiduciary duty that Canada and
9 British Columbia should be observing when they're
10 facing vulnerable marginalized people in the
11 Downtown Eastside.

12 And I just finally have to say before I'll
13 turn it over to Ms. Narbonne that February 14th,
14 the Memorial March, this has been going on since
15 1991. Its genesis was started on Powell Street
16 here in Vancouver. The Downtown Eastside has been
17 holding this march and there's been people
18 non-paid that are -- still even to this day are
19 advocating for missing and murdered women.
20 They've been working in conjunction with the
21 National Women's Association, Aboriginal Women's
22 Association in collecting data and information
23 about these women.

24 And this turns me to the critiques or the
25 criticisms that have been put out there that the

1 time frames are very narrow given what we've
2 shared about the location of where all of these
3 aboriginal women come from, given the difficulty
4 in actually ascertaining each and every aboriginal
5 woman in the work up of how they went missing and
6 where they went and the status for the families.
7 There's many aboriginal women's families that
8 despite all of the people that are here aren't
9 here because they're so marginalized. Their whole
10 entire families are marginalized. When you spoke
11 to the Papin family, they said, "You know, I don't
12 know" -- they weren't properly notified when
13 Georgina went missing, but they said, "I don't
14 know why you have a hard time finding us. There
15 was at one point a time when we were all in jail
16 at the same time." This is a family of nine
17 children. So -- and Canada didn't phone them.
18 The RCMP didn't phone them. They -- and there's
19 lots of aboriginal families that aren't here
20 because they are still marginalized. These are
21 things that the National Aboriginal Women's
22 Association know of.

23 So we just -- I just want to end on this part
24 here that the criticisms have been set out. And
25 I'm just looking here to see if there's -- we know

1 the time frames that the -- of the inquiry, the
2 geographic location. There is an unprecedented
3 decision to give standing, but not financial
4 assistance to all the parties that were here.
5 And -- and we do submit that it is a serious
6 disservice to the inquiry not to have them here.
7 And I know that, Mr. Commissioner, you did have
8 them, but we include this in the report and
9 consider how we are going to take steps forward to
10 make beneficial use of the information that has
11 been found and to ensure that the children who
12 haven't been talked about too much during this
13 inquiry, but it should form an important aspect of
14 the recommendations and it should form -- it
15 should be a crucial part in police investigations
16 that when someone has been murdered or is missing
17 that there's some sort of mechanism in place that
18 is going to facilitate for these children. For
19 example, Georgina Papin had seven, but out of all
20 the women that were named, there's many, many
21 women whose children we have no idea. And to have
22 a fulsome discussion about the issue of missing
23 and murdered aboriginal women -- and I know this
24 relates to the sub-issue that you're dealing with,
25 is missing and murdered women of the Downtown

1 Eastside, which takes us back to the bigger issue,
2 is it needs to be addressed, we respectfully
3 submit, in the recommendations and submissions.

4 I'm going to turn it over to Ms. Narbonne now
5 to speak to the specific police investigations and
6 relations with the police. Thank you, Mr.
7 Commissioner.

8 THE COMMISSIONER: Miss Narbonne.

9 MS. NARBONNE: Thank you, Mr. Commissioner.

10 Miss Hunt has given us the backdrop in which
11 we find ourselves for the terms of reference and I
12 think --

13 THE REGISTRAR: Your name, please.

14 MS. NARBONNE: Sorry. Narbonne, Suzette.

15 I think that that is an important thing to
16 consider when you look at how these women came to
17 be in the Downtown Eastside. If we ignore the
18 history of the aboriginal people, we do a
19 disservice to them and this inquiry, in my
20 submission, cannot move forward.

21 The women, as my friend has said, weren't
22 born in the Downtown Eastside. They ended up
23 there. They had families. They had people who
24 loved them. They suffered prior to ending up in
25 the Downtown Eastside from marginalization, from

1 abuse, from addiction, and ultimately far too many
2 of them suffered at the hands of Robert Pickton.

3 Now, in our brief we have detailed numerous
4 women and I intend to touch on only a few. It
5 doesn't detract from any of the things we say
6 about them in our brief, but just in the interests
7 of time.

8 Mona Wilson's sister Lisa Bigjohn spoke to
9 the commission about the story of her family. And
10 their story was really the story of far too many
11 aboriginal women. They grew up in a broken home.
12 Lisa Bigjohn said they were shattered by alcohol
13 and whatever other kinds of abuses they suffered.
14 As young children, the siblings were separated out
15 into different foster homes, into residential
16 school. Lisa and Mona reconciled ironically when
17 Mona was incarcerated in a correctional
18 institution. Mona started phoning her sister
19 Lisa. They dreamt of better lives, of leaving
20 their addictions behind, changing things, escaping
21 this dark place they had ended up in, as we
22 described it. But Miss Bigjohn testified that she
23 kept drinking and Mona returned to the streets.
24 And we know that Mona never left the streets. She
25 never escaped.

1 Chris Joseph testified as well and told us
2 about the tragedy of his family experience. Like
3 Lisa Bigjohn, he described a childhood that was
4 absolutely fractured by drinking. The children
5 were all separated off and taken into care. He
6 said he became a ward of the court and was bounced
7 from one group home to another until he was in his
8 early teens when it sounds like he just left. The
9 last time he saw his sister Olivia she was
10 pregnant with her second child. Like Mr. Joseph,
11 who was very candid with us, Olivia suffered too
12 from serious substance abuse.

13 Dawn Crey's brother Ernie Crey and her sister
14 Lorraine testified before this commission as well.
15 Their father attended residential school and all
16 of the children ended up in foster homes. The
17 welfare department -- as Mr. Crey described it,
18 the welfare department did not encourage contact
19 between siblings and even less so once they were
20 adopted. Both Ernie and Lorraine testified about
21 the indifference of the police towards the
22 disappearances of these women, many, many of whom
23 were aboriginal, Mr. Crey said.

24 Many other families came forward before this
25 commission, both aboriginal and non-aboriginal, to

1 speak about their loved ones and to speak about
2 what Mr. Ward described as the disrespect and
3 indifference of the police towards this terrible
4 tragedy of women going missing. And I
5 completely -- we concur with his submissions in
6 that regard. There was an attitude of disrespect
7 in my submission.

8 Dianne Rock's sister Lilliane Beaudoin heard
9 from the police because the police had two bags of
10 her sister's clothing that had been left behind in
11 her room. The police didn't tell Lilliane about
12 the missing women. They didn't even tell her that
13 her sister was missing. She thought they were
14 calling because her sister had skipped out on her
15 rent. Some of their family didn't find out what
16 happened to Dianne until they heard it through the
17 media.

18 Elsie Sebastian was last seen in 1992. Her
19 family testified that they tried to report her
20 missing four different times before they could get
21 someone to actually take a report. When Donalee,
22 Elsie's daughter, tried to find her mother in
23 1999, that's when she met with Morris Bates of the
24 VP-NLS and he told her that Elsie just wasn't a
25 priority for the police because she was a

1 40-year-old, drug addicted, native woman. There
2 was certainly nothing in the attitude of Missing
3 Women -- sorry -- Missing Persons to dispel this
4 view.

5 If I can just quickly flip to our
6 submissions. What Donalee testified to before
7 this commission was she called the Missing Persons
8 and talked to them about her mother. The lady
9 that she spoke with said it was their own culture
10 down there and they cover up for each other. She
11 told Donalee that if Elsie didn't want to be
12 found, she wouldn't be found. She was probably on
13 a holiday. Donalee told you she was -- she was
14 shocked. Her mother lived on social assistance.
15 She didn't take holidays.

16 Lynn Frey had a very similar experience when
17 she tried to report her daughter Marnie missing.
18 Like Donalee Sebastian, she was told, "Wait a few
19 weeks. Marnie's probably on holidays." Her
20 experience that she told us about was that the
21 police just didn't care; that to them Marnie was
22 just a low life prostitute.

23 Angela Wolfe, Brenda Wolfe's daughter, grew
24 up in foster care. She was eight years old when
25 the police came to speak to her at her foster home

1 about her mother's death. She believed that the
2 problem of the missing women was worsened by the
3 police who, as she said, ignored the problem for
4 almost two decades. She said these women were
5 marginalized by society and ignored by the police.

6 In our submission, the common history of too
7 many of these aboriginal women who went missing
8 was the legacy of the residential school, the
9 attitude of the government responding to this
10 legacy by then separating children into care, as
11 we call it, separating siblings, taking children
12 away from their families, taking these connections
13 away. The only thing they had was their family
14 connections.

15 The other thing these women have in common is
16 cycles of addiction and cycles of abuse. You'll
17 recall the evidence of Ms. Ens, who told us in
18 really personal terms about her own experience.
19 She talked about how she was effectively sold for
20 a bottle of beer to her grandfather, taken to
21 Haida Gwaii, raised as Haida. Her family had been
22 in residential school. She and her siblings all
23 suffered abuse as a result of her family's abuse
24 that they had suffered. She said the families
25 didn't know better. She talked about how these

1 children were just ripped from families, leaving
2 parents with no children, with no roles in a
3 society that traditionally provides roles for
4 every member of its society.

5 You heard too from Catherine Astin, who's a
6 nurse in the Downtown Eastside, and she spoke
7 about the involvement of the residential school
8 system and of the child welfare system and the
9 lives of the women that she worked with, and I
10 believe quoted from that in our submissions. I'll
11 just flip to it. Miss Astin said this -- and I
12 think it's worth hearing the quote.

13 ... the women have lived fractured lives.
14 They've been abused. They've been mistreated
15 by people who were supposed to take care of
16 them. Institutions haven't really met their
17 needs. They're afraid of people in
18 authority. They haven't been treated well by
19 people in authority whether it's a teacher,
20 whether it's going into a hospital emergency.
21 She told us that approximately 80 percent of the
22 women she dealt with were aboriginal. Most of
23 them had children involved in the child welfare
24 system. And she again spoke of that common theme
25 that emerged, was the deep fear and distrust of

1 the police that the aboriginal women had because
2 of their past experiences, because of their
3 experiences, either themselves through residential
4 school or through their family's experiences in
5 residential school and through the child welfare
6 system. The women are scared to report something.
7 They're scared they're going to lose their
8 children. They're scared they're going to be
9 accused. And I think Mr. Gratl talked about that
10 in his recommendations.

11 The First Nations Summit sent a letter -- and
12 you've heard much of that letter -- expressing
13 their concerns about a number of missing women.
14 It was over a full year until Missing Persons Unit
15 added Constable Shenher, Detective Constable
16 Shenher to their force and really started an
17 investigation. Shortly after they got the letter,
18 Dickson went out. He investigated. He claimed
19 he'd found the women within a very short period of
20 time. However, he also said there's a whole lot
21 more people missing than we realized.
22 Notwithstanding that, a full year goes by. During
23 that time 10 more women went missing.

24 Angela Wolfe described the history of
25 aboriginal people in Canada as genocide. We

1 submit that when we look at the history of the
2 First Nations groups, we're not so sure that
3 Angela Wolfe is that far off the mark.

4 Since colonization the lands were taken. The
5 culture was civilized out of people through
6 residential school. Security of the family was
7 destroyed by the child welfare system that sought
8 to separate the siblings from siblings. It
9 shouldn't be a surprise to us that a hugely
10 disproportionate number of aboriginal women ended
11 up in the Downtown Eastside.

12 When we look at the police investigation --
13 and I know everyone's glossed over it and I fear I
14 will do the same simply because of the time issues
15 -- we need to look at, firstly, what Vancouver
16 Police did and out of just a very high level, I
17 guess, Shenher takes the investigation. She gets
18 this tip right away. She was confident from
19 beginning to end that she had her suspect, the
20 right person, but she didn't close her mind and
21 she did an investigation, but she got no -- when
22 Rossmo says, look, there's a serial killer at
23 work, he's shut up. There's not going to be a
24 message going out. We're not going to tell people
25 about this. The investigation really suffered.

1 When she gets Fell and Wolthers -- and I'm not
2 going to criticize their work. They were single
3 minded. They persevered -- the group was unable
4 to work together. So instead of this being
5 helpful, it was a fractious relationship. VPD
6 just -- in my submission they worked on this, but
7 nothing came of it.

8 The RCMP were no better. They had a view --
9 I will never understand it. Although they
10 admitted they knew lots of people were going
11 missing as early as '95 and that this was not just
12 women on holidays, their view was that we are
13 investigating Mr. Pickton for one thing and one
14 thing only. We have one source. We don't believe
15 that source. Therefore, this is -- this
16 investigation is going to be short and sweet, and
17 it was short and sweet. Every time the officer --
18 firstly, the officer they put in charge of it was
19 very senior in years, but certainly not senior in
20 terms of the chain of command at the RCMP. The
21 more senior people didn't seem to share their work
22 with her. When she's doing an interview, it's
23 interrupted. When she tries to interview Pickton,
24 she has no idea why she's interviewing him. I
25 submit that there just wasn't the kind of concern

1 put to these investigations that should have been.

2 We submit that as a society we have to do
3 better. We can't continue to justify our actions
4 because they're well meaning actions. And I don't
5 for one second suggest that the police had any
6 ulterior motives, not for one second. But we
7 can't justify their actions because they're well
8 meaning. We have to recognize that there is this
9 paternalism that can cause more harm than it
10 cures. The police in their evidence did
11 acknowledge and the government certainly
12 acknowledges that there is a fiduciary
13 relationship with the First Nations, but they
14 didn't act on it. When they realized there was
15 still more people going missing, there was no
16 warning given. It's inexplicable.

17 We submit that there needs to be a real
18 dialogue that involves aboriginal people and the
19 government. There needs to be far more treatment
20 programs that are developed by First Nations
21 people for First Nations people. We need more
22 resources. We need to truly recognize that the
23 missing women were victims long before the
24 ultimate indignity of the Pickton farm.

25 Ms. Ens and Mr. Bates told you about what

1 their work was. A lot of their work was
2 completing criminal injuries compensation
3 applications. Well, any of us in this business
4 know that those are applications for someone who's
5 a victim of crime to compensate them, these
6 people, marginalized, vulnerable people in the
7 Downtown Eastside going to get some help to make a
8 claim so they can get a little bit of money from
9 the government to compensate them for being yet
10 again marginalized and mistreated.

11 Mr. Commissioner, I'll just get my notes. I
12 apologize. I am terrible for having papers flying
13 all over the place in my submissions.

14 In your opening you reminded us that this
15 inquiry is about these missing women and the terms
16 of reference are framed in a way that they're
17 framed, but we can never lose sight of the fact
18 that this is about missing women. And you talked
19 about the questions we should be asking ourselves
20 as a society. I submit that we need to challenge
21 ourselves. We need to recognize the
22 vulnerability. We need to use this inquiry as a
23 catalyst for change. As Miss Hunt said in her
24 submissions, this is part of a journey to find
25 justice. We can criticize this process and I

1 submit that criticisms are valid, but that
2 shouldn't detract from the value of this inquiry.

3 Public inquiries always serve a useful
4 purpose. They put it out there. It's public for
5 a reason. It puts it out there. It forces us to
6 acknowledge these things. It forces us to
7 confront our own biases, our own conduct that
8 allows the marginalization.

9 We hope that this inquiry does challenge all
10 of us and challenges the people who have watched
11 it, the people who have sat here, the people who
12 have participated in it, and it challenges us to
13 break down structures and build something better.

14 In the closing of our submissions -- and we
15 have a lot of recommendations that we've put
16 forth. I know, Mr. Commissioner, you've read
17 them. I don't purport to repeat them all. But in
18 our closing we told you, and I want to repeat, the
19 murdered and missing aboriginal women from the
20 Downtown Eastside are amongst our most vulnerable
21 in society and we hope that this inquiry is a step
22 along the journey towards righting the wrongs and
23 towards creating a society that demonstrates its
24 belief in the value of each and every human being
25 regardless of their standing. Thank you.

1 THE COMMISSIONER: Thank you, Miss Narbonne.

2 Before we -- before we take a break, I want
3 to thank both of you for dealing with an issue
4 that's extremely vital, extremely important to
5 this inquiry, and that is a disproportionate
6 number of aboriginal women who were murdered
7 and/or have been missing. And I know that you
8 have both taken a global approach to the issue and
9 that is -- that is a relationship of aboriginal
10 people to the criminal justice system. Those of
11 us who have been involved in the system know full
12 well that the -- that it's been a somewhat
13 dysfunctional relationship. And when I say that,
14 I mean there's a disproportionate number of
15 aboriginal people in our institutions, in our
16 jails, and that shouldn't be the case. So we have
17 to look at issues -- the larger issues, and you've
18 both pointed out to me the importance of looking
19 at this from a global perspective.

20 And we are, of course, examining here a
21 horrific tragedy, tragedies that took place, and
22 at the same time we shouldn't lose sight of the
23 fact of the history of aboriginal people in
24 Canada, not only as far as the justice system is
25 concerned, but the role of aboriginal people and

1 where they fit in to our society. And they are
2 the First Nations people. They were here. And
3 I -- I don't think there's anything more shameful
4 than the fact that the aboriginal people weren't
5 allowed to vote here until 1962, and that's
6 something that all Canadians need to take note of.

7 So I want to thank both of you for -- for
8 your very thoughtful submissions. Thank you.
9 We'll take the break.

10 THE REGISTRAR: The hearing will now recess for 10 minutes.

11 **(PROCEEDINGS ADJOURNED AT 2:56 P.M.)**

12 **(PROCEEDINGS RESUMED AT 3:08 P.M.)**

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

14 THE COMMISSIONER: Miss Livingston.

15 MS. LIVINGSTON: Shall I start?

16 THE REGISTRAR: Name, please.

17 MS. LIVINGSTON: My name is Ann Livingston and I'm representing
18 the Vancouver Area Network of Drug Users, who were
19 granted full standing and were not able to get a
20 lawyer.

21 It's a very emotional day for some reason to
22 do this today. And the narrow confines and the --
23 what do you call them -- you know, to conduct the
24 hearings and find facts and be consistent with the
25 Attorney General and not screw up anything for any

1 prosecutors and to recommend changes considered
2 necessary respecting the initiation and conduct of
3 investigations in British Columbia of missing
4 women and suspected multiple homicides, to
5 recommend changes considered necessary respecting
6 homicide investigations in British Columbia by
7 more than one investigating organization,
8 including the co-ordination of those
9 investigations are very narrow and it's concerning
10 to me that, you know, how -- how is it that what I
11 might have to say would fit in any of those, so I
12 hope you're very creative.

13 THE COMMISSIONER: Well, I think -- no. I understand -- first
14 of all, I want to commend you for all the good
15 work you've done in the Downtown Eastside.

16 MS. LIVINGSTON: Thank you.

17 THE COMMISSIONER: The terms of reference are confined, as you
18 say, for good reason and we have to comply with
19 them. And I know that's been the concern of many
20 people who thought the terms of reference ought to
21 have been more expanded to include -- well, when
22 Grand Chief Ed John was here, he thought that on
23 behalf of the aboriginal communities we ought to
24 be dealing with the legacy of colonization,
25 residential schools, and to find out how we got to

1 where we are today. And the women, many of whom
2 were upset at the inquiry, were upset that
3 because -- that we were not dealing with the
4 issues regarding legalization of prostitution and
5 the systemic poverty of women in the Downtown
6 Eastside. Again, those are very, very valid
7 issues to deal with, but we have to confine
8 ourselves to the police investigation --

9 MS. LIVINGSTON: Right.

10 THE COMMISSIONER: -- and what happened in the police
11 investigation and as well the Crown's stay of
12 proceedings against Pickton in January, 1998. So
13 that's what the government wants answers on and we
14 have to deal with that. However, in your case,
15 you are representing VANDU. And it might be
16 helpful for you to deal with the policing in the
17 Downtown Eastside, the area that you're
18 particularly familiar with, and how the policing
19 impacts upon your clients, if you will, the
20 Vancouver Area Drug Users. And you've sat in on
21 many of the hearings. You've been here for a lot
22 of the time, so you've heard a lot of the
23 evidence, so it may be helpful if you told me what
24 you think is happening based on the evidence that
25 you've heard and what recommendations ought to be

1 made.

2 One of the concerns that we've heard here is
3 there's -- the relationship between people in the
4 Downtown Eastside and particularly the Vancouver
5 Area Drug Users and the police, and maybe you can
6 remark on those areas that I know that you're
7 familiar with that because you've dealt with those
8 issues in the past when you've appeared before me
9 at various hearings both here and in the community
10 forums. So you've been here many times. So if
11 you can deal with that and I'll hear you.

12 MS. LIVINGSTON: Thank you very much.

13 THE COMMISSIONER: Thank you.

14 MS. LIVINGSTON: I also want to acknowledge that many of the
15 members of the Vancouver Area Network of Drug
16 Users came today and I'm --

17 THE COMMISSIONER: Thank you for coming.

18 MS. LIVINGSTON: So VANDU was granted full standing to
19 participate in this inquiry and then denied
20 funding for a lawyer. The Vancouver Area Network
21 of Drug Users is a group of some 2,000 people who
22 use illegal drugs who work to improve the lives of
23 people who use drugs through user -- drug user to
24 user support and education. We are humbly funded
25 by the Vancouver Coastal Health Authority to

1 provide support, education and advocacy to our
2 large membership and have one full-time staff and
3 two part-time employees.

4 VANDU and its predecessor and hundreds and
5 hundreds of volunteers, VANDU and its predecessor
6 organizations, IV feed and the back alley drop-in
7 have been holding education and support meetings
8 for people who use drugs since 1995. Of the 60
9 murdered and missing women we estimate that over a
10 dozen participated in our grassroots drug user
11 organizations. The fact that the missing and
12 murdered women were known to be addicted to
13 illegal drugs, to have lived in the Downtown
14 Eastside of Vancouver and to have used heroin,
15 cocaine or both for many years has largely been
16 ignored by this inquiry. Although they were
17 referred to as sex workers or more derogatory
18 names, it is understood that almost universally
19 they sold sex to get money for illegal drugs and
20 that they were severely, desperately addicted.

21 They were known to be on welfare and to live
22 wretched -- in wretched conditions, in squalid,
23 single-room occupancy hotels. They were called
24 druggies and junkies and junkie hos by hospital
25 staff, by the media and the public. They were

1 relentlessly harassed, arrested and abused by
2 police. They were turned away from hospitals and
3 detox centres and drug treatment facilities and
4 were excluded from community centre programs
5 without even being able to use public toilets or
6 telephones. Predators were often kinder to them
7 than service providers and civil servants.

8 Addiction is a diagnosable illness and is
9 recognized as a chronic recurrent disability.
10 Once diagnosed, addiction can be treated by a
11 physician. Many, many of our beloved missing and
12 murdered women were not recognized as ill and were
13 instead arrested and charged numerous times by
14 police for crimes such as communicating for the
15 purpose of prostitution, for theft and for
16 possession and possession -- for possession of
17 drugs and for possession of drugs for the purpose
18 of trafficking.

19 Many of our women had warrants for their
20 arrest, not just for crimes, but for missing court
21 dates, for violating bail conditions and for
22 missing probation appointments. Most Canadians
23 and most lawyers and most police do not understand
24 how unfairly the criminal justice system works for
25 poor people or they would act to end the injustice

1 inherent in it. When even a tiny offence such as
2 jaywalking or vending is ticketed by the police, a
3 crisis is created for a person too poor to pay and
4 they will end up wrestling a system that
5 efficiently and relentlessly pursues them for this
6 puddle of debt.

7 As we speak, our MLAs are passing new laws
8 that will ensure that women who have SkyTrain
9 tickets are pursued for the debt they have
10 incurred for riding without fare on our publicly
11 funded system. They plan to collect such fines
12 going back 10 years. There is also \$100 million
13 being spent constructing turnstiles to prevent
14 people from entering the public transit system
15 without a fare. These are the exact initiatives
16 that put poor marginalized and drug-addicted women
17 at further risk. If women cannot ride the transit
18 system, they will be forced to hitchhike to get
19 around the Lower Mainland. Ironically, women
20 criminalized because of their addiction issues
21 will find themselves even more unable to get to
22 the more than 12 court dates on average for each
23 criminal -- that each criminal charge generates.
24 These court dates are either preceded or followed
25 by jail time and then another probation order,

1 which is very difficult for people to follow and
2 causes them to have to go to many, many more
3 appointments.

4 If there is anything useful to come from this
5 inquiry, let it be a thorough review and a
6 critical analysis of the current mining of the
7 poor and ill to fuel overtime hours for police, to
8 fill our new and privately owned and operated
9 prisons and to ensure their return to jail because
10 of a violation of a conditional sentence.

11 To be clear, women are avoiding going to
12 cement cells where -- the description of being in
13 Surrey pretrial is you're locked down for most of
14 the time. There's no natural light. You're
15 allowed out for an hour a day and that's on to a
16 cement court. You never touch grass or touch
17 anything green growing. You're served rotten food
18 in a sick environment. The women come in there
19 from off the street and they're suffering
20 different stages of withdrawal. The ones who are
21 too sick to hold their heads up are dependent on
22 others who are coming along in the withdrawal
23 because there really isn't enough staff. And
24 that's from Betty Krawczyk, who served a lot of
25 time in jail for protesting the cutting down of

1 trees, but documented her time in there in a very
2 useful way.

3 This same criminal justice system will not
4 help women when they are needing help for serious
5 offences committed against them like the forcible
6 confinement, rape, and attempt murder.

7 Ironically, women who go to the police for help
8 cannot be assured they will not be arrested for
9 warrants outstanding from their inability to pay
10 fines for offences they should not have been
11 charged with in the first place.

12 It is my understanding that recent changes in
13 legal aid, which most vulnerable women rely when
14 they go to court, will reward lawyers with cash
15 incentives if they can convince their client to
16 plead guilty to the charges against them without
17 going to trial. This will put vulnerable women at
18 further risk as they will be incarcerated more
19 frequently without access to medical treatment for
20 addiction.

21 Addiction is not well understood as an
22 illness, but seems to be more common amongst
23 people who have suffered trauma. Because
24 addiction is so poorly understood, the treatment
25 offered to addicts range from surrendering their

1 lives to a higher power to ingesting methadone
2 daily under strict guidelines, which include
3 peeing in cups for drug testing under the watchful
4 eye of medical personnel.

5 The failure rates of drug treatment programs
6 are very high with as many as 90 percent of those
7 entering some drug treatment programs using drugs
8 within a few months of entering the treatment.
9 This drug treatment failure can be catastrophic
10 for women resulting in the permanent removal of
11 their children who are lost to foster care system
12 and permanent adoption.

13 Incarceration acts the same way. We had a
14 program where women if they happened to get
15 pregnant -- I mean be arrested while they were
16 pregnant and gave birth in jail were able to keep
17 their children, and two years ago this program was
18 discontinued. And for these kinds of crimes to
19 lose custody of a child for the rest of your life
20 is a very serious kind of punishment. It's cruel,
21 I think.

22 Anyway, ironically this family dislocation
23 results in increased drug use for women,
24 overcoming the loss of their apprehended children,
25 and for the children torn from their families and

1 placed in foster homes are at extreme risk of
2 experiencing mental health and addiction issues
3 themselves.

4 It is tempting for those in the legal system
5 to see drug courts as the middle path,
6 acknowledging people who use illegal drugs as both
7 criminals and as people in need of medical
8 treatment for addictions. Drug courts are
9 expensive and ineffective and have poor outcomes
10 for extremely marginalized and vulnerable women.
11 Our community courts at first glance appear to be
12 a good idea, but we have seen the same problems of
13 multiple delays and proceedings as regular courts
14 and failures at implementing social supports for
15 sentence participants.

16 So the community courts get clogged up
17 because they have the ideal of saying I assign you
18 to housing and then there is none. So it's a
19 failure of the entire system. They could be a
20 good idea if we had, you know, a social network
21 that really worked.

22 We cannot in good conscience conclude this
23 inquiry without acknowledging that the current
24 drug laws of Canada did contribute to the failure
25 of the police in Vancouver and around the province

1 to take seriously the disappearance of these 60
2 women. We can go on to say that the majority of
3 Canadians support changing our drug laws. A
4 volume of research shows that drug-addicted
5 individuals go into extremely high risk
6 environment, i.e. alleys, under bridges, abandoned
7 buildings, et cetera in an effort to evade
8 street-based drug law enforcement strategies which
9 are not subject to evaluation. They receive the
10 lion's share of tax dollars. And this is
11 enforcement, police, as a strategy for dealing
12 with the drug problem.

13 For instance, when the auditor general last
14 reviewed Canada's drug strategy in 2001, its
15 report estimated that of the \$454 million spent
16 annually on illicit drug control efforts in
17 Canada, 226 million, which is 93.8 percent, was
18 devoted to drug law enforcement. The rest at 7
19 percent is divided up amongst prevention,
20 education and -- prevention, education, treatment
21 and something like harm reduction.

22 The report further concluded:

23 Of particular concern is the almost complete
24 absence of basic management information on
25 spending of resources, on expectations and on

1 results of an activity that accounts for
2 almost \$500 million each year.

3 I'm sure it's more now. The terrible behaviour of
4 the police towards women who use illegal drugs and
5 sell sex is partially due to the entrenched police
6 culture that rewards traditional performance
7 measures such as arrests and that drug-related
8 arrests are the very easiest with hundreds of
9 available obvious marginalized drug users on our
10 streets.

11 Commendations and promotions for police are
12 often the result of high arrest statistics and,
13 furthermore, court time earns officers large
14 amounts of publicly funded overtime pay.

15 We have heard and are certain that the police
16 refer to people who use drugs as hypes, druggies,
17 junkies and women who use drugs as junkie hos,
18 whores. To be fair, many other professionals are
19 guilty of this and particularly in the time period
20 where these women were disappearing. We've seen a
21 change in people's language because of groups like
22 VANDU, I might add.

23 This, of course, leads to the compounding of
24 hopelessness and self-hatred that many people who
25 use illegal drugs experience and find they are

1 unable to find drug treatment other than the
2 rigid, poorly run abstinence-only treatment. So
3 I'm urging you to write something -- that
4 something comes out about the drug treatment in
5 British Columbia.

6 We need to oversee our police. They need to
7 be accountable to civilian oversight. They need
8 to be transparent with how they spend tax dollars,
9 how spending priorities are set, and they need to
10 be stopped from mining certain neighborhoods for
11 crime to advance their already bloated budgets and
12 their personal incomes with huge overtime
13 payments. They need to be integrity tested and
14 the police courts and jail system need to be
15 mystery shopped regularly.

16 Police need to be properly trained and to be
17 polite to the public and kind and considerate to
18 people who are mentally ill and/or addicted. They
19 need to be fired if they are not. I am both the
20 relative of a missing woman who was native and who
21 used illegal drugs and a resident of the Downtown
22 Eastside for 19 years. I have worked extensively
23 with people who use illegal drugs and have
24 observed closely how the police investigate
25 missing women. I observed the changes made by

1 police as the enormity of the problem of missing
2 women grew. I have concluded that police should
3 only have a partial role in looking for people who
4 go missing.

5 The people the police often look for are --
6 the people police look for are often avoiding them
7 because despite the stupidity of arresting and
8 re-arrestomg vulnerable, addicted women, the
9 police refuse to stop targeting them with sweep
10 after sweep to remove them from the public eye in
11 order to help increase property values in the
12 Downtown Eastside.

13 A better approach to finding missing women
14 would include clauses in welfare and pension and
15 medical and court place to alert a trusted family
16 member or friend when someone does not show up to
17 get their cheque or misses multiple medication
18 pick-ups. This would pinpoint the time of the
19 disappearance and the police could get involved
20 after that. When the police are the only people
21 who can get information about a person who may be
22 avoiding police, the families are stuck in a
23 sustained panic, not knowing what has happened to
24 their loved one and are not able to get
25 information from police.

1 My family reported Elsie Sebastian missing
2 for eight years before we were able to have her
3 added to the missing women list. I urge this
4 commission -- I mean even though she didn't pick
5 up a welfare cheque in November of 1992, that's
6 when she went missing. That's when she could have
7 been reported. She overdosed and was at Lions
8 Gate Hospital. That was her last contact with the
9 health care system. Welfare sent a \$50 grocery
10 voucher to a store on the North Shore. We don't
11 know if she spent it, but that was it. After that
12 there's silence. And we could have known that
13 earlier. We could have asked people. We could
14 have gone to the North Shore and tried to find her
15 or find someone who had seen her.

16 I urge this commission to examine the problem
17 of resource allocation in understanding how and
18 why so many people went missing and to prevent
19 such a horror from happening again.

20 The province we live in currently spends 40
21 percent of tax dollars collected on health care
22 budget, over \$12 billion. Shockingly little is
23 spent on ensuring people do not get sick in the
24 first place, on adequate incomes for families who
25 find themselves destitute, on safe, affordable

1 housing and on programs where people who have
2 problems can regain dignity and inclusion in
3 society.

4 What we have seen instead is no money for
5 housing and income programs for people living in
6 poverty, but a large amount of our tax dollars
7 going to build prisons, not just prisons, but
8 remand centres. All evidence shows that going to
9 prison damages people with poor health outcomes,
10 poor ability to cope in society when let out of
11 prison. And incarceration breaks up families,
12 creating predictable negative consequences for
13 foster care and for more imprisonment so that
14 children in foster care often have children who
15 end up in foster care, as do children of prisoners
16 end up in prison.

17 We know that our missing women and many of
18 our vulnerable women on our streets today are not
19 helped with the increased arrests we have seen our
20 police engaged in and most of our tax dollars
21 squandered on. And I'm talking about the civic
22 budget. It has -- the largest single item is
23 policing. They are often rejected by women's
24 programs and community centres and homeless
25 shelters. It is now indisputable that people

1 criminalized by their drug use can be welcome to
2 low threshold programs such as opiate and
3 stimulant substitution programs, drug consumption
4 rooms and member run drop-in facilities. These
5 well researched initiatives are extremely cost
6 effective, but there exists no funding for them as
7 it appears that billions are going for new prisons
8 and increased policing.

9 We heard again and again in the sessions on
10 keeping our vulnerable women safe, the public
11 sessions, that advocacy and support centres in the
12 community are facing cuts to already inadequate
13 funding while billions are spent on preventing --
14 on treating preventable illnesses such as HIV and
15 hepatitis C. Repeated ambulance trips in the
16 Downtown Eastside are \$24 million a year. There's
17 a hundred ambulance calls a day, repeated
18 emergency room visits from these if only 60
19 percent go on those ambulance things. That's
20 another 24 million. Increased court costs and,
21 worst of all, maximum security cells where ill
22 people are sent to await trial for being addicted
23 and poor and unable to avoid police.

24 To state that the police, the courts in our
25 community have failed -- has failed the missing

1 women and their families is a huge understatement.
2 So it is important to move forward to deter such
3 failure in the future and we do. And we do not
4 have such reassurance with Sister Watch and the
5 new procedures for missing women or the police
6 policy of support for initiatives they have been
7 forced to accept such as Insite.

8 A brief visit to Hastings Street will expose
9 you to police who are aggressive, rude,
10 unrelenting and unable to stop exploiting the very
11 people they are tasked to protect. On top of
12 this, you may see a film crew accompanying our
13 special Downtown Eastside police force, making a
14 for profit reality TV series called The Beat
15 despite repeated requests and vigorous demands
16 they stop filming. They have refused.

17 So I urge you, commissioner, to not just take
18 police at their word when they say they work
19 closely with the community, but to create a legal
20 and enforceable way they can actually be held
21 accountable to the communities they serve.

22 One wonders where and how the families,
23 especially the children of the missing women, will
24 proceed with their lives, feeling that the
25 terrible suffering they have experienced can be

1 put behind them. I cannot help but think there
2 needs to be an acknowledgment to each child and
3 each grandchild from you, directly from you, Mr.
4 Oppal, a letter, something. Are they sorry
5 enough -- sorry.

6 And we need a legacy fund. The police say
7 they are sorry and that we've heard that many
8 times. And it's -- certainly I think we are
9 grateful to hear the apologies. Are they sorry
10 enough to ensure that there is a college or
11 education fund for these children and their
12 children? We see the Odd Squad raise millions for
13 their foundation, which messages that needle
14 exchange is a failed social experiment, that
15 InSite promotes drug use and that addicts are
16 making bad decisions. This ideological war with
17 police must end before more people die. BC has
18 been a leader in the world for innovative, well
19 researched drug treatment and has taken a Charter
20 case to the Supreme Court of Canada challenging
21 the prostitution laws.

22 The idea that a rogue band of officers can
23 challenge the medical research on addiction
24 treatment and be given full power to terrorize the
25 men and women who find themselves on Hastings

1 Street homeless and addicted is unacceptable and
2 points to a terrible flaw in the accountability
3 and governance of police. The board and the
4 brass -- the board and the brass of the VPD
5 support leading addiction -- treating addiction as
6 a medical problem and embrace harm reduction. The
7 police on the street enact harm production.

8 In closing, the telling of the truth of these
9 women's lives rests with your report. I didn't
10 know what I was going to say, so I urge you to
11 tell the truth about whatever you can and to make
12 very strong enforceable recommendations.

13 THE COMMISSIONER: Thank you, Miss Livingston.

14 MR. VERTLIEB: That covers the schedule for today. We have two
15 housekeeping issues, one other matter. Perhaps,
16 Mr. Giles, we could mark the documents that you
17 have that were previously marked for ID as
18 exhibits proper. And you can just do that and
19 give the numbers later on. It doesn't need to be
20 done right this moment.

21 THE REGISTRAR: Just to give you a quick idea, it will be 218
22 NR down to 229 NR and all counsel will be getting
23 a copy this evening.

24 MR. VERTLIEB: Thank you very much. Secondly, we have
25 affidavits from Mr. Fell and Mr. Wolthers that

1 have been distributed but should be marked as
2 exhibits proper.

3 THE REGISTRAR: The one for Mr. Fell will be 230. Now, is that
4 to be NR?

5 MR. VERTLIEB: No. That doesn't need to be.

6 THE REGISTRAR: Okay. And the one for Mr. Wolthers will be
7 231.

8 (**EXHIBIT 230:** Affidavit of Mr. Fell)

9 (**EXHIBIT 231:** Affidavit of Mr. Wolthers)

10 MR. VERTLIEB: Thank you. And there's one other matter, Mr.
11 Commissioner. More than one participant has
12 inquired about the late filing of written
13 argument. As you recall, you had given an
14 instruction that all closing arguments were to be
15 filed by Friday, June 1 and there are still a few
16 participants who have not filed and if they choose
17 to do so, perhaps you might have a firm date on
18 that so that the participants who wish to reply
19 can do so in short order and have this matter come
20 to a conclusion so you can move on with the
21 important work that you have to do.

22 THE COMMISSIONER: All right. Well, I -- in light of the fact
23 that we said last Friday, I don't think it's
24 unreasonable that I'll give those people who
25 haven't had the -- who haven't filed written

1 arguments to file them by this Friday and there
2 will be a reply by the deadline of the following
3 Friday.

4 MR. VERTLIEB: Thank you. And that concludes the matters for
5 this afternoon.

6 THE COMMISSIONER: Mr. Gratl?

7 MR. GRATL: I can say, Mr. Commissioner, that I will not be
8 done my written submissions by this Friday. Given
9 the scope of my mandate and the interests that I'm
10 required to represent, I have to give
11 consideration to all of the testimony, all of the
12 issues that arise and make suggestions for fulsome
13 recommendations.

14 THE COMMISSIONER: You tell me what you think is reasonable.
15 Keep in mind that everybody here is dealing with a
16 broad range of issues. I recognize that you have
17 almost an amorphous --

18 MR. GRATL: It's a sweeping mandate and leaving things out is,
19 I think, not a good idea for me. I'd like to do a
20 fulsome job to satisfy my mandate in the
21 completest sense as possible and so I'd like the
22 end of the month if that's possible, Mr.
23 Commissioner.

24 MR. VERTLIEB: Well, the practical problem is that you need to
25 start working on your report and I leave it to

1 you, but that certainly poses some technical
2 problems, I'm sure, for many of the participants,
3 including your own staff.

4 THE COMMISSIONER: Yes. I have to -- I have to start writing
5 this thing, and that's the difficulty with that.
6 And then people may want to respond to your
7 written argument, so -- Mr. Hern?

8 MR. HERN: I just note that, you know, we all had to work
9 extremely hard to pull together the arguments and
10 the submissions for the date that you did set and,
11 you know, sacrificed a couple of weekends to pull
12 that together. So necessarily you're going to
13 have to -- you're going to have to limit the --
14 excuse me.

15 THE COMMISSIONER: You know, I would ask that if you're going
16 to stay here to give counsel an opportunity and
17 the courtesy to be heard. You know, I've been
18 fairly liberal by allowing the outbursts that have
19 taken place, but I think it's -- I think it's
20 basic politeness that we listen to one another.

21 MR. HERN: So, anyway, my point, Mr. Commissioner, is that, you
22 know, all the other participants had to narrow
23 down the scope of their arguments, so they didn't
24 cover every single witness and so on. I mean that
25 is -- can be a duplicate of your own job. And we

1 all picked issues that we thought were important
 2 for our clients and had to make some choices in
 3 that regard. And so I would respectfully submit
 4 that pushing it off to the end of the month
 5 unnecessarily prolongs the issue because for all
 6 of our clients we have an opportunity to respond
 7 to Mr. Gratl's submission, and so I would just ask
 8 for a more narrow and reasonable time frame for
 9 that.

10 THE COMMISSIONER: Okay. Anybody else have any comments?

11 MR. GRATL: I just say, Mr. Commissioner, it's not a fair
 12 comparison because, of course, the Vancouver
 13 Police Department has had more than a decade to
 14 prepare and they've also had the benefits of
 15 having their -- they've also had the benefit of
 16 having the bulk of their position set out in a
 17 500-page report, which they prepared over the
 18 course of a decade. Similarly, institutional
 19 interests like the Government of Canada have an
 20 enormous legal team, an enormous legal team, and
 21 their issues are even confined to the RCMP side of
 22 things. As far as the individual police officers,
 23 their interests that they're to serve are much
 24 more narrow and can be reduced to just a small
 25 number of witnesses.

1 So the comparison really that my friend --
2 and I'm sensitive to Mr. Hern's need to respond in
3 a way on behalf of his client, but -- Ms. Narbonne
4 suggests ask for two weeks. You'll get it.

5 MS. NARBONNE: Well, I'll support him.

6 THE COMMISSIONER: I didn't know you were the commissioner, Ms.
7 Narbonne.

8 MS. NARBONNE: I just told him I'd support him.

9 THE COMMISSIONER: Maybe you'd like to come and sit up here and
10 make the decision. Well, you know, look, I want
11 to be fair here to everybody and I want to be
12 reasonable. I know how difficult this -- this
13 undertaking is to file written arguments and I
14 note that -- what Mr. Roberts has done and I see
15 some of the arguments that I had the opportunity
16 to read yesterday, thorough arguments. And I
17 don't want to be unfair to you, but at the same
18 time I have to be fair to everyone else here
19 because people will no doubt want to respond to
20 what you will say in your written argument. So
21 I'm -- okay. What I'll do is I'll compromise and
22 as opposed to -- I'll give you until the middle of
23 next week -- that's June 13th -- to file. I'm
24 sure you can -- you can do a more than adequate
25 job in that length of time. That's another 10

1 days. And then --

2 MR. GRATL: I'll see what I can do. That's all I can promise.

3 THE COMMISSIONER: I'm sure you'll --

4 MR. GRATL: But I will make best efforts to comply with your
5 deadline, Mr. Commissioner.

6 THE COMMISSIONER: So when do you need to respond to that?

7 MR. HERN: Just a week.

8 THE COMMISSIONER: A week? Is that appropriate and adequate
9 for everybody? All right. A week after that to
10 the 20th to respond. Thank you.

11 MR. VERTLIEB: 9:30 tomorrow, Mr. Commissioner.

12 THE COMMISSIONER: All right. Thank you.

13 THE REGISTRAR: The hearing is now adjourned until 9:30
14 tomorrow morning.

15 **(PROCEEDINGS ADJOURNED AT 3:48 P.M.)**

16 I hereby certify the foregoing to be
17 a true and accurate transcript of the
18 proceedings transcribed herein to the
19 best of my skill and ability.

20 Kathie Tanaka, Official Reporter
21 UNITED REPORTING SERVICE LTD.

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