

Vancouver, B.C.

November 30, 2011

(PROCEEDINGS RECONVENED AT 10:00 A.M.)

THE REGISTRAR: Order. The hearing is now resumed.

THE COMMISSIONER: Yes.

CROSS-EXAMINATION BY MR. GRATL:

Q Deputy Chief, in your report at page 195 you assessed the failure of Vancouver Police Department management to appreciate that sex trade workers in the Downtown Eastside are generally not transient?

A Sorry, are you asking me to agree with you?

Q Yes.

A Yes, I did write that. I wrote more about that issue, but yes.

Q One of the things you note is that Detective Constable Shenher repeatedly pointed out beginning very early in August of 1998 that the missing women are frequently in contact with family members and government agencies prior to that their disappearances?

A Yes.

Q Which is contrary to the transience theory?

A Yes, in a long-term basis. I wrote about the fact that they would be transient on a short-term

1 basis. Dave Dickson talked about how, look, they
2 will go missing for a few weeks at a time but then
3 they show up again. So on a long-term basis, yes,
4 they weren't transient.

5 Q We heard an awful lot of expert evidence from
6 Professor Lowman and Susan Davis regarding the
7 very tight contact that sex workers, survival sex
8 workers have with the community, including with
9 their dealers and with healthcare providers.

10 A Yes, many of them that's true.

11 Q You don't disagree with any of that?

12 A No.

13 Q All right. And you note that some of the senior
14 management, not all, you specifically exclude
15 Deputy Chief Gary Greer, some of the senior
16 management adhere to this transience theory?

17 A Yes.

18 Q And Inspector Biddlecombe is among those senior
19 management members?

20 A He was one of the managers that was very skeptical
21 that they wouldn't be found given sufficient time
22 to look for them.

23 Q Yes, I know, but I'm asking specifically about
24 adherence to this transience theory. Biddlecombe
25 was one of the people who did adhere to the --

1 A Yes, he --

2 Q -- transience theory?

3 A -- believed that they were transient.

4 Q I think we spoke over each other there. Inspector

5 Biddlecombe adhered to the transience theory,

6 correct?

7 A I believe so, yes.

8 Q Who else within senior management adhered to the

9 transience theory?

10 A I think that Deputy Chief McGuinness accepted that

11 from Inspector Biddlecombe. It seemed that Chief

12 Constable Chambers believed that. I can't

13 remember exactly what Chief Constable Blythe said,

14 but I think that he probably thought that they

15 were transient.

16 Q This transience theory is in the nature of a

17 generalization about a group of individuals that

18 lacks empirical foundation, isn't it?

19 A I think that there is empirical foundation for

20 some groups of sex trade workers to be transient

21 in the way that they thought, but I agree that

22 there wasn't an empirical basis for believing that

23 about the survival sex trade workers in the

24 Downtown Eastside.

25 Q And, of course, it was only survival sex trade

1 workers that were missing?

2 A That is my belief.

3 Q And that was their belief too, wasn't it? I mean,
4 there wasn't a misconception about escort workers
5 going missing?

6 A I'm not sure of their level of understanding of
7 who the women were, but generally I would agree it
8 was generally understood that they were missing
9 from the Downtown Eastside.

10 Q Right. These inspectors, McGuinness, Biddlecombe,
11 Chambers, these officers were aware that it was
12 survival sex workers, drug dependent, in the
13 Downtown Eastside that were going missing, weren't
14 they?

15 A I believe that they were generally, yes.

16 Q And there was no empirical foundation for their
17 generalization about this group of missing women
18 to support the notion that they were transient;
19 isn't that correct?

20 MR. HERN: I just want to make sure that we're clear in
21 fairness to those officers who are testifying that
22 what is being asked is simply Deputy Chief
23 LePard's opinion about what is his view in the
24 course of his review as to what these officers may
25 have believed. I mean, this is a question about

1 what they believed in their mind --

2 THE COMMISSIONER: I agree.

3 MR. HERN: -- and I just worry about those officers coming to
4 face this inquiry after people have already
5 testified about what was in their mind.

6 THE COMMISSIONER: I know that. This is fairly repetitious. I
7 agree with you. I've heard this before, though,
8 transient -- the belief that many of them were
9 transient. In fact, many of them had families,
10 and many of them had roots in the community, and
11 many of them had friends who inquired about their
12 presence, and we've heard a lot of that, so I
13 don't know if it's doing me any good to -- or
14 assisting me at all to hear what other officers
15 thought.

16 MR. GRATL:

17 Q So, Deputy Chief, then there's no empirical
18 foundation for that generalization about survival
19 sex workers, that they are -- they tend to be
20 transient?

21 A Well --

22 THE COMMISSIONER: Well, I think he's already acknowledged that
23 the -- that while that -- there was that
24 prevailing attitude amongst some members of the
25 police that really the belief may have been

1 erroneous. Is that not your position?

2 A Yes, and that not only that, although I'm not
3 disagreeing with you, that there were things that
4 happened that led them astray in that, for
5 example, women who had been reported missing years
6 before were found.

7 THE COMMISSIONER: Were found.

8 A And that fed into their erroneous belief that
9 others would be found as well.

10 MR. GRATL: Well -- so I'd like to explore this area because
11 the witness hasn't answered some of the questions
12 that I think are germane here.

13 THE COMMISSIONER: That what?

14 MR. GRATL: The witness hasn't answered some of the questions
15 that are germane to the analysis of stereotyping.
16 I want to ask this witness whether --

17 THE COMMISSIONER: Yes.

18 MR. GRATL: -- effectively McGuinness, Chambers, and
19 Biddlecombe relied on a stereotype of survival sex
20 workers.

21 THE COMMISSIONER: Well, I think he's already said that, that a
22 lot of them did, and he said that there may have
23 been some validity to that theory because many of
24 them turned up later. He specifically made
25 reference to Ada Prevost being found in Arizona

1 and two other women who were found in Ontario,
2 that that fed into the theory that they were
3 transient, that sooner or later they would turn
4 up, and, in fact, we know now that many of them
5 didn't turn up, and so that theory -- that
6 generalization was not accurate. I don't know
7 what more you need to ask.

8 MR. GRATL: Well, here's what I need to clarify, Mr.
9 Commissioner.

10 Q The First Nations Summit on February 13th, 1997,
11 asked the Attorney General to look into the
12 murders of 55 aboriginal women in the Vancouver
13 area, correct?

14 A Yes.

15 Q And then the Vancouver Police Department was asked
16 to look into that issue?

17 A The Attorney General asked the Provincial Unsolved
18 Homicide Unit to look into the issue, and the
19 Vancouver Police Department loaned Constable Dave
20 Dickson to the Provincial Unsolved Homicide Unit
21 to assist with that task.

22 MR. VERTLIEB: Mr. Commissioner, I don't mean to be difficult.
23 We've heard all about this.

24 THE COMMISSIONER: I know that.

25 MR. VERTLIEB: And --

1 THE COMMISSIONER: I know that.

2 MR. VERTLIEB: -- I just want to give you a bit of an
3 understanding of the timing we're at. We have
4 fallen behind. We should have well been into
5 Williams by now. We are going to be asking our
6 colleagues for estimates of time on the witness
7 list we've prepared. I fear that that's going to
8 give an estimate of time that won't work to what I
9 think was necessary to accomplish our job to give
10 you the evidence that you need. Ms. Tobias has
11 said she'll be half a day to a day with Deputy
12 LePard. Superintendent Williams is in town, and I
13 was hoping to start him tomorrow. Ms. Tobias
14 shouldn't be cut off because her work is
15 important, so I'm just hoping that you would
16 understand that going over old ground is
17 absolutely detrimental to the smooth development
18 of the evidence you will need to do the job that
19 you've been asked to do.

20 THE COMMISSIONER: Yes, I agree with you. Mr. Gratl.

21 MR. GRATL: Well, I haven't asked the question yet, Mr.
22 Commissioner.

23 THE COMMISSIONER: Well, you've already gone over ground this
24 morning that I already know.

25 MR. GRATL:

1 Q The question that I wanted to put to the witness
2 was this, Mr. Commissioner. The First Nations
3 Summit never said that the women were missing, did
4 they? It wasn't that Dickson found women who were
5 alleged to be missing. The First Nations Summit
6 said they were murdered.

7 A No, that's not my recollection of the work that
8 Constable Dickson was doing. I don't recall
9 exactly what was in the letter. I know that there
10 was --

11 MR. GRATL: It's in the witness brief of documents, Volume 1,
12 Phase 1 under tab 5. It says:

13 We're asking your intervention in a serious
14 matter involving the criminal investigations
15 of the brutal murders of fifty-five
16 Aboriginal women...it appears not all the
17 necessary steps were taken to investigate and
18 solve the multiple murders.

19 There's no suggestion that they were missing and
20 that Dickson found them. They were known to be
21 murdered. That's my point, Mr. Commissioner. We
22 have not trodden over that ground yet, and with
23 your leave I would ask that the witness be
24 permitted to answer the question.

25 THE COMMISSIONER: That discrete question, that, in fact, they

1 were concerned about murdered women and not
2 missing women?

3 MR. GRATL: Yes.

4 THE COMMISSIONER: All right. Are you able to answer that?

5 A I would need to review that letter again. My
6 recollection is, and I could be wrong, that some
7 of those women that that letter identified that
8 were believed to have been murdered, and I agree
9 with you, I'm sure that you read that correctly,
10 that they believed them to be murdered, in fact
11 weren't.

12 MR. GRATL:

13 Q Well, and what you put in your report is that the
14 First Nations Summit list was appropriately
15 discredited by the work of Detective -- or
16 Constable Dickson, and I'm suggesting to you that
17 that couldn't be further from the truth. The list
18 was never put forward as a list of missing women
19 in the first place, and it's inappropriate to
20 describe the list as being discredited by the work
21 of Dave Dickson.

22 A What I was referring to, and I don't know if
23 you're quoting directly from my report, was that
24 the context was that there was this list of 71
25 missing and murdered women because there was

1 information from the First Nations Summit and also
2 was added to by the --

3 THE COMMISSIONER: So Constable Dickson found all but two, and
4 then they learned afterwards there were others
5 that were missing.

6 A Yeah, he accounted for the women. They either had
7 been investigated, and, for example, as I said,
8 the ones that had occurred in Vancouver, eight of
9 the ten of them had, in fact, been solved. He
10 accounted for others that my recollection is had
11 not been murdered, that they were findable or that
12 they had died of other causes, for example,
13 overdose deaths or that sort of thing, or because
14 of the information that was added he was able to
15 account for women that were not missing. And so
16 my point in the report was that there was this
17 prevailing view by managers that -- as Constable
18 Dickson said, these lists come up all the time
19 that women are missing, they've been murdered, and
20 then we look into it and it turns not to be the
21 case, but in doing his work what he said was, "I
22 identified women that I could not find that I was
23 concerned were missing," and that was what was the
24 catalyst for him writing a report saying, "Look,
25 I've been able to account for these women, but I

1 have not been able to account for other women."

2 MR. GRATL:

3 Q But what I'm suggesting is that your conclusion in
4 your report that the First Nations Summit list was
5 appropriately discredited is inappropriate and
6 wrong.

7 A Well, are you quoting my words there?

8 Q Yes, "discredited" is the word that you used,
9 "appropriately discredited".

10 A So I wouldn't want that to be -- I probably should
11 have been more careful in my words then, because I
12 wasn't referring to their list exclusively. I was
13 referring to the list of 71. And so I would want
14 to look at what I wrote in the context, but if I
15 -- if that caused offence or was misinterpreted in
16 the context, then I apologize for that. That was
17 not my intention. It was in the context of
18 writing why managers formed this opinion that,
19 look, we've been through this before, we'll be
20 able to find these new missing women as well, and,
21 of course, they were wrong.

22 Q And then the further problem then that if senior
23 management relied on Dickson's findings to somehow
24 support the transience theory, well, that would
25 have been inappropriate too?

1 A Yes, and what I wrote in my report was that they
2 gave too much weight to the fact that he was able
3 to account for these 71 and too little weight to
4 the fact that he wasn't able to account for the
5 new missing women that he had identified. So I
6 said the same thing.

7 Q And I don't take issue with the latter, but with
8 the former, he wasn't accounting for anyone
9 asserted by anyone to be missing in the first
10 place, but I've already asked that question.

11 So then turning to the next issue, you are
12 aware of the bad date sheets, that --

13 A Yes.

14 Q That sex workers for a long period of time
15 prepared sheets --

16 A Yes.

17 Q Effectively warnings to each other?

18 A Yes.

19 Q And many of them adhered to that bad date sheet
20 practice?

21 A Many of the sex workers?

22 Q Yes. They read the sheets, and they reported on
23 the sheets, correct?

24 A Yes, that's my understanding.

25 Q All of that's predicated on their ability to

1 change their behaviour depending on the
2 information they receive about johns?

3 A Yes.

4 Q Okay. And then you are aware that there's a
5 suggestion in the evidence that Robert William
6 Pickton was having a hard time getting sex workers
7 into his car after a while and so he needed the
8 assistance of accomplices, believed to be Taylor,
9 Ellingsen, and Houston?

10 A Yes.

11 Q Okay. So that shows that there's a change in the
12 behaviour of sex workers, survival sex workers
13 depending on the information they have?

14 A Well, the information came from someone about what
15 Pickton believed. I don't know what the sex trade
16 workers themselves believed.

17 Q All right. Then there's evidence from you about a
18 train the trainers program for survival sex
19 workers --

20 A Yes.

21 Q -- to defend themselves and change their behaviour
22 depending on the circumstances?

23 A Yes. I don't know if "defending" themselves is
24 the right word. It was more about diffusing and
25 not getting into dangerous situations.

1 Q Plainly that program is predicated on the idea
2 that sex workers can learn from information,
3 digest the information, and change their practices
4 and patterns of behaviour?

5 A Yes, I think that that was the idea, that some sex
6 trade workers could do that.

7 Q And then there were weekly safety meetings with
8 Dave Dickson at the WISH Drop-In Centre in the
9 basement of the First United Church?

10 A Yes, I understand that to be true.

11 Q That's predicated on the ability of survival sex
12 workers to change their behaviour depending on the
13 information exchanged at those safety meetings,
14 isn't it?

15 A I agree that it is predicated on the possibility
16 of that. I also think that you need to look at
17 the statement of Dave Dickson, who was very
18 familiar, and he said, "Look, you can't protect
19 them because they're so driven by their addictions
20 that it doesn't matter. There can be a gun
21 sitting on the dashboard, and if the -- you know,
22 if they need a fix and they need money, they're
23 going to get in the car with anybody no matter
24 what."

25 Q Okay. So we've got these four pieces of evidence,

1 the bad date sheets, the accomplices, the train
2 the trainers program, and the weekly safety
3 meetings, all of which suggest that sex workers
4 are able to change their behaviours, and do, in
5 the light of information they receive, correct?

6 A To some extent. There wasn't anything that was
7 going to make a deeply addicted sex trade worker
8 realistically stop being a sex trade worker, for
9 example, because they were so driven by the things
10 that put them there in the first place, but you're
11 asking me whether they might?

12 Q Change their behaviour to improve their safety
13 based on information received --

14 A Yes.

15 Q -- or training received.

16 They're capable of doing that?

17 A Yes.

18 Q All right. So when you write in your report that
19 it wasn't appropriate or necessary to issue a
20 report to the public and to sex workers that there
21 may be a serial killer preying on them, I take it
22 that that's wrong?

23 A No. I think that you've jumped topics here
24 because it's one thing to provide specific
25 information, like in a bad date sheet, that there

1 is a specific bad date, don't get in the blue
2 truck, whatever it is. It's another thing to
3 provide a general warning. The sex workers
4 themselves already clearly believed that to be the
5 case. They were the ones, and their advocates,
6 bringing those theories forward.

7 Q Don't you write in your report, Deputy Chief
8 LePard, that sex workers were too drug dependent
9 to change their behaviour so it wasn't necessary
10 or would have been superfluous to issue a warning
11 about a serial killer to them? Isn't that what
12 you say in your report at pages 36, 215, and 326?
13 I mean, you repeat it three times in your report;
14 isn't that right?

15 A I don't know. I'd have to look at the page
16 numbers to see what I said. The first page number
17 I'm sure was the executive summary, so it's
18 summarizing what's in the body of the report. I
19 don't doubt you, but in the context of what I was
20 saying was it's one thing to provide information
21 about a specific suspect, it is another to say
22 that it would have changed behaviour to say there
23 was a serial killer when, in fact, that was
24 already well believed. There were -- the people
25 in the community believed it. The problem was

1 that there were people in the police department
2 that didn't believe it. There were people like --
3 you mentioned DEYAS. There were people like Judy
4 McGuire from DEYAS that said that, look, there was
5 a very high profile. The whole profile of the
6 police investigation. The sex workers themselves
7 believed that there was a serial killer out there.

8 Q Deputy Chief, we have the Vancouver Police
9 Department insisting over and over and over again
10 in the media that there's no evidence of a serial
11 killer, and you admitted yesterday that that was
12 false?

13 A Well, I think that it was --

14 Q Isn't that correct?

15 A I think that it was incorrect, but I do think you
16 have to look at the context of what they were
17 saying is what they were referring to is that we
18 haven't found physical evidence of this occurring.

19 Q It's not just that the VPD doesn't issue a warning
20 to survival sex workers that there's potentially a
21 serial killer preying on them, it's that the
22 Vancouver Police Department consistently puts out
23 messages that there's no evidence of such a
24 predator; isn't that true?

25 A I agree that the Vancouver Police Department

1 minimized the possibility; always acknowledged the
2 possibility, but minimized it, and I said early on
3 and I wrote I think that it was a mistake. I
4 think that they should have put it in not because
5 I thought that it was likely to change behaviour,
6 but I thought they should have done it because it
7 would have brought more attention to the issue, it
8 would have acknowledged the problem. It might
9 have been a catalyst to bring more resources to
10 the investigation. It might have generated more
11 information coming from the public. So for all
12 those reasons I think it was a mistake not to do
13 it. I just --

14 Q So rather than warning, what the police department
15 did was offer false assurances that there was no
16 evidence of a serial killer, correct?

17 A That is part of what they said.

18 Q All right.

19 A But it's not all of what they said.

20 Q Now, in the face of your admission that in some
21 cases survival sex workers are able to change
22 their behaviour to enhance their own safety, I
23 take it you'll admit now that the Vancouver Police
24 Department's massaging of the subject, failing to
25 warn and offering false assurances was

1 inappropriate?

2 A Well, I've already said I think it was a mistake
3 not to give the warning. As to whether a general
4 warning of a serial killer would have made a
5 difference, I'm not convinced of that because, as
6 I've said, in the community --

7 THE COMMISSIONER: You don't have to go through that. We've
8 heard that a number of times before, and I expect
9 we'll hear that from Constable Dickson when he
10 testifies.

11 MR. GRATL:

12 Q Now, the Home Inspection Task Force --

13 A The Home Invasion Task Force?

14 Q Home -- did I say home inspection?

15 A You did.

16 Q That's the real estate market. The Home Invasion
17 Task Force, for which you were responsible, had
18 access -- received far more resources than the
19 Missing Women Review Team; isn't that correct?

20 A No, at the peak of the Missing Women Review Team
21 and the Home Invasion Task Force the number of
22 investigators was about the same.

23 Q I'd like to take you to page 215 of the -- of
24 Exhibit J. Or even 212 might be a good starting
25 place. This is an administrative report from

1 Deputy Chief McGuinness to the chair and members
2 of the Vancouver Police Board; isn't that correct?

3 A Yes.

4 Q And what this memo does -- you've seen this
5 before, haven't you?

6 A I'm not sure if I've seen this one. I've
7 certainly seen memos to the police board.

8 Q Well, this is a -- I can introduce the document to
9 you then. This is a six-page memorandum,
10 administrative report, that sets side by side the
11 progress of the Missing Persons Review Team and
12 the Home Invasion Task Force, the Missing Persons
13 Review Team being Sergeant Field's and the Home
14 Invasion Task Force being yours. The first thing
15 we note is that one's called a review team and the
16 other one's called a task force.

17 A Yes. I would just say that by this time, 2000, I
18 was no longer in charge of the Home Invasion Task
19 Force, and, actually, it was smaller than I've
20 described when it started.

21 Q All right. And then there was no Vancouver Police
22 Department resistance to a \$100,000 reward for the
23 Home Invasion Task Force, but there was Vancouver
24 Police Department resistance to a \$100,000 reward
25 for information about the missing sex workers?

1 A Yes. It was two completely different fact
2 patterns, but you're right.

3 Q And then I won't go through the information about
4 the Missing Women Review Team, but I'll jump
5 straight to page 215, the report on the Home
6 Invasion Task Force and a list of the
7 investigative techniques that were deployed under
8 your command.

9 A Some of it. I don't want to take all the credit
10 because by then I had left, and I had left a
11 capable sergeant in charge of it when I went back
12 to my original assignment after revamping the Home
13 Invasion Task Force.

14 Q There are just a few things that I want to
15 highlight here. One is a door to door canvassing
16 of 2600 homes in the City of Vancouver.

17 A Well, the rest of the line is that it fell within
18 an area determined through a geographical profile
19 because we actually had crime sites to profile.

20 Q All right. Yes. So 2600 homes were canvassed; is
21 that correct?

22 A Yes.

23 Q A review of all similar offences or offences of a
24 suspicious nature within a 24-hour period of each
25 home invasion?

1 A Which line are you on? Okay. I see that. Yes.

2 Q Examination of over 290 tips from various sources?

3 A Yes.

4 Q And then over the page, the fourth bullet:

5 The application of a SIUSS data bank to enter
6 each and every tip that comes into the unit.
7 This system allows the comparison of both
8 suspects and incidents.

9 A Yes.

10 Q I take it you had no problem with SIUSS data
11 entry?

12 A We had an investigator who was trained on it
13 assigned to the team. He was also someone that on
14 a part-time basis was supporting the missing women
15 investigation.

16 Q Okay. You don't report any problems with that
17 database or software, correct?

18 A I wasn't aware of any.

19 Q And you had no problem finding sufficient analysts
20 and data entry people?

21 A Well, actually, it was not as easy as you might
22 think, and I suppose I was lucky that I got there
23 first. I actually had to borrow him. He was
24 loaned to me from the Coordinated Law Enforcement
25 Unit. We did not have that expertise in the

1 police department.

2 Q And after that analyst or data entry person for
3 SIUSS was done with your Home Invasion Task Force
4 they weren't sent directly to the Missing Women
5 Review Team, were they?

6 A I understand that he was assisting the Missing
7 Women Review Team but on a part-time basis.

8 Q Okay. And then you have at the sixth bullet:

9 Interviews of in excess of 200 possible
10 suspects whose names for one reason or
11 another came to the attention of the task
12 force;

13 is that correct?

14 A Can you just point me to the bullet? It sounds
15 right, but --

16 Q It's the sixth bullet on page 216.

17 A Yes.

18 Q And then obviously there's been efforts to do a
19 full review of all occupants in the designated
20 group homes within the City of Vancouver and
21 Municipality of Burnaby, correct?

22 A Yes, I see that.

23 Q Forensic examination of dental impressions and
24 food items bitten into?

25 A Yes. They -- those things all speak to the

1 evidence that was available to look into and that
2 there was, for example, food that had been bitten
3 by a suspect. There were crime scenes to
4 geographically profile to look where a suspect
5 might be. Some of those things that were possible
6 to do, like interviewing a possible suspect, those
7 were also done in the missing women investigation.
8 I've said that they investigated I think over 500
9 tips. So there was a lot of work being done in
10 there.

11 Q And much consultation with forensic experts and
12 experts including a forensic knot analyst from the
13 RCMP?

14 A Yes, because there was evidence of knots to look
15 at.

16 Q I take it that you'll agree with me after review
17 and reminder of all the steps that were taken in a
18 one-year period or less than one-year period by
19 your task force that your task force was, firstly,
20 successful, as opposed to the Missing Women Review
21 Team?

22 A Yes, it was eventually successful in making some
23 arrests. That actually occurred -- well, one
24 occurred while I was there, and others occurred
25 after I left.

1 Q It involved numerous -- 200 interviews with
2 possible suspects?

3 A Yes.

4 Q Whereas the Missing Women Review Team did not get
5 to any of their suspects?

6 A No, that's not true. My understanding is that
7 there were suspects that they looked at. There
8 was one suspect that you know that was interviewed
9 and charged with some serious sexual offences.
10 And so I don't know all the -- I didn't look into
11 each of the 500 tips that they completed. When I
12 say tips, I don't mean tips from the public. I
13 mean pieces of information, leads to follow up on.

14 Q I take it, though, that in your Home Invasion Task
15 Force the presence of hundreds of multiple
16 suspects did not present an investigative obstacle
17 that was insurmountable?

18 A Well, that was extremely challenging. It wasn't
19 insurmountable, but, of course, it was very
20 challenging and labour intensive. But, of course,
21 you had -- with the exact date and place known of
22 every offence that was being investigated, that
23 makes it much easier to look at, for example, the
24 availability of a suspect, to see if they've -- to
25 have committed the crime, to see if they have an

1 alibi, to match an MO, see when they were in and
2 out of prison, that sort of thing. So --

3 Q So when did the Home Invasion Task Force wind
4 down, Deputy Chief?

5 A I don't know that because I went back to my
6 assignment in 1990 -- 1999. At some point in 1999
7 I went back to my assignment, and it continued on
8 until 2000 anyway.

9 Q Nothing would have prevented the deployment of all
10 of these Home Invasion Task Force resources to the
11 Missing Women Review Team after the Home Invasion
12 Task Force work was complete, would it?

13 A By the -- by that time that you're talking about
14 it was actually quite a small number of
15 investigators. I think it might have only been
16 two at the time because they had exhausted the
17 things that were more manpower intensive, and, in
18 fact, there is documentation saying now that the
19 Home Invasion Task Force is winding down we can
20 free up some staff to support the Missing Women
21 Review Team. But as to your question could it be
22 redeployed, yes, of course, and I wrote that in my
23 report, that the problem was how the investigation
24 was framed and that had the VPD understood the
25 nature of the challenges that even though it would

1 be very difficult, because there was extreme
2 resource pressures, it could have been done. I
3 agree with you. More resources could have been
4 applied. It was within the capacity of the VPD to
5 do that.

6 Q And resources obviously at least equivalent to the
7 resources deployed for the Home Invasion Task
8 Force?

9 A I think that whatever resources were indicated
10 were needed to be successful, they understood what
11 the issue is and what the investigative
12 opportunities were, then even if it might have
13 been difficult, it was possible to redeploy
14 resources to do that. It would have been
15 extremely difficult, but it was possible, and I've
16 written that.

17 Q While we're on the topic of resources, from time
18 to time there were a lot of resources deployed in
19 respect of public nuisance issues, including
20 street-level sex work and street-level drug use
21 and trafficking, correct?

22 A Yes.

23 Q We know that there's the DEEP program, but you had
24 an opportunity to review documents dealing with
25 the DEEP program?

1 A Yes.

2 Q It was a three-year program from 1999 to 2002?

3 A 2001, I believe.

4 Q Okay. And that program deployed 30 full-time
5 officers to the Downtown Eastside?

6 A It's a little bit more complicated than that.
7 There was some redeployment of officers, and there
8 was some deployment of full-time officer
9 equivalents by using overtime, but I agree with
10 you that there were more resources deployed into
11 the Downtown Eastside, and that was certainly the
12 objective.

13 Q Yes. And the objective was to interrupt the
14 street-level trafficking, mostly at Main and
15 Hastings?

16 A That was part of the reason. The street-level
17 trafficking and also the violence and chaos that
18 it generated.

19 Q Sure. And all it succeeded in doing was
20 displacing the trafficking?

21 A There certainly was some displacement.

22 Q Yes, but there wasn't any noticeable decrease in
23 trafficking activity? It just moved, and it moved
24 to other neighbourhoods?

25 A Yes.

1 Q There were complaints about displacement. You've
2 reviewed those documents, haven't you?

3 A Yes. That's not the whole story, but I agree with
4 you.

5 Q Sure, there were some arrests, but the people
6 arrested were almost immediately replaced by other
7 people, correct?

8 A Yes. It was part of a series of efforts to try to
9 deal with the problems in the Downtown Eastside,
10 and I think that sometimes you have to fail to
11 know what works and what doesn't, and, you know,
12 we concluded after that that we weren't going --
13 the VPD wasn't going to arrest its way out of the
14 problem in the Downtown Eastside, and so
15 subsequent to that it shifted to a much more focus
16 on not arresting drug addicts and addicted drug
17 traffickers but more focusing on high visibility
18 in the Downtown Eastside to reduce violence.

19 Q At least some of those 30 officers could have been
20 deployed to assist the Missing Women Task Force?

21 A Maybe not those particular officers, but I agree
22 that resources could have been shifted within the
23 VPD to focus on the missing women investigation.

24 Q Well --

25 A I wrote that in my report.

1 Q Half of the funding for those 30 officers came
2 from City Hall, and half was a redeployment of
3 existing members?

4 A That was the plan.

5 Q Okay. So if there had been the political will
6 from City Hall, half of those members could have
7 been deployed to the Missing Women Task Force?

8 A I wouldn't want to blame that on City Hall in that
9 although that was a little bit of an unusual
10 situation, which I write about, the deployment of
11 officers in the police department is entirely the
12 prerogative of the chief constable, that city
13 council's really only statutory role is to fund
14 the police, not to deploy them.

15 Q I just mention it because it seems pretty clear
16 that the priority was on interdiction of street-
17 level drug trafficking rather than Missing Women
18 Review Team resources; is that correct?

19 A There certainly was more of a focus on that issue,
20 I agree with you.

21 Q And you've also seen then the documents that
22 indicate that there was for a period of two or
23 three months a deployment of seven full-time
24 officers, perhaps eight full-time officers just to
25 implement a no tolerance policy against street-

1 level sex workers?

2 A I saw the documentation about that, and I also
3 heard the evidence from Dr. Lowman about what he
4 thought the police were trying to do and the
5 inadvertent effects of that in his opinion and
6 that he was somewhat complimentary of the police
7 in trying to deal with a very difficult problem
8 and balancing competing interests and so on.

9 Q And I suggest to you that those officers could
10 have been deployed instead of to arrest sex
11 workers, to investigate the many suspects
12 identified by the Missing Women Review Team?

13 A Regardless of where police officers were deployed
14 at the time and to what duties, it's not like the
15 police department, like an emergency ward, is
16 that -- because you have heart attacks you don't
17 stop dealing with broken legs, but what I've said
18 is regardless of what other things police officers
19 were doing, that it was within the capacity of the
20 Vancouver Police Department to put more resources
21 into the investigation of the missing women.

22 Q Yes, but what I want to do is I want to establish
23 the proposition that the priority for the
24 Vancouver Police Department was on arresting
25 survival sex workers rather than investigating

1 those who prey on survival sex workers. That's a
2 manifestation of priorities?

3 A There was some priority on dealing with the
4 prostitution problem in neighbourhoods and very
5 vociferous complaints and threats of vigilante
6 action and so on. As a -- as to your
7 characterization of focusing on arresting them, I
8 think that what the documentation shows and public
9 statements by Inspector Doern, in charge of the
10 Vice Section at the time, was that they did not
11 want to arrest sex trade workers and charge sex
12 trade workers, that they were only going to do
13 that in extreme circumstances. So there was
14 certainly, I agree, the memos from Corporal
15 McKellar talking about discouraging sex trade
16 workers from the Franklin stroll in the
17 residential area. I did see those, and I know
18 that that was going on, but I don't think by then
19 that there was a general trend towards arresting
20 sex trade workers. There was, I agree, focus on
21 dealing with the neighbourhood complaints and
22 problems created by the sex trade generally.

23 Q Now, I didn't want to go into referring to the
24 documents, but in Exhibit A wasn't there a memo to
25 all patrol members?

1 A Sorry, Exhibit A is?

2 Q Is the Lowman documents. It says Juristat on the
3 first page.

4 THE REGISTRAR: Are you looking for identification A?

5 MR. GRATL: For identification A.

6 A Thank you.

7 MR. GRATL:

8 Q Isn't it true there was a memo issued to all
9 patrol members that there was to be a no tolerance
10 policy towards street-level sex workers in every
11 area of the city?

12 A Can you refer me to the document?

13 Q I'm just looking for it. It's at page 48. It's a
14 memo dated March 20th, 1997, from Sergeant
15 McKellar to all districts.

16 A Yes. I see that.

17 Q It says in no uncertain terms that:

18 With the implementation of a Task Force from
19 D2 T-11 last week, our approach to this
20 problem,

21 meaning street-level sex work,

22 is simple, the city, department and citizens
23 will not tolerate the unacceptable behaviour
24 and conduct of the Street Sex Trade Workers
25 or their Johns. As a result this type of

1 behaviour will not be tolerated on ANY STREET
2 IN THE CITY OF VANCOUVER.

3 A Yes, I see that from 1997. It did evolve after
4 that, you'll have seen in the documents, with
5 Inspector Doern and Inspector Taylor.

6 Q The words "ANY STREET IN THE CITY OF VANCOUVER"
7 are in all caps, which is the textual equivalent
8 of shouting at people?

9 A For people that are used to speaking on computers,
10 I agree with you. I don't know if that's what he
11 was doing in this memo. He seems to use a lot of
12 caps.

13 Q And here Sergeant McKellar says:
14 ...please DO NOT tell sex workers to simply
15 stay 5-6 blocks from schools to ply their
16 trade as it is not going to be allowed.

17 A Yes.

18 Q If a Sex Trade Worker is going to Solicitor
19 Sex for the purpose of prostitution then they
20 are going to have to do it somewhere else.
21 are going to have to do it somewhere else.

22 Is that correct?

23 A Yes.

24 Q And by "somewhere else" it means outside of the
25 City of Vancouver?

1 A Yes, I agree it was not -- this was not a
2 thoughtful memo or initiative, and I'm glad to see
3 that subsequent to this the thinking evolved
4 around that, and this was one particular
5 sergeant's initiative that seemed to be
6 disconnected with what the view of, for example,
7 the inspector in charge of the Vice Section was.
8 Q All right. So this memo would have been
9 distributed to every police officer, all patrol
10 officers in all the districts?
11 A I don't know if it would have been distributed to
12 each individual one. I'm sure to their sergeants.
13 Q All right. Now, this memo would have affected
14 relationships between police officers and sex
15 workers?
16 A Certainly had the potential to.
17 Q So you've also heard from -- you were here for the
18 testimony of Professor Lowman?
19 A I was here for his testimony during the first
20 week. I don't know if he continued after that.
21 Q All right. You heard reference by him to a study
22 from 1995 regarding violence against sex workers?
23 A I believe that I did.
24 Q And that study, among other things, concluded that
25 there was violence perpetrated, or at least

1 reported violence, perpetrated by sex -- by police
2 against sex workers; is that correct?

3 A I don't recall him saying that, but if it says
4 that, it says that.

5 MR. GRATL: If we could pass the Exhibit 3 to the witness,
6 please.

7 THE REGISTRAR: 3.

8 MR. GRATL:

9 Q If you turn to tab C, it's a report entitled
10 "Assessing the Violence Against Street-Involved
11 Women in the Downtown Eastside".

12 A Yes.

13 Q And then if you just turn to page 39, you'll see a
14 general lack of respect described by sex workers
15 is a problem?

16 A Can you just point me where you're looking on the
17 page?

18 Q
19 What, in your opinion, could improve the
20 services of the Police?

21 A Yes. Yes, I see that.

22 Q
23 97% wanted more respect for themselves...
24 that they should take bad dates seriously.

25 A Yes.

1 Q On the right-hand side you've got some anecdotes
2 there about dumping by police. Some people dump
3 women off at the UBC -- at UBC or Stanley Park?

4 A I see that.

5 Q All right. Which puts women in a dangerous
6 position or at risk of further harm, and then
7 there's a report there saying:

8 I saw a 15 or 16 year old get backhanded by a
9 cop and the cop told her to 'go home and be a
10 good girl'.

11 A I see that.

12 Q And then at page 75.

13 A Are we in a different tab now?

14 Q Same tab. Sorry, tab D. This is a different
15 study entitled "Violence Against Persons Who
16 Prostitute: The experience in British Columbia".
17 Page 75, Table 100, "Who Committed the Offences/
18 Harassment" against sex workers. Uniformed police
19 are referred to in 26.2 per cent of the cases and
20 Vice --

21 A Yes. We don't know what --

22 Q -- 14.8 per cent.

23 A Yes. We don't know what harassment means, though,
24 here, in fairness. I'm not disputing the
25 research, but --

1 Q No. And also, to be fair, we don't have a
2 breakdown harassment versus offences.

3 A Right.

4 Q Okay. So -- but there's a high proportion here,
5 uniformed police 26.2 per cent and Vice 14.8 per
6 cent; is that right?

7 A Yes. I mean, it doesn't surprise me to see that a
8 sex worker would believe that any contact with the
9 police officer would be harassment in the same way
10 that we get complaints from people who are checked
11 for possession of drugs think it's harassment when
12 we might look and say it's the police officer
13 doing their job.

14 Q And then very much in line with those two studies
15 we have the 2001 report released by PACE authored
16 by Leonard Cler-Cunningham and Christine
17 Christensen?

18 A Yes, I'm aware of that report.

19 Q And that, just like the other two reports, speaks
20 of offences committed by police officers?

21 A It does do that.

22 Q All right. So the Leonard Cler-Cunningham report
23 doesn't stand on its own then, does it?

24 A Well, I think in the allegations that that
25 particular report makes, or some of them, it

1 distinguishes itself from these other reports.

2 Q I take it you were aware of these reports when you
3 served as the inspector in charge of the Policy
4 and Research Department?

5 A No, I can't say that I was aware of these or that
6 I would have been.

7 Q Okay. All right. If you weren't aware of them,
8 then were you aware of the absence of policies
9 that would specifically deal with these
10 allegations of violence against street-level sex
11 workers by the police?

12 A Well, we have policies in place, not about --
13 about specific people that we deal with. We have
14 policies in place that require our police officers
15 to treat everyone with respect and to obey the law
16 and to be respectful of people's Charter rights,
17 for example. So we didn't need to specify a
18 particular group of people. It's our expectation
19 that all people would be treated respectfully.

20 Q But nothing specific for these vulnerable
21 individuals?

22 A Well, there certainly were policies and practices
23 that I know is in some of the material that you
24 have that talks about the view of the Vice Squad.
25 So not every policy is a departmental-wide policy

1 that appears in a regulations and procedure
2 manual. It can be a local policy in the Vice
3 Unit, for example, how they are going to carry on
4 business.

5 Q Detective Constable -- or, sorry, Constable
6 Dickson reported to you that some police officers
7 had relationships with sex workers, correct?

8 A I don't recall him saying that to me, and I'm not
9 sure what you mean by relationships.

10 Q Well, could you turn then to page 76 of Exhibit J.

11 A Yes, this isn't a statement to me.

12 Q It's a transcript of Dave Dickson being
13 interviewed by Deputy Chief Evans.

14 A That's why I was confused, because you said he
15 told me that.

16 Q There is Constable Dickson saying a lot of guys in
17 the police department -- he says:

18 It's, it's always been okay for me, as a
19 police officer, if I ever chose to do that,
20 to go out and get a hooker on the side. If I
21 got caught, which a lot of cops have got
22 caught, it's just brushed off. Nothing
23 really happens. That's, I think, for me,
24 always been a pet peeve of mine, because, you
25 know, I have never crossed that line, and I

1 get upset when I see other people doing it,
2 because how does somebody trust me -- I mean,
3 and I could tell you stories of cops doing
4 stuff down that all the street seen it, you
5 know. But how do people trust me when I've
6 got some idiot out there in a uniform doing
7 that?

8 A Yes, I see that.

9 Q All right. So did you -- were you aware of this
10 information when you were preparing your report?

11 A No. Well, which information? I certainly wasn't
12 aware of his statement because it hadn't been
13 taken yet.

14 Q Well -- no, I appreciate that, but were you aware
15 that there -- there were police officers who, as
16 Constable Dickson put it, had a hooker on the
17 side, got caught, and it was just brushed off?

18 A I am not aware of information like that.

19 Q You had never heard of that before?

20 A Well, I have heard of police officers who had used
21 the services of a sex trade worker, and I gave
22 evidence about that.

23 Q That was like 1978 or something you said, was it?

24 A No, I said during the '80s.

25 Q '80s.

1 A Because I was aware of it. I was a police officer
2 at the time.

3 Q Okay. But nothing after the '80s? Nothing in the
4 '90s?

5 A No, I'm not -- I'm not personally aware of
6 information about a police officer having a
7 relationship with a sex worker in the '90s.

8 Q And, again, the officer getting caught and it
9 getting brushed off?

10 A No, I'm not aware of that at all.

11 Q You just -- and in the course of your duties you
12 just haven't heard of it in the '90s or in the
13 2000s?

14 A In the 2000s I recall hearing about a police
15 officer who had been caught in suspicious
16 circumstances in a stroll somewhere off duty and
17 that there was very significant action taken about
18 that. I don't recall anything like that during
19 the '90s. I don't recall it now. Might have at
20 the time. I do recall one incident in the 2000s.

21 Q But nothing about the impunity business that --

22 A No.

23 Q -- Constable Dickson --

24 A No, I totally --

25 Q -- referred to?

1 A -- disagree with him in the way that he is
2 describing that because I know how seriously it's
3 taken.

4 Q All right. So then if we could turn to page 204
5 of Exhibit J.

6 A And how would he know even is what I think when I
7 read that, what was done with someone, since we
8 don't discuss people's personal discipline files
9 and so on.

10 Q Your immediate reaction is to doubt the veracity
11 of what Constable Dickson says right there?

12 A Not that he might have been aware of police
13 officers that had used the services of a sex trade
14 worker, but for him to characterize it as it was
15 just brushed off knowing how seriously that it's
16 taken, I doubt that.

17 Q Despite what you have already acknowledged as his
18 expertise about what happens on the Downtown
19 Eastside?

20 A Well, his expertise is around sex workers in the
21 Downtown Eastside and so on but not about what
22 discipline might be meted out or the level of an
23 investigation or anything like that.

24 Q So you do doubt the veracity of what Constable
25 Dickson is saying right there?

1 A I --

2 Q That's your first -- that's what your gut tells
3 you?

4 A Well, based on my --

5 THE COMMISSIONER: He's already said, I mean -- how much longer
6 are you going to be?

7 MR. GRATL: What I'm told by the RCMP is that they've had a
8 problem putting their document package together
9 and they won't be ready to go until this
10 afternoon. Am I wrong about that?

11 THE COMMISSIONER: Oh. That didn't answer my question.

12 MR. GRATL: I'm narrowing in on --

13 THE COMMISSIONER: No, no. You see, it's a simple question.
14 How long will you be?

15 MR. GRATL: Sometimes, Mr. Commissioner, it's hard to predict.

16 THE COMMISSIONER: Pardon me?

17 MR. GRATL: Sometimes it's hard to predict how long you will be
18 with a witness.

19 THE COMMISSIONER: You've given ample proof of that.

20 MR. GRATL: I can say the areas I still need to cover include
21 the question of the qualification of the witness
22 to give expert evidence on the issue of systemic
23 discrimination.

24 THE COMMISSIONER: Qualification of what witness?

25 MR. GRATL: Well, this witness was, as I understand, qualified

1 as an expert, but the area of the expertise -- of
2 his expertise, that is, where he is qualified to
3 give expert opinion evidence, wasn't properly
4 delineated or wasn't fully delineated, and I'm
5 hoping to cross-examine the witness on that area,
6 unless, of course --

7 THE COMMISSIONER: Why is it being done now when you've
8 elicited all kinds of other opinion evidence from
9 him?

10 MR. GRATL: Well --

11 THE COMMISSIONER: I mean, much of what he has said is opinion
12 evidence based upon the review that he did of
13 other people's activities, and now you're saying
14 that he's not really an expert and he can't give
15 opinion evidence on much of what he said.

16 MR. GRATL: Well, I'd like to cross-examine him because, of
17 course, there was no opportunity to, as usually
18 occurs when a witness is qualified, there wasn't
19 an opportunity to cross-examine the witness on his
20 qualifications, and I want to confine my cross-
21 examination to that specific area.

22 THE COMMISSIONER: My problem is this. We have timing problems
23 here, and you started your cross-examination on
24 Monday, Monday afternoon at 2:50, and your
25 estimate at that time was a day. Here we are

1 Wednesday morning, eleven o'clock. I'm asking you
2 now how long you'll be, and I haven't got an
3 answer from you. You know, I'm not trying to be
4 unfair or anything. I think I've been fair here
5 to a fault, and you're not the only one that's
6 gone on longer than -- than anticipated, but the
7 fact is that we have to get this inquiry moving.
8 And I can tell you one thing right now, that when
9 we move into the new year and we start hearing
10 evidence from witnesses who have personal
11 knowledge there are going to be time limits.
12 There's no other way of doing this. I've been
13 very liberal, and I have given a lot of leeway. I
14 have listened to evidence that's of a repetitious
15 nature. I mean, I don't know what the purpose
16 today of hearing what Dr. Lowman said again. I
17 heard Dr. Lowman. That evidence wasn't
18 contradicted by anyone, and yet I heard the deputy
19 chief refer to it again. See, that doesn't help
20 me much. At the end of the day I have to make
21 findings of fact and make recommendations, and I
22 need to hear evidence, but it doesn't do me any
23 good at all to keep hearing the same evidence over
24 again. Again, I'm not trying to be disrespectful
25 to you. I just want you to know that it's not

1 fair to other lawyers in the room if accurate time
2 estimates aren't given. I mean, we have a lot of
3 lawyers here, we have a lot of information to
4 canvass and a lot of material to cover. So, you
5 know, Ms. Tobias has been patiently sitting there
6 and -- while her clients, the RCMP, have been
7 criticized in some ways, and no doubt she's going
8 to take some time in her -- in cross-examination,
9 but meanwhile I've been hearing all of this
10 evidence, and nobody gives me an accurate estimate
11 of the time. Now, I've asked you how long do you
12 think you'll be.

13 MR. GRATL: Half an hour. That's my estimate at this time.

14 THE COMMISSIONER: Estimate at this time. You'll be held to
15 half an hour. Okay.

16 MR. GRATL: The difficulty I have, Mr. Commissioner, is
17 sometimes the witness answers on his own
18 tangents --

19 THE COMMISSIONER: On his what?

20 MR. GRATL: -- including --

21 THE COMMISSIONER: Pardon me? Answers?

22 MR. GRATL: Answers in a tangential way, including extraneous
23 information on issues that I haven't really asked
24 about --

25 THE COMMISSIONER: Well, look --

1 MR. GRATL: -- when I ask a targeted question, and I think the
2 record will bear me out, Mr. Commissioner.

3 THE COMMISSIONER: You know, in fairness, I listened yesterday
4 to tedious cross-examination about the term
5 "hooker". I heard at least 25 references to it
6 that could have been covered in two questions.
7 That question, I suggest, with respect, could have
8 been asked in the following way: "Was there ample
9 evidence and police files that you looked at and
10 from your own personal knowledge that officers
11 were using the term 'hooker'?"

12 MR. GRATL: That was my first question, Mr. Commissioner.

13 THE COMMISSIONER: No --

14 MR. GRATL: It was answered --

15 THE COMMISSIONER: -- you went tediously over each and every
16 reference to the term "hooker". I turned it off
17 after a while.

18 MR. GRATL: My first question, Mr. Commissioner, was the one
19 you just put.

20 THE COMMISSIONER: Yes.

21 MR. GRATL: And it was answered --

22 THE COMMISSIONER: Then why didn't you stop there? You got the
23 appropriate answer.

24 MR. GRATL: It was answered in the negative.

25 THE COMMISSIONER: I don't think it was in the negative. You

1 referred to the term "hooker" in the written
2 material, and he agreed with all of that, and it
3 was there in black and white, and yet we kept
4 hearing it over and over again. I'm just asking
5 you to use your time wisely. I'm not trying to
6 cut you off. I want to give you the full
7 opportunity, but at the same time we have to -- we
8 have a time limit here, so we need to get this
9 thing done.

10 MR. GRATL: Well, I would ask then, Mr. Commissioner, for your
11 assistance in ensuring the questions that I ask,
12 the targeted questions that I ask for the
13 remainder of my cross-examination are answered
14 specifically.

15 THE COMMISSIONER: Well, I think he's been fair in answering
16 your questions. I think he's been responsive.
17 Sometimes he's gone on longer than I would have
18 gone on in his situation, but, in fairness, he's
19 been here for eight days, and much of the
20 cross-examination that's taken place has been
21 asked by prior -- previous lawyers, and so, you
22 know, I --

23 MR. GRATL: The witness, Mr. Commissioner, he's a
24 sophisticated, very intelligent senior experienced
25 witness, and he anticipates where the questioning

1 is going, and he wards it off by supplementing his
2 answers with other evidence, and that's been a
3 challenge.

4 THE COMMISSIONER: Look, I think it's unfair for you to blame
5 this lengthy cross-examination, twice the estimate
6 that you gave, on the witness. We'll take the
7 break.

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

9 **(PROCEEDINGS ADJOURNED AT 11:06 A.M.)**

10 **(PROCEEDINGS RESUMED AT 11:23 A.M.)**

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

12 MR. GRATL:

13 Q At page 204 of Exhibit J Inspector Morris refers
14 to several cases that have been investigated where
15 the suspect represented himself to be a police
16 officer. The complaints were pursued, and upon
17 identification and charge of the suspect this has
18 proved to be untrue. The suspects go so far as to
19 have police equipment and paraphernalia in their
20 "rape kit" that they carry with him. Is that true
21 to your knowledge, that people were going around
22 pretending to be police officers with a rape kit?

23 A I don't -- didn't know about the information about
24 the rape kit, but I've certainly heard on many
25 occasions people posing as police officers and

1 have police paraphernalia in their car and have a
2 car made to look like a police car and so on.

3 Q They have a car made to look like a police car?

4 A Well, a car like -- that's similar to what's used
5 as a police car, and they're also used as taxis,
6 but -- so that sort of large --

7 Q And they're going around with a rape kit
8 presumably using those rape kits?

9 A I read that here. I don't recall having that
10 information coupled together, but I wouldn't
11 disagree with that. I have heard of suspects
12 posing as police officers.

13 Q And that happened in 2001?

14 A Well, this memo is in 2001. I've heard it over
15 the years. I've dealt with people myself who were
16 posing as police officers.

17 Q And these are people posing as police officers who
18 are raping sex workers?

19 A I have heard of that, of people sexually
20 assaulting sex workers and claiming to be police
21 officers.

22 Q All right. But you yourself didn't investigate
23 that for the purpose of your review?

24 A No.

25 Q So I take it as well that you are aware that an

1 individual on September 9th, 1999, was arrested at
2 Salsbury and East Hastings on the stroll, correct,
3 who was wearing -- a male wearing women's nylons,
4 he had a toque that had holes cut into it for
5 eyes, nose, and mouth just like a balaclava, he
6 had a large butcher knife in a duffel bag behind
7 the seat, he had a roll of duct tape and a pair of
8 silver handcuffs?

9 A I'm not aware of that specific incident.

10 Q You're not aware of this. I would have thought it
11 would be notorious because the person who was
12 arrested advised the police officers who arrested
13 him that he volunteers at the Chinatown Community
14 Police Department.

15 A And this was from 1999?

16 Q From 1999. You've never heard of that?

17 A I may have been aware at the time, but I don't
18 recall it now.

19 Q Okay. And it turned out that he was a volunteer,
20 correct?

21 A I don't know that. I'm not familiar with this
22 case.

23 Q If I can ask you to turn to page 206 of Exhibit J,
24 there's a Miscellaneous and Supplementary Report.
25 It's dated September 10th, 1999, and it sets out

1 exactly those facts.

2 PC's observed suspect stop and pick up a
3 local working girl at the south-west corner,
4 and there's the reference to Salisbury and East
5 Hastings?

6 A Yes.

7 Q

8 PC's pulled alongside the suspect vehicle.
9 The working girl got out and left. The
10 suspect stared blankly ahead.

11 And then it says how the suspect was dressed in
12 jeans with a button fly undone, cotton jacket,
13 black wool toque, black wool gloves. As the
14 suspect reached for the insurance papers the
15 officer was able to see that the back of the
16 suspect's toque had a slit in the rolled band
17 portion and observed a small duffel bag behind the
18 passenger seat, which plainly visible in the bag
19 was a -- the handle and partial blade of a large
20 butcher knife. A cursory search of the suspect
21 found that he was wearing women's black nylons.
22 He said that he was wearing them because he was
23 cold. The suspect's toque was rolled -- was
24 rolled out into a homemade balaclava complete with
25 eyes, nose, mouth holes cut into the fabric. And

1 he had a condom in his left front pocket, and then
2 a further search of the duffel bag revealed a pair
3 of silver handcuffs, a roll of duct tape, a flash-
4 light, flesh-tone bra, a cream and green dress,
5 and all these items were seized; is that correct?

6 A Yes, that's what the report says.

7 Q You've never heard of this, that this individual
8 said he volunteered at the Chinatown Community
9 Policing Office?

10 A Like I say, I may have been aware of this at the
11 time, but I don't recall it now, and I -- this is
12 a significant incident, but I can tell you that it
13 is not unique in the number of people out there
14 who are known sex offenders and engage in this
15 sort of behaviour.

16 Q Over the page it says this suspect caught with a
17 rape kit who said he was a volunteer at the
18 Chinatown Community Policing Office was released
19 at the scene with no charges pending. He was
20 advised to go home immediately. That's what it
21 says, doesn't it?

22 A Yes.

23 Q And you weren't aware of this?

24 A I don't remember it today. I may have been aware
25 of it at the time. I don't know.

1 Q Well, this type of incident would surely impact
2 the relationship between police officers and sex
3 workers, wouldn't it?

4 A Well, what I see is a police officer that's been
5 very diligent in investigating this incident and
6 made sure that the information about this very
7 suspicious character was distributed to the people
8 that would need to know about it should there be a
9 complaint, for example, from a sex worker. So I'm
10 not sure what you mean about the relationship and
11 that this police officer seems to have been very
12 concerned about it.

13 Q All right. Well, we'll have an opportunity to ask
14 the Missing Women Review Team officers what
15 follow-up was done in respect of this Community
16 Policing Office volunteer.

17 Were you aware that there was a policy in
18 place at the 911 dispatch and the subsequent
19 E-Comm dispatch that if a person making a missing
20 woman report did not have an address for a missing
21 person the dispatcher was to refer that person to
22 the Missing Persons Unit?

23 A No, I don't recall being aware of that.

24 Q All right. I'd like to refer to the actual
25 missing person policy in place at the time that

1 the review team's work was underway. That's found
2 at this witness brief documents binder 1 at tab
3 10. This is a fax to you, a fax cover dated March
4 22nd, 2004, from Heather Wilson, a research
5 assistant?

6 A Yes.

7 Q She's a City of Vancouver employee?

8 A No, she's a Vancouver Police Department employee.

9 Q Oh, I see. I was just assuming from her e-mail
10 that she was a City employee. She's faxing you
11 the policy for the communications section --

12 A Yes.

13 Q -- dealing with missing women --

14 A Yes.

15 Q -- is that correct?

16 A Yes.

17 Q Now, this is being faxed to you March 22nd, 2004,
18 so the first time you look into the policy?

19 A In writing my report --

20 Q Yes.

21 A -- or ever?

22 Q Well, you started in September of 2002.

23 A No. I started reading documents in September of
24 2002, but I didn't actually start writing my
25 report until very late 2003 and early 2004.

1 Q Okay. So you got the policy before you started
2 writing your report but after you did your
3 interviews?

4 A Some of the interviews were before, and some of
5 them were after.

6 Q All right. Key individuals, Shenher, Field, had
7 they already been interviewed by the time you
8 received this policy?

9 A I had certainly done initial interviews with them.
10 There was more than one interview.

11 Q All right. And Sandra Cameron had already been
12 interviewed by this time, March 2004?

13 A I don't remember the date that I interviewed her.

14 Q All right. If you turn over the page then,
15 please, at the bottom we find a specific provision
16 that says:

17 Persons defined in the following categories,
18 regardless of the time period they have been
19 missing, shall receive a missing persons
20 report and a field unit response to
21 investigate circumstances,

22 and then there are three such circumstances. The
23 first, A, is children of tender years, age 12 and
24 under. The second, B, is senior citizens, age 65
25 and over. And the third, C, is persons whose

1 mental or physical state may place them at risk to
2 themselves or others. This would include persons
3 with memory loss, handicaps, retardation,
4 blindness, muteness, or suicidal intentions,
5 etcetera, correct?

6 A Yes.

7 Q Now, sex workers, survival sex workers fall into
8 the third category, don't they?

9 A Well, I think that that would depend on the
10 circumstances.

11 Q Aren't they at risk, at high risk?

12 A I don't think that that's the context of that
13 subsection, but I do agree that they're at high
14 risk. They're at high risk of violence, for
15 example.

16 Q Aren't almost all of them drug dependent?

17 A Yes. In the survival sex trade, yes.

18 Q Isn't that a form of disability or illness or
19 handicap?

20 A I agree, but the context, though, is of someone
21 who's missing who's at immediate risk, like an
22 Alzheimer's patient who wanders away and could be
23 wandering into the woods or that sort of thing,
24 not someone who's generally capable of making
25 decisions for themselves and taking care of

1 themselves.

2 Q You have presented what you now say is a revised
3 policy that's going -- that's about to go to the
4 police board, correct?

5 A This is a communication centre policy, and the
6 policy that I'm -- that you're referring to now is
7 one for our regulations and procedures manual, so
8 it's for the police officers.

9 Q All right. That revised policy identifies missing
10 women as women at risk and says take an immediate
11 report and do some field investigations,
12 effectively, doesn't it?

13 A Yes, it's -- it points out how vulnerable they
14 are, I agree.

15 Q But isn't it the case that the policy of
16 application at the time of the Missing Women
17 Review Team's work already identified people with
18 handicaps as people at risk and required an
19 immediate missing persons report, no 24-hour
20 waiting period, and a field unit response to
21 investigate?

22 A I don't think that that's how that policy would
23 have been interpreted at the time, the way that
24 you're describing it. I agree that there's -- the
25 policy has certainly evolved since then and

1 understanding of the importance of the issues that
2 you've described has evolved since then.

3 Q Can I ask you to turn then to page 68 of Exhibit
4 J. That's an example of a missing persons report,
5 a so-called 565 report?

6 A Yes.

7 Q And if you go down to the description
8 "Disability/Dependence", it's about in the middle
9 of the page, there are a number of categories
10 there that the person filling out the form can
11 fill out. They're letter coded. A is a physical
12 disability or dependence. B is a mental
13 disability or dependence. C is a medical
14 disability or dependence. D is a possibly
15 suicidal disability or dependence. E is an
16 alcoholic or drug addict disability or dependence.
17 F is a combination disability/dependence. And G
18 is a none known.

19 A Yes.

20 Q And here you've got the missing persons report for
21 Kerry Koski. E is selected?

22 A Yes.

23 Q And there E means alcoholic or drug addict
24 disability/dependence?

25 A Well, that's two categories there, disability or

1 dependence.

2 Q Yes.

3 A So they're clearly stating that there is a
4 dependence issue there. I don't know whether that
5 is being interpreted as having a disability. I
6 understand that that is how it's been interpreted
7 in human rights law and so on. I don't know
8 whether that person -- you would have to speak to
9 someone that was taking these reports.

10 Q Okay. So if there -- and as you say, I think you
11 correctly identified that drug dependence is
12 identified as a disability by human rights law.

13 A I understand in certain circumstances --

14 Q Certain circumstances.

15 A -- that it is. That's my understanding. I'm not
16 an expert on that.

17 Q And I take it then that if the notion of
18 disability had been understood in the way that
19 it's understood in human rights law then the
20 missing persons policy of application during the
21 Missing Women's Review Team would have required a
22 missing persons report and a field unit response
23 to investigate; is that right?

24 A Again, it would depend on the circumstances.

25 Q What I'm suggesting, really, is that at the time,

1 say in 1998 to 2001, the Vancouver Police
2 Department had yet to take on really a full
3 understanding of drug dependence. They regarded
4 drug dependence as a choice rather than as an
5 illness or disability. And it's consistent with
6 that understanding that this missing persons
7 policy was interpreted?

8 A I don't know that I would agree that they viewed
9 it as a choice. I don't think anybody chooses to
10 be a drug addict.

11 Q If you don't know --

12 A But generally --

13 Q If you don't know the answer to that and you don't
14 want to say, "Generally I can't answer what people
15 thought about drug dependence, whether it was a
16 disability or not," you could just say so.

17 A Well, I don't know what people thought. I agree
18 with the second part of your comment as certainly
19 there's been an evolution of thinking about drug
20 addiction and how the police should respond to it.

21 Q Sure. I mean, there was a VPD opposition to
22 InSite for a long time on the footing that it
23 wasn't a disability.

24 A No. No. The Vancouver Police Department always
25 as a matter of policy had supported InSite, and,

1 in fact, we had policy around that. We were very
2 public in stating that we wanted it to have the
3 best chance of success. The chief constable of
4 the day came out publicly saying that we supported
5 InSite. We assigned an inspector to work with
6 InSite and develop policy around it so that we
7 could support it and help it be successful. So it
8 is completely wrong to say that the Vancouver
9 Police Department was against InSite.

10 Q I mean, at the time, in 2001, the VPD was still
11 taking down the VANDU needle exchange table in
12 front of Carnegie, wasn't it?

13 A First of all, InSite opened in August of 2003, not
14 2001. I know the incident that you are talking
15 about, and that was one officer that made a
16 decision at that time that was not supported by
17 the Vancouver Police Department, and we did work
18 to repair the damage done to the relationship
19 around that issue, but your question about InSite
20 and not supporting it, just completely incorrect.

21 Q I mean, if there was an evolution from
22 understanding drug addiction as a crime or a moral
23 choice to an understanding of drug dependence as
24 an illness or disability, the VPD at the time of
25 the Missing Women Review Team work had yet to make

1 that evolution; is that correct?

2 A I think that it was in the course of evolving and
3 that it had not reached the level that it had
4 reached, for example, by 2003 or that it has
5 reached now.

6 Q Suffice it to say that this policy of receiving an
7 immediate missing women -- person report and
8 conducting an immediate field response to
9 investigate circumstances, that didn't happen in
10 the case of these missing women?

11 A I agree.

12 Q All right. Now, you gave evidence about attempts
13 to improve relationships between sex workers and
14 the Vancouver Police Department?

15 A Yes.

16 Q There were efforts in and around 2004 and 2005 to
17 create a 1-800 number province-wide for reporting
18 sex workers missing, for reporting people missing
19 generally?

20 A Yes, there have been efforts over the years that
21 -- discussions continue to this day.

22 Q I mean, we had a real problem in this missing
23 person investigation. Some women were going
24 missing in Port Alberni, some were in Port
25 Renfrew, others were out in Agassiz or Hope.

1 There was a real problem with not just the Lower
2 Mainland having different reports, but all over
3 the province there were different reports,
4 correct?

5 A Yes, there was a problem with where the report was
6 made, the coordination and communication of the
7 investigation, and also I would say, which I've
8 done some work on and written about fairly
9 extensively, is the barriers to reporting, which I
10 think could be addressed at least in part by
11 having a 1-800 number and a centre for excellence,
12 I'll call it.

13 Q But 10 years on there still isn't a 1-800 number
14 province-wide to report people missing?

15 A That is true, much to our displeasure.

16 Q All right. And you heard Susan Davis's testimony
17 that there might be training, sensitivity training
18 on sex worker issues, but the fellow who
19 introduces her, John McKay, who introduces her to
20 new recruits says that the new recruits should
21 listen to her because listening to her could help
22 you solve a crime against a real woman some day.
23 Did you hear that evidence?

24 A No, I did not.

25 Q If that were true, if he said such things, that

1 would be a problem, wouldn't it?

2 A I find that very difficult to believe knowing then
3 Inspector McKay's commitment to the issues and his
4 understanding of the survival sex trade. The memo
5 that he wrote about it is quoted extensively in my
6 report.

7 Q There again you have a choice between believing a
8 sex worker and an officer who you know, and your
9 immediate inclination is to believe the officer
10 who you know?

11 A No, because I said I didn't hear her say that.

12 THE COMMISSIONER: No. Wait a minute. In fairness, you've
13 asked him what his view is, what the position of
14 the Vancouver Police is --

15 MR. GRATL: I didn't ask him that.

16 THE COMMISSIONER: Just a minute. And he said that he, knowing
17 what McKay has done, that he's reluctant to accept
18 what your contention is.

19 MR. GRATL: I just asked him whether, if it was true, whether
20 that would be a problem, and then he volunteered
21 about how great John McKay is and how dedicated he
22 is, so --

23 THE COMMISSIONER: Well, that's because he disagrees with your
24 underlying supposition, your premise.

25 MR. HERN: I want also to object to the introduction to that

1 question, which was "there again", and this --
2 that is not in foundation because he asked this
3 about Mr. Dickson's comment, I believe, and it was
4 disagreed with, and so it's not correct to begin
5 that question saying "there again" as if he's
6 established the previous occasion.

7 MR. GRATL:

8 Q So I'll put it to you -- I'll put the question to
9 you again. If what Susan Davis has to say about
10 her introduction to recruits, that it said of her
11 that recruits should listen to her because
12 listening to her could help the recruits solve a
13 crime against a real woman, that would be a
14 problem, wouldn't it?

15 A I agree that it would be a problem if -- I didn't
16 hear the evidence, so I'm only relying on what
17 you're saying, and if the context was to say that
18 sex workers weren't real women, then I agree with
19 you that that would be a -- I'm appalled.

20 Q All right. So a new policy is being prepared with
21 respect to missing women, in particular sex
22 workers, correct?

23 A Our policy is being amended, yes.

24 Q Yes. And it's before the police board, correct?

25 A It's not before the police board right now because

1 we're doing some further community consultation.

2 Q That was going to be my question. No community
3 consultation has been done on that policy at this
4 juncture, has there?

5 A No. We've done -- we're doing extensive community
6 consultation with partners that were working in
7 the community. It's gone to aboriginal groups.
8 We've already received some feedback about it
9 already, so --

10 Q Did it go to PACE?

11 A There was a list of people that it went to that I
12 could get, but I don't recall if PACE was on it.
13 I wasn't dealing with it specifically.

14 Q So you can't say whether it went to sex worker
15 advocacy groups before it was announced in the
16 media?

17 A No, I can't say that. I just know that it has
18 gone out to a group of people, and I can tell you
19 that that amended policy was delayed because of
20 some other things that occurred, like a riot, and
21 we had done consultation on that with people, for
22 example, from WISH and from the Women's Memorial
23 March. It was part of a report committee -- it
24 was part of a report that we were preparing at the
25 time, and so there was discussion about our

1 policies at that time, and that was back in the
2 spring of this year.

3 Q Did it go to VANDU?

4 A I don't know that.

5 Q All right. So you can't say whether it went to
6 VANDU for consultation before being announced
7 publicly?

8 A Well, first of all, we didn't announce it
9 publicly.

10 Q Do you accept that it was in the press this --
11 last week?

12 A It was in the press, and we weren't ready to go,
13 and we actually pulled that item, which was
14 already being reported on, because we wanted to do
15 some more community consultation.

16 Q All right. So the sex -- Safety For Sex Workers
17 Action Group, SIWSAG -- do I have that correct?

18 A I'm not sure I'm aware of that group.

19 Q Which is the committee that involves Vice and
20 policy members and a diversity team and various
21 community groups?

22 A I recall seeing a reference to that, and that
23 acronym sounds familiar, but I'm not familiar with
24 it.

25 Q Okay. Sex worker groups have been asking for

1 years for a formal policy making enforcement of
2 section 213, the communication section of the
3 Criminal Code, the lowest priority for the Vice
4 Squad, correct?

5 A There certainly have been representations from
6 Susan Davis and others around that issue.

7 Q Okay. Now, you've testified that, in fact, it's a
8 very low priority, communication prosecutions and
9 enforcement?

10 A That, in fact, it is?

11 Q In fact, it's a low priority, correct?

12 A Yes. We haven't charged a sex worker, to my
13 knowledge, in years for communicating.

14 Q But why won't the VPD then make it an aspect of
15 formal policy not to enforce section 213 of the
16 Criminal Code or to make it the lowest policing
17 priority? Do you know?

18 A We actually have a draft.

19 Q Sorry, go on.

20 A Late last year I heard a presentation at our
21 police board meeting from Susan Davis about issues
22 around enforcement that you are mentioning, and as
23 a result of that presentation from Susan Davis I
24 asked that we start work on a policy around those
25 issues and enforcement of prostitution laws

1 generally, including against common bawdy-houses,
2 and that actually has been underway. I've seen a
3 draft of it just -- and commented on it in the
4 last two days, and it's to the state now that
5 we're going to be doing more community
6 consultation about that draft policy.

7 Q All right. Wasn't that -- didn't that form part
8 of the recommendations to city council, making
9 section 213 enforcement the lowest policing
10 priority within Vice? Didn't that form part of a
11 recommendation to city council which was later
12 removed?

13 A From who? Sorry, I'm not --

14 Q From a report to city council.

15 A I know that there was a report done by the City
16 that the Vancouver Police Department was consulted
17 on around sex trade issues. I don't know about
18 that specific --

19 Q One of the pieces of that report --

20 A -- recommendation.

21 Q I'm asking you whether you know that one of the
22 pieces of that report was a recommendation for a
23 formal policy that section 213 enforcement would
24 be the lowest priority for the Vice Squad. Do you
25 know that?

1 A No, I don't know that.

2 Q I take it then you're not aware that that was
3 pulled from the report just before it was
4 presented to city council right before the
5 municipal elections just a month and a half ago?

6 A I'm not aware of that either. I'm just generally
7 aware of the report.

8 Q Now, the Vice Squad is an interesting name
9 because, of course, vice refers to a type of moral
10 assessment of character. As opposed to virtue we
11 have vice, correct?

12 A Yes, I agree.

13 Q All right. So even the word "vice" is morally
14 inflected, correct?

15 A Yes.

16 Q And policing, I take it, in this area, sex work,
17 especially survival sex work, shouldn't be morally
18 inflected, it should be tailored to the drug
19 dependency and illness issues; isn't that correct?

20 A Well, the work of the Vice Unit is around dealing
21 with problems created in communities by the sex
22 trade and other things as well. That's not all
23 that they do. They do Internet pornography and so
24 on. So that is their focus. As to the word
25 "vice", I hadn't thought of that. That's an

1 interesting point. I think that there is a long
2 history, including in our law, of the use of that
3 word.

4 Q There's a long history, and you see it in the
5 *Butler* case onwards that there's a movement in the
6 law away from a moral-based evaluation of sex laws
7 to a harm-based analysis of sex laws, correct?

8 A Yes, I agree with you to the extent I know that.

9 Q And I take it that the word "vice" and "Vice
10 Squad" is pre that evolution, it pre-dates that
11 evolution to a harm-based analysis?

12 A Yes, I agree.

13 Q All right. So it's a little bit out of date, is
14 it?

15 A Yes.

16 Q And it could use updating?

17 A We would certainly consider that.

18 Q Now, what's the percentage of aboriginal police
19 officers at the Vancouver Police Department?

20 A 1.6 per cent the last information I had.

21 Q All right. And what's the percentage of
22 aboriginal people in the City of Vancouver?

23 A 2006 census said 1.9 per cent.

24 Q And how about in the Downtown Eastside?

25 A I don't know. Much higher.

1 Q All right. And what percentage of people who are
2 arrested by the Vancouver Police Department are
3 aboriginal?

4 A I don't know that.

5 Q And what percentage of people who go through the
6 courts in Vancouver are aboriginal?

7 A I don't know. I do know that aboriginal people
8 are grossly over-represented in our justice system
9 generally.

10 Q All right. And I take it that you'll agree that
11 the Vancouver Police Department would be assisted
12 by hiring more aboriginal constables?

13 A Yes, and we -- we do make great efforts in
14 outreach to do that, and we're almost at the rate
15 in the census for Vancouver, for Vancouver and the
16 census metropolitan area. I know that we've gone
17 from -- the first time I looked at it was about
18 2000, when we had about eight, and we're now at 22
19 aboriginal officers, so that's a pretty
20 significant percentage increase.

21 Q Well, that is a significant percentage increase,
22 mostly because you start at such a low number,
23 isn't it?

24 A Yes, small numbers are more sensitive to change, I
25 agree, but by any measure I think going from 8 to

1 22 is significant, and as I say, it's a comparison
2 of 1.6 to 1.9 per cent in terms of their -- our
3 population of aboriginal officers compared to the
4 census.

5 Q What's the target number for aboriginal hirings?

6 A Well, I don't think that we have a target number.
7 Our goal is to have a police department that is
8 reflective of the diversity of the city that we
9 police.

10 Q And, of course, of the population that is the
11 target of policing and enforcement efforts?

12 A I don't think that we have drilled down to that
13 level other than to say that we want our police
14 department to be diverse like the population that
15 we police.

16 Q All right. I take it it would be of assistance to
17 the Vancouver Police Department to consult with
18 aboriginal organizations that have an interest in
19 this issue and arrive at a target figure for total
20 hirings, would it?

21 A I'm not sure that I agree with you about arriving
22 at quotas, target numbers. We definitely have a
23 general goal of hiring aboriginals, physical
24 minorities, women so that we are reflective of the
25 population that we police, and I think that we've

1 done quite well.

2 Q All right. There was a committee, a working
3 group. Vancouver Police Department participated,
4 and so did Susan Davis and other sex worker
5 organizations, correct?

6 A I'm not sure which working group you're referring
7 to.

8 Q All right. It's the Sex Industry Workers Safety
9 Action Group. Have you heard of that?

10 A I may have. It's not ringing a bell with me right
11 now. I know that we certainly consult with a wide
12 variety of groups, and we've had many
13 conversations with Susan Davis, for example. I
14 don't know about the name of the group.

15 Q Did you know that a report has been completed for
16 a period of about six months but it has not yet
17 been released?

18 A By that working group?

19 Q Yes, by that working group. They have a report
20 complete. It was completed about six months ago,
21 and it hasn't been released. You're not aware of
22 that?

23 A I'm aware of several reports. I know that Susan
24 Davis, who's come a number of times to our police
25 board, has provided us reports, and one of them

1 might be the one that you're talking about, but
2 I'm not aware of a specific report or that it
3 hasn't been published.

4 Q Okay. So you can't explain why that report hasn't
5 been published?

6 A No, I can't.

7 Q All right. Now, semi-covert officers attended in
8 the Downtown Eastside starting in January 2002 as
9 part of a joint forces operation?

10 A Yes.

11 Q There were about 12 of them, correct?

12 A Yes.

13 Q And they were investigating all sorts of suspects,
14 correct?

15 A My understanding of the group was to try to
16 develop information and contacts in the Downtown
17 Eastside to do preventative work and investigative
18 work to address the issue that women were still
19 going missing, but as I've given evidence before,
20 I only have a fairly superficial understanding of
21 specifically what Evenhanded was doing when I did
22 my review. So that was part of the Evenhanded
23 project.

24 Q And do you know from Professor Lowman's reports
25 and even from your own knowledge as a senior

1 member of the Vancouver Police Department that
2 there's a very high level of violence against
3 survival sex workers?

4 A I agree with that. I understand that.

5 Q And a lot of that, from the police department's
6 point of view, flies under the radar because sex
7 workers aren't willing to come forward, correct?

8 A Yes, and that's something that we've been working
9 very hard to change.

10 Q All right. So this semi-covert team of 12
11 officers was deployed to address some of those
12 sexual predators and violent predators within the
13 Downtown Eastside, correct?

14 A I wouldn't be surprised if that was part of it,
15 but, as I say, I don't know what their specific
16 instructions were.

17 Q All right.

18 THE COMMISSIONER: I'm going to stop you there. You wanted a
19 half hour. I gave you 40 minutes. Do you have
20 another question?

21 MR. GRATL: Yes, I do, and, Mr. Commissioner, I noticed we took
22 a long break.

23 THE COMMISSIONER: We didn't take a long break. We took a 16-
24 minute break.

25 MR. GRATL: Because I was pretty sure that it stopped -- we

1 stopped at five minutes after.

2 THE COMMISSIONER: You know, you have a tendency whenever I'm
3 critical of your timing to sort of deflect the
4 criticism, blame the witness, now we took too long
5 a break. I gave you an extra 15 minutes yesterday
6 from four o'clock to 4:15, and each time you've
7 asked for extra time I've given you more than the
8 time that you asked for. Now, in fairness to
9 other lawyers you'll hear, Mr. Roberts wants a
10 half hour here, and so I can't -- I can't just
11 accommodate you forever. You asked for a day.
12 You started cross-examining at 2:50 on
13 Wednesday -- on Monday, and then yesterday I asked
14 you in the afternoon. You said you were going to
15 need two hours. You had more than two hours.
16 Then I asked you a while ago, and you said half
17 hour. You had 40 minutes. So, you know, I know
18 it's imperfect to give the time estimates. I know
19 that. And I've been more than fair, I think, and
20 flexible, but you can't keep just taking the time
21 and at the expense of other counsel. And, you
22 know, we have a deadline here. We can't go on
23 forever, and so I'm -- tell me what more you want
24 to ask.

25 MR. GRATL: All I'm asking for is parity with Mr. Roberts, but

1 if you're cutting me off and saying I can't ask
2 any more questions, Mr. Commissioner --

3 THE COMMISSIONER: I'll give you --

4 MR. GRATL: -- I accept that.

5 THE COMMISSIONER: Pardon?

6 MR. GRATL: I can accept that.

7 THE COMMISSIONER: All right. Thank you. Mr. Roberts, you
8 wanted -- you wanted a half hour; is that correct?

9 MR. ROBERTS: Yes. Darrell Roberts for First Nations
10 interests. Yes, I believe I can do it in half an
11 hour.

12 THE COMMISSIONER: Okay. All right.

13 MR. ROBERTS: May I proceed?

14 THE COMMISSIONER: Yes, go ahead.

15 **CROSS-EXAMINATION CONTINUED BY MR. ROBERTS:**

16 Q To set the point, Mr. Commissioner and Mr. LePard,
17 I have been asked to agree to the filing of the
18 memorandum which you prepared over the weekend in
19 answer to what was essentially a question that
20 hadn't been asked yet, an anticipated question
21 with respect to the material which I had prepared
22 in the form of an aide-memoire, two aide-memoires,
23 number two and number three, all as part of an
24 information application for a search warrant in
25 relation to, as in the material, the suspected

1 crime of kidnapping by fraud resulting in first
2 degree murder under the provisions of the code. I
3 was intending to get to the points in my
4 cross-examination at the end of Thursday to ask a
5 question of you as to how close we were, the
6 police forces were at the time to the issuance or
7 granting of a search warrant on an application as
8 so composed, and you were given the opportunity
9 over the four-day break or three-and-a-half-day
10 break to take that memorandum home, which was
11 unexpected by me, and you prepared a memorandum,
12 which I've been asked to file, called "Analysis of
13 the D. Roberts mocked-up ITO by DC LePard". Have
14 I stated correctly how that all happened?

15 MR. HERN: Well, that --

16 THE COMMISSIONER: Yes. Yes.

17 MR. HERN: I haven't been advised that Mr. Roberts was getting
18 up to ask this, but I think that that's unfair to
19 ask this witness as to how it happened in terms of
20 DC LePard taking it home. We know what happened.
21 We've dealt with that the other day. And,
22 moreover, my understanding of -- of the admission
23 of these notes was by agreement with Mr. Roberts
24 because when he cut Deputy Chief LePard off in his
25 answer he said, "Well, you can file" -- DC LePard

1 said, "Can I file -- can I give you these notes
2 then," and Mr. Roberts agreed that those could go
3 in. So I think the question is a bit misstated to
4 the witness, and I don't think the witness needs
5 to answer how it is that we come -- Mr. Roberts
6 ended in this position that he did.

7 THE COMMISSIONER: No. No, I understand that it was done in
8 order to give the deputy an opportunity to
9 respond, and apparently this has been done by --
10 by this analysis that -- so I don't see -- I don't
11 understand the problem. Why can't he ask the
12 questions?

13 MR. HERN: Well, what I want to be clear --

14 THE COMMISSIONER: He apparently wasn't complete. He didn't
15 have the opportunity to complete his
16 cross-examination last day on that last issue.

17 MR. HERN: And that's the point that I want to clarify. What
18 happened was he cut Mr. -- Deputy Chief LePard off
19 in his answer at 12:10 of that day and said that
20 he had some more questions, and he agreed that
21 Deputy Chief LePard could effectively complete his
22 answer by handing up to you his notes, and that's
23 what I want to make sure, that that's clear.

24 THE COMMISSIONER: Okay. Well, you've done that, and he wants
25 to cross-examine on that. That's all he's doing.

1 MR. HERN: We'll see where it goes. I just wanted to make that
2 clear.

3 THE COMMISSIONER: Yes. Go ahead.

4 MR. ROBERTS: I really want to cross-examine on what was the
5 purpose of writing this memorandum and making some
6 statements in it which reflect on my
7 credibility -- I didn't focus on that before --
8 and my integrity, and I'll get to those words in a
9 moment. So I want to --

10 THE COMMISSIONER: If it means anything, I can tell you that I
11 don't see this affecting your credibility. I
12 don't know if anybody else here does, but --

13 MR. ROBERTS: Even if that's so, it's going to sit there. I've
14 been asked to file it. I'd like to just --

15 MR. VERTLIEB: I was going to say --

16 MR. ROBERTS: -- have a short time, if I may, to explore what
17 was in the mind of Mr. LePard as to why he wrote
18 it the way he did.

19 MR. VERTLIEB: I just wanted to say I didn't see any reason to
20 question Mr. Robert's integrity. He's had a
21 long-standing career of excellence, and I didn't
22 see any issue at all, but Mr. Roberts did not have
23 a chance to cross-examine on that, and I thought
24 it was only fair when he asked for that
25 opportunity that he be given it, which he's doing

1 now.

2 THE COMMISSIONER: And as I saw it, I -- like I say, there's a
3 difference of opinion about what happened and the
4 factual underbasing of your -- your aide-memoire.
5 I didn't see it as any kind of an attack on your
6 credibility, but -- yes.

7 MR. HERN: Well, I didn't either, Mr. Commissioner, but, I
8 mean, if Mr. Roberts is concerned about these
9 pieces of paper being placed in the record because
10 they may reflect in that way in his mind on his
11 credibility, then one alternative would be to
12 simply allow the deputy chief to finish his answer
13 and then not place the document into the record.
14 If that's what Mr. Roberts would like, I don't see
15 a problem with that, but one way or another he
16 needs to finish his answer.

17 MR. ROBERTS: I'd like to do a little short cross-examination,
18 if I may, please.

19 THE COMMISSIONER: All right.

20 MR. ROBERTS:

21 Q Mr. LePard, when you prepared the memorandum, you
22 knew that the purpose of the aide-memoire was to
23 explore the question of search warrant capability
24 for the crime of kidnapping by fraud?

25 A My understanding of your questioning of me was to

1 ask me whether the information in this mocked-up
2 ITO was sufficient to obtain a search warrant.

3 Q With respect to the suspected crime of kidnapping
4 by fraud?

5 A Yes, I understood that that was part of it.

6 Q All right. So I want to just drop back for a
7 moment, please. Your understanding of the crime
8 of kidnapping by fraud is very central to what I
9 want to do just for a moment. You participated in
10 a large way with respect to the McMynn kidnapping
11 situation, and that gave rise to an appeal in the
12 aiding and abetting charges against a chap named
13 Vu, right?

14 A I had a very high-level oversight role in that. I
15 was not an investigator in the McMynn kidnapping.

16 MR. ROBERTS: I've referred to the Vu case a couple of times,
17 Mr. Commissioner. I think I should hand it up and
18 have one for the witness.

19 MR. HERN: Do you have a copy for me?

20 MR. ROBERTS: I'm sorry. Yes, indeed.

21 Q VU was an accomplice, an aider and abetter of the
22 kidnapping involving the young man McMynn?

23 A That's my understanding, yes.

24 Q Would you turn, please, to page -- only one
25 reference -- 16 of 21.

1 A Sorry, to page 16?

2 Q 16. At the top right-hand corner it says 16 of
3 21.

4 A Yes.

5 Q Paragraph 60. It reads:

6 The *mens rea* for a party therefore requires
7 both intent and knowledge. Intent may be
8 inferred from conduct, and a person who is
9 sane and sober is deemed to intend the
10 natural and probable consequences of his
11 acts.

12 That's really just a restatement of law that you
13 have known, is that not so?

14 A I'm sorry, I didn't even see where you were
15 reading from.

16 Q Paragraph 20. I'm sorry. I said 60. I put my
17 glasses on. Paragraph 60.

18 Intent may be inferred from conduct...

19 A Yes, I see that. Sorry.

20 Q
21 ...and a person who is sane and sober is
22 deemed to intend the natural and probable
23 consequences of his acts.

24 Do you see that?

25 A Yes.

1 Q All right. And that is the only intent required
2 for kidnapping? You know that to be so?

3 A Well, I know that to be so in 2011, BC Court of
4 Appeal's decision in this case.

5 Q You knew that before this? You knew that the
6 crime of kidnapping only required proof that one
7 intended to kidnap the person, whether by force or
8 fraud?

9 A I don't know what my specific level of
10 understanding of the law around kidnapping was
11 because I hadn't been involved in kidnapping
12 investigations.

13 Q I thought you said earlier in one of your answers,
14 "Yes, that's probably so I knew that"?

15 A I don't recall that, but I think I generally
16 understand what the crime of kidnapping involves
17 and the intent, and I agreed with you around
18 people intend the natural consequences of their
19 actions.

20 Q All right. And that's all that's required for
21 proof of kidnapping by fraud? You knew that
22 generally?

23 A In a very general way.

24 Q All right.

25 A I wasn't familiar -- you know, you've put to me

1 these things. I'm not sure if I even had thought
2 before your cross-examination about the offence of
3 kidnapping by fraud.

4 Q Well, I'm -- I have to do this cross-examination.
5 I'm not going to get down and beg for it, but I
6 respectfully want to be able to proceed with this
7 cross-examination, so I want you to go to the
8 victim's statement, which is where I broke off on
9 cross-examination Thursday last just before the
10 noon break, and that victim statement can be
11 found, Mr. Registrar, if you could put it before
12 him, in the Evans report. If I can have the Evans
13 report before the witness. Chapter 8, page 48.

14 A Sorry, page 48?

15 Q Chapter 8, page 48. I won't read it again. I
16 just want to take you there and fix on a couple of
17 lines. You remember I had this before you on
18 Thursday?

19 A Yes.

20 Q And at the end of it, having read it through, in
21 particular how this victim got into Mr.
22 Pickton's -- Willie Pickton's truck on a bargain
23 for oral sex and then was taken to his property
24 and then attacked after the sex and barely got
25 away with her life, all right, after I read

1 through it I said to you: "Is this not a classic
2 case of kidnapping by fraud?" Do you remember
3 that?

4 A I do recall you asking me that.

5 Q And your answer, and I was waiting for the
6 transcript to have it, but it's not a quick turn-
7 around, the answer was that we don't know -- in
8 part your answer was we don't know when it was he
9 formed the intention to attack, to contravene his
10 bargain. Do you remember making that answer?

11 A I remember that generally because what I looked at
12 was that it seemed after the facts that you cited
13 about her wanting to leave the car and him not
14 letting her that then there was an agreement for
15 consensual sex between them.

16 Q There was an agreement for consensual sex right at
17 the beginning, for oral sex. That's the basis
18 upon which she got into the car according to this
19 statement.

20 A Yes, and --

21 Q Isn't that so?

22 A And then when they got to his trailer there was an
23 agreement then. There wasn't an attempt to escape
24 or something like that. There was an agreement
25 then, and my understanding of reading her

1 statement was that there was a consensual sex act
2 between them and then an attack followed.

3 Q What difference does that make? She's in his
4 custody by the bargain that was made downtown.
5 She never left his custody throughout the whole of
6 that transaction; isn't that so?

7 A Well, it is true that she remained with him, but
8 you were putting to me this fact pattern about
9 consent by fraud, and I looked at that and said,
10 well, I don't know if that supports that because
11 of the whole transaction, and this evidence was
12 available to Crown at the time and yet --

13 Q Please don't go there. I want to know what you
14 knew when you gave some evidence in this case.

15 A Yes.

16 Q All right. If you're suggesting -- and surely
17 you're not trying to have fun with this court or
18 this inquiry. Are you suggesting that if Pickton
19 changed his mind from the bargain for sex, whether
20 oral sex or real sex, and decided to attack her
21 that we have to find out when he changed his mind?
22 Is that what your suggesting (sic) is?

23 A No. What I'm --

24 Q What your suggestion is.

25 A -- saying is that from reading her statement and

1 knowing the facts that I don't know when he formed
2 the intent to attack her, whether it was when he
3 picked her up, which would make it, as you
4 describe, kidnapping by fraud --

5 Q Mr. LePard, why are you --

6 THE COMMISSIONER: Let him finish.

7 MR. ROBERTS:

8 Q Why are you talking about when he formed the
9 intent if the only intent required is the -- is
10 the natural and probable consequences of his act?

11 A Well, I'm not going to agree with you on that.

12 THE COMMISSIONER: Well, in fairness, what he's saying is that
13 he didn't think there was a factual basis for it
14 at that time. That's what he's saying. I think
15 he should have the opportunity to answer that
16 question.

17 MR. HERN: Mr. Roberts apologized yesterday for cutting this
18 witness off, but he keeps cutting him off again.
19 Please let him finish. It's a complicated
20 question of law and fact that he's asking, and I
21 think that it entails -- it's entirely reasonable
22 to have an answer that isn't yes or no.

23 MR. ROBERTS:

24 Q Finished?

25 A Sorry, the question again?

1 Q All right. My question is -- it's more in a
2 hypothetical. I suggest to you that it is not any
3 concern of the law as to when a kidnapper or what
4 looks like an apparent kidnapper might change his
5 mind from a voluntary engagement of custody to one
6 that becomes violent.

7 A No, I -- my understanding of the law is that I
8 would have to respectfully completely disagree.
9 If two friends get in a car and one drives another
10 to a house and they get into an argument and one
11 assaults the other, I don't think that that leads
12 inevitably to the inference that when he picked
13 him up that he was kidnapping him by fraud.

14 Q The one crime that was always Vancouver's to
15 investigate was a kidnapping by fraud from which
16 first degree murder would be charged where death
17 was caused during the course of that kidnapping;
18 is that not so?

19 A It was always within the VPD's responsibility, and
20 I've said this numerous times, to investigate the
21 fact that women were going missing from the
22 streets of Vancouver, but it was not known how
23 that was occurring. There were many suspicions
24 about how that might be occurring. As to if there
25 had been a known offence of someone having been

1 kidnapped by fraud there, then I agree that the
2 VPD would have jurisdiction to investigate it,
3 but, in fact, the VPD was conducting an
4 investigation. Whether they understood that
5 nuance of the law or not, I don't think that it
6 changed anything in that they were still
7 responsible for conducting this investigation, and
8 when information came forward about this suspect
9 in Coquitlam, the VPD supported and worked with
10 the Coquitlam RCMP on that investigation jointly,
11 which the primary and most serious offence and the
12 offence that was far more likely to be successful,
13 and as that turns out to be the case, was
14 information about a murder on the Coquitlam
15 property.

16 Q You first saw this statement which is here now in
17 Deputy Chief Evans' report, you first saw it when
18 you were writing your report; isn't that correct?

19 A Yes, I had reviewed that Victim 97 report.

20 Q And did you not -- when you looked at it, did you
21 not consider that it laid out apparent facts for
22 kidnapping by fraud?

23 A No, I did not.

24 Q Did you not consider that at any time when you
25 wrote your report, that this set out facts for

1 kidnapping by fraud wherein if death occurred that
2 would be first degree murder?

3 A No, I did not.

4 Q Is your only hesitation that the sex act agreement
5 changed? Let's put the hypothetical that the
6 person got into the vehicle on a promise for oral
7 sex, went out to Pickton's farm, in his custody,
8 no change in custody, and then after or during
9 whatever the oral sex he attacks her. Is it your
10 understanding then as a deputy chief of police
11 that that would set out a fact situation for
12 kidnapping by fraud?

13 A That it would or would not?

14 Q It would.

15 A I didn't put my mind to that issue because what I
16 looked at in looking at that historical
17 information, it was in the context of what was the
18 information pointing to Pickton, and certainly
19 that was important information that made him a
20 very viable suspect. I looked at the
21 investigation conducted by Coquitlam into that,
22 that there was no pursuit of that particular line
23 or request, for example, from the VPD. I'm not
24 sure what more would have been done. They
25 understood all the facts of what had occurred to

1 their satisfaction. So, no, I wasn't looking at
2 it for that purpose. I was looking at it in the
3 context of what was all the constellation of
4 information pointing to Pickton as a good suspect
5 for attacks on women.

6 Q But you're a knowledgeable police officer, sir.
7 Didn't you see on those facts -- remove what seems
8 to trouble you, that the agreement changed at the
9 property. Didn't you see on those facts a
10 straightforward example of kidnapping by fraud,
11 that is to say, an arrangement by which somebody
12 put themselves in another's custody willingly,
13 consensually, and then taken to the property and
14 attacked? Did you not see it that that is --

15 A No.

16 Q -- as in the *Metcalf* case and other cases,
17 kidnapping by fraud?

18 A No, because I wasn't putting my mind to that issue
19 because that wasn't my purpose in reviewing the
20 report.

21 Q Did you ever put your mind to that purpose?

22 A Of whether that was kidnapping by fraud?

23 Q That situation as kidnapping by fraud.

24 A No, I did not put my mind to that because I didn't
25 have any facts, other than the 97 report, which

1 I've said what the purpose that I was reviewing
2 it, I did not have any other facts to look at that
3 supported that that offence had occurred.

4 Q I'm just going to read a very short part from the
5 reasons for judgment of the Court of Appeal in
6 *Pickton* by Mr. Justice Low. I don't have a copy
7 for you, but I don't believe that's necessary.

8 The Crown sought to prove that the Appellant
9 murdered each of the six victims at his farm,
10 property in Port Coquitlam, after taking them
11 from the Downtown Eastside area of Vancouver
12 where each of them was a sex trade worker.

13 All of the charges you knew that were advanced in
14 this case were in relation to sex trade workers
15 who were picked up in downtown Vancouver and taken
16 to Pickton's farm? That's correct, isn't it?

17 A I understood that they were sex trade workers from
18 the Downtown Eastside --

19 Q Who were killed at Pickton's farm or his property?

20 A And elsewhere, I was about to say, that were
21 killed at his property.

22 Q All right. Now, are you saying that it never
23 occurred to you -- let me start again. You knew
24 these facts during the course of your writing of
25 your report, right?

1 A I knew that --

2 Q As I just read to you, you knew them?

3 A -- the victims -- that the victims were from the

4 Downtown Eastside and elsewhere and had gone to --

5 Q I'm not asking you about elsewhere. Mr. Justice

6 Low's statement, he says --

7 A Yes.

8 Q -- each of them is from the Downtown Eastside of

9 Vancouver and they were a sex trade worker. You

10 knew that when you were writing your report?

11 A Well, I knew that generally. I, of course, didn't

12 have the benefit of Justice Low's decision.

13 Q You didn't need that benefit to know what the

14 facts were. He's just restating what everybody

15 knew.

16 A Well, I understood your question to be did I know

17 what he has stated there.

18 Q All right. Thank you. And you knew it when you

19 wrote your report?

20 A I knew -- my understanding was, is that sex trade

21 workers, many of them from the Downtown Eastside,

22 had been conveyed to the property in Coquitlam and

23 had been murdered there.

24 Q But you also knew that this being sex trade

25 workers, the only basis for them getting into

1 vehicles in all probability was on bargains for
2 sex?

3 A I knew that that was a likely cause.

4 Q A likely cause. Therefore you knew, did you not,
5 that these transactions were likely kidnapping by
6 fraud with death ensuing; isn't that true?

7 A No.

8 Q You never put your mind to that when you wrote
9 your report?

10 A No. I did put my mind to the issue of whether
11 women had been forcibly removed from the Downtown
12 Eastside, I mean, the theories generally about
13 what was happening, were these women abducted, so
14 I considered it generally.

15 Q The point of my question, sir, is, all right, you
16 considered it generally. To the extent that you
17 considered it generally, then what you were
18 considering is death caused whilst committing
19 kidnapping, which is a crime based in Vancouver?
20 That's what you were considering generally; isn't
21 that so?

22 A Well, those aren't the words that I would use, Mr.
23 Commissioner. I would agree if -- hypothetically
24 if that had occurred that there would be an
25 offence that was beginning in Vancouver, and what

1 I've said before is that whether that was the case
2 or not it didn't change the responsibility of the
3 VPD to investigate women missing from the Downtown
4 Eastside. As to the legal techni -- these
5 technical issues about kidnapping by fraud, I did
6 not put my mind to that issue. What I put my mind
7 to was what should the VPD have done based on the
8 information that was available and also what was
9 the conduct of the investigation, who was leading
10 it and so on in Coquitlam.

11 Q Sir, I suggest -- if I might ask you to think
12 about my question before you answer it. I suggest
13 that you very definitely thought about what was
14 the possible crime or crimes committed in
15 Vancouver with respect to the missing and murdered
16 women before you wrote your report.

17 A Yes, I thought about the issue generally, about
18 whether there was any crimes committed in
19 Vancouver.

20 Q All right. Crimes generally. And the one crime
21 that if you thought about it generally, being a
22 knowledgeable fellow like you are, on these facts
23 you had to think about kidnapping by fraud with
24 death ensuing; isn't that true?

25 A No, it's not correct.

1 Q All right. In your report, and we don't have to
2 go to it, I'm just going to touch on it, you have
3 written a report which says the legal jurisdiction
4 to investigate the murder of the missing women was
5 with the RCMP in Coquitlam, and you make that
6 point specifically on page 296, correct?

7 A Yes, what I said was that the information received
8 was about a murder that had occurred on the
9 Pickton property and that the Coquitlam RCMP
10 properly had jurisdiction to investigate that,
11 that there was never any disagreement with that,
12 that the officers themselves --

13 Q I didn't ask you whether there's disagreement.
14 Please don't go on. That's the only one you talk
15 about with legal jurisdiction in your report; yes
16 or no?

17 A I talked about the responsibility of the VPD to
18 investigate any crimes that occurred in Vancouver.

19 Q You used the term "legal jurisdiction".

20 A Pardon me?

21 Q You used the term "legal jurisdiction" in your
22 report, page 296.

23 A Yes.

24 Q That's the only one you say had legal
25 jurisdiction, is RCMP?

1 A Mr. Commissioner, it was in the context of
2 describing who was responsible for investigating
3 the information about a murder alleged to have
4 committed on -- been committed on Pickton's
5 property.

6 Q Sir, in the memorandum --

7 THE COMMISSIONER: I don't want to interrupt you, Mr. Roberts,
8 but hasn't he sort of made it clear that he didn't
9 think about that, that he didn't think about the
10 fact that -- that it could have been committed --
11 that any crime could have been committed within
12 Vancouver jurisdiction because in his mind there
13 was no evidence? So what more do we --

14 MR. ROBERTS: I'd like to put two questions to him in a moment
15 with your leave, please, Mr. Commissioner, because
16 I want to take it further than that.

17 THE COMMISSIONER: Okay.

18 MR. ROBERTS: The memorandum that's been filed, that I have to
19 file and apply something to, makes allegations
20 that the material that I prepared for this court
21 was false and misleading.

22 THE COMMISSIONER: Well --

23 MR. ROBERTS: No, just a minute.

24 THE COMMISSIONER: I don't take it that way.

25 MR. ROBERTS:

1 Q I'm sorry. I beg your pardon if I'm interrupting.
2 I beg your pardon. Where I'm going with this is
3 I'm going to put this question to the witness with
4 respect to his report. His report -- this is a
5 question to you, Mr. LePard. Your report is
6 prepared on the premise that the only legal
7 jurisdiction for investigating the crimes of the
8 missing and murdered -- of Pickton with respect to
9 the murder of the missing women, the only legal
10 jurisdiction was with the Coquitlam RCMP and that
11 all that Constable Shenher was doing was assisting
12 them in that investigation. The reference to
13 kidnapping in any form or other or any obligation
14 to investigate the crime of kidnapping by fraud
15 nowhere appears in that report, is that not so?

16 A Well, there's two questions there, and as to the
17 first question, whether it was based on the
18 assumption that the only jurisdiction was in
19 Coquitlam, the answer is no. That's not what I
20 put my mind to. The question that I understood
21 that I was being asked and led up to is was there
22 sufficiency in this ITO to have got a search
23 warrant in 1998, and my view of the information,
24 which, by the way, that was not the final draft of
25 my notes which I provided to my lawyer, to our

1 lawyer, my view of it was that the draft mocked-up
2 ITO, which I in no way am suggesting you were
3 trying to mislead anybody with, that it was a
4 mocked-up ITO, that I believe that it was
5 insufficient in a number of different ways, and
6 that's what I was trying to be responsive to, not
7 the issue of jurisdiction.

8 Q I am going to ask the question. I put it to you
9 that you wrote your report on a false premise that
10 the only jurisdiction to investigate the missing
11 and murdered women was the RCMP and that the VPD
12 through Constable Shenher was merely assisting and
13 that was deliberately done to mislead, to take
14 one's eye off the ball for the failures and the
15 mistakes of the Vancouver Police Department?

16 A Mr. Commissioner, I could not disagree more. I do
17 not think that that's what those notes show.
18 That's not the premise of doing the document. It
19 was to provide notes to myself to be responsive to
20 this proposition that the police had sufficient
21 evidence and if only the VPD had understood the
22 law then they could have known that they could
23 have taken it upon themselves to go get a search
24 warrant for the property, which, as I explained,
25 was not practicable at all. That's not the way

1 that it would have occurred, number one. And
2 number two, that I thought that the draft ITO was
3 insufficient in many ways.

4 THE COMMISSIONER: How much longer are you going to be?

5 MR. ROBERTS: I have one more question.

6 THE COMMISSIONER: Okay.

7 MR. ROBERTS:

8 Q I believe what I want to address is on page 171.
9 These are -- this is an excerpt in the transcript
10 of this hearing on November 8, 2011, and it's page
11 171 at the bottom of the page. Can you find that
12 page?

13 A Yes, I see it.

14 Q It's the question at line 18. I am going to read
15 the question to you and your answer. Mr. Vertlieb
16 put this to you:

17 Q Your view was there was no crime committed
18 in Vancouver?

19 A Correct.

20 Do you see that?

21 A Yes.

22 Q I'm going to suggest to you that you gave a false
23 answer.

24 A Mr. Commissioner --

25 Q You knew very well there were crimes committed in

1 Vancouver; the VPD just didn't investigate them?

2 A Mr. Commissioner, I'm here for my tenth day of
3 evidence. I have tried my very best to give full,
4 honest and frank answers, truthful answers in
5 every case to the best of my knowledge, and that's
6 what that answer was, that I am unaware of any
7 evidence that a crime was committed in Vancouver.
8 That was my view, that's what I wrote, that's what
9 I responded to Mr. Vertlieb, and that's what I am
10 saying now. So I take great offence to you
11 suggesting that I --

12 Q I am not going to be deterred --

13 THE COMMISSIONER: Let him finish.

14 MR. HERN: Let him finish.

15 MR. ROBERTS:

16 Q Go ahead.

17 A I will just say again I have done my very best for
18 the last 10 days, and I take great offence to you
19 suggesting that I was not telling the truth.

20 Q One more passage on the transcript of your
21 evidence, and that is November 9.

22 MR. HERN: Do you have a copy for the witness? Mr. Baynham,
23 are you going to give a copy to the witness so he
24 can read it?

25 THE REGISTRAR: The witness and the commissioner, please.

1 MR. ROBERTS:

2 Q Have you got November 9? It's page 143, beginning
3 at line 14?

4 Q So the intent, I don't think I need to
5 explain this to you, Mr. Commissioner, but
6 someone having intent does not constitute
7 completion of a crime, that there needs to
8 be mens rea and there needs to be actus
9 rea,

10 it's actually *actus reus*,

11 and the elements of the offence have to be
12 completed. So there was no offence that
13 was committed in Vancouver; there's no
14 evidence of an offence that was committed
15 in Vancouver. Whether or not he had
16 intent in his mind does not constitute an
17 offence and, in fact, we don't know what
18 the intent in his mind was and, in fact,
19 we don't know which, if any, of the women
20 that ended up at the pig farm in Coquitlam
21 were actually picked up by Pickton.

22 I am not going to read more. With respect to the
23 evidence that you gave with respect to *actus reus*
24 and *mens rea*, you knowing that in a general sense
25 that for kidnapping by fraud or kidnapping by

1 force the only intent required is the presumption
2 that the person intends the natural and probable
3 consequences of his act, I premise this on the --
4 assuming that you knew that that is the only
5 intent required, here you gave false evidence?

6 A Again, Mr. Commissioner, I gave evidence to the
7 best of my ability based on my knowledge. I
8 believe that what I have stated there is generally
9 true. I understand that there are some
10 exceptions, for example, a conspiracy. I had not
11 put my mind to the issue of kidnapping by fraud.
12 I do understand that if there had been a
13 kidnapping by force that that act occurred at the
14 very first moment that the person was taken by
15 force. I had never considered or put my mind to
16 the issue of kidnapping by fraud, but I still --
17 my understanding and my evidence there is what I
18 understand there to be. I know that the law is
19 full of exceptions.

20 Q One last question. I suggest to you that you,
21 sir, a well-educated, senior police officer,
22 having taken many courses, including the law of
23 evidence, that your evidence you just gave now
24 that you didn't put your mind to whether or not
25 there was kidnapping by fraud with respect to the

1 facts of the missing and murdered women from
2 Vancouver is false evidence?

3 THE COMMISSIONER: Well, I think he already answered that.

4 MR. ROBERTS: All right. Those are my questions.

5 THE COMMISSIONER: All right. Thank you.

6 MR. HERN: Mr. Commissioner, I just want to state on the record
7 that I'm deeply concerned by that kind of -- those
8 kind of questioning where -- and I just -- I don't
9 think that that was appropriate, and I don't think
10 it should be an example for others. You spoke
11 earlier today of fairness to a witness, and these
12 were questions of law being placed to an
13 individual who is not an expert in law but has
14 done his best to do his review, and then to turn
15 that around on him and accuse him of giving false
16 evidence to you with that kind of flimsy
17 foundation in my view should not be replicated,
18 and I don't think it's appropriate. The -- I
19 thought that Mr. Roberts was going to give Deputy
20 Chief LePard an opportunity to respond to the
21 question that he had cut him off on last Thursday,
22 and I see that he hasn't done that, so I would
23 respectfully ask that the notes that were agreed
24 to be going in as an exhibit then go in for that
25 reason.

1 MR. ROBERTS: I agree they go in with the memorandum which I
2 have attached to it, which I believe you've seen.
3 Only on that basis.

4 THE COMMISSIONER: All right.

5 MR. ROBERTS: And I also will reserve the right to say that
6 they're -- in any event, they're inadmissible as
7 outrageous argument.

8 MR. HERN: Okay. Well, that's a different issue. If Mr.
9 Roberts is going to argue that the answer to the
10 very question he asked is inadmissible, I am going
11 to -- we're going to have to deal with that maybe
12 after the break.

13 THE COMMISSIONER: All right.

14 MR. HERN: I mean, I just can't see how -- I can't fathom how
15 that could be the case. He asks for an opinion.
16 He gets an answer.

17 THE COMMISSIONER: I'm mindful of the fact that what has been
18 put here has been -- is -- is a hypothetical
19 situation, and you can argue the weight that ought
20 to be attached in due course to that.

21 MR. HERN: But -- but, Mr. Commissioner, with respect to what
22 my friend has just said, that it's not admissible,
23 he has put a hypothetical question to this
24 witness, and he didn't like the answer, but, I'm
25 sorry, in my submission that is admissible. He

1 can argue about weight later.

2 THE COMMISSIONER: Well, now he's testified, and that's
3 evidence. All right. Thank you. Yes.

4 MR. GRATL: I'm asking that exhibits marked for identification
5 as A and J be admitted into evidence as the next
6 two exhibits.

7 THE COMMISSIONER: All right. Is there any objection to that?
8 All right.

9 THE REGISTRAR: The document now marked as Exhibit -- or for
10 identification A will be marked as Exhibit 39, and
11 J will be marked as Exhibit number 40.

12 MR. VERTLIEB: I presume that the providers of those documents
13 are comfortable there's no information that needs
14 to be vetted?

15 MR. HERN: Ms. Tobias advises me they're still being worked on,
16 so we'll need to talk about that over lunch. I
17 don't know what's happening with that.

18 THE COMMISSIONER: All right.

19 MR. VERTLIEB: That's why I stood up. I don't think they
20 should be marked then.

21 THE REGISTRAR: Okay. In that case, those markings will be
22 deleted.

23 THE COMMISSIONER: All right. Anything else?

24 MR. GRATL: I don't know, but I'll be vigilant in ensuring the
25 vetting.

1 THE COMMISSIONER: I'm sorry?

2 MR. GRATL: I'll be vigilant in ensuring the vetting happens in
3 a timely fashion.

4 THE COMMISSIONER: I'll leave that with you. So, Ms. Tobias,
5 you're next. When do you want to come back to do
6 this?

7 MS. TOBIAS: I'm content to come back at 2:00, Mr.
8 Commissioner.

9 THE COMMISSIONER: At 2:00?

10 MS. TOBIAS: Yes.

11 THE COMMISSIONER: All right. Thank you.

12 THE REGISTRAR: The hearing is now adjourned until 2:00 p.m.)

13 **(PROCEEDINGS ADJOURNED AT 12:45 P.M.)**

14 **(PROCEEDINGS RESUMED AT 2:00 P.M.)**

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

16 MS. TOBIAS: Beg your pardon, Mr. Commissioner. Cheryl Tobias,
17 appearing for the Government of Canada. Now, just
18 before I start I understand that there is a
19 document to be marked, the one that was being
20 discussed just before we broke for lunch. I'm not
21 sure if Mr. Hern needs to say anything more than
22 that other than he doesn't object anymore.

23 MR. HERN: I don't have anything particular to say except that
24 Mr. Giles now has the copy with the -- Mr.
25 Roberts' statement on the front as a memorandum,

1 and so I think that can be marked.

2 THE COMMISSIONER: Okay. All right.

3 THE REGISTRAR: That will be marked as Exhibit number 39.

4 **(EXHIBIT 39: Document entitled - Analysis of the**
5 **D. Roberts mocked-up ITO; together with attached**
6 **note by Darrell W. Roberts, QC)**

7 MS. TOBIAS: And, Mr. Commissioner, you should have two volumes
8 of documents that we've handed up to Mr. Giles.
9 In accordance with what has become the custom,
10 we've given a copy to -- the witness has a copy,
11 and commission counsel has a copy. Everyone else
12 has been given CDs with the documents
13 electronically. And I should say, Mr.
14 Commissioner, I'd ask you to have available as
15 well Exhibit 1, I think it's Exhibit 1, Deputy
16 Chief LePard's report, and the binder of documents
17 that Mr. Gratl was using because we will be
18 referring to those in the near future.

19 THE COMMISSIONER: Thank you.

20 **CROSS-EXAMINATION BY MS. TOBIAS:**

21 Q Deputy LePard, where I want to start this
22 afternoon is with a question of perspective, and
23 as you yourself have noted many times, it's very
24 important not to consider the events with which
25 this commission is concerned from a point of view

1 of hindsight; is that right?

2 A I agree.

3 Q And we've talked a lot and there's been a lot said
4 so far about the question of what specific
5 information was available about the offences in
6 issue, but I want to ask you about some other
7 aspects that also need to be considered when
8 you're putting yourself back in the position in
9 which the investigators found themselves starting
10 in 1997. Can I ask you to do that?

11 A Yes.

12 Q Okay. Now, besides the evidence, there are other
13 aspects that are important that are not the same
14 now as they were then, and I am going to suggest
15 some of them to you and ask you if you agree with
16 me. Now, I'm just asking you on a general level
17 at this point. I'm going to go into more detail,
18 but the kind of training that say homicide
19 investigators had at their disposal in 1997 is not
20 the same as it is today?

21 A Yes, I agree. Training's always evolving.

22 Q And similarly, as has been remarked, this case
23 certainly was very unusual and in some respects
24 even unprecedented, so they didn't have that
25 experience back in 1997 to 2002?

1 A I would agree with you.

2 Q And in some respects things like the investigative
3 standards, investigative practices at that time
4 are not what they are today -- were not what they
5 are today?

6 A Yes, I agree. They're always evolving and
7 improving.

8 Q And likewise, the various systems that were in
9 place at the disposal of the investigators, and
10 I'll give you some examples in a moment, but there
11 were various systems that exist today that did not
12 exist in 1997, and you can think of things like
13 electronic systems or management systems, that
14 sort of thing?

15 A Yes, I'm sure that's true.

16 Q And those -- those other factors are extremely
17 pertinent, and I'll give you an example that
18 you've referred to very often, is that the
19 background knowledge and experience of the senior
20 management -- managers in the Vancouver Police
21 Department about the sex trade workers on the
22 Downtown Eastside is not today what it was back
23 then?

24 A Yes.

25 Q And you've told Mr. Commissioner quite a bit here

1 and there about some of the changes that have come
2 about driven partly by this case because, as you
3 said, the Vancouver Police Department didn't stand
4 still, and neither did the other police forces; is
5 that right?

6 A True. The VPD and the RCMP I agree did not stand
7 still.

8 Q Now, there are some changes in techniques in
9 particular that I would like you to focus on
10 because I think that they're very relevant to the
11 subject of this inquiry, and I'm going to start by
12 asking you to pick up Mr. Gratl's book of
13 documents. I shouldn't call it that. I believe
14 it's Exhibit J for Identification.

15 THE REGISTRAR: For identification J, that's correct.

16 A Yes.

17 MS. TOBIAS:

18 Q And I am going to ask you to refer to the document
19 that begins at page 227, which is -- have you got
20 that, sir?

21 A Yes.

22 Q And it's a memorandum dated August the 25th, 2000,
23 to yourself from -- is that Acting Inspector
24 Geramy Field?

25 A Yes.

1 Q So I'd ask you to turn to the next page of that
2 document, and you'll see at the bottom a reference
3 to DNA?

4 A Yes.

5 Q Do you see that?

6 A Yes.

7 Q And in this memorandum she states:

8 This is another expectation in almost all
9 homicide cases now. Previously it was a
10 selective tool, but is now evidence juries
11 expect to hear. DNA warrants can be hugely
12 time consuming, depending on the length and
13 complexity of the case. Defense has taken to
14 vigorously attacking the Informations used to
15 obtain search warrants in an effort to keep
16 DNA evidence out. As a result, obtaining the
17 warrants has become a lengthy process
18 requiring extensive involvement by Crown
19 before they will approve approaching a Judge.
20 So you will agree with me that DNA evidence in the
21 missing women's investigations with which we are
22 concerned here is crucial?

23 A It did turn out to be crucial, yes.

24 Q And that the techniques and systems in place have
25 changed enormously since the time of -- well,

1 since 1997 certainly?

2 A Yes, I'm sure they have.

3 Q Now, before I deal with since 1997 so much, you'll
4 remember that the particular document we're
5 looking at is dated 2000, and we can see, can we
6 not, from the extract that I've read to you that
7 the DNA -- the use of DNA and the kinds of things
8 that the police were required to do in relation to
9 DNA evidence was in the process of change back
10 then, very great change?

11 A In 2000 or --

12 Q Yes.

13 A Yes, 2000 is when the DNA databank came into being
14 and legislation around that is my recollection.

15 Q And from the extracts I read to you, again, you
16 can tell that in the years prior to 2000 as well
17 the police had experienced or the Vancouver Police
18 Department certainly had experienced great change
19 in what they had to do and how much they used DNA
20 evidence?

21 A Well, in that it was new legislation and so
22 something new to work with and to meet the
23 standards that were expected, yes.

24 Q Another topic that has been very much discussed so
25 far is major case management?

1 A Yes.

2 Q Now, I'm going to ask you just to leave the
3 document, that one open, and take up your own
4 report, that being Exhibit 1, I believe, at page
5 247 to 248.

6 A Yes.

7 Q And you explained, and I am not going to take you
8 through this in any detail at all, but you
9 explained what major case management is and how it
10 came to be put together?

11 A Yes.

12 Q And I'll simply draw your attention to I believe
13 it's page 247. I'm sorry, I have a slightly
14 different version. The passage beginning, "The
15 major case model -- management model training
16 prepares candidates..." Do you see that, sir?

17 A Yes.

18 Q And essentially what you're saying in that
19 paragraph -- I'd like to draw your attention to
20 the middle of that paragraph where you say:

21 The major case management model repackages
22 the cumulative skills, knowledge and
23 experience derived from the successes and
24 failures of Canadian law enforcement and
25 organizes them in a manageable format, which

1 makes them more effective and easily applied.

2 A Yes. I actually precede that by saying that that
3 is an excerpt from the major case management
4 manual. They're not my words.

5 Q Okay. The point being that this model has
6 become -- has come to be regarded as more or less
7 essential in any case remotely like the ones that
8 we are considering in this inquiry?

9 A It is the standard for major cases, I agree.

10 Q But again going back to 1997 to 2002, it's fair to
11 say that the major case management model had been
12 conceived of, training was available, but it was
13 not widely implemented, certainly not in your own
14 department?

15 A I agree.

16 Q And if I recall correctly, you were one of just a
17 couple individuals who had the training --

18 A That's true.

19 Q -- right?

20 Would you take up Exhibit J again, and I know
21 I've asked you to keep the page open, and so if
22 you can stick your finger in it but flip to page
23 235, please.

24 A Yes.

25 Q And this now is the second page of another

1 memorandum from Sergeant Field to -- this time to
2 Inspector Gord Spencer, and it's dated November
3 22nd, 2000.

4 A Yes.

5 Q And there's a section on the second page of the
6 memorandum that deals with major case management.

7 A Yes.

8 Q Do you see that?

9 A Yes.

10 Q And the subject of that paragraph, and you might
11 want to take a moment to have a look at it, is
12 essentially that it's becoming a standard practice
13 by a number of police forces, but you need to
14 front-end load it, and there's an issue with the
15 kinds of resources it takes and the availability
16 of those resources in the Vancouver Police
17 Department at that time?

18 A Yes, that is what it says.

19 Q Okay. And do you agree with that?

20 A Generally I agree with it. The major case
21 management model really doesn't talk about the
22 number of people. It describes functions. I'm
23 sure you've seen the organizational chart, and you
24 can have one person doing more than one function.
25 The major case management model contemplates a

1 very small number of investigators as well. But I
2 agree with your point that the major case
3 management model talks about the need for front-
4 end loading and delineation of responsibilities
5 and so on.

6 Q Okay. You should have in front of you Deputy
7 Chief Evans' report.

8 A Yes.

9 Q And would you please turn to page 1-3 of that
10 report. Now, before I ask you about this
11 specifically, I would ask would you agree then
12 that when evaluating how the investigations were
13 conducted at that time one cannot use major case
14 management standards?

15 A Well, in the VPD what I talked about is that there
16 was advice available. I agree with you that it
17 was in its infancy in its implementation but that
18 there was advice available about it and it was a
19 practice that there was information available.
20 And so in terms of applying a standard, I agree
21 that in the VPD, which I'll speak to, it was
22 nowhere near as evolved because it was basically
23 not there, except for in a few investigations, as
24 it is now and in many police departments where
25 it's very sophisticated and it is the standard.

1 Q I think what I'm asking you is to agree with me
2 that if -- when Mr. Commissioner looks and
3 evaluates the efforts of any one team that this is
4 something that's important to be kept in mind.
5 I'm -- just before you answer that I'm going to
6 tell you specifically what elements I want to put
7 to you. First is that major case management was a
8 relatively new phenomenon, and, secondly, that the
9 business processes and systems that are required
10 to make it work were not firmly in place?

11 A So I agree with 95 per cent of what you've said.
12 I will say that the major case management model, I
13 agree with you, was in its infancy, not many
14 people had received the training, but major case
15 management generally, police have been
16 investigating serious crimes since the birth of
17 modern policing, and it's always evolved, and so
18 certainly in police departments across the country
19 they were managing major investigations.

20 Q Well, sir, I'm just going to interrupt you there
21 for one moment because what I'm asking about is
22 this specific model.

23 A Yes, I agree with you that the major case
24 management model like I've laid out that's been
25 taught at the CPC since about 1994, I believe, was

1 not -- was in its infancy in implementation.

2 Q And would you also agree that even if a particular
3 team was given say a team commander and the file
4 coordinator and the lead investigator, like
5 anything new, there are bound to be some growing
6 pains?

7 A Yes.

8 Q Now, I've asked you to turn up page 1-3 in Deputy
9 Chief Evans' report. Have you got that?

10 A Yes.

11 Q And you'll see item 4. This is part of her
12 executive summary. It deals with major case
13 management?

14 A Yes.

15 Q And so she says that the standardized approach by
16 the VPD and RCMP using major case -- sorry,
17 utilizing major case management principles would
18 have ensured a smooth transition and so forth?

19 A Yes.

20 Q Do you see that? Would you agree that this is a
21 reasonable point looking back and looking ahead
22 but not one that -- but it was not a model you
23 would have expected a team to use thoroughly in
24 1997 to 2002?

25 A Well, less so in 1997 and more so getting closer

1 to 2002 because I think by 2002 the major case
2 management model was well known and well
3 understood.

4 Q Okay. I want to ask you about what preceded the
5 major case management model in terms of organizing
6 an investigation and how the investigations were
7 run. All right? The tip system was in general
8 use at the time in the VPD; is that right?

9 A No, the tip system is -- I believe is a term used
10 by the RCMP for how they manage information. It's
11 not a term that I ever recall being used in the
12 VPD.

13 Q Okay. But --

14 A I'm certain it was something very similar, if
15 that's what you're asking me.

16 Q Okay. Yes, I think that is what I'm asking you.
17 So let me describe what it is, and you can tell me
18 if I'm right. Essentially you had, in theory, a
19 file coordinator who would have a list of tips,
20 which are really more like tasks or investigative
21 leads; is that right?

22 A Yes.

23 Q And each one of those leads would be assigned to
24 one or more members?

25 A Yes.

1 Q And those members -- and a tip might be, for
2 example, go and take a statement from Mr. Pickton?

3 A Yes.

4 Q And those people would go out and do that and
5 follow up and come back and report and provide
6 written reports to the file coordinator?

7 A Hopefully that's what would occur.

8 Q And all the material that they would collect, all
9 those bits of paper would go into a file folder or
10 a tab in a binder, something like that? They'd be
11 collected together?

12 A Yes. It was often called the box, and there would
13 be basically a rolling filing cabinet that might
14 have a series of folders for the tip information.

15 Q Okay. And so you would have an index, and there
16 would be one of these tasks in an index, and then
17 a folder, box, whatever was needed that would
18 correspond to that task?

19 A Yes.

20 Q And in a little case you might have four inches of
21 material, and in a big case you might have rooms
22 full of material?

23 A Rooms full would be pretty unique, but definitely
24 the inches I agree with.

25 Q And I am going to ask you to go back to Exhibit G

1 for a moment.

2 A Sorry, which exhibit?

3 Q Maybe it's Exhibit J. Sorry. The binder that you
4 had initially, the documents introduced by Mr.
5 Gratl.

6 A Yes.

7 Q And if you go back to the memorandum to yourself
8 that begins at page 227 --

9 A Yes.

10 Q -- one of the developments that is detailed in
11 this memorandum is entitled "Homicide Trends" at
12 the bottom of the page.

13 A Sorry, of which page?

14 Q Page 3 of that memorandum, page 229 in the book.

15 A Yes.

16 Q Do you see that?

17 A Yes.

18 Q And there is an explanation that talks about
19 difficulties arising in things like gang-related
20 homicides, and at the top of the page, the second
21 new sentence:

22 Ten-year homicide investigators can attest to
23 the change in workload. A homicide
24 investigation ten years ago would probably be
25 a thick file folder. Today, even the

1 simplest case is several binders if not
2 several boxes of material.

3 Do you see that?

4 A Yes.

5 Q Do you agree with it?

6 A Yes.

7 Q So what you have happening, and I appreciate that
8 this is 2000, but this describes a development
9 that had been taking place over a course of time?

10 A Yes, as new expectations from the courts,
11 especially new Charter decisions, especially
12 decisions like *Stinchcombe*, the onus on police and
13 the demands on police were becoming more and more.

14 Q Okay. And we combined that with the system that
15 the RCMP calls the tip system. What do you call
16 it in the VPD?

17 A I don't know if we had a term for it, but a system
18 like the tip system.

19 Q So I'll just call it the tip system --

20 A Yes.

21 Q -- and we'll understand --

22 A Yes.

23 Q -- that it's -- what we're talking about in terms
24 of the VPD practice.

25 A Yes.

1 Q Okay. So we go to 1997, and we have homicide
2 investigations, and let's switch to the missing
3 women's investigations. That investigation, I
4 gather, was using the same kind of system to begin
5 with, the tip system?

6 A The VPD missing women investigation?

7 Q Yes.

8 A Yes, I would say generally.

9 Q And so one of the things that happened during this
10 time, and again I'm referring to 1997 to 2002, was
11 the increase in use of electronic file management
12 systems; is that right?

13 A Well, certainly SIUSS, as I've described in my
14 report, was being used in a variety of places. It
15 was never really designed to be an electronic case
16 management system. It was an analytical system.
17 So there were efforts to use it in that way, and
18 certainly as time evolved there has been more
19 development of software, for example, to use for a
20 major case management. I would say even in 2002
21 it was still a little bit hit and miss. I know
22 that the RCMP had internally developed a system
23 for the Swissair crash called ENR, and that was in
24 use by the RCMP.

25 Q And that's what Project Evenhanded ended up using,

1 a variety of that system --

2 A Yes.

3 Q -- is that right?

4 A That's my understanding.

5 Q Okay. So what we have then in that period of time
6 is that for so-called ordinary homicide
7 investigations you've got a much larger amount of
8 material that you have to deal with than had been
9 the case in previous years, yes? As we've talked
10 about.

11 A I'm not sure what you mean by deal with, but, yes,
12 generally, yes, the volume of the files and the
13 amount of material being generated was increasing.

14 Q And you've migrated to a tip system, which is
15 still -- or you've been using a tip system, which
16 is still a paper-based system, but you can see
17 these more electronic tools coming into being more
18 on the horizon?

19 A Yes.

20 Q And that is certainly a difference between the
21 practice then and the practice today?

22 A Yes, absolutely.

23 Q So when we consider -- and let me ask you one more
24 thing. When you're using the paper-based tip
25 system that we've just described, for one

1 investigator who hasn't been involved in doing a
2 particular task to come up to speed you're doing
3 it the old-fashioned way, or if you're looking for
4 something, you're going through boxes and file
5 folders and things like that?

6 A That's one of the ways to get the information, but
7 one of the things that often occurs in an
8 investigation is that the file coordinator keeps a
9 running chronology --

10 Q Right.

11 A -- of the investigation so that anybody can come
12 in and look and see what are the main steps that
13 have been taken in this investigation.

14 Q Thank you for remembering that because I meant to
15 ask you about that and I forgot. So in addition,
16 however, one of the important factors in -- the
17 larger the investigation becomes is how to do the
18 analysis, how to make the links between different
19 pieces of information? And let me give you an
20 example before you answer that. We talked a
21 moment ago about an example, go and take a
22 statement from Mr. Pickton.

23 A Yes.

24 Q And if Mr. Pickton happened to mention that he
25 knew another person, I don't know, Ms. Jones or

1 something like that, and so that's all nice, but
2 if Ms. Jones' name had come up in, who knows, a
3 vehicle check or something that was in another
4 tip, another task somewhere else, you'd have to
5 make that connection manually, wouldn't you?

6 A Unless you had some way of electronically linking
7 the information or if you had someone who was
8 keeping a careful chronology of the progress of
9 the investigation and all the key information,
10 unless it got to be so voluminous that it was
11 unmanageable.

12 Q And so that's one of the problems electronic
13 systems are meant to help with?

14 A When you have huge volumes of information, yes.

15 Q And your Missing Women's Task Force had a huge
16 volume of information; is that right?

17 A Missing Women Task Force was the JFO.

18 Q I'm sorry.

19 A The Missing Women Review Team?

20 Q The Missing Women Review Team is the one I meant.

21 A Yes, they had a lot of information because there
22 were so many different -- you would call them
23 tips, lead sheets to look at, yes.

24 Q And I seem to recall references in the documents
25 to an enormous number of more conventional tips

1 coming in from the public and so on and so forth
2 that had to be sorted through?

3 A Yes, because, of course, they were looking at
4 many, many different suspects and possibilities
5 and so on as opposed to looking at one suspect.

6 Q And so things were being done, if I can be a bit
7 extreme, in crayon? Sorry. They were being done
8 by hand? Everything was being done by hand?

9 A They were trying to make use of the SIUSS system
10 to deal with the problems that you've illustrated
11 around volumes of information. Clearly from my
12 review it was not providing as much assistance as
13 they thought it was going to be, but that was the
14 point of it. So they were trying to use
15 electronic records management.

16 Q Let me take you to something even more basic that
17 I'll suggest to you was in transition at the time,
18 and that is the approach to homicide
19 investigations. The tip system that we've been
20 talking about contemplates a file coordinator and
21 the assistance of a number of other members, but
22 the system, if I can call it that, that preceded
23 it or the model that preceded it was more in the
24 nature of one or two members who would take the
25 file and they'd go work the file, the two of them,

1 and they'd solve the case, and that's how it was
2 done?

3 A I think that that's often been referred to as the
4 1950's Baltimore homicide model of investigation,
5 and I agree with your characterization, is that
6 often it would start with quite a few detectives,
7 because there's so much to be done in the first
8 instance, and then it would eventually evolve to
9 two detectives running with the file, we would
10 call it.

11 Q Right. And I would suggest to you that in 1997
12 particularly that model had not died out yet?

13 A No, I agree.

14 Q And so we kind of had a mixture of these different
15 kinds of practices going on?

16 A Yes, there were a mixture, and just speaking for
17 the VPD, we were moving during that time to more
18 -- we called it a pod-based system where we would
19 have four detectives actually work in a pod
20 together as major case management was in its
21 infancy. So it was evolving, but I agree with you
22 that it was -- there was a mixture of systems.

23 Q So again, when Mr. Commissioner is looking back
24 and evaluating the choice -- choices made by some
25 of the teams and some of the investigators, he

1 needs to keep in mind that there were -- there
2 were a combination of a practice that was more
3 team-based and a practice that was more based on
4 individual effort?

5 A I agree.

6 Q And sometimes, as in any time of transition, the
7 two things don't combine as smoothly as you would
8 want them to?

9 A I agree.

10 Q Another technique that we've heard a lot about is
11 criminal profiling. You've spoken about that
12 before. And as I understand, there's kind of two
13 kinds of profiling. One is geographic profiling,
14 and one is based on a study of the individual; is
15 that right?

16 A That is my understanding.

17 Q And I know you don't claim to be an expert in that
18 field, so I'm not going to ask you the kinds of
19 questions I would ask of an expert, but is it fair
20 to say that looking back in 1997 to 2002 that
21 criminal profiling was a relatively new
22 phenomenon, it had not been used a great deal by
23 the VPD?

24 A I'm not sure what a great deal means. I would --

25 Q It wasn't a standard technique used in homicide

1 investigations? Let's start there.

2 A I wouldn't want to speak for how often homicide
3 investigators were using it then. I know that I
4 certainly took it -- I was aware of it to the
5 level that I needed to be as a detective sergeant,
6 and I had taken advantage of those -- that
7 expertise that was out there during that same
8 time.

9 Q But I think my point is that, like DNA evidence,
10 it was something that had become available in
11 recent years and was not -- it was not a long-
12 standing -- and let me define long-standing for
13 your assistance. You know, at least a decade or
14 more.

15 A Yes, I agree.

16 Q So when contemplating whether or not someone
17 should have relied upon it or the extent to which
18 it should have been used, one does need to
19 remember that it was a lot newer than it is now?

20 A Yes. I think that it really was coming about at
21 the same time and becoming more known when the
22 ViCLAS system came out because that's what ViCLAS
23 was based on, was understanding criminal profile,
24 inferring things from criminal behaviour. So
25 ViCLAS became well known quickly because our

1 policies required that ViCLAS books be filled in
2 for certain types of offences, and that's what it
3 was based on. But I agree with you that it was
4 not -- going and consulting with the criminal
5 profiler was not an everyday thing.

6 Q And speaking of ViCLAS, ViCLAS was certainly
7 operative in the late 1990s, but it's the kind of
8 system that depends on information being put into
9 it regularly and promptly?

10 A Yes. And it was available in the mid-1990s as
11 well.

12 Q Right. But was the implementation of the system
13 as thorough in 1997 as it is today?

14 A I can only speak for the VPD, and I know that we
15 had a full-time ViCLAS coordinator whose goal was
16 to ensure that there was a hundred per cent
17 compliance with our policy around that. I'm sure
18 that that probably wasn't -- a hundred per cent is
19 a very high standard, but there was a high degree
20 of compliance, and I know that there was
21 information circulated around when there were
22 concerns of lack of compliance in certain
23 agencies, and the Attorney General of the day even
24 said, "Look, we need to do better in the policing
25 community generally or we're going to look at

1 legislating this." I can remember that going on
2 in the 1990s.

3 Q So the tool to the extent that it might not have
4 been as -- the database might not have been as
5 complete as it perhaps is today, that's another
6 consideration you have to keep in mind?

7 A Yes.

8 Q So it's not so useful if it's not as complete?

9 A Right. The more information that's in it, the
10 more powerful it's going to be.

11 Q And I want to ask you some questions about your
12 resource use because you have spent quite a bit of
13 ink and quite a bit of breath detailing the
14 difficulties that the VPD had in the period 1997
15 to 2002 with the resources. You're of the view, I
16 take it, that there really weren't enough
17 resources to do all the serious cases to their
18 optimum degree?

19 A Well, I'm of the view that the VPD was under
20 extreme resource pressure during that time, but
21 what I also said is that although that was
22 important context, that it was within the VPD's
23 capacity to redeploy resources, to reprioritize
24 resources and could have.

25 Q Right, but I think what I asked you is -- the

1 proposition I put to you is that you did not have
2 enough, you say, to do all the serious cases to
3 optimum -- and let me define serious for your
4 assistance -- all homicides cases as thoroughly as
5 they could have been done?

6 A In the way that the resources were deployed at the
7 time, I agree with you.

8 Q So by definition what you just said means that
9 cases have to be prioritized?

10 A Yes.

11 Q And so I want to ask you about the criteria that
12 were -- that the VPD used to prioritize cases, all
13 right?

14 A Yes.

15 Q And I should say as well that even if your
16 resource situation hadn't been as -- as bad as
17 you've described, resources are never infinite, so
18 you always need to prioritize; is that right?

19 A I agree.

20 Q Okay. Now, to go to the obvious, perhaps, a major
21 factor is the seriousness of the case?

22 A Yes.

23 Q And a homicide case is obviously always a serious
24 case?

25 A Yes.

1 Q There's always a public safety issue, or there's
2 often a public safety issue?

3 A I will agree with you that there often is, not
4 always.

5 Q So that might be something that might
6 differentiate one kind of homicide from another in
7 terms of its priority?

8 A Yes, the risk to public safety. There's a
9 difference between a one-off, where it's not
10 believed that the suspect is a danger to anyone
11 else, and a different type of homicide case, for
12 example.

13 Q And I'd suggest to you that a second important
14 factor is whether there are leads in a case that
15 promise to be productive. So let me elaborate on
16 that a little bit to assist you. If you had two
17 cases of the same degree of seriousness and one of
18 them had a very promising lead and the other
19 didn't, where would you put your resources?

20 A Well, that is an interesting hypothetical, and
21 what I would say is that solvability is one of the
22 issues that you would look at, but you would never
23 say or, in my view, shouldn't properly say, "We're
24 not going to put effort into this case even though
25 it's very serious and there's a risk to the public

1 because we think it's going to be really, really
2 challenging." So --

3 Q But, sir, with respect, that's not quite the
4 question I asked, and perhaps I wasn't clear, so
5 I'll put the question again, all right? All other
6 things being equal, let's start with that, all
7 other things being equal, when the crunch comes,
8 which case do you choose?

9 A If in your hypothetical both of those cases
10 involve, like, a real risk to the public, then I
11 think you have to work on both of them.

12 Q I think -- I don't want to make this too
13 complicated here. Really what I'm getting at is I
14 think, as you said, solvability is one of the
15 factors that you take into --

16 A Yes.

17 Q -- consideration; is that fair?

18 A Yes.

19 Q Okay.

20 A But if I'm looking at solvability, there's a
21 difference between solvability of a break and
22 enter and solvability of a murder.

23 Q Okay, but let's take this one at a time. All
24 right. You've agreed with me that's one of the
25 factors?

1 A One of the factors to consider.

2 Q I didn't say it was the only one. I said it was
3 one of them.

4 A Or what weight is going to be given to it.

5 Q Exactly. And the other one we've talked about is
6 the seriousness of the case and whether public
7 safety is an issue?

8 A Yes.

9 Q Those are all factors you look at?

10 A Yes.

11 Q Yes. And it's my understanding that as a general
12 rule when a murder is -- has just been reported
13 it's considered to be very important to address
14 that immediately and to work all the leads on that
15 case because a lot of them dissipate with time?

16 A I agree.

17 Q So newly reported murders or homicides are a high
18 priority for that reason?

19 A Are a high priority?

20 Q Yes.

21 A Yes.

22 Q So I understand, in large part from reading your
23 report and some of the other materials, that the
24 need to address newly reported homicides in your
25 section meant that homicides that had been worked

1 on for a while sometimes had to take a back seat?

2 A Yes.

3 Q And that's how you develop something -- that's one
4 of the reasons you develop what I've seen referred
5 to as historical files?

6 A Yes.

7 Q Now, I think it's important that when we use that
8 term we understand exactly what it means, so I
9 want to make sure that I do for the benefit of Mr.
10 Commissioner. Okay. So a historical file, first
11 of all, is one that has -- some period of time has
12 gone on -- has gone by since it was first
13 discovered, yes?

14 A Yes.

15 Q We're usually looking at a span of time. And
16 that, generally speaking, the obvious leads have
17 been exhausted?

18 A Yes, I think that that would be an important
19 point, because you could have had a homicide that
20 happened historically, whatever that time period
21 is, but you could have fresh information about it
22 that demanded investigation so that it won't --
23 wouldn't dissipate, as you've described.

24 Q Okay. So that -- that brings me to something
25 else. When you've got a file that someone's been

1 carrying for a while and the fresh leads have been
2 exhausted and then something new happens, then it
3 gets moved back to the front of the stove?

4 A Because the analysis changes, I agree.

5 Q And that -- but your historical cases built up, I
6 think?

7 A Sorry, they still?

8 Q The numbers of historical cases built up over
9 time, and that's one of the factors that led to
10 the establishment of the Provincial Unsolved
11 Homicide Unit; is that right?

12 A That's my understanding.

13 Q And so the mandate of that unit was to deal with
14 these historical cases or what was conventionally
15 called cold cases?

16 A Yes.

17 Q I will ask you parenthetically, there have been
18 some references to times when the Unsolved
19 Homicide Unit, there was a suggestion that perhaps
20 it could assist in the investigation of the
21 missings by the VPD. There have been some
22 references --

23 A Yes.

24 Q -- to that; do you agree?

25 And so that would seem to be an unusual

1 reference given that the Missing Women's Review
2 Team was investigating disappearances and not
3 apparently murders.

4 A Well, no, because at some point, as I've
5 described, the thinking was evolving from it's a
6 possibility to it's more and more likely as it
7 went into 1999, which was during the time, as I've
8 described and I described in my report, that
9 Sergeant Field was making many efforts to try to
10 get a JFO going.

11 Q But this wasn't a cold case, was it?

12 A Well, if you're speaking about the mandate of the
13 Unsolved Homicide Unit, yes, I understand that,
14 and --

15 Q So would that be -- I'm sorry, I interrupted you.
16 All I'm saying is that doesn't seem to fit within
17 their mandate.

18 A Yes, I agree, and like all police agencies,
19 though, is that it's not etched in stone, and you
20 look at -- resources are used dynamically. They
21 might, you know, be intended for one purpose and
22 might be used to assist in another. So it doesn't
23 surprise me that there was an effort made to
24 involve the provincial police and say that that --
25 you know, maybe the Unsolved Homicide Unit could

1 help with this. So I agree that -- I understand
2 what their mandate was and that it didn't fit
3 exactly, but it doesn't surprise me.

4 Q So -- but equally because of what their mandate
5 was you're not surprised that they didn't think it
6 was something they should take on? They were
7 pretty busy.

8 A Well, I can't speak to that. What I will say was
9 that it didn't seem to be an issue of how recent
10 or historical it was. It seemed to be an issue of
11 show us when you have evidence of an actual murder
12 to work on and we'll look at it, but you don't
13 have that right now. I think that that's what's
14 documented in the VPD notes and that's what's
15 documented in Corporal Connor's notes.

16 Q There were quite a number of members of the VPD on
17 that team, and if I -- I'll name a couple that
18 were involved in this -- in the investigations
19 with which we're concerned. Brian Honeybourn?

20 A Yes.

21 Q And he was?

22 A He was a sergeant there.

23 Q A sergeant then. And Bruce Ballantyne?

24 A He was a detective there.

25 Q I can't remember. Did you interview them for your

1 report? Did you interview them?

2 A I've spoken on the phone to Sergeant Honeybourn.

3 I did not interview Detective Ballantyne.

4 Q But they -- Sergeant Honeybourn was involved in
5 some of the meetings that -- where some of these
6 discussions were taking place about the potential
7 for UHU to become involved?

8 A Yes, and I was satisfied that I understood what
9 Provincial Unsolved Unit's position was and what
10 their involvement was.

11 Q So -- but there are always people behind the name,
12 so one of the people behind the name Unsolved
13 Homicide Unit for the purposes of this case was
14 Sergeant Honeybourn of the Vancouver Police
15 Department?

16 A Yes, Sergeant Honeybourn of the VPD was seconded
17 to Unsolved Homicide Unit at the time.

18 Q And so was -- was it Bruce Ballantyne?

19 A Detective Ballantyne.

20 Q He was a detective?

21 A Yes.

22 Q And he was involved along with RCMP Officer Frank
23 Henley in the Coquitlam -- they provided some
24 assistance to the Coquitlam detachment of the RCMP
25 in 1998 -- sorry, in 1999; is that right?

1 A Yes.

2 Q That's your understanding?

3 A Yes.

4 MS. TOBIAS: Mr. Commissioner, I'm about to switch to a new
5 area. I wonder if this would be an appropriate
6 time for the afternoon break.

7 THE COMMISSIONER: Sure. If it's convenient for you.

8 MS. TOBIAS: I beg your pardon?

9 THE COMMISSIONER: If it's convenient for you.

10 MS. TOBIAS: Yes, it is.

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

12 **(PROCEEDINGS ADJOURNED AT 2:54 P.M.)**

13 **(PROCEEDING RESUMED AT 3:15 P.M.)**

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

15 MS. TOBIAS:

16 Q Deputy Chief LePard, I'd like you to find
17 volume -- the first volume of documents that was
18 handed up earlier. Unfortunately, I don't believe
19 they have labels on them. Do they?

20 A It says Volume 1.

21 MS. TOBIAS: Okay. That's fine. And for the purposes of
22 keeping the record straight on these, Mr.
23 Commissioner, I'm going to be reviewing a number
24 of documents within or the documents within these
25 two binders that I've handed up, and I'm going to

1 start with Volume 1, so I would ask at this point
2 they be marked as the next exhibit for
3 identification, please.

4 THE COMMISSIONER: Volume -- tab 1?

5 MS. TOBIAS: Volume 1 of the group of documents that I handed
6 up.

7 THE COMMISSIONER: Okay.

8 THE REGISTRAR: Marked for identification?

9 THE COMMISSIONER: Yes. I assume nobody has any objections.

10 THE REGISTRAR: That will be marked as for identification K,
11 letter K.

12 **(EXHIBIT K FOR IDENTIFICATION: Two binders,**
13 **Volume 1 and Volume 2, of Department of Justice**
14 **Documents for Cross-Examination)**

15 MS. TOBIAS:

16 Q Now, sir, before the break we covered various
17 parts of the practices, investigative practices
18 and systems and so forth as they existed as part
19 of the framework for evaluation, and in the course
20 of your evidence so far you've referred to or been
21 asked quite a number of times about certain
22 concepts which I understand are legal concepts,
23 and Mr. Commissioner is well aware of them, but
24 for the purposes of making sure that we are all on
25 the same page and are talking about the same

1 thing, I want to take you through some of them
2 briefly and also to ask you about your -- in the
3 course of your report what understanding you were
4 bringing to bear. Is that clear?

5 A I think so.

6 Q Now, if you would turn, please, in Volume 1,
7 Exhibit K, to tab 1-G, and that is a series of
8 excerpts from a volume entitled "Hutchison's
9 Canadian Search Warrant Manual 2005"; do you see
10 that?

11 A Yes.

12 Q And is this a publication that you are at all
13 familiar with, sir?

14 A No, I don't think so.

15 Q Okay. Would you turn, please, to page 34 of that
16 tab, and this is -- has a section entitled "Role
17 of the Police", and this is in reference to
18 obtaining search warrants and other judicial
19 authorizations. Okay. So all I want to point out
20 to you here is under "Division of Labour" the
21 author considers that the officer is the applicant
22 and the person ultimately responsible for the
23 decision to seek a search warrant and for the
24 contents of the Information to Obtain. Do you
25 agree with that?

1 A Yes, I understand.

2 Q Do you agree with it?

3 A Well, I'm not sure what leads up to this, and so I
4 don't know if I know the context that --

5 Q Well, there is no context. It's just in terms of
6 a person who's going to swear an Information to
7 Obtain, an officer who's going to swear an
8 Information to Obtain is the applicant for a
9 search warrant, and that person is responsible for
10 its contents?

11 A I understand that a person swearing an application
12 for a search warrant is responsible for the
13 contents, yes.

14 Q Okay. Would you turn over to page 35, please. In
15 the middle of the page there's the heading "Duty
16 to Make Full, Frank and Fair Disclosure to the
17 Judicial Officer". Now, this is something that
18 you've spoken about in quite -- with quite a bit
19 of emphasis, I think, when Mr. Roberts was asking
20 you about the Hiscox information and the sample
21 ITO that he drafted.

22 A Yes.

23 Q Do you recall giving that evidence?

24 A Yes.

25 Q And I recall you saying that -- talking about the

1 importance of putting in the bad with the good, if
2 I can put it that way?

3 A I think that's a fair way to put it. Those
4 weren't my words, but --

5 Q And so here in this portion we -- the author
6 states:

7 Officers are constantly reminded of their
8 duty to make "full, frank and fair"
9 disclosure of all material facts to the
10 issuing justice. This requires the officer
11 to present all of the relevant and material
12 evidence gathered to date as well as
13 outlining all of the significant
14 investigative steps taken in relation to the
15 case that gives rise to the warrant request.

16 Is that your understanding of the duty of the
17 officer swearing the ITO?

18 A I -- it is my understanding that it needs to be
19 full, frank, fair. I've also read that it is
20 important to -- that it's not necessary to include
21 all the information. It's important to include
22 sufficient information to show the reasonable
23 grounds, and it's really important not to exclude
24 anything that might detract from the information
25 that might cause the justice of the peace to put

1 less validity. So being fair to the suspected
2 person is really important. So --

3 Q So let me --

4 A -- I've seen other descriptions that don't say you
5 have to include all information gathered during an
6 investigation.

7 Q So when you're looking at the question, your lens,
8 if I can put it that way, is that -- let me
9 underline in the first sentence the word
10 "disclosure of all material facts". Everything
11 that would affect the justice's decision one way
12 or another, as far as you know, has to go in that
13 ITO, right?

14 A Yes.

15 Q Okay. And at the end of the page -- or, sorry, at
16 the end of that paragraph the author says:

17 Since the other side is not present, the
18 court expects that the officer will provide
19 it with all the information that it needs to
20 make a fair decision on the application -
21 even if that evidence is not relied upon by
22 the officer, or may run counter to the
23 officer's theory.

24 A Yes.

25 Q And I would underline "or may run counter to the

1 officer's theory"?

2 A Yes.

3 Q And that's what you expect an officer of Vancouver
4 Police Department to do when making such an
5 application; is that right?

6 A Yes.

7 Q Okay. Now, when you were testifying initially and
8 commission counsel was asking you questions about
9 different kinds of judicial authorizations, such
10 as a search warrant for a premise, a video
11 warrant, wire-tap authorization and so on and so
12 forth, you were asked questions about which -- you
13 know, which was -- standard was demanding and
14 which wasn't. I don't remember exactly the
15 wording that my friend used, but do you remember
16 that line of questioning?

17 A Yes.

18 Q So I'd like to ask you to clarify part of that,
19 and so I'm going to ask you a few questions about
20 that, okay? Now, let's take as -- when you were
21 looking at this situation, you had mention in your
22 report at various times of things like wire-taps,
23 search warrants, I think you mentioned a video
24 warrant?

25 A Well, I describe those things because those were

1 all things that were being considered by the
2 investigators, and so I'm reflecting what is in
3 their notes.

4 Q Okay. And -- but you're also -- you also gave
5 certain opinions in your report about some
6 investigative steps that you think should have
7 been taken or not. So when you did your report
8 you were thinking about the various options, were
9 you not?

10 A Yes, I was thinking about various options, but I
11 don't think that they included, like you've
12 raised, wire-tap and that sort of thing. I
13 believe, I could obviously be wrong, that in my
14 report I reflected what the investigators were
15 noting, that we're going to write -- we're going
16 to look for a video warrant, we're going to -- in
17 February of 2000 we're going to try to get a
18 search warrant to get on the property, and so on.
19 So I don't think that I talked about, in the
20 investigative strategy, that they could have
21 done, for example, wire-tap. I did talk about
22 pursuing information sufficient to get a search
23 warrant.

24 Q Yes, but I think my point is that in going through
25 that you had certain -- you had in mind what you

1 understood to be the requirements for taking such
2 steps; is that not right?

3 A That I had in my mind the requirements for taking
4 such steps? I'm not sure I understand your
5 question.

6 Q Let me back up a little bit here. I'm sorry if
7 I'm confusing you. All I'm getting at is that
8 when you gave your opinion about various aspects
9 of the investigation that part of what must have
10 gone into your reasoning was your understanding of
11 the legal requirements at play?

12 A I'm sure it did go into my reasoning when I
13 considered various investigative strategies that
14 might have been available --

15 Q Okay.

16 A -- that could have been considered.

17 Q So -- now, one of the central legal concepts is
18 the question of reasonable grounds, is it not?

19 A Yes.

20 Q Would you turn, please, to page 51 in that same
21 tab that you've been looking at, and at the bottom
22 of the page under the heading "Reasonable Grounds
23 to Believe", do you see that passage, sir?

24 A Yes.

25 Q And the first sentence says:

1 The constitutional standards set down in
2 *Hunter v. Southam* for criminal searches was
3 one of reasonable belief based on sworn
4 evidence.

5 A Yes.

6 Q Now, you're familiar, I'm sure, with *Hunter v.*
7 *Southam*. It's the seminal decision of the Supreme
8 Court of Canada.

9 A Yes. I read it many years ago.

10 Q Okay. And so the standard of reasonable belief
11 based on sworn evidence applies to -- is a
12 requirement for many different kinds of searches,
13 is it not?

14 A Yes.

15 Q So if you flip over the page, there's several
16 pages of discussion that begin there about exactly
17 what reasonable grounds -- reasonable belief is,
18 but I'd like to draw your attention to the
19 quotation in the top third of the page from the
20 Supreme Court of Canada in the *Debot* case. Do you
21 see that?

22 A Yes.

23 Q And in the middle it states:

24 I agree with Martin J.A. that the appropriate
25 standard is one of "reasonable

1 probability"...

2 Do you see that in the quote?

3 A Yes.

4 Q Okay. And if you look about halfway through the
5 next paragraph, the centre of the paragraph, the
6 sentence beginning, "As noted already, *Hunter*
7 considered..."

8 A Sorry, can you tell me where that is.

9 Q The centre of the paragraph following the quote.
10 About eight lines down. "As noted" -- or, sorry,
11 about six lines down.

12 As noted already, *Hunter* considered the
13 constitutional standard to be "where
14 credibly-based probability replaces
15 suspicion."

16 A I do not see that in the paragraph below the
17 quote.

18 Q Are you on page 52?

19 A No, I'm on page 54. I thought you directed me
20 to --

21 Q Sorry. Page 52, please.

22 A Okay. Now you want me to look at beginning with,
23 "As noted..."?

24 Q Yes.

25 A Yes.

1 Q Okay. So we know, as has been discussed, it's a
2 question of probability and not suspicion? It's a
3 higher standard than suspicion?

4 A Yes.

5 Q And the qualification there is that it's credibly
6 based?

7 A Yes.

8 Q And then the author continues:

9 The Information to Obtain a search warrant
10 must, therefore, give the justice of the
11 peace sufficient weighable evidence to allow
12 the justice independently to find the officer
13 could reasonably find a *credibly based*
14 *probability* that all of the preconditions for
15 the issuance of the warrant exist.

16 A Yes.

17 Q And is that -- does that -- is that the same
18 understanding that you had or have?

19 A Yes.

20 Q Okay. So there is the evidence on -- on the level
21 and nature of evidence that is needed; is that
22 right?

23 A Yes, that's my understanding.

24 Q Okay. And would you go to page 123, please. I'm
25 sorry, to 121. And this is in the course of a

1 discussion about evaluating information from
2 tipsters or informants, so obviously something
3 that is relevant to this situation, ours, and
4 under the heading "The Challenge for the Warrant
5 Applicant and Judicial Officer".

6 A Yes.

7 Q The last sentence in that paragraph:

8 The justice must be able *to satisfy himself*
9 *or herself...*

10 Do you see that?

11 A Yes.

12 Q

13 ...that the information from the tipster/
14 confidential informer is to some extent
15 reliable, and is not based on idle gossip or
16 rumour.

17 And then there is the -- further down the page
18 there's the passage from the decision of Mr.
19 Justice Martin, the Court of Appeal, in *Debot*. Do
20 you see that?

21 A Yes.

22 Q And are you familiar with the *Debot* case, sir?

23 A Sorry, with the?

24 Q Are you familiar with that case?

25 A I may have been at some point. I don't remember

1 it right now.

2 Q Okay. So there's some passages, some parts of the
3 following passage that I'm going to draw your
4 attention to, and I'd like you to tell Mr.
5 Commissioner if these passages correctly express
6 what is your understanding and what standards you
7 bring to your analysis, all right? So first of
8 all:

9 [A] mere statement by the informant that he
10 or she was told by a reliable informer that a
11 certain person is carrying on a criminal
12 activity or that drugs would be found at a
13 certain place would be an insufficient basis
14 for the granting of the warrant.

15 A Yes, that's my understanding.

16 Q And so bringing it home to the situation we are
17 here concerned with, if, say, Mr. Hiscox had said
18 simply, "I know that Robert Pickton is killing
19 women," that wouldn't do it?

20 A No.

21 Q That wouldn't do anything?

22 A No, and I've never said that I disagreed.

23 Q I didn't say that. Let's just take this a step at
24 a time, okay?

25 A Sure.

1 Q Then it continues:

2 *The underlying circumstances disclosed by the*
3 *informer for his or her conclusion must be*
4 *set out...*

5 Do you --

6 A I see that.

7 Q Does that comport with your understanding?

8 A Yes.

9 Q And near the bottom of the page there's a
10 sentence:

11 *Highly relevant to whether information*
12 *supplied by an informer...*

13 Do you see that?

14 A Yes.

15 Q
16 *...constitutes reasonable grounds to justify*
17 *a warrantless search or an arrest without*
18 *warrant are whether the informer's "tip"*
19 *contains sufficient detail to ensure that it*
20 *is based on more than mere rumour or*
21 *gossip...*

22 I am going to stop there.

23 A Yes.

24 Q That's something that is your understanding?

25 A Yes.

1 Q Continuing on:

2 *...whether the informer discloses his or her*
3 *source or means of knowledge and whether*
4 *there are any indicia of his or her*
5 *reliability, such as the supplying of*
6 *reliable information in the past or*
7 *confirmation of part of his or her story by*
8 *police surveillance.*

9 A Yes.

10 Q So -- and including information like that is a
11 routine matter and a routine -- something that you
12 routinely look for before you trot off to the
13 justice of the peace to ask for a warrant; is that
14 right?

15 A Yes.

16 Q Would you turn over to page 123, please. There
17 are three headings on that page, "Compelling",
18 "Credible", and "Corroborated". Do you see those,
19 sir?

20 A Yes.

21 Q And under the heading "Compelling", that is, near
22 the end of it where there's reference to evidence
23 that the source was first-hand rather than local
24 rumour, a story that is internally consistent
25 and makes sense when measured against normal

1 experience make information more compelling?

2 A Yes.

3 Q And so does that -- is that the sort of principle
4 you were referring to earlier in your evidence
5 when you talked about your view that some of the
6 tips were internally consistent?

7 A Yes.

8 Q Would you -- we've already dealt with credibility
9 to some degree, and I won't take you through the
10 next passage in detail, but suffice it to say that
11 it is important for an officer to specify why he
12 or she believes that an informer is reliable or a
13 tipster is reliable?

14 A Yes.

15 Q And then bottom of the page, "Corroborated" or
16 "Confirmed". It says the best way for an officer
17 to bolster the value of a tipster or confidential
18 informer is to find evidence -- is to find other
19 material that corroborates material elements of
20 what the informer has told the police?

21 A Yes.

22 Q And that's your understanding?

23 A Yes.

24 Q And then at the bottom:

25 Corroboration in this context must be

1 confirmation of something more than innocent
2 details (or publicly available information)
3 in the context of an anonymous tip.

4 A Yes.

5 Q So again bringing it home to our situation, if
6 there's a lot of information about Willie Pickton,
7 simply confirming that a person by the name of
8 Willie Pickton exists and has a farm in Coquitlam
9 at the address described isn't going to do it for
10 the kind of information we're talking about in
11 terms of whether that's significantly
12 corroborative; is that right?

13 A I agree. That's often referred to as mundane
14 information that needs to be cited, but it's not
15 unique or compelling. It confirms things that
16 many people can see.

17 Q Now, is it fair to say, sir, that when the police
18 are considering obtaining a search warrant or
19 other similar authorization in a very serious case
20 that one of the considerations is to make sure the
21 grounds are solid because the consequences of
22 being wrong could be very prejudicial to an
23 eventual conviction?

24 A Yes, absolutely.

25 Q And that is because there is going to be -- in

1 most serious cases applications to exclude
2 evidence gathered under search warrants are
3 frequently made?

4 A Yes.

5 Q And that is something that would be anticipated in
6 an investigation such as an investigation by the
7 Missing Women's Review Team or the investigation
8 that occurred in Coquitlam?

9 A I agree.

10 Q Would you turn, please, in the same volume to tab
11 2C. And do you see, sir, this is a decision by
12 Mr. Justice Williams in the *Pickton* case?

13 A Yes.

14 Q Entitled "Ruling re: Firearm Search"?

15 A Yes.

16 Q And this, sir, is the ruling with respect to,
17 among other things, an application to exclude
18 evidence from the search of the property that
19 occurred on -- in February of 2002. And to
20 illustrate the point I'd ask you to look at
21 page -- start at page 8, please. Do you see the
22 heading above paragraph 18 entitled "Material
23 Omissions in the ITO"?

24 A I'm sorry, I didn't hear you. Someone coughed.

25 Q I'm sorry. Page 8, paragraph 18.

1 A Yes.

2 Q And there's a title "Material Omissions in the
3 ITO"?

4 A Yes.

5 Q And so if I can just -- before I go on, we talked
6 before about having to include all the material
7 information in the Information to Obtain, and so
8 material omissions, this is reference, as you
9 understand it, to an allegation that there's been
10 something important omitted?

11 A I haven't read this decision, but that's what I
12 would infer, yes.

13 Q So would you go to paragraph 18, please.

14 A Yes.

15 Q And there's a list of allegations about omissions
16 that -- from the ITO which are argued to be
17 relevant and significant facts. Do you see that?

18 A Yes.

19 Q And the first is that the source had a criminal
20 record and about the source's motivation to
21 provide -- that the source's motivation was
22 financial?

23 A Yes, I see that.

24 Q And those would both be factors that would tend to
25 undermine the assessment of the source's

1 reliability?

2 A Well, that's what's alleged here.

3 Q But that's not an argument that's unfamiliar to
4 you, I assume?

5 A No, that doesn't surprise me that that would be
6 argued.

7 Q And so if a source has a criminal record, it's
8 common practice or required for police to put the
9 record in insofar as it might be relevant; is that
10 right?

11 A It certainly would not be uncommon.

12 Q And so if you turn over the page, at paragraph 20
13 you'll see the allegation there that failure to
14 disclose in the ITO that the source had a criminal
15 record and was financially motivated compromised
16 the ability of the JJP to assess his credibility.
17 That's putting it in more technical terms; is that
18 right?

19 A I'm sorry, what's the question?

20 Q I'm just saying that's rephrasing what we just --
21 that's a different way of saying what we just
22 discussed?

23 A Yes.

24 Q Okay. And there's -- I'm not going to take you
25 through it, but there's a discussion of those

1 factors, and the -- Mr. Justice Williams comes to
2 the conclusion that, in paragraph 26, that the
3 fact that the source was to be paid should have
4 been disclosed and so on and so forth. I'll just
5 tell you that he came to the same conclusion about
6 the record. And at the end of the day, though, he
7 decided that there was a sufficient basis in the
8 ITO for the issuance of a warrant. That's at
9 paragraph 28. So this is a process, though, and
10 I'll describe the process in a moment, but you are
11 familiar with the process whereby there's an
12 analysis at trial of the grounds, and the
13 consequences if there are deficiencies can be
14 anything from what I've just described, in other
15 words, that the warrant is still upheld, to the
16 warrant is not upheld and the evidence is -- is
17 found to be inadmissible under section 24(2) of
18 the Charter?

19 A Yes, I understand that that is a possible
20 consequence.

21 Q And is it not true that, again, in a serious
22 investigation, or any investigation for that
23 matter, that this is one of the things that the
24 police keep in mind when deciding if they really
25 think they have enough?

1 A Yes, that it's not just enough to get it past the
2 justice of the peace; it needs to be defended in
3 court.

4 Q Right. And that's from the experience of having
5 warrants that were issued and executed in good
6 faith nonetheless found to be invalid and the
7 evidence excluded?

8 A Generally speaking?

9 Q Yes.

10 A Yes.

11 Q And as I think you agreed with me before, that
12 that consideration is perhaps more acute the more
13 important the case becomes and the more important
14 the evidence in that case?

15 A Yes, I agree.

16 Q There's another factor that I want to ask you
17 about along similar lines, and that's something
18 that doesn't occur all over Canada, but it's the
19 effect of the charge approval process. Now, if
20 you actually stay in that binder, would you turn,
21 please, to tab 1, paragraph D, which is entitled
22 the "Crown Counsel Act"?

23 A Yes.

24 Q Now, this you'll see is, from the top left-hand
25 corner of the page, is dated 1996, so it's the

1 version from the -- that was in effect in the time
2 in question covered by this inquiry, but it --
3 I'll just tell you that it hasn't particularly
4 changed, but this is where it's set out under
5 section 2(a) the function of the Criminal Law
6 Branch to approve and conduct all prosecutions, so
7 charge approval --

8 A Yes.

9 Q -- as well. And you're very familiar with that
10 system?

11 A I am.

12 Q And under section 4, subsection (3) is the
13 statutory authority of Crown counsel to approve
14 for prosecution any offence or offences that he or
15 she considers appropriate.

16 A Yes.

17 Q So what that means is that you have -- the police,
18 before charges are laid, have to submit their
19 report to Crown counsel and Crown counsel will
20 decide if, in fact, that charge will be approved
21 and if that prosecution will go ahead?

22 A Yes. Sometimes there's a little bit of variation
23 around the timing when it's an arrest made in the
24 middle of the night or whatever, but when there
25 isn't an arrest that's made right at the time and

1 it's a brief that's submitted to Crown, then, yes,
2 there's going to be a charge approval process.
3 Sometimes there is a charge laid very early and
4 then Crown reviews it and decides that they're not
5 going to proceed with it and so the charge is
6 stayed.

7 Q Right. But in most serious cases if the person is
8 arrested there's a report submitted in the morning
9 and the charges are either approved or not
10 approved and the case goes depending on that
11 decision, right?

12 A Yes, generally.

13 Q Okay. And would you turn, please, to tab E, which
14 is entitled "Crown Counsel Policy Manual". Do you
15 see that?

16 A Yes.

17 Q And if you go over the page -- oh, first of all,
18 this -- if you go over to page 2, the date you see
19 in the -- near the top of the page, the date is
20 1-1-91, 1st of January, '91?

21 A Yes.

22 Q And so this appears to be the version in place at
23 the time covered by this inquiry. The later tab
24 provides the next version, but I won't ask you to
25 go through it. It's there for information, but

1 there's no real significant difference. But would
2 you look over the page again at the page numbered
3 2 at the top with the title "Substantial
4 Likelihood of Conviction".

5 A Yes.

6 Q And one of the things that is considered here is
7 that at the end of -- a substantial likelihood of
8 conviction is significantly more than a *prima*
9 *facie* case but less than a virtual certainty of
10 conviction?

11 A Yes, I understand that.

12 Q And you have testified about that before in the
13 context -- and it's in your report in the context
14 of the difference between what is required for
15 charge approval and what is required for an
16 arrest; is that right?

17 A Yes.

18 Q But now what I want to ask you about is a somewhat
19 different topic, and that is in the next
20 paragraph.

21 During the charge approval process, Crown
22 Counsel does not have the benefit of hearing
23 the testimony of Crown witnesses, either in
24 direct or cross-examination,
25 and then it continues to the end.

1 For this reason, Crown Counsel must be
2 flexible in applying the substantial
3 likelihood of conviction standard recognizing
4 that the more serious the allegation, the
5 greater the interests of justice in ensuring
6 that provable charges are prosecuted.

7 And then the next section -- oh, no, sorry, I
8 don't need you to go through that.

9 If you turn over the page, there's just a
10 list of instructions for applying the charge
11 standard, but what I want to ask you specifically
12 is do you agree with me that in addition -- that
13 one of the things the police also -- no, let me
14 back up a little bit. When a Crown is approving a
15 charge, the Crown evaluates the admissibility of
16 the evidence presented by the police; is that
17 right?

18 A Yes.

19 Q And so if there appears to be a shaky foundation,
20 appears to the Crown that the foundation for
21 admissibility of certain items seized is shaky,
22 that that will affect the Crown's decision?

23 A Certainly one of the things that they're going to
24 consider, yes.

25 Q And that, in fact, is something that the police

1 and the Crown might even have disagreements about
2 from time to time?

3 A Yes.

4 Q And so the police officer going to get the search
5 warrant is also mindful that even if the justice
6 of the peace issues the warrant, the Crown may
7 take a different view of the validity of the
8 search and the likelihood of the evidence being
9 admitted?

10 A Yes.

11 Q And so those are important considerations in an
12 important case because, again, there's no point
13 in -- you haven't accomplished much at the end of
14 the day if you do a search only to be told by the
15 Crown that they're not going to approve charges
16 because in their view the search was not lawful or
17 the evidence won't go in?

18 A Right.

19 Q So we start off with a statutory requirement of
20 reasonable grounds, but we need -- would you agree
21 that we need to understand the surrounding
22 circumstances as well to understand how the police
23 will approach their investigation?

24 A I agree.

25 Q One topic that has come up and that I would

1 suggest to you is an important concept in this
2 inquiry is an understanding of what is meant by
3 the term "person of interest". That's a very
4 common term in police circles, is it not?

5 A It has become one.

6 Q And the basic proposition is that the term "person
7 of interest" and "suspect" are not equivalent; do
8 you agree with that?

9 A I think that it has evolved to be the case, yes.
10 It wasn't always the case.

11 Q Okay. But, again, in the time covered by this
12 inquiry we need to be cognizant of the difference
13 of those concepts when reading the documents and
14 hearing the evidence; do you agree with that?

15 A I agree that we need to be cognizant of what was
16 the understanding at the time, yes.

17 Q And so it might be necessary to speak to the
18 particular person who used the term in a
19 particular document or otherwise to ascertain what
20 they mean by that?

21 A Yes, if that was an issue.

22 Q But certainly if we are reading a document and
23 we're told that Joe Smith is a person of interest,
24 we cannot assume from that that Joe Smith was a
25 suspect?

1 A I agree that not necessarily.

2 Q Would you please turn to in the same volume we've
3 been looking at tab 2D. I'm sorry, my tab at tab
4 2D is a case called *Kokesch*, and that's not the
5 one that I need to refer you to. What do you have
6 at your tab?

7 A At my tab I believe 2D is the case of Willis --
8 *Wills, Richard Wills*.

9 MS. TOBIAS: Excuse me one moment.

10 THE COMMISSIONER: That's what I have too.

11 MS. TOBIAS: Then it's just my book that's mixed up, and that's
12 probably a good thing.

13 MR. DICKSON: 2B.

14 MS. TOBIAS:

15 Q I have *Grant* at 2B. So what do you have at 2B?

16 A At 2B I have *Kokesch*.

17 Q All right. What do you have at 2A?

18 A At 2A I have *Donnohue Grant*.

19 Q Let's go with *Donnohue Grant*. So there's just an
20 extract from this case here, and here -- this is a
21 decision of the Supreme Court of Canada, and the
22 question of the difference between a suspect and a
23 person of interest came up because the issue was
24 how the person was treated when they were -- when
25 the person was being questioned. And if I may

1 have your indulgence for a moment, Mr.
2 Commissioner. You know what, I think I'll come
3 back to that in the morning because I think
4 there's some mix-up with the documents, for which
5 I do apologize, and we'll make sure that gets
6 fixed.

7 So what I'll do now is I'll move on. Sir, my
8 colleague has put in front of you a document
9 entitled "Compilation and Comparison of
10 Information from Various Sources About Pickton's
11 Activities". You see that?

12 A Yes.

13 Q And I'll tell you what this is. I don't pretend
14 for a moment it's exhaustive, but one of the
15 central questions in this case is looking at the
16 information provided by various people to the --
17 with respect to Mr. Pickton's activities on his
18 farm and the strength of those -- of that
19 information or those allegations, and so if you
20 look at the table -- the heading is really, really
21 big, but the reason for that is you'll see across
22 the top Caldwell, Menard, Hiscox, Best, Yelds,
23 Anderson in quotations, and Casanova?

24 A Yes.

25 Q And the documents under -- listed underneath each

1 person's name is in the exhibits, and of course
2 you know what Mr. Caldwell said to Detective
3 Chernoff and Lepine is in a lot of different
4 documents, but they appear in these documents at
5 those particular pages, and what we've done here
6 is simply summarized the most basic information,
7 the basic elements of information so that we can
8 kind of get a snapshot, because we've been doing a
9 lot of considering of what this person said and
10 then what that person said, but this is an attempt
11 to put the basic information all in one place so
12 that we can take a different view of it. Okay.
13 And so on the left-hand column under the word
14 "Issue", do you see that?

15 A Yes.

16 Q There's first of all the piece of information
17 "Jane Doe", a woman hanging in the barn, which is
18 a short form for some of the information that was
19 provided, and you'll see if you go across that row
20 under the heading "Caldwell" you'll see the
21 description:

22 Ellingsen described to Caldwell how she saw
23 Pickton cutting strips off her,
24 that's a reference to Jane Doe,
25 legs and said fat was yellow,

1 etcetera.

2 A Yes.

3 Q And then we can see that Menard said nothing about
4 that, Hiscox said nothing about that, and what
5 Best said about that was that Ellingsen was
6 wandering around the farm about 2:00 a.m. and
7 found him in the barn with a woman strung up, if
8 we go over the page --

9 A Well, can I just stop you there, because you're
10 asserting that Menard said nothing about that, and
11 I don't think that that's accurate. He didn't
12 necessarily describe the detail that's in that
13 purple font, but he did say something about
14 something occurring that was consistent with that
15 information. So I don't think -- he didn't say
16 nothing about it.

17 Q I haven't asked you a question yet.

18 A Okay. Well --

19 Q I'm simply explaining to you how this is set up.
20 Okay? The question's coming.

21 A Okay.

22 Q So that is how it's set up, and I didn't -- if you
23 just flip the page over -- I apologize because the
24 heading is so big, but you see, for example, under
25 "Caldwell" the Jane Doe hanging in the barn issue

1 is described in considerably more detail. Do you
2 see that? It actually goes over about three pages
3 down that column?

4 A Yes.

5 Q Okay. And if you go back to page 1, there's a
6 legend at the top left-hand corner of the page.

7 A Yes.

8 Q Do you see that? And so what's in purple is
9 hearsay. In other words, Caldwell didn't see this
10 event. Ellingsen told him. So that's pretty
11 straightforward --

12 A Yes.

13 Q -- right?

14 And then the next part of the legend is blue,
15 and the blue writing signifies undermined. So
16 that's something that negatively affects
17 credibility. So going back to the questions I
18 asked you earlier, obviously in weighing the
19 import, and I am going to use more general
20 language here because it was -- the information is
21 used in different ways, in weighing the import of
22 the information you have to take, as we said, the
23 bad with the good, right?

24 A Yes.

25 Q So the blue is perhaps the bad. So if you flip

1 over to page 4 -- oh, sorry, not page 4, page 3.

2 At the bottom of page 3 you see the reference on

3 the left-hand side to "body parts in freezer"?

4 A Yes.

5 Q And on the far -- so we'll say that -- without

6 flipping the pages too much, you'll know that this

7 is a question of the allegation being that Pickton

8 had put women's body parts in the freezer?

9 A Yes.

10 Q If you look at the far right-hand side, there's

11 the information from Mr. Casanova, and it's in

12 blue. He never saw any body parts in the freezer

13 or any other suspicious activity despite being

14 present during Pickton butchering pigs a number of

15 times. So does that make sense how I've -- how

16 we've done that now? So there's the information

17 and -- from Best, for example, which is hearsay,

18 and on the far right the information from Casanova

19 on that point negates the point. Does that make

20 sense, just in terms of how this is set up?

21 A Well, I understand how it's set up.

22 Q That's all I'm asking you right now.

23 A Okay, because it sounded like you were putting to

24 me that it negated the information.

25 Q But -- no. All I mean to ask you is if you

1 understand what's happening here.

2 A Yes, I think I understand how it's set up. It is
3 a little bit complicated.

4 Q And -- well, it's a complicated situation, isn't
5 it, sir? Red stands for something that
6 corroborates.

7 A Yes.

8 Q So if you look again at page 3 at the same point,
9 we have Caldwell saying that Pickton, yes, did
10 have a huge freezer full of different types of
11 things, and he had meats and they were wrapped in
12 black plastic. So, you know, yes, he had a
13 freezer, so that in one sense is supporting the
14 information. Would you agree with that, that that
15 would be something supportive?

16 A Yes.

17 Q Okay. And so that's what the red means. And,
18 finally, the green is the -- what was described in
19 some of the passages that I read to you as a
20 conclusory statement, and there aren't very many
21 of those, but those, as you've said, on their own
22 are not very helpful, they don't mean very much in
23 the evaluation of how accurate or important or
24 reliable information is, okay?

25 A Okay.

1 Q So I'm noting the time, and so what I would ask
2 you to do, if Mr. Hern has no objection and if Mr.
3 Commissioner doesn't either, is to take the table
4 and have a look at it overnight. And please keep
5 in mind that this is -- it's more an issue
6 snapshot than it is every last detail of
7 information, but I want to take you through it
8 tomorrow and just to kind of get a bit of a high-
9 level overview of how things weighed in the
10 balance, okay? Would you do that, please?

11 A Yes.

12 MR. VERTLIEB: I just have one question for counsel. This is a
13 high-level overview, but I just looked at it
14 quickly. There's no column for Ellingsen, nor
15 for, indeed, Pickton.

16 MS. TOBIAS: No, because it --

17 MR. VERTLIEB: I was just going to ask why are those two
18 sources of information left out?

19 MS. TOBIAS: Because they were -- well, I'll tell you why.
20 Ellingsen was left out because, first of all, she
21 denied everything, and Pickton was left out
22 because he's not a source. But we will be dealing
23 with other -- this table only purports to deal
24 with the people that the police treated as
25 sources. They came and provided information to

1 the police about various of these activities. It
2 doesn't purport to be exhaustive.

3 MR. VERTLIEB: So it's not a high-level overview, it's a high-
4 level overview of sources?

5 MS. TOBIAS: Yes. Thank you. Yes.

6 MR. HERN: Just for the witness's benefit, it may be helpful
7 for you to just advise whether you are going to
8 ask him to agree with that information or that the
9 information is accurate. I didn't quite
10 understand what you ultimately want him to do with
11 it, and it may be difficult for him to understand
12 what's he supposed to do with it tonight.

13 MS. TOBIAS: I -- that's fair. I think it would be helpful,
14 Deputy LePard, if you examined the table. If you
15 think there are any major issues that are left
16 out, I don't know if you think that -- you made a
17 reference for Menard, for example. You may wish
18 to review some or all of the underlying sources
19 for this information that are set out. I don't
20 particularly intend to take you to them, but you
21 may wish to do that. I put them in the table for
22 everyone's information, but essentially I think in
23 terms of the major issues that were raised, if I
24 can phrase it in that way, I would like you to
25 assist Mr. Commissioner and us in seeing if -- if

1 this is a reasonable high-level picture of the
2 different information provided by these particular
3 people on those issues.

4 MR. VERTLIEB: Mr. Commissioner, my concern -- and I really
5 don't know why we're getting this at this time,
6 but I respect my learned friend and her decision-
7 making process. This deputy is our witness in the
8 general sense because we called him, but he's been
9 on the stand for many, many hours, and I have no
10 idea how many hours it would take him to go
11 through this, and as you said a number of times,
12 and fairness is not -- these are -- it's not just
13 a word, it's one of our core principles, and so I
14 just want it to be clear that if the witness is
15 unable to do it in any brief review that he
16 shouldn't be feeling he's under some obligation
17 because a lawyer asked him to look at it that he's
18 supposed to be up into the wee hours of the night
19 looking at this, which I can look at very quickly
20 and say it would take some considerable time to
21 review. It's unfortunate it hadn't been delivered
22 sooner with that request so he could have had time
23 to reflect on it in a fair way. I just wanted to
24 say that because I do -- I am concerned about
25 being fair to the people who are on the witness

1 stand, and there's a great drain on them that
2 anybody understands who's had to give evidence
3 before.

4 THE COMMISSIONER: All right.

5 MS. TOBIAS: If I may clarify, Mr. Commissioner, as I said, I
6 think it's important when evidence is repackaged,
7 if I can put it that way, like this that the
8 sources of the evidence be set out, but as I said,
9 I don't particularly intend to take the witness to
10 them. I'm not going to ask him those kinds of
11 questions. They're there for your reference and
12 for his reference if he wants to look at it. I
13 would have thought that these matters, these
14 particular pieces of information, because,
15 frankly, these pages are mostly the headers, is
16 information that he's actually quite familiar
17 with. He's talked about them a lot in his
18 evidence, and he's put a lot of it in his report.
19 So I'm certainly acting under the assumption that
20 he will be able to read it and absorb it in not
21 very much time at all. If that proves not to be
22 the case, it's certainly not my intention to keep
23 him up all night.

24 THE COMMISSIONER: Okay. Thank you. Mr. Roberts.

25 MR. ROBERTS: Darrell Roberts, First Nations interests. I want

1 to just add a voice of support to counsel Cheryl
2 Tobias. She's very capable. If this document
3 assists in her cross-examination, she should be
4 allowed to do it. In many ways it's in the nature
5 of an aide-memoire. So I have great respect for
6 my learned friend over there who's commission
7 counsel, but I cannot see what objection there can
8 be for her use of this document to assist in her
9 cross-examination.

10 THE COMMISSIONER: I don't think there was an objection as
11 such. I think it was a concern that giving him
12 more -- a voluminous amount of material to review
13 overnight.

14 MR. ROBERTS: I understand, but this is a very difficult
15 inquiry, and we are supposed to get to do it in a
16 careful and meticulous way, and I understand
17 that's going to help counsel do this.

18 THE COMMISSIONER: Okay. Well, yes.

19 THE REGISTRAR: Mr. Commissioner, normally the document handed
20 to the witness becomes the official document. If
21 he is going to take that home this evening, I
22 would prefer this document to be -- him allowed to
23 mark up the document if he so chooses --

24 THE COMMISSIONER: Good point.

25 THE REGISTRAR: -- and another document be entered as the

1 official document. Thank you.

2 MS. TOBIAS: Absolutely. Thank you, Mr. Giles. We will do
3 that.

4 THE COMMISSIONER: All right. Thank you. We'll adjourn until
5 tomorrow.

6 THE REGISTRAR: The hearing is now adjourned until ten o'clock
7 tomorrow morning.

8 **(PROCEEDINGS ADJOURNED AT 4:09 P.M.)**

9

10 **I hereby certify the foregoing to**
11 **be a true and accurate transcript**
12 **of the proceedings transcribed to**
13 **the best of my skill and ability.**

14

15 **Leanna Smith**

16 **Official Reporter**

17 **UNITED REPORTING SERVICE LTD.**

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