

October 12, 2011

Vancouver, B.C.

(PROCEEDINGS RECONVENED AT 10:04 A.M.)

THE REGISTRAR: Order. The hearing is now resumed.

MR. VERTLIEB: Good morning, Mr. Commissioner. Just to outline the morning for you, we have Grand Chief Ed John, who will make a presentation, and then Mr. Skwarok on behalf of Dr. Rossmo and then Ann Livingston for VANDU, and I think that will take us a long way through the morning. Just one thing, Mr. Commissioner. There are so many lawyers for so many of the parties and I just wanted to have you perhaps confirm that you are comfortable if they come and go as need be so no one's worrying about that or appearing to be rude in any way.

THE COMMISSIONER: No. I -- I think that's an excellent suggestion. I know that many of you have other things to do and I'm well aware of that, and you don't need to seek leave in the event that you have to go back to your office and do the other things that you normally do in your office. So just feel free to go in and out at your pleasure.

MR. VERTLIEB: Thank you, Mr. Commissioner. All right. Thank you.

25 MS. FOX: Good morning, Mr. Commissioner, fellow counsel,

1 participants and observers.

2 THE COMMISSIONER: Thank you. Thank you for appearing.

3 MS. FOX: My name is Stacey Edzerza Fox. I'm legal counsel for
4 the First Nations Summit, which has limited
5 standing in this process. And I want to introduce
6 some of our delegations with me today. The Grand
7 Chief Edward John will be making a statement on
8 behalf of the First Nations Summit. We also have
9 with us Chief Douglas White III, who's a member of
10 the political executive of the First Nations
11 Summit, as well as Leah George Wilson, who's also
12 on the executive. Not here today are Dan Smith
13 and Ray Harris. I would also like to welcome our
14 National Chief Shawn Atleo, who is with us today.
15 And I'd also like to acknowledge Wendy John and my
16 co-counsel, Melissa Louie, who are in the gallery
17 today as well. Thank you.

18 MR. JOHN: Thank you. Good morning, Mr. Commissioner.

19 THE COMMISSIONER: Good morning.

20 MR. JOHN: My is Akile Ch'oh, hereditary chief, Tl'azt'en
21 Nation. I'm also known as Edward John. I've been
22 a member of the B.C. bar. I was called in 1980
23 and have been a member of the bar since. Recently
24 I said that in one of my community meetings and
25 one of the young boys came up to me and said,

1 "You've been in the bar that long?" I'd like
2 to --

3 THE COMMISSIONER: I'm pleased I wasn't at that meeting.

4 MR. JOHN: You know, the word bar is kind of misleading in many
5 of our communities, as you can well imagine.

6 I would like to also acknowledge that Chief
7 Doug White is also a lawyer, a member of the bar
8 in this province, and that Leah George Wilson is a
9 law student at UBC --

10 THE COMMISSIONER: Thank you.

11 MR. JOHN: -- in her second year. I wanted to also introduce
12 Charlene Belleau, who is here as well.

13 THE COMMISSIONER: I see her in the audience.

14 MR. JOHN: A tireless advocate for residential school
15 survivors, particularly indigenous women who have
16 been greatly impacted over the years, and her
17 tireless advocacy is important to all of us.

18 I wanted to -- today is October 12th and for
19 some of you it may be absolutely of no
20 significance, but to indigenous people in the
21 Americas it's of absolute significance because in
22 1492, on October 12th some fellow called
23 Christopher Columbus landed in Hispaniola in what
24 is now the Dominican Republic and we saw the
25 beginning of a relationship, the product of which

1 we find ourselves today. And I say that because
2 it's an important part of our history that we --
3 we need to understand, and today the Americans and
4 others acknowledge and celebrate this day for one
5 reason or another and we acknowledge this day for
6 other entirely different reasons.

7 I have a written submission to make. I'm not
8 sure whether that submission has been made
9 available, but if not, we can make it available to
10 counsel by e-mail or hard copies and to the
11 commission as well. And I want to thank my dear
12 colleague, Mr. Vertlieb, the commission counsel,
13 for offering his chair. I don't intend to be
14 commission counsel, but I certainly welcome his
15 kind gesture this morning.

16 I wanted to take a quote from an article
17 written by Justice Rosalie Abella, the Supreme
18 Court of Canada. And it's printed in the McGill
19 Law Journal. And she had this to say about human
20 rights:

21 International Law and Human Rights: The
22 Power and the Pity. The world was supposed
23 to have learned three indelible lessons from
24 the concentration camps of Europe:
25 a. Indifference is injustice's incubator;.

1 b. It's not what you stand for, it's what
2 you stand up against; and
3 c. We must never forget how the world looks
4 to those who are vulnerable.

5 The essence of what we have to say is captured in
6 those three -- three ideas from Justice Abella.

7 I wanted to -- at the start also to
8 acknowledge that we are in the -- recognize the
9 Coast Salish peoples on whose ancestral lands we
10 stand and recognize that they continue to have
11 legitimate land and territorial rights inherited
12 from their ancestors throughout all of these
13 lands. This is what they and we as indigenous
14 peoples know and believe. We continue to know and
15 believe this to be so.

16 We have been in many rooms such as this in
17 front of independent arbiters, whether it's with
18 the Crown representative, by the Attorney General
19 of British Columbia and in some cases the Attorney
20 General of Canada, bringing forth issues of
21 importance to our communities, whether these
22 issues are relating to fishing rights or forestry
23 or the environment or water or the right to
24 take -- or the right to moderate livelihood.
25 We've been in rooms like this on many occasions,

1 in a room that we often feel the hostility coming
2 from Crown agencies as they -- they put us to the
3 test to prove who we are as indigenous people, to
4 prove that we exist and to prove that we have
5 rights. And that is the nature of what I want to
6 bring forward today as well.

7 I am here today as an elected spokesman for
8 and on behalf of the First Nations Summit and
9 those First Nations in this province who are in a
10 difficult and protracted negotiations process to
11 fairly and equitably resolve these land-related
12 rights with Canada and British Columbia, the
13 successors of Crown colonial governments.

14 These First Nations have been at their
15 respective tables for some 15 years now and with
16 very little success and very little to show for it
17 and have borrowed in the neighbourhood of about
18 \$350 million from the government in the meantime.
19 I will explain later what they, our chiefs and the
20 First Nations, see as obstacles to real and
21 genuine negotiations to reach agreements.

22 In the colonial era of this province,
23 authorities such as Governor James Douglas through
24 various proclamations and ordinances unilaterally
25 took these lands that now make up the province of

1 British Columbia. These lands were taken without
2 negotiating with and certainly without the
3 knowledge, consent or agreement with our
4 ancestors. It is as if our people did not exist
5 or have any rights to their lands and territories.
6 In fact, they were treated with hostility and in
7 some cases warfare. We recount, of course, an
8 example being the Chilcotin chiefs who were hung
9 for defending their territory. And we've seen the
10 history and heard the history of that.

11 Although the primary mandate of the First
12 Nations Summit is to establish and support a
13 constructive resolution process on the land,
14 resources and territory issues through good faith
15 negotiations, we also fully engage in the ongoing
16 political, social, cultural and economic issues
17 facing our people and communities and working to
18 develop viable and practical political and policy
19 solutions to these issues.

20 We are deeply engaged in a myriad of
21 processes with governments to address legal,
22 legislative, regulatory and policy issues dealing
23 with education, health, housing, water,
24 sanitation, technology, fisheries, forestry,
25 mining, energy, early child development and so on.

1 We also deal with local governments, industry
2 groups and other public interest organizations.
3 We are not directly involved in the various
4 day-to-day matters within our communities even
5 though many issues are brought to us. However, we
6 do assist in any way we can. Ultimately, all of
7 our efforts are to advocate for and support the
8 survival, dignity and well-being of our peoples
9 and our communities. And we've been doing this
10 for a considerable amount of time.

11 Education, for example, is a priority number
12 one in this province for our peoples, for our
13 chiefs, our leaders and our communities, and it's
14 also a national priority for the Assembly of First
15 Nations, our national organization.

16 And I want to acknowledge the role of
17 A-in-chut, Shawn Atleo, the national chief, who's
18 been a tireless advocate for ensuring that this
19 issue remains in the forefront. When we came
20 directly involved in the education issue of our
21 peoples in the late mid-1980s to the early 1990s,
22 our students were graduating at about 30 percent.
23 Three out of ten -- seven out of our ten students
24 did not graduate. Three out of ten did, 22.5
25 perhaps. The general graduation rate in the

1 province was about 70 to 75 percent. In these 20
2 years or so we've managed to bring the graduation
3 rates of our students up to about 50 percent
4 because we have been proactive. We haven't sat
5 back and complained about our situation and we've
6 tried to do what we can to improve it despite the
7 fact that we know in this country that the
8 education funding for our students and our schools
9 are about 25 percent less than what -- what --
10 what the general public school system in British
11 Columbia receives.

12 Similarly with children in care, we haven't
13 sat back and watched our children continually
14 being taken from our communities and put into
15 foster care, yet those organizations who support
16 our children are funded at about 25 percent less
17 than what the province provides to its -- provides
18 for its services. This issue was brought by the
19 National Assembly of First Nations and Care For
20 Children Society and a complaint to the Canadian
21 Human Rights Commission and Canada interjected and
22 said that the commission had no mandate to address
23 this issue and fought against -- every step of the
24 way fought against the equity that we needed to
25 see in this -- in this issue.

1 So I wanted to raise that as two specific
2 examples of what we have been trying to do yet at
3 the same time run into obstacles and seemingly
4 hostile approaches of governments, and that's
5 where we've been. You know, as much we like to
6 find constructive and proactive solutions, it's
7 not been a very easy struggle, and we'll explain
8 in the legal context as well.

9 The situation, of course, I wanted to -- the
10 point I wanted to make was that more likely than
11 not our children would not complete high school.
12 More likely than not that our children would end
13 up in government care. More likely than not --
14 compared to the general population I'm talking.
15 More likely than not our children would end up in
16 provincial youth detention centres. Approximately
17 50 percent of those in youth detention centres are
18 indigenous aboriginal children, aboriginal youth.
19 I would question also the fact that what is the
20 connection between children in care and those who
21 end up in youth detention centres. More often
22 than not our people will find themselves in
23 federal or provincial prisons. More often than
24 not our people will find themselves without a job.
25 And that's the context that we want to lay out and

1 hopefully are able to provide more information on
2 that. We have a series of bodies and
3 organizations that we've been able to establish
4 that work specifically in this area, whether it's
5 health or education or forestry or mining. Chiefs
6 who have expertise in this area are the ones who
7 direct these bodies that they have established.

8 So this is the context that we want to
9 provide and we think that it will be instructive
10 to this inquiry. I know the very specific mandate
11 of this commission is to examine the conduct of
12 the police and to ask questions about why the
13 charges were stayed following the conviction of
14 Pickton of murdering six women.

15 In this submission I wanted to focus on one
16 important key issue, and it's about generally the
17 history of this country and perhaps even in the
18 Americas. But in the history of this country and
19 the history of this province, we see western ideas
20 about the role and the status of women in society,
21 the inferiority of women generally and how they've
22 been treated and dealt with in this country. And
23 to the credit of many activists, these issues have
24 been brought forward and becoming the mainstream
25 part of society that for some reason or another we

1 have to say, well, women have finally arrived.
2 And it's a sad commentary on our society to know
3 that, but from a First Nations and aboriginal
4 indigenous perspective, we need to show that --
5 this -- this message: that indigenous women in
6 our cultural history played a pivotal role about
7 who we are and about our communities and about our
8 societies and about our cultures.

9 That -- for example -- I'll use myself as an
10 example. When I was born into our matriarchal
11 society, it was my mother and her clan who
12 determined where I belonged and the laws of our
13 nation would apply based on that sense of
14 belonging, and that it was they in the end who
15 determined whether or not I would become a chief.
16 And these are the laws of our peoples and these --
17 this was a powerful position that our women were
18 in in the history of our peoples right across this
19 province.

20 Recently ceremonies are coming back that
21 respect the role and place of indigenous women.
22 When young girls are coming to a rite of passage,
23 it is the chiefs who will disrobe, take their
24 blankets off and wash in front of the public the
25 feet of the young lady who is going through this

1 change in her life to acknowledge and respect the
2 status and the place of women in our communities.
3 And this is a part of history that no one knows or
4 no one sees or that is any determination of.

5 But as history will show, Crown agencies,
6 Crown governments, colonial governments understood
7 the powerful place of women and targeted those
8 women to undermine the legitimacy of the authority
9 of our ancient systems that we inherited from our
10 ancestors. The women became the target and they
11 were marginalized and they were demeaned and they
12 were treated in ways that -- that has been totally
13 unbecoming of a free and democratic society. But
14 that's the history of this -- in this country of
15 the place of our women that were specifically
16 targeted.

17 Our families were targeted by the government
18 through, in particular, the Indian residential
19 school system and they needed to break that
20 structure down. They needed to break this
21 authority structure down to -- to move forward
22 with their assimilation policies to dispossess our
23 peoples from our territories and lands, to
24 undermine the political structure of our
25 communities, the cultural integrity of our

1 peoples, and in doing so the women became the
2 target. It wasn't the men. It wasn't the chiefs.
3 In fact, men who had no authority in the community
4 were elevated to these positions called chiefs by
5 the colonial authorities, in effect to undermine
6 the authority of the women, and that's the history
7 that we're familiar with. They were specifically
8 targeted in the *Indian Act* as well.

9 And we all are familiar with the case
10 involving Sandra Lovelace, who brought a complaint
11 to the international community, which forced the
12 Government of Canada to abandon its discriminatory
13 laws against indigenous women in this country,
14 which led eventually to further changes in federal
15 legislation as well as changes in the Charter of
16 Rights and Freedoms that we're all familiar with
17 in this country.

18 Who can forget the murals of the legislature
19 in Victoria that depicted our women in a very
20 demeaning way? And some people argued that it was
21 just art. And our women and our communities and
22 our people and our chiefs said we object to that,
23 and it was years later finally those murals were
24 covered up. What does it say about this society
25 and how it thinks about indigenous women, how it

1 thinks about indigenous peoples? We have to ask
2 that question because it's a very important
3 question to this inquiry. It's a large systemic
4 issue. I understand that we have to deal with
5 specific individuals and we cannot forget any one
6 of those women who are on that chart up there and
7 their pictures and many of their families who are
8 here.

9 I wanted to also say that this issue is
10 important to our communities, important to our
11 people, important to our families. It's important
12 to -- as well and has been recognized as a very
13 significant issue at the international level. In
14 the 10th session and the report from the United
15 Nations Permanent Forum on indigenous issues,
16 there is a section that deals with indigenous
17 women issues particularly and that this issue
18 involving indigenous women and violence is also a
19 very profound international issue. And we need to
20 understand that the targeting of indigenous women
21 is very systemic globally and that people are
22 standing up and trying to understand what this
23 issue is, how big it is, how -- how it needs to be
24 dealt with and how it needs to be addressed, and
25 that I would encourage the commission to take a

1 look at the report of the 10th session of the
2 Permanent Forum as well as the reports from the
3 previous nine sessions where this issue has
4 continuously been in front of the United Nations.

5 Specifically regarding this inquiry, we
6 wanted to talk about three -- three specific --
7 three critical issues: One, the situation of
8 those granted participant standing before this
9 inquiry; secondly, the independent inquiry,
10 including the calls for an independent inquiry;
11 the terms of reference; the appointment of a
12 commissioner; conduct and operation of the
13 commission; and, finally, a little more detail on
14 the historic and contemporary First Nations-Crown
15 relations.

16 A large number of individuals and
17 organizations applied for and have been granted
18 participant standing before this commission. The
19 First Nations Summit applied for and was granted
20 limited participant status.

21 While some participants will appear before
22 the commission, most have, for a number of very
23 legitimate reasons, withdrawn. Many of these
24 reasons have been submitted to the commission in
25 writing and are well known publicly. These have

1 highlighted the credibility of the commissioner,
2 the inquiry, including the conduct of the inquiry
3 itself, and that of the provincial government,
4 which has from the outset tied their hands of the
5 commission by its extremely limited terms of
6 reference and by refusing to provide desperately
7 needed financial support -- I was wondering why
8 Art Vertlieb was drinking so much water -- and by
9 refusing to provide desperately needed financial
10 support to those participants who have very
11 limited or no resources at all. Given the
12 incredible importance of the issues before this
13 inquiry, the position of the B.C. government to
14 not fund the participants is nothing short of
15 astounding.

16 The fact that so many have withdrawn cannot
17 be good for this commission. Any report and
18 recommendations that the commission -- of the
19 commission will very well be received and
20 considered with a large degree of skepticism,
21 perhaps, as some have stated, protecting and
22 advancing the interests of only those who are able
23 to afford legal counsel.

24 Some families have been fortunate to have
25 financial support to retain legal counsel. This

1 is positive, constructive and welcome. Some
2 families as well will be represented through this,
3 aboriginal families. There are, however, many
4 aboriginal families who have missing and/or
5 murdered family members who will not be
6 represented by anyone or in any direct way.

7 Although the commission has appointed an
8 individual as independent counsel to represent
9 aboriginal peoples, this was done without any
10 discussions or concurrence with aboriginal or
11 First Nations peoples. We, of course, extend our
12 gratitude to those who have stepped forward to
13 advise and provide services on a pro bono basis.
14 That's an incredibly kind gesture on their part.
15 This approach of an independent counsel raises a
16 number of questions: Who is this individual
17 accountable to? Who does this individual
18 represent? How are instructions given and by
19 whom?

20 While we fully respect the appointed
21 individual and the pro bono counsel, this is a
22 highly unsatisfactory and difficult position.
23 Because they are independent, we cannot retain
24 them and provide instructions to them or have them
25 accountable to us. This is, as we understand, the

1 nature of the relationship and the nature of their
2 independent -- or their appointment as independent
3 counsel. It would have been useful if the
4 commission approached First Nations and aboriginal
5 participants and recommended that they, with the
6 financial support from the commission or the
7 province, retain their own counsel, legal counsel
8 through this process.

9 With respect to the independent inquiry,
10 shortly after the formation of the First Nations
11 Summit, we began to hear stories of and receive
12 information about and including names of
13 aboriginal women going missing and/or being
14 murdered in the Downtown Vancouver, Downtown
15 Eastside. And the commission counsel yesterday
16 referred to this as well. It appears to us that
17 despite continuous serious efforts by some
18 individuals and organizations, no authorities were
19 paying much attention to them or the issues they
20 were raising. Given that we are a First Nations
21 political organization, some of these individuals
22 and organizations came to us for advice and
23 support. After all, many of these missing women
24 are aboriginal and come from our communities
25 across this province and across this country.

1 In supporting and working with them, we
2 fought for this -- this issue to be taken
3 seriously by the provincial government, local
4 police and various public agencies.

5 In January, 1997, the First Nations Summit
6 chiefs formally called for an investigation into
7 the multiple murders of aboriginal women in
8 Vancouver, setting out a list of 48 women believed
9 to be of aboriginal ancestry. The following month
10 we contacted the Attorney General, then Ujjal
11 Dosanjh, seeking his intervention and support in
12 appointing a special investigator to examine the
13 cases on an urgent and priority basis. We also
14 worked to raise public awareness about this issue
15 in the media and by being involved with those
16 aboriginal/First Nations organizations in the
17 Downtown Eastside who -- who came forward and
18 approached the chiefs in British Columbia for
19 support.

20 It wasn't until June, 1997 that the Attorney
21 General responded to us advising that the Unsolved
22 Homicide Unit had been established and that they
23 had been provided the list of names we provided
24 and that the unit was looking into this matter.
25 The Vancouver Police Department advised that

1 the -- advised the First Nations Summit that a
2 number of other names had been added to the list,
3 altogether 71, the list that we provided and that
4 all had been accounted for except two. However,
5 we were advised by aboriginal peoples in the
6 Downtown Eastside that aboriginal women continued
7 to go missing.

8 As we know now, in 2002 it was publicly known
9 that Pickton was involved and responsible for the
10 horrific and gruesome murders of many of the
11 missing women for which he is now doing life in
12 prison. It is not clear to us how many of these
13 deaths could have been prevented, and this is an
14 issue I know that's squarely in front of the
15 commission for which I think the families deserve
16 answers.

17 Over the years, along with many others, we
18 have been calling for inquiries into aboriginal
19 justice matters, including an inquiry into the
20 death of Frank Paul, the missing and murdered
21 aboriginal women in the Downtown Eastside, the
22 missing women, most of whom are aboriginal, on the
23 Highway of Tears, Highway 16 in Northern British
24 Columbia, and a general examination of the
25 aboriginal peoples involved in one way or another

1 with the justice system in British Columbia. This
2 would include the disproportionate numbers of
3 aboriginal people charged with criminal offences,
4 those who appear in various provincial courts in
5 this province, those in provincial or federal
6 jails, those who have died as a result of police
7 actions or while in police custody, the lack of
8 aboriginal peoples in police forces, the lack of
9 aboriginal judges, the lack of aboriginal peoples
10 who are judges, and so on.

11 And in my practice as a lawyer in the
12 northern part of British Columbia, in all those
13 small communities, virtually any court day the
14 majority of those on the court list, the court
15 docket, were aboriginal/First Nations people. I
16 can't understand how that is so. In most cases
17 aboriginal peoples do not make up the majority of
18 the population in that -- in those communities.

19 An inquiry into the death of Frank Paul has
20 been completed and a report has been made public.
21 In fact, we as representatives of the First
22 Nations and Metis met on several occasions with
23 then Attorney General of B.C., yourself, Mr.
24 Commissioner, to discuss the terms of reference.
25 We were presented with draft terms of reference,

1 which in our opinion were completely
2 unsatisfactory. And in subsequent meetings and
3 calls with yourself and your officials, we
4 provided some alternative draft terms of reference
5 which, for the most part, became final terms,
6 thanks to your efforts. Of course, when the
7 commission proceeded to complete its inquiry, the
8 Province took issue with its own terms of
9 reference and challenged it all the way to the
10 Supreme Court of Canada. It's unbelievable, but
11 that's what happened.

12 Despite the fact that we have long been
13 calling for an inquiry, it came somewhat as a
14 surprise to us when the Province announced the
15 Missing Women Inquiry. We weren't advised that
16 this would be happening nor talked with about
17 this. As representatives, we were never
18 approached by the Province regarding any aspect of
19 the inquiry, not the terms of reference or the
20 appointment of the commission or the commissioner.

21 While we welcomed an inquiry, this approach
22 by the Province was not helpful. The terms of
23 reference, in our opinion, were extremely narrow
24 and we felt would not cover those issues we
25 considered important. We also felt that if the

1 commission went beyond those terms of its mandate
2 either during the inquiry or in its findings,
3 report or recommendations, that it would be
4 challenged by the Province or by any of the
5 official Crown agencies, including the police.
6 And we saw that in the Frank Paul Inquiry where
7 the Province challenged its own terms of
8 reference. And it opens the door from where we
9 sit that if you go in -- stray beyond your terms
10 of reference even a little bit, that we expected
11 the Crown through their legal counsel will be on
12 top of it right now and ensure that any of this
13 information is not in your report, probably
14 including this report as well that I'm giving.

15 In any event, in the subsequent meeting with
16 the former Attorney General of B.C., it became
17 clear to us that while the inquiry was
18 established, it was an inquiry with an extremely
19 short leash because, as it was explained to us,
20 these generally go over their budgets and time
21 line and are not a very useful investment of
22 limited government resources. This kind of
23 astounded us to hear that from the Attorney
24 General of the province.

25 It was further -- it was further explained

1 that limited resources could be better used in
2 other ways such as investing in those underlying
3 circumstances that lead to aboriginal women coming
4 into vulnerable positions and, in fact, the
5 Province would establish a committee to deal with
6 aboriginal women issues in the province.

7 And the Province should not use this
8 committee and the appointment of this committee as
9 an excuse not to fund those who have been granted
10 participant status, but that has been used as an
11 excuse by the Province so far. And unfortunately
12 as well, we have not seen any financial resources
13 that would address these systemic and difficult
14 issues facing aboriginal women in this province.
15 So we want this commission to be aware of that.
16 Further -- and in this -- in this submission we
17 want to lay our cards on the table, as it were,
18 and not really to leave any stone unturned.

19 The appointment of a former MLA, a former
20 member of caucus and cabinet of the sitting
21 government and also a former Attorney General
22 under this same government, as independent
23 commissioner it came as a surprise to us as well.
24 Given this, the perception of a lack of
25 impartiality and independence was questioned.

1 It is acknowledged that you are a well known
2 and highly respected justice -- former justice of
3 the court of appeal in this province and I
4 certainly am well aware of your reputation and
5 respect, the integrity that you have as an
6 individual and as a lawyer and as a former judge
7 of the court of appeal. However, concerns were
8 expressed that you had stated publicly that you
9 did not think an inquiry into missing and murdered
10 women was needed. This was and still is a very
11 difficult situation for --

12 THE COMMISSIONER: I'm going to interrupt you there. I
13 apologize for doing it. That quote has been
14 attributable to me from time to time. I said that
15 an inquiry couldn't be held while I was the
16 Attorney General. And the reasons for that are
17 quite clear. The Pickton case was before the
18 courts and, as you know from your legal
19 background, you cannot have a commission of
20 inquiry concurrently with legal proceedings. It's
21 just legally impossible to do that. And that's
22 the position that I took when I was the Attorney
23 General and that was a correct position in law.
24 And it was only -- you'll note that it was only
25 after the Pickton appeals were finally disposed of

1 by the Supreme Court of Canada did the Province
2 see fit to -- to commission this inquiry.

3 MR. JOHN: We may be talking about two different circumstances,
4 but, in any event, this was a statement on CBC, so
5 your clarification is helpful. It's the
6 perception that I'm talking about here.

7 THE COMMISSIONER: All right. Okay. I just want to make it
8 clear that -- that that's the reason we gave at
9 that time, that we could not have a -- have an
10 inquiry, but after I left government and after the
11 Pickton appeals were disposed of, then an inquiry
12 was commissioned. And that's the right thing to
13 do. And as well, you -- you may remember that
14 after the inquiry -- after the appeals were
15 dismissed, the Vancouver Police came out with the
16 LePard report, which was helpful, extremely
17 helpful in determining what the police role was,
18 and it became abundantly clear to everyone at that
19 time that an inquiry ought to be held. And I
20 think the appropriate thing was done by the
21 government to hold the -- to order an inquiry at
22 that time.

23 MR. JOHN: And I accept that. I firmly believe that an inquiry
24 is not possible pending the completion of a trial,
25 for example, as we've seen in this case, or while

1 an investigation continues. That's -- I fully
2 accept that point.

3 THE COMMISSIONER: Thank you.

4 MR. JOHN: Further -- and this is an issue that was released by
5 the provincial government -- is the communication
6 with the then Attorney General regarding funding
7 for participant organizations. While highly
8 commendable and welcome, the perception
9 nonetheless causes a degree of discomfort. With
10 separate independent legal counsel representing
11 the commission and the Province, it would be fair
12 to assume existing legal ethics would govern
13 conduct between the parties, that legal counsel
14 would communicate with each other on behalf of
15 their respective clients. Presumably the
16 provincial government released -- publicly
17 released this information for reasons for which we
18 can only speculate.

19 While these events taken separately may not
20 be fatal to the inquiry, we are concerned that
21 together they may lead to a perception of the
22 gradual erosion of the impartiality and
23 independence of and ultimately the credibility of
24 the findings, report and final recommendations.
25 And that's a concern that is really -- it's

1 important to us that the findings, the report and
2 recommendations be above any -- any question above
3 reproach and that's what we're hoping for.

4 THE COMMISSIONER: I can assure you that will happen. This is
5 a -- this is a fully independent inquiry and
6 that's why we have so many different groups here.
7 And I fully -- I fully welcome people to come and
8 participate. And there are no sacred cows here
9 and we're quite prepared to hear all of the
10 comments, all of the criticisms, wherever they may
11 be labelled, and we intend to have a fully
12 independent comprehensive report at the end of the
13 day. I can tell you that we're very much
14 committed to that, to finding out what happened,
15 when it happened and why it happened. And the
16 commission staff and I have worked extremely hard
17 in ensuring that that happens. And I'm grateful
18 that you're here to -- particularly to give the
19 background of issues that need to be heard,
20 particularly the historical position of aboriginal
21 people in this country. And while we are well
22 aware of the injustices and all of the horrible
23 things that took place to -- to our First Nations
24 people, they need to be repeated, and I can assure
25 you that all of that will be taken into

1 consideration at the end of the day when we
2 prepare our report.

3 MR. JOHN: Thank you. We certainly appreciate that. But I
4 want to be absolutely clear these are views and
5 comments and statements by chiefs that -- that
6 we've heard over the course of this number of
7 months. And we -- and in giving us the
8 instructions to proceed, this was part of the
9 mandate that was given to us, to make sure that
10 these issues were squarely in front of the
11 commission, their concerns were in front, so we
12 are doing that.

13 And I want to, however, say that the
14 commission, to its credit, has, and yourself in
15 particular, recommended and even advocated for
16 participants to have their costs covered.
17 Notwithstanding this, the Province has been
18 unequivocal and adamant that it will not cover any
19 costs other than for those directly impacted,
20 including those costs for the families of the
21 missing women, missing and murdered women. In
22 fact, this position was true until very late last
23 evening in discussions with officials from the
24 Attorney General's office.

25 The commission has in front of it very many

1 difficult questions: What happened? And the list
2 I was provided by the commission counsel is a very
3 extensive and I think thorough list of those
4 questions that need answering. I certainly
5 appreciate the effort and the extent to which
6 those questions were raised. We have a few
7 questions that maybe coincide -- that may coincide
8 with those questions: What happened? What went
9 so horribly wrong? Could any of these murders
10 have been prevented? Did the fact that many of
11 these women were aboriginal have anything to do
12 with their being targeted or that the police
13 investigations were somehow incomplete because
14 they were aboriginal? What role did the policing
15 bodies have in trying to prevent any of this from
16 happening? What can be done to prevent the
17 recurrence of a similar situation? And I'm sure
18 that we will hear from all the parties here as to
19 their respective roles in all of this as the
20 commission unfolds.

21 Now, briefly again the context for
22 understanding First Nations-Crown relations, and
23 we want to talk about the systemic issues and what
24 we call the patterns of Crown conduct. We firmly
25 believe that to know our history and that of our

1 historic dealings with successive Crown
2 governments will help you understand the nature of
3 existing relations and that of our place in
4 contemporary British Columbia. We do not want to
5 oversimplify a complex history of relationships,
6 but there are certain recurring elements of past
7 and contemporary conduct on behalf of the Crown
8 which cannot be ignored.

9 There is an atmosphere in the conduct of
10 Crown affairs that is difficult for First Nations
11 people to accept or even understand. At the very
12 core of this is a continued denial by the Crown on
13 behalf of British Columbia and Canada of the very
14 existence of aboriginal peoples or their rights
15 until -- unless and until these rights are proven
16 in the court. Notwithstanding the constitution of
17 Canada says that aboriginal rights and treaty
18 rights of the aboriginal people of Canada are
19 recognized and affirmed, nowhere in the
20 constitution does it say until proven in a court
21 yet that's where -- where we find ourselves. Even
22 to this day we continue to see this in the
23 pleadings filed by the Crown lawyers -- by Crown
24 lawyers and in their written and oral arguments
25 they submit when matters relating to the rights of

1 aboriginal peoples end up in the court.

2 The United Nations Declaration of the Rights
3 of Indigenous Peoples adopted by the UN General
4 Assembly in its preamble says -- and we do have a
5 copy we'd like to submit as well for the
6 commission's record and use. And in the preamble
7 it reads -- it reads this:

8 Affirming further that all doctrines,
9 policies and practices based on or advocating
10 superiority of peoples or individuals on the
11 basis of national origin or racial,
12 religious, ethnic or cultural differences are
13 racist, scientifically false, legally
14 invalid, morally condemnable and socially
15 unjust.

16 They are -- the declaration contains 46 articles
17 and 24 preambular paragraphs taken together to
18 form minimal standards for the survival, dignity
19 and well-being of indigenous peoples. In
20 December, 2010 Canada endorsed this declaration.

21 Since its inception as a colony and then as a
22 province when they joined Confederation in 1871,
23 B.C. and Canada have acted with impunity regarding
24 the land, cultural and political rights of
25 indigenous peoples. The Crown's underlying

attitude towards aboriginal peoples is best reflected in the June, 2008 apology issued by the prime minister to survivors or, as referred to in the apology document, "former students", survivors of Indian residential schools across B.C. and across Canada. The apology acknowledges the following:

1. Two primary objectives of the residential school systems were to remove and isolate children from the influence of their homes, families, traditions and cultures and to assimilate them into the dominant culture.

These objectives were based on the assumption aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was famously said, "to kill the Indian in the child". Today we recognize this policy of assimilation was wrong, has caused great harm and has no place in our country.

The apology goes on:

The government now recognizes that the consequences of Indian residential schools were profoundly negative and that this policy has had a lasting and damaging impact on

1 aboriginal culture, heritage and language.

2 And further the apology reads:

3 The legacy of Indian residential schools has
4 contributed to social problems that continue
5 to exist in many communities today.

6 And I want to say that the apology did not
7 come as a matter of political goodwill. It came
8 only after long and protracted litigation and
9 appeals to the Supreme Court of Canada during
10 which the government denied it had any
11 responsibility to the survivors.

12 And credit to the late Chief Justice Brenner,
13 who was the trial judge in this case. He -- he
14 listened to the testimony of each and every one of
15 those survivors in graphic detail, because why?
16 Because the government forced those individuals to
17 recount what happened to them, every graphic
18 detail, and forcing them and embarrassing them and
19 humiliating them to tell their stories in a public
20 forum. To his credit, Justice Brenner did the
21 right thing. In the end the courts found both
22 Canada and the churches liable for what happened
23 in the schools.

24 Now we have a Truth and Reconciliation
25 Commission, which is holding hearings across this

country, finding that the impacts to individuals and families have been absolutely devastating.

And I would encourage an opportunity if the commission has the foresight to invite the Truth and Reconciliation Commission to talk about the legacy, the impacts of what that commission has heard to date. Whether it's practical or feasible, I'm not sure. But as a witness I was invited to attend the hearing in Inuvik last summer and called as a witness and listened to the survivors tell their stories and it was -- it was -- it broke my heart to hear their stories and how it impacted them and their families and the women and their children and how relationships fell apart. I went to an Indian residential school such as they did for a number of years and all I could think of was how angry I was listening to their stories yet this issue is still regarded and treated with indifference in this country as if it's something that happened to some other people, some other place, some other time. The legacy is still real. The legacy is still apparent. I'm sure that some of those -- or maybe their families of the aboriginal women who are on that chart were survivors or that their parents or

1 their relatives were survivors of Indian
2 residential schools. I'm absolutely sure of that.

3 The history of this relationship, of course,
4 does not end here. As mentioned earlier, the
5 pattern is reflected in the taking of indigenous
6 lands in British Columbia without agreement or
7 without any compensation. In *Calder*, the famous
8 Nisga'a case, the first case to the Supreme Court
9 of Canada on this issue, the Crown argued that all
10 Indian land rights were extinguished in the
11 province prior to joining Confederation in 1871.
12 It was premised on the notion that the lands were
13 free for the taking because indigenous peoples
14 were neither civilized nor Christian and,
15 therefore, had no concept of property. When First
16 Nations today stand up to protect and defend their
17 interests, they are viewed as obstacles and even
18 ridiculed with derision. We recount the negative
19 atmosphere in Williams Lake, for example, when the
20 chiefs stood up to defend Fish Lake against the
21 proposed development and how they were treated in
22 that community when they dared to go into that
23 community by the public.

24 Indians and, of course, along with Chinese
25 immigrants were prohibited from pre-empting Crown

1 lands or owning lands at all in this province.
2 Indians were not allowed to vote in provincial or
3 federal elections until the mid-1900s, provincial
4 elections in 1949, federal elections in 1962.
5 Indian students of school age were not allowed in
6 public schools until the 1950s. In the 1880s the
7 federal government enacted laws to prohibit the
8 ancient potlatch practices that were at the very
9 core of many indigenous peoples' cultures and
10 political systems in British Columbia. By law
11 lawyers could not be retained by indigenous people
12 to pursue claims relating to land in the province.
13 This pattern by the Crown was aptly called the
14 "conspiracy of laws" by Gary Yabsley and the late
15 Chief Joe Mathias in a research article written by
16 them. The laws and policies reflected an
17 aggressive and even hostile pattern of denial, of
18 repression, of oppression and of suppression.
19 Many other independent research and commissions
20 and reports have come to similar conclusions.
21 Again, the underlying point in all this is
22 that the conduct and acts, including laws and
23 policies, of the Crown reflect a systemic pattern
24 of discrimination. If the Crown in its official
25 capacity is able to discriminate systemically, how

1 then are its citizens and its institutions to
2 think or act towards aboriginal peoples and the
3 substantive issues they raise? These prevailing
4 attitudes do not exist in silos. They permeate
5 and impact on all aspects of First
6 Nations/aboriginal lives.

7 First Nations fight daily to protect and
8 defend their lands, keep their children and
9 improve the lives of their members. They fight
10 for safe drinking water, mould-free homes and warm
11 clothes. Much of this fight is with the Crown for
12 the recognition of their aboriginal rights and
13 their inherent right to self-government, for
14 improved Crown legislation and policy, for revenue
15 sharing from resources on First Nations lands, for
16 improved fiscal relationships to allow First
17 Nations to help their members access basic
18 programs and services.

19 We know all too well where the First Nations
20 do not have resources or a capacity to fully help
21 their own people. We know all too well the
22 resulting cycle is harsh and endless, a cycle of
23 poverty, despair, hopelessness and lateral
24 violence. Many see this as a legacy of the
25 residential school system. These conditions often

1 result in many of our people ending up in
2 desperate situations and locations outside of our
3 communities. And I said that many or most of
4 those women on the chart, in the missing women,
5 murdered women come from our communities. This is
6 not to suggest hopelessness and despair across the
7 board. We see individuals, families and
8 communities grappling with these and working to
9 find solutions each and every day.

10 So when individuals leave their communities
11 and reach places like the Downtown Eastside of
12 Vancouver, we feel that they are no better
13 protected and become more vulnerable to various
14 forms of abuse and threat and typically become
15 more silent and invisible. And this is the
16 stories that we continually hear from the First
17 Nations and aboriginal advocacy groups who work
18 tirelessly in the Downtown Eastside and who we are
19 thankful for their work and support their
20 initiatives.

21 Across Canada how the criminal justice system
22 responds to aboriginal people, the police policies
23 and actions. There have been -- these remain
24 serious issues. There have been many similar
25 inquiries including: The Manitoba Justice

1 Inquiry, which examined the handling of the 1971
2 murder of Norway House, First Nation woman Helen
3 Botty Osborne, the 1988 police shooting of First
4 Nation member John J.J. Harper and the justice
5 system and aboriginal peoples generally; as well
6 the Ipperwash Inquiry Report released in 2007,
7 which examined the government and police handling
8 of a 1995 protest by the Stoney Point Ojibway
9 over lands expropriated during World War II,
10 during which a provincial police officer shot and
11 killed protester Dudley George; the 1989 Royal
12 Commission on the Donald Marshall, Jr. prosecution
13 which looked at how the criminal justice system
14 failed Mi'kmaq, the late Donald Marshall, Jr. "at
15 virtually" -- as the quote from the report reads,
16 "at virtually every turn from his arrest and
17 wrongful conviction for a murder in 1971 up to,
18 and even beyond, his acquittal by the court of
19 appeal in 1983," and identified the need to
20 "ensure more equitable treatment of blacks and
21 natives in the criminal justice system". Further,
22 in 2009 and 2011 the interim and final reports of
23 the inquiry into the death of Frank Paul, a
24 Mi'kmaq man who died alone and cold in a back
25 alley in Vancouver sometime December 5 and 6, 1998

1 after being left there by the Vancouver Police.
2 As First Nations we intervened and called for this
3 inquiry. Although he was a Mi'kmaq man from the
4 East Coast, he lived here and we saw his death
5 as -- and the manner in which he died as
6 reprehensible and pushed for an inquiry to examine
7 how he died. And, finally, the coroner's inquest
8 and commission for public complaints into the
9 in-custody death of Mr. Raymond Silverfox, a
10 43-year-old member of the Little Salmon Carmacks
11 First Nation in Yukon who died on December 2, 2008
12 after spending 13 hours in Whitehorse RCMP jail
13 cells. The coroner's inquest heard evidence that
14 Silverfox, who had been arrested for public
15 drunkenness laid in a pool of his own vomit and
16 feces while RCMP officers and detachment guards
17 watched and jeered at him for that 13-hour period.
18 The Commission for Police Complaints also found
19 complacency and callousness of RCMP members
20 contributed to Silverfox's death and that they had
21 failed to act in accordance with the RCMP Act and
22 the RCMP's core values with regard to their
23 conduct.

24 Such incidents, of course, do not only occur
25 to aboriginal peoples. It seems that nearly on a

1 daily basis we hear of yet another police
2 incident. As recently as two weeks ago, the First
3 Nations Summit, along with the Union of B.C.
4 Chiefs, the B.C. Assembly of First Nations and the
5 Native Court Worker and Counselling Association of
6 B.C., had to publicly express shock and outrage at
7 the RCMP beating of a 17-year-old handcuffed
8 aboriginal girl in Williams Lake, the death of a
9 19-year-old aboriginal male in custody in Prince
10 George, and the RCMP tasering of an 11-year-old
11 aboriginal boy. The organizations also expressed
12 support for the Gitxsan in their call for action
13 following the coroner's inquest into the
14 outrageous RCMP shooting of Rodney Jackson in the
15 back two years ago. These types of action are
16 extremely disturbing and totally unacceptable.

17 Aboriginal peoples should be able to expect
18 that the police forces are there to protect and
19 serve them and their communities. In fact, many
20 communities do now have protocols to develop
21 constructive dialogue and relations with police
22 forces. This needs to be encouraged and supported
23 and something perhaps that your commission needs
24 to look at. However, the situation remains that
25 members of the police forces are all too often

1 seen as among the biggest threats to aboriginal
2 peoples. There is a serious level of mistrust on
3 the streets.

4 And I want to tell you a short -- not a
5 story, but in my language and in my community
6 the -- we have -- our community, our people have a
7 name for the police and it's this: It's
8 nayachuknay (phonetic). That's the name that our
9 people use and it translates into this: "Those
10 who take us." And it's not about protection or
11 about service. It's about these individuals who
12 come and take our people away. Nayachuknay.
13 That's the name that our people have given to
14 them. It's a name well before my time.

15 THE COMMISSIONER: I'm just wondering if this is a convenient
16 time to break.

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

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

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

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

21 MR. JOHN: Thank you, Mr. Commissioner. I appreciate the
22 opportunity to continue to make the presentations.
23 As one of my colleagues said to me once, former
24 Chief Mattie Joel from Kamloops, his dad told him,
25 "You can't fix a flat tire by yelling at it." And

1 so we're here to try to provide this constructive
2 advice, suggestions and --

3 THE COMMISSIONER: Well, I don't know how to fix a flat tire,
4 but I'm sure you can help me along in this.

5 MR. JOHN: Just go to a garage. It's easier.

6 I wanted to -- to -- to just reiterate
7 that -- the point I was making about the serious
8 level of mistrust in and among our people with
9 police forces. And that's not to suggest that
10 efforts are not being made either by the police or
11 by our communities. I think there are tremendous
12 efforts that have been made and that this needs to
13 be built, and it's difficult to imagine still that
14 given the level of dialogue which is occurring
15 that this -- these events are still happening.
16 And, you know, it really -- we need to find a safe
17 and secure place where our people do not have to
18 worry to use the word nayachuknay, the ones who
19 take us, as a concept for police because that's
20 out there. That's real and it's still a word
21 that's used and the pattern has been in the past
22 to do exactly that.

23 I wanted to -- although we know this is in
24 the public eye, I also suggest that and say that
25 we are of the view that there is futility in

1 police investigating themselves. Nothing changes.
2 We have steadfastly called for independent
3 reviews, investigations and inquiry into various
4 police actions and investigations. And I talk
5 about the inquiry, the coroner's inquest into the
6 shooting of Rodney Jackson. I mean how can anyone
7 who's shot in the back be a threat to anyone? I
8 mean to shoot someone in the back, that's --
9 that's -- I wasn't there, mind you, and -- but
10 this is -- it's absolutely beyond belief that this
11 would happen, but it did. And this is not the
12 only death. We talk about the individuals in
13 police custody who died, aboriginal peoples or who
14 died as a result of police actions, in several
15 instances shootings of individuals. And the First
16 Nations Summit -- First Nations Summit has long
17 called for a thorough public inquiry to scrutinize
18 the system that has failed so many of our people.

19 The provincial government and police refused
20 for years to acknowledge that women were going
21 missing or being murdered at an alarming rate.
22 Then when the numbers were irrefutable, they
23 refused to acknowledge that a serial killer may be
24 operating. Then once a serial killer was found,
25 they refused to launch an independent inquiry into

1 the investigations or the botched investigations,
2 as we refer to it. And then when they -- finally,
3 the government relented and announced the Missing
4 Women Inquiry. They refused to allow key
5 organizations' input into the design of the
6 inquiry, which ultimately resulted in an unduly
7 narrow terms of reference.

8 And then once the process was underway and a
9 ruling on participant standing made, the Province
10 refused funding despite the commission's strong
11 findings and interventions that each of these
12 organizations would provide valuable information
13 and insight to ensure that the inquiry is
14 thorough, meaningful and fair. And we still stand
15 by that proposition because whether -- whether --
16 organizations like the Summit look at issues from
17 a policy level and in a very political level, but
18 those organizations in the east side who on a
19 daily basis work with those women from our
20 communities, the aboriginal women from our
21 communities, and who know them intimately and what
22 they are going through.

23 All of us who sought standing committed a
24 tremendous amount of time and effort to prepare
25 and deliver our submissions. Again, we are deeply

1 disappointed that the Province took away voices
2 critical to this inquiry. It came so close to
3 being a well-rounded, inclusive and fair inquiry
4 with over 20 service and advocacy organizations
5 with a wealth of experience prepared to roll up
6 their sleeves and assist the commission to do its
7 job. How will the inquiry realize its full
8 potential?

9 And I want to use the Native Courtworkers and
10 Counselling Association, whom I know you're very
11 familiar with. They've been in existence close to
12 40 years now and each and every day the Native
13 Courtworkers are in the courts in this province
14 providing support and advice to aboriginal peoples
15 in front of the courts. And they, as we've been
16 advised, have had tremendous experience in dealing
17 with people at 222 Main Street, the provincial
18 court building, and many -- perhaps all of those
19 women who are missing aboriginal women were
20 clients at one time or another of the Native
21 Courtworkers and who provided support. That
22 wealth of information will not be before this
23 commission. We're going to hear the official
24 stories from the Crown as to, you know, who they
25 were, what they were charged with perhaps or any

1 of their background. That's going to be the
2 Crown's story, the official story from the -- from
3 the police forces, but you're going to hear a
4 different story from the court workers, and you'll
5 hear probably a different story from the families
6 who are here through their legal counsel. And
7 that's just the fundamental reality. And so that
8 record which they have -- they don't have the
9 resources to put that record together because it
10 covers an extensive period of time for them to do
11 that. It requires a tremendous amount of
12 resources. That information will not be before
13 this inquiry, unfortunately, because -- because of
14 the lack of resources they had to withdraw from
15 participating in this inquiry.

16 As legal experts concluded in a letter to the
17 Province in September:

18 The result of the Province's action is that
19 the result of former Attorney General
20 Penner's decision in July ensures no party
21 will be equipped or inclined to cross-examine
22 witnesses with a view to addressing or
23 revealing systemic issues. It is difficult
24 to conceive of a more substantive,
25 self-interested manner of interfering with

the independence of a public inquiry than denying resources to all but police and government and a small group of grieving families.

And the letter concludes:

The commission cannot now proceed fairly or credibly.

And that's a real perception out there. It is out there. There's questions around credibility and questions of fairness, and that is an issue that the commission needs to deal with.

This inquiry is the only process available to us to examine these incredibly important issues involving the missing and murdered women. Chiefs and leaders at the recent First Nations Summit meeting discussed their involvement in this inquiry and came to the conclusion that for now we need to remain in this process. We heard from chiefs who had community members who were -- who are missing and murdered. We had individuals e-mailing us and pleading with the chiefs to remain in the process and to support those members from our communities whose deaths are being reviewed in this inquiry. There is a -- but there is a real fear, however, by our leaders and chiefs

1 that the inquiry, its findings, reports and
2 recommendations will be incomplete, unfair,
3 perhaps irrelevant and will not be implemented by
4 the Province.

5 We will report to our chiefs and leaders in
6 November for their review and decision as to how
7 we participate in this process, whether we are out
8 or whether we continue in this process. Like all
9 others who have withdrawn, we have no financial
10 resources to be involved in any sustained way in
11 this process over the next eight months we gather.
12 We look at with envy the resources for the Crown
13 and we may see a couple of lawyers here, but we
14 know there's a battery of lawyers and support in
15 their offices that is supporting the work that
16 they are doing. We cannot -- we cannot hope in
17 any way whatsoever to compare to the level of
18 resources which they have at their disposal.

19 We hope the Province will once again take a
20 look at the serious issue involving funding for
21 participants and consider appropriate levels of
22 financial resources for full and effective
23 participation. Full and effective participation
24 is absolutely critical and we're not there yet.
25 And until we see the government stepping forward,

1 we're -- it's not going to happen. And that's --
2 it's one of the most astonishing things that we've
3 seen in this inquiry on behalf of the government.
4 Do they really believe in this commission and what
5 it's set up to do or are they just putting it out
6 there hoping -- hoping to placate the public that,
7 you know, there's somebody doing some work and
8 that we will find a report and, you know, keep --
9 keep everyone else silent? I don't think that's
10 going to happen. You hear the drums out there and
11 the people singing and people are going to
12 continue to protest. It's a free and democratic
13 society and they have every right to do so to
14 express their displeasure.

15 We want to be absolutely clear, crystal
16 clear, we are not here thinking that there are no
17 questions about the commission's -- the inquiry's
18 credibility. We are here, however, because we
19 believe this is about missing and murdered women
20 and their families and the many questions which
21 they have. While we feel we can contribute to the
22 inquiry's process and ultimately its report, we
23 know it is not about our organizations. It's seen
24 over time that the non-aboriginal and aboriginal
25 families and individuals have reached out to each

1 other and supported each other and that we find
2 ourselves on common ground on this issue.

3 I am mindful and mindful of prayer by the
4 elderly yesterday morning, Eugene Harry, and what
5 he said to all of us. That prayer was powerful in
6 reaching out to each other in this very difficult
7 time as the families grieve and trying to find
8 answers to the many questions that they have, not
9 just aboriginal families who we're here to
10 represent, but, you know, we find ourselves in
11 that place with the other families who also are in
12 the same position as our families are and we're
13 here together on this.

14 You know, the unfortunate thing is that --
15 that the government's action is very disturbing.
16 We're hoping that as a commissioner -- commission
17 of inquiry that you will allay our concerns and
18 our fears, that you may prove us wrong. There's
19 an incredible weight that we think is on this
20 commission and certainly on your shoulders as a
21 commissioner. Are you able to -- to meet this
22 challenge? Are you feeling fully confident, given
23 the information that's not going to be before you,
24 able to come to the necessary findings of fact
25 that are important to this, to look at the

1 evidence as necessary to come to the findings of
2 fact and to at the end of the day prepare a report
3 with recommendations that -- that can make a
4 difference?

5 We've seen countless reports across this
6 country in inquiry after inquiry. We had a \$60
7 million Roy Commission on aboriginal peoples.
8 It's gathering dust in the Parliament library in
9 Ottawa because the political will is not there.
10 And then that's the concern that we have, if we
11 have another report with solid and strong
12 recommendations, and where's the government going
13 to go with those recommendations? Are they going
14 to sit on it? Are they going to file it on the
15 law library shelf? How is it going to impact
16 those families who are sitting here who are asking
17 questions, the answers to which they haven't
18 received? So I'm raising these as rhetorical
19 questions to you, Mr. Commissioner, because we
20 want to be -- to be in a place -- and I'm just
21 about finished here, so if you have a question you
22 want to ask me.

23 THE COMMISSIONER: I was just going to say that whether the
24 recommendations are ultimately implemented will be
25 for persons like yourself, powerful people like

1 yourself to lobby governments. I'll be out of the
2 picture by then. But I can tell you that there
3 are, in fairness, sir, many commissions of inquiry
4 that have resulted in very positive actions. I
5 can tell you that the commission of inquiry that I
6 headed in 1994 in policing in British Columbia is
7 still said to be the last word in policing in
8 Canada and I get comments about that, about the
9 reforms that have taken place in -- in policing as
10 a result of that commission of inquiry. So -- and
11 there are others that -- on healthcare and others
12 that have found themselves into policy and
13 legislation. But that ultimately will be a
14 challenge for -- for credible people like
15 yourself, to push governments in order to ensure
16 that good things can come out of commissions of
17 inquiry.

18 MR. JOHN: Thank you, Mr. Commissioner. I'm mindful of the
19 report in 1994 and -- that took place. My only
20 question is why are we having this inquiry? If
21 that inquiry would have been fully implemented,
22 those concerns, why do we now have to address the
23 failings that is before this commission around the
24 actions towards those missing and murdered women?
25 That's the only thing I would say.

1 In this day and age, Canadian society in all
2 its parts and as a whole should take a zero
3 tolerance stand against indifference and racism
4 and establish a new reality solidly rooted in the
5 promotion of human rights and social justice with
6 special attention to the most vulnerable people in
7 our society who need extra help.

8 We want and expect this inquiry to scrutinize
9 what we see as systemic intolerance towards
10 aboriginal peoples and advocate for a new reality,
11 a new reality where aboriginal peoples are
12 important and significant partners in this
13 province and country, where aboriginal peoples can
14 feel safe and secure knowing that these agencies
15 set up to protect them will do so.

16 Considering Canada's promises in its
17 Constitution and consistent with the standards --
18 the minimum standards in the UN Declaration on the
19 Rights of Indigenous Peoples, we seek a future
20 where true reconciliation by the Crown with First
21 Nations becomes a reality and occurs on all levels
22 of our relationships, from individual citizens to
23 state agencies and the state relationship with us.
24 For us the survival, dignity and well-being of our
25 peoples and our cultures is critically important.

1 We want to be proactive in finding and seeking
2 solutions because we at this point see that the
3 approach of government is, as the courts have
4 said, impoverished, their policies are, and very
5 short sighted and we want to see what we can do.
6 Maybe we're reaching beyond the mandate of this
7 commission, but we think -- we think, given the
8 place of aboriginal communities, First Nations
9 communities in this province and then given that
10 many of those individuals in our communities for
11 one reason end up in a place like the Downtown
12 Eastside, end up in the very -- in the situation
13 where we find those aboriginal and missing women
14 and the missing women altogether, that there
15 are -- there are -- we need to find -- we need to
16 find some ways in which we can see that and how
17 those individuals are -- their vulnerability is
18 recognized and dealt with through the state is
19 important to all of us.

20 So the underlying -- so the underlying thing
21 that I wanted to say was one of the points -- not
22 the underlying yet, but in the information that is
23 before us in the original trial involving Pickton,
24 we know that four of the six individuals -- four
25 of the six -- four out of the six convictions in

1 the first trial were aboriginal; that three of
2 these are represented by counsel here and one is
3 not represented. Of the 20 Crown charges which
4 were stayed, which is another part of your
5 inquiry, four of these individuals were aboriginal
6 and one Metis. Only one of these four are
7 represented. Three are not represented. Out of a
8 total of 33 whose DNA was found on the Pickton
9 farm, 12 of these were aboriginal. And so it's
10 about those who are not represented here and those
11 families. And I'm not sure what exactly is being
12 done to ensure that in one way or another -- and
13 I'm sure that there's an answer somewhere, but
14 from where I sit, I haven't seen anything that
15 says somehow they will be represented or that
16 someone will represent their interests. And by
17 every right they should have some voice in this
18 process so that their concerns and their issues
19 and the questions which they may are answered.
20 I've given you some of those.

21 I'm glad to know that Mr. Ward is here
22 representing those families, 18 families. That's
23 a large time. I know it puts a tremendous burden
24 on him and I know he's very capable legal counsel.
25 I have no question of that. I have tremendous

1 admiration for his courage and advocacy skills and
2 he does an excellent job, for which we certainly
3 are grateful.

4 And we know that this process will unfold,
5 but there is -- there are questions that we've
6 raised that certainly need to be answered and for
7 our part, and as I said, we're here. We have
8 taken this opportunity. I'm really grateful and
9 thankful to you, Mr. Commissioner, for giving us
10 the time and the opportunity to say these words.
11 But given that this commission will -- will run
12 over a period of some eight months, it's virtually
13 impossible, given the resources, for us to be here
14 in any significant way. I mean given that, we're
15 happy to make this submission for your
16 commission's consideration and to -- to ensure
17 that this commission addresses these difficult and
18 important issues.

19 You know, we're not -- where the largest
20 concern is the approach of the government and what
21 it's done and an even larger concern will be
22 following the report and what happens to the
23 recommendations. And by that time you'll be out
24 of the picture, but we have to make sure and
25 ensure that you provide the strongest report

1 possible and the strongest recommendations
2 possible and, you know, short of that, it will be
3 another one of those inquiries that comes and goes
4 and nothing ever changes, nothing changes, and we
5 don't want that to happen. Thank you.

6 THE COMMISSIONER: Well, just before you go away, first of all,
7 I want to thank you for the quality comprehensive
8 submission that you've made. And you have made
9 reference to the fact that there are voices out
10 there that may not be heard. You've given a very
11 articulate response and a very articulate
12 submission regarding their plight. I would
13 welcome you to come back again from time to time
14 to the commission. There's nothing in the rules
15 or anywhere else that will stop you from coming
16 back and as the evidence in this commission of
17 inquiry unfolds. You've been very helpful. Thank
18 you. Boy, there aren't very many -- it's not
19 often that people get a round of applause in here,
20 Grand Chief. You've obviously done a good job.

21 MR. JOHN: That's my family.

22 THE COMMISSIONER: It's always nice to bring along supporters.

23 MR. SKWAROK: Yes, sir. Mark Skwarok appearing for Dr. Kim
24 Rossmo.

25 Dr. Rossmo is a former detective inspector

1 with the Vancouver Police Department who was
2 involved with the initial investigation of the
3 missing women. He was given standing in this
4 inquiry because, amongst other things, he has been
5 criticized, most unfairly, in my submission, about
6 his conduct in the missing women's investigation
7 by certain persons who may be witnesses in this
8 proceeding.

9 Further, it is expected that because of his
10 expertise in criminal investigations in general,
11 his evidence will be of assistance in the
12 commission's deliberations as to the adequacy of
13 the Vancouver Police Department's handling of the
14 case.

15 As to this later point, Dr. Rossmo is the
16 currently the university endowed chair in
17 criminology at Texas State University where he
18 teaches courses on investigative techniques and
19 serial murderers, amongst other things. He's
20 written numerous articles and several books on
21 these topics, including one called *Criminal*
22 *Investigative Failures*. He has provided advice to
23 various police agencies and investigators on
24 criminal investigations. In my submission, he's
25 thus in a unique position to not only have

1 firsthand knowledge of the facts, but also he's in
2 possession of impressive theoretical knowledge.

3 In opening statements made by my friends, we
4 have heard that the VPD's attitude to missing
5 women has been something akin to being prejudiced,
6 apathetic, disdainful, egregious and inexcusable.
7 This commission will determine whether those
8 adjectives are appropriate for some Vancouver
9 Police Department officials, but they most
10 certainly do not accurately apply to a number of
11 police officers who acted diligently, responsibly,
12 sensitively and professionally, only one of whom
13 is Dr. Rossmo.

14 Rossmo was one of the first people to warn of
15 the probable existence of a serial killer in the
16 Downtown Eastside. Unfortunately, he was ignored
17 and, in fact, he was criticized by senior police
18 officials for repeatedly voicing his concerns
19 about the likelihood that there was a serial
20 killer. Paradoxically and in a most remarkable
21 case of revisionist history, he was even blamed by
22 one senior official for the inadequacies of the
23 investigation despite what I submit will be clear
24 and ambiguous evidence that had senior police
25 officials listened to him, Pickton would have been

1 caught sooner. In the end, this case played a
2 major role in prematurely ending Kim Rossmo's
3 21-year career with the police force.

4 Rossmo joined the VPD as a civilian member in
5 1978 and became a sworn member in 1980. He worked
6 a number of positions with the VPD, including
7 spending eight years on the streets in the
8 Downtown Eastside, so he -- that's his personal
9 knowledge and experience with many of the problems
10 associated with poverty that are endemic there and
11 which will be reviewed by this commission.

12 On his own time and at his own expense Rossmo
13 obtained an MA in criminology in '87 and in 1995
14 he became the first police officer in Canada to
15 hold a Ph.D. in criminology. In his dissertation
16 he developed an investigative technique known as
17 geographic profiling, a term that will be
18 discussed on many occasions throughout this
19 inquiry. And he now teaches that course in
20 university and to law enforcement agencies.
21 Basically the methodology analyses the locations
22 of a connected series of crimes, such as murder,
23 to determine the most probable place that the
24 offender lived. Geographic profiling also
25 involves an information management plan that helps

1 focus on resource allocations, prioritizes tips
2 and suspects and develops investigative
3 strategies.

4 In October of 1995, Rossmo was appointed to
5 head the Geographical Profiling Unit, later the
6 Geographic Profiling Section, with the Vancouver
7 Police Department. A police bulletin that was
8 issued contemporaneously described his job as
9 including assisting in solving rapes, arson and
10 explicitly serial murders. He was promoted to
11 detective inspector and that's the position he
12 held until he left in December of 2000.

13 In the summer of 1998, Rossmo was told by a
14 colleague that the community had fears that there
15 may be a serial killer at large. He was asked
16 what he thought he could do to contribute to an
17 investigation. By that time, aside from focusing
18 on serial murderers in his Ph.D. dissertation, he
19 had actually investigated more than 20 serial
20 killer -- serial killer cases, so he had the
21 theoretical and practical knowledge.

22 In August of 1998, he drafted an internal
23 memo which contained something called the
24 strategic blueprint that detailed the type of
25 investigation he believed was necessary to

1 determine whether in fact there was a serial
2 killer responsible for the deaths of sex trade
3 workers in the east side. That investigative plan
4 was largely ignored by senior officials. The
5 question for this commission is: Why?

6 The following month, September of 2008,
7 Rossmo drafted a press release which stated:

8 Over the last few years there has been a
9 disturbing number of sex trade workers from
10 Vancouver's Downtown Eastside who have been
11 found murdered or reported missing.

12 Community concerns and our own preliminary
13 analysis has led to the Vancouver Police
14 Department forming the Downtown Eastside
15 Missing Persons Working Group. The objective
16 of this group is to determine if a serial
17 murderer is preying upon people in the
18 Downtown Eastside and if so, what murders and
19 disappearances are linked together.

20 The evidence will be, I anticipate, that the press
21 release was aimed at warning residents of the
22 potential danger, but also at hopefully gathering
23 meaningful evidence. It's generally understood
24 amongst criminal investigators that most serial
25 murders are solved by some piece of information

1 that comes from the public. Senior officials at
2 the Vancouver Police Department prohibited him
3 from publishing that news release. A question for
4 this commission is: Why?

5 In February of 1999, Rossmo sent an internal
6 e-mail stating that his preliminary review of data
7 that had been supplied to him suggested that there
8 had been a dramatic increase in the number of
9 missing women in 1997 and 1998.

10 On May the 25th of 1999, he produced an
11 detailed internal report that contained an
12 historical, statistical and scientific analysis
13 that confirmed that assessment. The analysis
14 determined that the probability that the
15 extraordinary increase in the number of missing
16 women in 1997 and 1998 could be attributed merely
17 to chance was less than one percent. He discussed
18 potential reasons why there could have been such a
19 large increase in the number of missing women and
20 concluded that:

21 The most likely explanation for the majority
22 of cases is a single murderer preying on skid
23 row prostitutes.

24 That report was largely ignored. The question for
25 this inquiry is: Why? Dr. Rossmo was one of the

1 many people who called for this inquiry and it's
2 important to know why. The missing women are gone
3 and nothing can be done to bring them back. Their
4 killer has been in prison for life and is no
5 longer a danger to the public and most of the
6 police officers involved in the investigation have
7 retired. His motive in wanting this inquiry is
8 simple: to ensure that this tragedy never happens
9 again. And that can only happen if the full, true
10 and complete facts are brought to light.

11 Mr. Vertlieb and Mr. Ward have outlined in
12 detail many of the questions that need to be
13 answered in this inquiry, including whether the
14 investigation was hampered by personalities,
15 organizational inefficiencies, inadequate
16 resources and other things. I'm going to add to
17 their list why was Rossmo ignored?

18 The issue in this case is not whether the
19 investigation could have been more efficient and
20 productive. It could have because all
21 investigations could theoretically be improved
22 upon. The issue is whether the investigation
23 should have been better, more efficient and
24 productive. In my submission, it most assuredly
25 should have been.

1 I anticipate that some parties in this
2 inquiry will state that the adequacy of what was
3 done in the investigation must be assessed not
4 with the unerring eye of hindsight, but what was
5 objectively reasonable at the time based on
6 available evidence and resources. I agree. But
7 in my submission, the evidence will show that
8 using that objective test, the police
9 investigation on the whole was nothing short of an
10 epic failure. In my submission, once the truth is
11 uncovered in this inquiry, it will then be the
12 responsibility of all the levels of government and
13 our police agencies to make the necessary changes
14 proposed by this commission. And if that occurs,
15 then something good might actually arise out of
16 this tragedy after all. Thank you.

17 THE COMMISSIONER: Thank you, Mr. Skwarok.

18 MR. VERTLIEB: Thank you, Mr. Skwarok. I believe Ann
19 Livingston would prefer to go next because of some
20 time commitments, and she is here and ready to
21 present on behalf of VANDU.

22 THE COMMISSIONER: Okay. Thank you.

23 MS. LIVINGSTON: I just want to say that VANDU's a group of
24 users and former users of illegal drugs -- hello.
25 My name?

1 THE REGISTRAR: Would you state your name, please?

2 MS. LIVINGSTON: My name's Ann Livingston.

3 THE REGISTRAR: Thank you.

4 MS. LIVINGSTON: VANDU's a group of users and former users of

5 illegal drugs to work to improve the lives of

6 people who use drugs through user-based peer

7 support and education. We believe that people who

8 use drugs have the capacity to live healthy and

9 productive lives and to contribute to their

10 community. VANDU ensures that people who use

11 drugs have a voice in the community and have input

12 to programs designed to serve them. We are funded

13 as a health enhancing disease prevention project

14 with meagre funding. We have one full-time staff

15 and two part-time workers and hundreds of

16 volunteers.

17 I am a co-founder of VANDU, which was formed

18 in 1998. Before VANDU formed, there were a number

19 of projects organized by people who use drugs and

20 for people who use drugs who are -- so we were

21 aware of the women going missing from the early

22 1990s. I have lived in the Downtown Eastside for

23 18 years where I have raised four sons. I'm also

24 the sister-in-law of Elsie Sebastian, who went

25 missing in 1992, and I'm supporting my nieces to

1 participate here and they are represented by
2 Cameron Ward.

3 VANDU's participation in this inquiry is
4 painful. We are aware that many other groups
5 granted standing are not here. We did not get
6 funding for legal representation and worry we're
7 seen as traders because we have not withdrawn from
8 this inquiry or we have not withdrawn so far. I
9 just wanted to bring that up because there's a lot
10 of pressure on VANDU members and VANDU within the
11 Downtown Eastside.

12 VANDU has over 2700 names on our member list.
13 It is estimated there are 5,000 people addicted to
14 drugs and/or alcohol out of the 12,000 Downtown
15 Eastside residents. Many, many drug users and
16 VANDU members have died in the Downtown Eastside
17 in 20 years. Their deaths were from suicide and
18 they were preventable. Their deaths were from
19 illicit drug overdose, from HIV, hepatitis and
20 MRSA. They were from violence of the illegal drug
21 trade, stabbed, beaten, thrown from hotel windows
22 for drug deaths. They died from being murdered by
23 predators while selling sex or lured by drugs
24 because the need for drugs with addiction. Some
25 of the women that went missing weren't selling sex

1 but were addicted to drugs.

2 So what do VANDU members want from this
3 commission? We want to be reassured that the
4 orphan children -- the orphan children are looked
5 after so they do not kill themselves or drink or
6 drug themselves to death or get murdered. Some of
7 these adult children of the missing women are in
8 the Downtown Eastside now using drugs. There
9 needs to be a special recognition of these
10 orphans, not just foster care and shame and
11 abandonment.

12 We want an apology from the police for
13 disregarding us. We want them to apologize for
14 hating our women and blaming the women for their
15 own victimization. We want to tell the world that
16 we are good, caring people. We want to say how
17 much we care. We want to tell someone on the
18 record that we put up posters, called morgues,
19 called coroner's offices, called prisons, called
20 police, and are now helping each other from
21 grief -- from the grief and horror of what
22 happened to our beloved women and sisters.

23 THE COMMISSIONER: Do you want a little time?

24 MS. LIVINGSTON: No. It's okay.

25 THE COMMISSIONER: You let me know if you need a break or

1 anything.

2 MS. LIVINGSTON: It's just hard to do this. It's really a
3 long, long time we waited for this inquiry.

4 THE COMMISSIONER: I know that. I just want you to know that
5 you're not under any pressure here. Take your
6 time.

7 MS. LIVINGSTON: It seems like it. Thank you. The women who
8 went missing were often people who used illegal
9 drugs. VANDU would like the role of the illegal
10 drug market to be a central consideration when
11 examining how the women were so vulnerable to
12 violence and murder, how the women were
13 criminalized by their drug addiction and poverty,
14 how the police completely disregarded them as
15 worthy of protection and help, how other social
16 agencies and community facilities excluded the
17 women from their programs and buildings in the
18 Downtown Eastside, how the women became so
19 degraded, how the women could be lured to their
20 deaths with illegal drugs, how the court system
21 sets the women up to fail with endless court
22 appointments, probation appointments and warrants
23 and more warrants for missing those appointments.
24 We would request that the role of the illegal
25 drug market and the war on drugs be a central

1 consideration when examining how women of -- of
2 avoiding arrest became more important to our women
3 than preserving their health. At different points
4 in the 1990s there were warrant checks at
5 emergency rooms where women were trying to
6 remember fake names they could give while they
7 were doubled over in pain. Welfare now asks for a
8 warrant -- whether you have a warrant, like, every
9 single monthly cheque. You figure you have to
10 tick that off. Housing is often eliminated for
11 people in this position. So we want the war on
12 drugs to be a central consideration when examining
13 how they gave up on life, how these women gave up
14 on life because of the persecution of Child
15 Protection Services, which deliberately set them
16 up to fail as mothers. The pain of this unnatural
17 loss fuels even more increased drug use among drug
18 using women.

19 We want this commission to look at how the
20 war on drugs is a central consideration when
21 examining how detox and drug addiction treatment
22 services failed the most marginalized, most
23 addicted and street involved drug addicts. We
24 want them to consider this on how welfare
25 intimidates the very people it was hopefully set

1 up to serve by constantly criminalizing the women
2 with threats of drug testing for welfare cheques.

3 I dare you to make this inquiry effective, to
4 make it about ensuring that each and every woman
5 on that poster has her story resolved, to make
6 this commission about Karen Smith and Marcella
7 Creison and Olivia Williams and the other dozens
8 of women on the poster who do not have people
9 here, the families we don't know where they are.
10 I'm always looking for them, so that's my quest,
11 to bring them here. I dare you to make sure every
12 family, especially the children and grandchildren,
13 of these missing and murdered women are contacted
14 and apologized to and reassured that their mothers
15 labelled junkies and hos were in fact citizens who
16 deserved inclusion, respect, care and protection.

17 Another recent inquiry, the Frank Paul
18 Inquiry, took place in Vancouver to look at the
19 tragic death of Frank Paul. Every day I walk past
20 a group of Frank Pauls drinking mouthwash, rubbing
21 alcohol. They engage with police in thousands of
22 911 calls and ambulance transports to hospital
23 emergency departments. Each one is a
24 million-dollar Murray -- I don't know if you know
25 what I mean by that -- in terms of the resources

1 and yet they're just left there. The inquiry may
2 have caused changes, but not to the people on the
3 ground vulnerable to dying on our streets and in
4 our alleys.

5 I dare you to make this -- this one -- this
6 inquiry different, to follow through after it's
7 over as an advocate so we can say, "Oh, that was
8 before Oppal's Missing Women's Inquiry. Things
9 are better now." Thank for your consideration.

10 THE COMMISSIONER: I want to thank you for appearing. And you
11 say that you want the inquiry to be effective. It
12 can only be effective if people come here before
13 the inquiry, give the advice that you've given us,
14 because you're on the street and your advice
15 counts, and I just want you to know that. It
16 doesn't do anybody any good to withdraw from the
17 inquiry. I'm not being critical of the people who
18 have withdrawn, but I just want you to know that
19 by you coming here, you will no doubt help make a
20 difference, so I just want you to know that.

21 MS. LIVINGSTON: This is the other VANDU member here, Marlene
22 Basil. She's going to bring up some very
23 practical things because that's how our lives are
24 very much tied to, you know, each day how we're
25 going to act.

1 THE COMMISSIONER: All right. Thank you.

2 MS. BASIL: Thank you. Good morning, Commissioner.

3 THE COMMISSIONER: Yes.

4 MS. BASIL: Hi. My name is Marlene Basil. I am a Carrier
5 First Nation and I have been living down in the
6 Downtown Eastside for the last eleven years. And
7 I'm -- I'm a VANDU board member, and so this is
8 what I have come to, like, for -- the reason in my
9 heart. I too was a survivor of residential
10 school. And what Chief John -- Edward John was
11 talking about, I've been there, done that and I'm
12 a survivor of the ruling. Like, I was a year and
13 a half when the welfare came in and kidnapped me
14 and my three brothers from my mom. So I -- to
15 this day I'm still under the welfare law, as you
16 could say, in my own thoughts anyways.

17 Okay. Good morning, Commissioner and lawyers
18 and all who are here to see justice will get done.
19 My name is Marlene Basil. I'm a VANDU board
20 member. I'm a Carrier First Nation. I lived in
21 Downtown Eastside for about eleven years. As I
22 came here yesterday, I met some of my people who
23 had survived the murder of their loved one. Many
24 have travelled a long way to get here. My concern
25 is foremost that their meals and accommodations

1 and their medications and all their needs are
2 covered while they are here for they have
3 travelled a long ways. Survivors of terror, of
4 life and death situations need to feel protected
5 completely. These survivors of our missing and
6 murdered women, the mothers, grandmothers, sisters
7 and aunties and cousins have many friends who
8 remember good and happy times and sad times of
9 each of these missing women. We need to see
10 justice gets done once and for all. We need to
11 show the whole world that this is not the time for
12 condescending remarks and messages to frighten the
13 testimony of the women, family and friends.

14 Also, it is essential that a baby-sitting
15 room for the families so grandbabies are nearby,
16 but adult children of the missing women can listen
17 without missing the inquiry they fought so long
18 for. It is important that those who wish to speak
19 here remembering situations when they're afraid to
20 go to the cops are not again afraid of arrest,
21 like to get arrested because of outstanding
22 warrants, so, in other words, they can do a
23 shut-down instead of like feeling confident to
24 speak for themselves. Hence the victims are kept
25 silent from the Vancouver Police Department, who

1 is not helpful in doing the right thing. What
2 goes around comes around to those who do wrong.
3 But on the other side of the coin, good things
4 come to those who do the right principle rather
5 than preference.

6 Also, my concern is that many of the missing
7 women and murdered women have no voice. The
8 witnesses of their last seen whereabouts may have
9 since passed on, you know, kind of give up on the
10 continuing on and finding the answers to the
11 questions that need to be answered. Thank you.

12 THE COMMISSIONER: Thank you for coming.

13 MR. VERTLIEB: Thank you, Mr. Commissioner. I just want to say
14 to both -- both the last speakers that in our
15 profession we have great respect for courage
16 because that's part of our history, and we can
17 speak for our commission and say to you that we
18 respect the courage it takes to be here and we're
19 grateful for your help.

20 I should say, Mr. Commissioner, that your
21 commission staff has reached out to the different
22 groups in the hopes of finding evidence that they
23 feel is important and that's an open invitation
24 that will continue. If groups in our community
25 feel they have evidence that's important for you

1 to hear, we welcome those people coming forward
2 and we will give them all the time they need to
3 make their views known to us. And we have worked
4 very hard over the last number of months to do
5 that and we will continue to do that.

6 Mr. Commissioner, now just having a look at
7 the time, the next presentation would be from
8 Jason Gratl and rather than have him commence and
9 then be interrupted, I think out of respect for
10 his presentation, we can take the break now and
11 we're in your hands on whether we --

12 THE COMMISSIONER: We'll come back at two. I don't want you to
13 be interrupting your -- your argument. All right.

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

15 (**PROCEEDINGS ADJOURNED AT 12:18 P.M.**)

16 (**PROCEEDINGS RESUMED AT 1:59 P.M.**)

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

18 THE COMMISSIONER: Mr. Gratl.

19 MR. GRATL: Mr. Commissioner, my name is Jason Gratl and I
20 serve in the role of independent counsel for
21 affected individuals and groups in the Downtown
22 Eastside. With me today and with me for the
23 duration of the proceedings is Seth Cooper, who
24 will be working with me as an articled student for
25 the duration of these hearings.

1 I'd like to begin, Mr. Commissioner, with a
2 few words to clarify my role as independent
3 counsel for the Missing Women Commission of
4 Inquiry. I know there's been a lot of questions
5 raised in the community, a lot of criticisms
6 raised in the community and I'm grateful for the
7 opportunity to respond to those criticisms and
8 explain the extent to which I'm able to make my
9 role as independent counsel work for these
10 proceedings.

11 As independent counsel, my full-time role is
12 to serve the public interest by presenting the
13 perspectives and representing the interests of
14 Downtown Eastside communities, in the plural, with
15 guidance from any groups or individuals who may be
16 affected by the work of the commission and who
17 wish to provide me with guidance. My work
18 includes cross-examination of witnesses, opening
19 and closing submissions, interviewing and
20 preparing witnesses, reviewing the electronic
21 document database, and making application for
22 disclosure, for procedural protections for
23 vulnerable witnesses and to ensure that the
24 commission calls the most inclusive sets of
25 witnesses appropriate to the terms of reference.

1 Now, the notion that I'm to present the
2 perspectives and represent the interests of
3 Downtown Eastside communities requires explanation
4 and elaboration. Put into the context of missing
5 and murdered women, my emphasis is primarily on
6 the perspectives and interests of persons who are
7 users of prohibited substances and engaged in
8 street-level sex work. Persons suffering from
9 mental illnesses, persons who are chronic users of
10 alcohol and those living under the class burdens
11 of poverty are a further aspect of my role, but my
12 emphasis for the course of these proceedings is
13 for the moment on sex workers and drug users.

14 I am mindful on an ongoing basis that the
15 abuses and mistreatment of sex workers and drug
16 users are difficult to disentangle from the issues
17 of gendered violence against women and historical
18 and current racism, oppression and
19 disenfranchisement of the aboriginal peoples of
20 Canada. This is sometimes described as
21 multi-dimensional discrimination.

22 My colleague, Ms. Robyn Gervais, and her
23 team, which includes Darrell Roberts, QC and Bryan
24 Baynham, QC, are independent counsel for women,
25 aboriginal people, and especially aboriginal

1 women. Both Ms. Gervais and I are attuned to the
2 complex intersectionality of racism, sexism and
3 discrimination against sex workers and drug users.

4 In one of the clearest examples of this,
5 Robert William Pickton's 1997 victim, in relation
6 to whom charges of attempt murder and unlawful
7 confinement were stayed by the criminal
8 prosecution service in 1998, was an aboriginal
9 woman engaged in sex work who was a user of
10 illicit drugs. In relation to this woman, for
11 example, both Ms. Gervais and I will turn our
12 focus and energies to the very troubling issues
13 arising from that incident.

14 In short, our work is not category driven.
15 Ms. Gervais and I have, from the outset of our
16 appointment, worked closely together and continue
17 to confer on an ongoing basis on any issues
18 involving multi-dimensional discrimination. We
19 have not and will not oversimplify these issues.

20 Another challenge to the role of independent
21 counsel is the diversity of perspectives and
22 policy opinion within the Downtown Eastside. This
23 is considerably less of a challenge than one might
24 assume at first glance. All the community groups
25 with which I have consulted are of one voice in

1 condemning the murder and sexual violence against
2 vulnerable women engaged in sex work in the
3 Downtown Eastside of Vancouver. Community groups
4 are of one voice in demanding that police agencies
5 protect vulnerable women from sexual and physical
6 predation and exploitation. The vast majority of
7 my mandate flows from these straightforward
8 propositions.

9 Where there are divergences in perspective
10 and policy opinion, I am able in the first case to
11 make alternative submissions to you, Mr.
12 Commissioner, but if the divergence is
13 intractable, as it may prove to be on the thorny
14 issue of the many options available for
15 decriminalization of sex work, I resolve to steer
16 myself away from that issue and to identify the
17 divergence for the affected groups and request
18 that they present their favoured positions to the
19 commission directly.

20 If the groups are unwilling or unable to
21 present their divergent viewpoints themselves and,
22 in my view, the commission requires submissions or
23 evidence on the issue in order to satisfy the
24 terms of reference for this inquiry, I will bring
25 the issue to the attention of the -- to your

attention, Mr. Commissioner, and ask for directions.

In fulfilling my mandate, I am able to extend confidentiality to all potential witnesses and groups that wish to give me guidance. Those interactions with individuals and groups are, in my opinion, both confidential in the ordinary sense and subject to a case-by-case Wigmore-based privilege.

In fulfilling my mandate, I am truly independent. I do not report to the commissioner, commission counsel, commission staff or any branch of the government executive. I maintain a separate office. I organize my own working relationships and assignments.

If anything, my mandate has attracted a criticism for a level of independence that is too high. Scholars and lawyers that I hold in high esteem, including Professor Kent Roach of the University of Toronto School of Law and Paul Cavaluzzo, who was lead commission counsel in the Commission of Inquiry into rendition and torture of Maher Arar, have made comments in this respect.

Professor Roach and Mr. Cavaluzzo accurately note that there is no oversight mechanism, formal

1 oversight mechanism or formal accountability
2 mechanism to ensure that I'm receiving the
3 appropriate level of guidance from groups and
4 individuals that are affected by the work of the
5 commission.

6 Now, the situation is, of course, complicated
7 by the community outrage at the decision of
8 Attorneys General Barry Penner and Shirley Bond to
9 defy your recommendations for funding for legal
10 counsel for participant groups that were made back
11 in May and June of this year. The community, in
12 my view, rightly views the denial of funding for
13 their legal counsel to be a strong show of
14 disrespect both for them and for this inquiry.
15 The denial of funding is a register of the
16 Attorney General's desire to silence the voices of
17 those who would hold the government and police
18 agencies to account. The Attorneys General have
19 denied funding on the pretext that scarce
20 resources are better deployed to provide funding
21 for programs for vulnerable Downtown Eastside
22 women. I say "pretext" -- I use the word
23 "pretext", Mr. Commissioner, because there has
24 been no corresponding increase in funding for
25 aboriginal women for programs to enhance the

1 physical protection and safety of sex workers in
2 the Downtown Eastside or to reduce the risk of
3 violence. I would be remiss in my mandate if I
4 did not denounce the denial of funding to those
5 community groups granted full participant status.
6 I would ask, Mr. Commissioner, that you include
7 reference to the names Barry Penner and Shirley
8 Bond in your report, adding them to the list who
9 have failed the missing women.

10 Simon Ruel, in his reference text *The Law of*
11 *Public Inquiries in Canada* notes that although
12 funding for participants at a public inquiry is at
13 the discretion of the government, the
14 recommendations of a commissioner carry
15 considerable weight and a government that ignores
16 such recommendations does so at its peril. Any
17 doubt about the wisdom of Mr. Ruel's observation
18 has been set to rest by the political fallout of
19 the funding refusal of the Attorneys General.

20 I acknowledge that my appointment as
21 independent counsel is not a complete substitute
22 for the participation of the full and limited
23 participants. This inquiry is impoverished by
24 their absence. As you know, Mr. Commissioner,
25 prior to my appointment as independent counsel for

1 this commission, I was counsel for three groups
2 that had been granted full participant status:
3 The Vancouver Area Network of Drug Users, the
4 Frank Paul Society and Walk4Justice, and I would
5 have greatly preferred the clarity of proper
6 solicitor-client relationship with my former
7 clients to the relative ambiguity of independent
8 counsel taking guidance rather than being directed
9 by instruction.

10 I note, however, to the credit of this role,
11 that some of the groups that remain as
12 participants and some that have withdrawn are
13 providing me with guidance on how best to fulfil
14 my mandate. Moreover, affected individuals and
15 organizations that have not applied for
16 participant status but are knowledgeable and
17 informed about Downtown Eastside policing and
18 policies are providing me with guidance to fulfil
19 my mandate appropriately.

20 So notwithstanding the active
21 non-participation of several of the groups granted
22 participant status, I do not anticipate difficulty
23 receiving sufficient guidance from affected
24 individuals and groups at this juncture.

25 Moreover, there are a number of mechanisms of

1 accountability that although informal and
2 self-imposed are nonetheless significant to the
3 satisfaction of my mandate. Firstly, I'm
4 accountable in the sense that any affected person
5 or individual may attend my office or telephone me
6 to give guidance or to offer criticism. My office
7 is open and my mobile phone is always turned on.

8 Secondly, I'm accountable for my work by way
9 of the public visibility of my arguments and
10 cross-examination of witnesses. I'm accountable
11 to fulfil my promises of providing explanations of
12 the legal processes and summaries of forthcoming
13 and past evidence to those who wish to receive
14 them. I am, in short, making myself accountable
15 by ensuring that my work is as public as possible.

16 And, finally, I will be accountable by
17 reference to the impact my submissions and
18 applications may have on you, Mr. Commissioner.
19 If my arguments and efforts are ineffectual, that
20 will be apparent in your findings of fact and in
21 your recommendations.

22 In sum, then, I have no illusions about the
23 compromise represented by my mandate as
24 independent counsel. The situation is
25 sub-optimal, but, in my respectful submission, it

1 is sufficient to work through to a significant and
2 meaningful contribution for the affected
3 communities I am charged to represent.

4 Now, then turning to the issues at hand on
5 this inquiry. This commission is charged with
6 making findings of fact and recommendations with
7 respect to the Attorney General's January 27th,
8 1998 decision to stay the charges against Robert
9 William Pickton and the many policing mistakes and
10 lost opportunities in the course of the missing
11 women investigations. Mr. Ward and Mr. Vertlieb
12 have referred to a number of those mistakes and
13 lost opportunities. And I agree that one
14 extremely important aspect of this commission's
15 work is to identify lost opportunities and
16 mistakes. I consider it part of my mandate to
17 assist the commission to identify those mistakes
18 and lost opportunities and to make recommendations
19 to prevent their recurrence.

20 But understanding those policing mistakes,
21 understandings those lost opportunities to catch
22 Mr. Pickton requires this commission to look
23 deeply at the policing policies and practices in
24 respect of the missing women. Policies and
25 practices are a reflection of priorities, a mark

1 of how the VPD and RCMP as institutions assess the
2 social significance and social status of missing
3 street-level sex workers.

4 The groups and individuals that are affected
5 and traumatized by police indifference to the
6 disappearances of women want acknowledgment from
7 this commission. That's what the drums were
8 beating out yesterday and this morning. The drums
9 were protesting the devaluation of the lives of
10 vulnerable street-level sex workers, not only
11 those who were murdered by Mr. Pickton, but every
12 woman who was beaten or raped or kidnapped or
13 strangled and was afraid to report to the police.
14 Every woman who had worked up the nerve to report
15 to police was laughed at and scorned by police and
16 told that she had it coming, that she was the
17 author of her own misfortune, that she did not
18 deserve extra police protection because she had
19 assumed the extra risk associated with
20 street-level sex work. Every sex worker whose
21 legal case was dismissed by a Crown prosecutor for
22 being late to a witness interview or for arriving
23 high to a meeting with Crown is asking for
24 recognition from you.

25 That's what the drums are beating about,

1 because at every stage the public authorities
2 resisted recognition of the missing women. They
3 resisted the reports by families and friends that
4 the women were missing. They resisted the
5 creation of a list of missing women. They
6 resisted commencing a murder investigation. They
7 resisted deploying sufficient resources for a
8 meaningful investigation. And, in fact, Mr.
9 Commissioner, the real investigation of Mr.
10 Pickton began in earnest only after he was caught.

11 This resistance at every step needs to be
12 acknowledged as rooted in discrimination, bias and
13 prejudice against drug users, sex workers,
14 aboriginal persons and the dispossessed of the
15 Downtown Eastside.

16 To understand the resistance of the police,
17 it is necessary to see the police in their
18 societal, legal and cultural context. Police bias
19 and discrimination was a response to, an adoption
20 of and implementation of larger social and
21 political and legal demands placed on them by
22 outside forces.

23 The police were influenced by Parliament and
24 the legislation passed by Parliament. Section
25 213(1) (c) of the *Criminal Code of Canada*, enacted

1 in 1972, prohibits every person who is in a public
2 place or in any place open to the public view from
3 stopping or attempting to stop a vehicle from
4 impeding pedestrian or vehicular traffic or
5 stopping any person or communicating with any
6 person for the purpose of engaging in
7 prostitution. The purpose of this law, found by
8 the Supreme Court of Canada in the *Prostitution*
9 Reference to be a worthy public policy, is to
10 "take prostitution out of the street and out of
11 public view." The criminalization of public sex
12 work was intended to eradicate a social nuisance.

13 So it must be understood, in fairness to the
14 relevant police agencies, that it was part of
15 their mandate to understand and to treat
16 street-level sex workers as criminals and to try
17 to eradicate what they do.

18 Similarly, Section 4(1) of the *Controlled*
19 *Drugs and Substances Act* makes the possession of
20 cocaine and heroin an offence punishable by up to
21 seven years imprisonment. Street-level sex
22 workers in the Downtown Eastside were
23 predominantly engaged in sex work in order to
24 acquire and use cocaine and heroin, and from the
25 point of view of the Parliament of Canada,

1 street-level sex workers working to acquire
2 cocaine and heroin were persons engaged in one set
3 of crimes in order to get enough money to commit
4 another set of crimes.

5 Just as problematically, sex workers, owing
6 in large measure to the need for expensive illicit
7 drugs, were often engaged in a variety of property
8 crimes and were ensnared in criminal legal
9 proceedings that resulted in offences for failing
10 to appear for court, breaches of bail and
11 probation and parole conditions. And when dealing
12 with the police, street-level sex workers are at
13 the whim of an officer.

14 So it must be recognized in addressing the
15 police conduct, in addressing the police
16 resistance to recognizing the value of -- the
17 human value of street-level sex workers that their
18 bias and prejudice against sex workers and drug
19 users is an official bias of the Government of
20 Canada, enacted by Parliament in our democracy.
21 Differentiating regulatory prescriptions from
22 criminal prescriptions is important here because
23 what marks off the criminal prohibition of sex
24 work and drug use from regulatory prohibitions is
25 the public notion that sex workers and drug users

1 deserve to be stigmatized and deserve to be
2 punished for their actions.

3 At a practical level, Mr. Commissioner, this
4 sets up a dual and irreconcilable mandate for
5 police officers. At a practical level it is
6 difficult for police officers to put aside this
7 notion of criminality, punishment and stigma and
8 recognize that sex workers can be victims of
9 crime. When dealing with a sex worker who is a
10 victim of crime, a police officer will be torn by
11 this dual mandate and nothing in law or policy
12 will tell officers whether to arrest a woman or to
13 take her statement. The decision becomes one of
14 discretion, up to an individual officer at a given
15 time.

16 You will hear evidence about a small number
17 of police officers who were able to look beyond
18 the criminality of sex workers and act on
19 complaints of victimization. In some cases, an
20 effective response to a sex worker's complaint of
21 violence and victimization was off book, in effect
22 extrajudicial. Very few officers, of whom Dave
23 Dickson is the most prominent, were treasured by
24 sex workers and sex worker advocates. These
25 officers, though, were rare. For sex workers,

most police officers were to be feared.

Now, aside from the formal designation by the law of the land as sex workers as criminals, it's necessary for this inquiry to look into the dark and nefarious implementation of those laws within the City of Vancouver because, again, at the level of discretionary enforcement, the police were doing what was demanded of them by the City of Vancouver. Vancouver neighbourhood residents associations made demands on the Vancouver Police Department. Concerned residents of the West End, Strathcona Residents Association, the Mount Pleasant Community Neighbourhood Association mobilized to push sex workers out of residential areas one at a time. Some residents' associations started roving patrols, harassing and humiliating sex workers and driving them away. Some residential associations went as far as hiring security guards to shine spotlights on women from their cars and park in front of the women as they worked. The intention of these choices was unmistakeable: to eradicate the sex work from the residential areas of Vancouver.

Vancouver merchants also made demands on the Vancouver Police Department. Downtown Vancouver

1 Business Improvement Association, Chinatown
2 Merchants Association, Gastown Business
3 Improvement Association mobilized to push sex
4 workers out of the retail areas. Merchants hired
5 by security guards were hired by -- merchants
6 hired security guards to implement their wishes
7 and to harass sex workers out of the area. Again,
8 the choice was clear: to eradicate sex work from
9 business areas.

10 The Vancouver Police Department were doing
11 what the residents and merchants associations
12 asked them to do: get sex workers out of sight
13 and keep them out of mind. Street-level sex
14 workers ended up contained in the only places
15 left: small quadrants or strolls in the most
16 isolated, poorly lit and dangerous industrial
17 areas of the city. Patrol and vice within -- the
18 patrol and vice departments within the Vancouver
19 Police Department made it clear to sex workers
20 that they would not be charged with prostitution
21 related offences unless they stepped out of the
22 designated areas. This policy was mostly
23 unwritten and informal.

24 And when it came to enforcing these policies,
25 Mr. Commissioner, there was no scarcity of

1 resources. I repeat, there was no scarcity of
2 resources for policing these women, but the
3 priority was on protecting residents and merchants
4 from the public nuisance presented by sex work and
5 not on protecting sex workers from sexual
6 violence. We will hear evidence of the many
7 innovative programs devised by the Vancouver
8 Police Department to combat sex work: deter and
9 identify sex consumers, Dear John letters,
10 databases of sex workers, but that same enthusiasm
11 and the same level of innovation was generally not
12 there to protect sex workers.

13 When the evidence is assembled, it is our
14 view that it will become clear that police
15 resistance to a proper investigation was the
16 foreseeable consequence of federal, municipal and
17 neighbourhood policies. Sex workers were seen as
18 undesirable and sex work was seen as something to
19 eradicate, something to drive from the public
20 view.

21 Now, displacement and containment was not
22 some benign policy. We will hear evidence from
23 Dr. Shannon that it quantifiably decreases the
24 safety of sex workers when sex work takes place in
25 dimly lit industrial areas. That's not a mere

1 after-the-fact lament. The displacement and
2 containment of sex workers by the police was known
3 by police and by city hall in advance of the
4 implementation of the policies to increase the
5 risk of violence committed against sex workers.
6 We will hear evidence from Professor Lowman and
7 other community witnesses about how the mayor, the
8 police board and senior VPD management were warned
9 that violence against women would increase as a
10 result of the displacement of sex workers to more
11 dangerous areas of the city.

12 This policing context set the framework for
13 the relationship between the police and sex
14 workers. The disappearances of women did not
15 happen in isolation. The Downtown Eastside was
16 awash with violence and sexual coercion of sex
17 workers and little was done. Sex workers were
18 forced through a social service agency, DEYAS, and
19 then later the women's information safe house, to
20 report violent abusive encounters with bad dates
21 to each other on bad dates sheets rather than to
22 report the crimes committed against them to the
23 police.

24 Still worse, criminalization of sex work and
25 drug use at the federal level and containment and

1 displacement at the municipal level set the
2 groundwork to encourage significant misconduct by
3 police officers against sex workers. When
4 organizations like PACE brought significant
5 patterns of sexual and physical abuse of sex
6 workers by certain Vancouver Police officers to
7 the attention of senior VPD management and the
8 police board, they were publicly ridiculed and
9 funding for their sex workers safety program was
10 denied by city hall.

11 And so when the VPD refused to acknowledge
12 the high probability of a serial killer operating
13 in the Downtown Eastside, sex workers were simply
14 reinforced in the notion that they were
15 disposable.

16 It was no secret at the time that these
17 decisions were made that serial killers considered
18 sex workers to be easy prey. At the time, Gary
19 Leon Ridgeway, the so-called Green River Killer,
20 who killed up to 49 sex workers in the Seattle,
21 Washington area from 1982 to 1998, was fresh in
22 the minds of the public and the police. At the
23 time, Robert Lee Yates, who pled guilty to killing
24 13 sex workers in the area of Spokane, Washington
25 from 1996 to 1998, was fresh in the minds of the

1 public and the police. The entire policing
2 community in the entire Pacific Northwest was
3 acutely aware of what was going on.

4 But aside from a few clear-sighted officers
5 like Dave Dickson, whose activities fell outside
6 the usual policing parameters, there was no
7 recourse for sex workers. The mechanisms of
8 police accountability were dysfunctional because
9 the police investigated themselves. When Angela
10 Jardine's mother initiated a complaint to the
11 Police Complaints Commissioner for failure to
12 investigate her daughter's disappearance, the
13 complaint was dismissed as unsubstantiated despite
14 strong and compelling evidence suggesting that the
15 complaint was well founded. The lack of a
16 functional civilian oversight mechanism and the
17 failure of the Vancouver Police Department to
18 adequately police themselves is a live and
19 important issue at this inquiry.

20 In sum, the police resistance here is not a
21 product of indifference or lack of caring or
22 merely a bad attitude. The police response to
23 missing women is informed by officially
24 sanctioned, publicly legislated, sustained attack
25 on sex workers and drug addicts as a public

1 nuisance.

2 Sex workers and drug addicts felt disposable
3 because in the scheme of official priorities, they
4 were disposable. Sex workers and drug addicts did
5 not trust the police to protect them because in
6 the scheme of official priorities, the police were
7 not supposed to protect them.

8 I expect it will be tempting, Mr.
9 Commissioner, to identify individuals who failed
10 in their positions: Ms. Cameron's obscene
11 tirades, Corporal Henley's inexcusable advice to
12 Mr. Pickton in 2000 that informants had named him
13 as the killer, Inspector Biddlecombe's irrational
14 elevation of his hunches over Detective Rossmo's
15 statistical analysis. It is important to make
16 findings of conduct -- findings of misconduct
17 against individuals, but it is equally important
18 to recognize that police mistakes and lost
19 opportunities were informed by the law of the land
20 and the demand of the law-abiding ratepayers of
21 the City of Vancouver.

22 For this reason, it is not -- and I say this
23 with respect -- sufficient to analyse these events
24 through a core policing lens. What the police
25 were doing was exactly what they had been asked to

1 do.

2 It is not enough for us to ask whether
3 community policing principles were satisfied
4 because, in fact, the police had a very close
5 working relationship with residents and merchants
6 associations. To understand policing at this
7 level, we need to understand that there was an
8 operationalized institutional discrimination
9 against sex workers and drug users that resulted
10 in the deaths of these women.

11 Recognizing the legal and political desire
12 and demands to eradicate street-level sex work is
13 necessary to making recommendations on how police
14 and prosecutors and missing persons staff provide
15 sex workers and drug users with equal recognition
16 as victims of crime, equal access to police
17 protection and equal access to justice in the
18 courts of the land.

19 Meaningful recommendations must extend beyond
20 improved -- improving training for bad apples and
21 elimination of politically incorrect language from
22 official communications. Meaningful
23 recommendations must require, if not legislative
24 reform, specific and well thought out attenuation
25 of discretionary enforcement of prostitution laws

1 and drug laws. It must mean an end to the
2 displacement and containment of sex workers in
3 poorly lit industrial areas. It must mean an end
4 to the creation and sustainment of localized
5 containment fields in the City of Vancouver, in
6 which serial killers and serial predators can
7 operate with immunity.

8 And indeed, Mr. Commissioner, those changes
9 need not wait for your report. They need not wait
10 for your final report. They can occur without
11 your recommendations and they could occur
12 immediately.

13 The reality -- the current reality, Mr.
14 Commissioner, is that the forces that were in play
15 from 1997 to 2002 are still in play and women are
16 still going missing and the abuse and sexual
17 violence of sex workers and drug users continues
18 to this day.

19 Meaningful recommendations, as Ms. Livingston
20 pointed out for VANDU, will draw on the underlying
21 reality that street-level sex work is a by-product
22 of the high price of illicit drugs, and the demand
23 for illicit drugs is fuelled by childhood sexual
24 and physical abuse, a dysfunctional foster care
25 system, mental health challenges, colonial and

1 residential school policies and abuses, and the
2 despair and hopelessness fostered by poverty and
3 disenfranchisement.

4 The good news is that these problems are all
5 human problems. They are all subject to change.

6 Mr. Commissioner, I entered into this role placing
7 a lot of faith in this process and placing a great
8 deal of faith in you. That faith will be borne
9 out if your findings of fact and your
10 recommendations adequately present or recognize
11 the importance of the safety and equality of sex
12 workers and drug users. Thank you.

13 THE COMMISSIONER: Thank you, Mr. Gratl.

14 MS. GERVAIS: Good afternoon, Mr. Commissioner. My name is
15 Robyn Gervais and my role in this commission is as
16 independent counsel representing aboriginal
17 interests.

18 I would like to begin by acknowledging that
19 we are in Coast Salish territory and I would like
20 to thank the Coast Salish people for allowing us
21 to share our stories and to hold this vital
22 inquiry on their land.

23 Before I begin my formal opening, I would
24 like to invite Kelly White, a Coast Salish woman
25 and a member of CRAB - Water For Life Society,

1 which has standing at this inquiry, to sing the
2 women's warrior song. I will let her explain the
3 significance of this song and its relevance in
4 this inquiry in her own words.

5 MS. WHITE: (**TRADITIONAL LANGUAGE SPOKEN**)

6 I am honoured to be requested to share the
7 culture and the ways of our people in this hearing
8 as requested by this young lady. And the song
9 derives one of our seven dialects of Salish
10 people, Mr. Commissioner, the Lil'wat of the
11 Salish Nation. We have these courts. The
12 nations -- Mount Currie is the Lil'wat Nation and
13 this turned out to be the theme song for the
14 Missing and Murdered Women Campaign since 1990,
15 sir. And this song was also used in my parents'
16 seven-year trial from 1957 to '63 when the nations
17 of B.C. reunited for the first time since 1980s.
18 By law, Canadian government, the native people
19 couldn't convene. That song was sang at that
20 trial for seven years.

21 I was born premature at that trial. My mom
22 had me premature because of the hardships of that
23 trial, so I'm really honoured to be asked to sing
24 this song.

25 It's by the grace of God that the spirit of

1 all that are chosen to be are here to defend our
2 people. This song was also sung for the ceasefire
3 for Gustafsen Lake. It was sung in the world of
4 indigenous people over for the ceasefire in Oka at
5 the Pines, at the brothers and sisters of the
6 Mohawk Nation. It was also sang at the request
7 for a ceasefire at the Mexico consulate when they
8 shut down and 10 of our government representatives
9 of Canada and Assembly of First Nation Chiefs,
10 organization of states as well as the
11 non-government organizations went to the Jiava
12 (phonetic) singing our sacred women's warrior song
13 for ceasefire in Jiava and we supported them for
14 that ceasefire. It's a brothers and sisters song
15 helping brothers and sisters. It's a prayer song
16 for healing, Commissioner.

17 And with that, I'm honoured to share that in
18 the way of strength for our ancestry, all that are
19 in this room. We rely on the strength of our
20 ancestries and our knowledge and the highest of
21 honour, healing our nations of united resistance.
22 Some call this a mistake or some call this an
23 inquiry. Some call this mistakes of policing and
24 we're looking at that with the strength of our
25 ancestries and look with a rendering of this song

1 the commitment, unconditional love of our people
2 to stay forever on each trial of murder of our
3 women.

4 So I invite all in this room in respect of
5 their own ancestry's truths that we seek truth
6 here for the right of indigenous people. I invite
7 all in this people to stand for the strength of
8 their ancestries that we are moving toward one
9 goal today for truth and justice. And with that
10 invitation, Commissioner, we invite those that are
11 in this room and in hearing this sense of this
12 song to think of the seven generations after them.
13 We're going to clean this apartheid off with the
14 healing process that is necessary.

15 (**TRADITIONAL SINGING**)

16 MS. WHITE: There's a men's warrior song also, Commissioner,
17 and I'll render that. It's a balance of our
18 sacred right for all people of the world, and that
19 balance is with men and women, that we have
20 justice for all. This men's warrior song derives
21 of the song of my good friend that was murdered by
22 white racists in South Dakota. My in-laws
23 defended him. She was 93 at that time,
24 Commissioner. She defended her son being murdered
25 by white racists. She didn't know any better than

1 to be racist because that's the way the -- the
2 world was. When I render this song, I think of
3 that man that was murdered. This song of our
4 people derived from the cries, but they don't --
5 the songs we make of our pain are holy. They're
6 sacred. They're not protests. This song is not a
7 protest song. It's a sacred song, the last breath
8 of our man that was beaten to death by his
9 neighbours. They went to school together. They
10 grew up together. We're going to clean all that
11 racism away with this healing song. We have the
12 will and the mind. I just wanted to interpret
13 this song.

14 (**TRADITIONAL SINGING**)

15 MS. WHITE: In the languages the name of that song,
16 Commissioner, means the man kills himself when the
17 woman dies. He leaps over the cliff. There's no
18 life for a man without a woman. It's sacred for
19 the honour of your time.

20 (**TRADITIONAL LANGUAGE SPOKEN**)

21 MS. GERVAIS: I'd just like to formally say thank you to Kelly
22 for providing that.

23 THE COMMISSIONER: Thank you.

24 MS. GERVAIS: And I probably don't need to say anything after
25 that, but I will.

1 THE COMMISSIONER: Pretty powerful.

2 MS. GERVAIS: It's very powerful.

3 While this inquiry may sometimes be fractious
4 and even adversarial, I hope that throughout the
5 months to come we can remember Kelly's voice and
6 keep the focus of the inquiry where it belongs:
7 on the missing and murdered women.

8 In my opening statement today I intend to
9 provide you with an overview of my aboriginal
10 background and experience working with aboriginal
11 communities in B.C., followed by a brief synopsis
12 of the evidence that I anticipate this inquiry
13 will hear in relation to the effects of
14 colonialism, the residential school system, the
15 child welfare system, poverty, systemic racism and
16 the disproportionate number of aboriginal people
17 residing on the Downtown Eastside of Vancouver.

18 I suggest that it is a culmination of these
19 systems that is responsible for the
20 disproportionate number of aboriginal missing and
21 murdered women in the Downtown Eastside and across
22 Canada.

23 I will also briefly discuss recommendations
24 on how to build on the existing strengths of the
25 aboriginal and Downtown Eastside community.

1 In closing, I will discuss what I believe can
2 be accomplished at this inquiry and how to inform
3 pragmatic and useful recommendations.

4 I will begin with a brief discussion of my
5 aboriginal background. I am a Metis woman and my
6 family is from the La Ronge area of Northern
7 Saskatchewan. I am a descendant of the Dumont and
8 Oulette lineage. I did not grow up with my birth
9 family, but I sought them out in my early twenties
10 and have since formed a strong relationship with
11 them.

12 My legal career has consisted mainly of
13 aboriginal child welfare work as legal counsel for
14 the Vancouver Aboriginal Child and Family Services
15 Society, which is a delegated child protection
16 agency that is responsible for all aboriginal
17 child protection matters in Vancouver. I have
18 also provided legal counsel on child protection
19 matters in circuit court in Bella Coola and in
20 Pemberton. Prior to that, I worked with Mediate
21 B.C. where I travelled to aboriginal communities
22 throughout B.C. to recruit and train aboriginal
23 child protection mediators in aboriginal and
24 remote communities.

25 Prior to accepting my appointment as

1 independent counsel, I represented the Carrier
2 Sekani Tribal Council in this inquiry. And for
3 those of you who are not familiar with Carrier
4 Sekani Tribal Council, it is a tribal council in
5 Northern B.C. which represents eight First Nations
6 in the Carrier Sekani territory, which stretches
7 from Prince George to Prince Rupert.

8 When Carrier Sekani Tribal Council withdrew
9 from this process due to lack of funding for legal
10 counsel, I applied for my current role after
11 obtaining the personal support of Carrier Sekani
12 Tribal Council David Luggi and Carrier Sekani Vice
13 Tribal Council Chief Terry Teegee.

14 Through my work with Vancouver Aboriginal
15 Child and Family Services Society and through my
16 own personal experience, I have seen firsthand the
17 effects of the residential school system, the
18 child welfare system, the effects of poverty,
19 racism, systemic and otherwise and violence
20 against aboriginal women.

21 Through my work with Mediate B.C. and in
22 aboriginal communities throughout B.C., I have
23 gained firsthand appreciation for the cultural
24 diversity of First Nations in B.C. and also an
25 awareness of the various struggles that face

1 aboriginal communities.

2 My role in this inquiry as independent
3 counsel is to give voice to and to represent the
4 interests of the aboriginal community. I see my
5 involvement manifesting in various ways such as
6 cross-examination of witnesses at this inquiry who
7 are members of the Vancouver Police and the RCMP
8 with the assistance of my co-counsel Darrell
9 Roberts and Bryan Baynham. I also will propose
10 witnesses to commission counsel to support the
11 themes and facts set out in my opening statement.

12 However, I believe that the most important
13 role I can play in this inquiry is to educate you,
14 Mr. Commissioner, so that the recommendations made
15 as a result of the evidence put forth in this
16 inquiry are properly informed.

17 I would now like to turn to the national
18 issue of violence against aboriginal women. In
19 March, 2011 the federal Legislative Standing
20 Committee on the status of women, chaired by the
21 Honourable Heddy Fry, produced an interim report
22 titled "Call into the Night: An Overview of
23 Violence Against Aboriginal Women". Research for
24 this report included firsthand consultation with
25 aboriginal women across Canada, aboriginal

1 organizations such as the Native Women's
2 Association of Canada, and academic experts in the
3 field.

4 I would like to read a quote from this report
5 that speaks to the current state of violence
6 against aboriginal women. The quote is:

7 Aboriginal women and girls are as likely to
8 be killed by a stranger or an acquaintance as
9 they are by an intimate partner. This is
10 very different from the experiences of
11 non-aboriginal women in Canada whose homicide
12 rates are often attributed to an intimate
13 partner.

14 I respectfully ask that you take a moment to stop
15 and think about this statement. What is life like
16 for a woman who is more likely to be killed by a
17 stranger than by an intimate partner? I suggest
18 that the woman referred to in this statement lived
19 the lives of the women who are the very subject of
20 this inquiry. These are the women standing on
21 street corners, sleeping on mats in shelters,
22 eating meals at drop-in centres or churches.
23 These are women dependent on potentially violent
24 men for the salvation of their next fix, the
25 shelter of a Downtown Eastside hotel room or food

1 for themselves or their children. These are women
2 whose lives are at risk on a daily basis.

3 When I think about the lives of aboriginal
4 women living on the Downtown Eastside, I wonder
5 how in a society that constitutionally guarantees
6 rights and freedoms for all Canadians, so many
7 aboriginal women find themselves in this position.
8 And I believe that the answer to this question is
9 a clear and concise chain of historical and
10 contemporary discrimination. That discrimination
11 is found in legislative and policy decisions that
12 have paved the way for the missing and murdered
13 women to end up on the Downtown Eastside and
14 eventually in the hands of a serial killer. This
15 discrimination can be traced throughout history
16 and plays a significant role in the
17 disproportionate number of aboriginal women
18 missing and murdered from the Downtown Eastside.
19 I believe that the evidence we will hear in this
20 inquiry will address this discrimination that I
21 have been talking about.

22 Although the residential school system was
23 not the first link in the chain of events that
24 resulted in the disproportionate number of
25 aboriginal women missing and murdered from the

1 Downtown Eastside, I believe it is a common
2 denominator. The underlying policy behind the
3 residential school system was that aboriginal
4 culture is inferior and should be replaced by
5 European beliefs and values.

6 I suggest that the residential school system
7 is a prime example of systemic racism. It sent a
8 clear message to aboriginal and non-aboriginal
9 people that being an aboriginal person was
10 undesirable, which in turn encouraged systemic and
11 individual racism against aboriginal people.

12 The now well documented abuse suffered by
13 aboriginal people in the residential school system
14 set the aboriginal people on a cycle of abuse,
15 violence, poverty and addictions. The last
16 residential school closed in 1996 in this
17 province, but things have not changed.

18 According to the Native Women's Association
19 of Canada, as of March 31st, 2010 there are three
20 times more aboriginal children in the child
21 welfare system than there were at the height of
22 the residential school system. I anticipate that
23 you will hear evidence in this inquiry that will
24 link the residential school system and the child
25 welfare system.

1 As a result of the residential school system,
2 aboriginal children grew up outside of their
3 communities and families and often in violent and
4 abusive situations. When these children
5 eventually became mothers and fathers, many did
6 not have the skills needed to parent or they were
7 dealing with addiction issues as a result of abuse
8 suffered in the residential school system.
9 Subsequently, their children were apprehended by
10 child welfare authorities and many of those
11 children ended up back in the hands of the state.

12 You will also hear evidence that the child
13 welfare system as it is today perpetuates violence
14 against aboriginal women.

15 Pivot Legal Society has reported that women
16 who are victims of violence often do not report it
17 because they fear that children will be
18 apprehended. This places women in a position
19 where they have to choose between remaining in a
20 violent relationship or having their children
21 removed.

22 Poverty also plays an integral role in the
23 violence which aboriginal women face. Aboriginal
24 women living in poverty often lack access to safe
25 and affordable housing, which exposes them to

1 violence and places them in vulnerable positions.

2 You will hear evidence provided by family
3 members that their missing or murdered family
4 member was subject to a vicious cycling of
5 residential schools, foster care, addiction and
6 poverty.

7 A clear illustration of this cycle can be
8 told by the story of Georgina Papin. Prior to
9 telling her story in relation to the systems
10 outlined above, I would like to thank and
11 acknowledge Georgina's sisters, Cynthia Cardinal
12 and Elana -- Elana Papin, who are both here today,
13 for allowing me to share her story. In addition,
14 Cynthia and Elana also provided me with a picture
15 of Georgina and with her daughter Christina. I
16 would like to pass this up to you so that I can
17 tell -- so that as I tell you her story you can
18 see her with her daughter and see her for the
19 beautiful woman that she was. I'll just take a
20 moment.

21 Georgina was born on March 11th, 1964 in
22 Edmonton, Alberta. She was a member of the Enoch
23 Cree Nation. Her mother's name was Alice and she
24 was a member of the Ermineskin First Nation. Alice
25 was a residential school survivor who suffered

1 with addictions. Georgina had eight siblings who
2 all relied on their grandparents to care for them.
3 When her maternal grandmother, who was a
4 significant family support, suddenly died in a car
5 accident, all nine children were placed in the
6 child welfare system throughout the 1960s and
7 1970s.

8 Georgina was only one year old when she and
9 her older siblings were removed from their home.
10 Georgina was placed in a foster home with her
11 older brothers and her sisters were sent to the
12 same residential school that their mother
13 attended. Georgina and her brother moved between
14 foster and group homes for the next eleven years
15 where it is believed that she was neglected and
16 abused.

17 At 12 years old Georgina ran away to the
18 streets of Calgary where she joined a gang. At 14
19 years old she moved to Las Vegas, Nevada and began
20 working in the sex trade to support herself. From
21 there she moved between Las Vegas, Edmonton, Fort
22 Saskatchewan, Mission and eventually to the
23 Downtown Eastside. Georgina gave birth to seven
24 children, all of whom were removed from her care
25 and placed with family or in foster care.

1 Georgina suffered the effects of the
2 residential school system through her mother's
3 addiction which led to her removal from her family
4 and community as an infant. She grew up in foster
5 care and group homes. She carried the pain of
6 addiction, prostitution, and violence until she
7 was reported missing in 1999 when she was only 34
8 years old. On December 9th, 2007 Robert William
9 Pickton was convicted of her murder.

10 I suggest that Georgina's story also sheds
11 light on the reasons that women from all over B.C.
12 reside in the Downtown Eastside, but no one can
13 speak to this fact better than someone who resides
14 in a northern community and has lived in the
15 Downtown Eastside. One such person is Jacob
16 MacKay. No doubt you will recall him speaking to
17 you in Prince Rupert at the study commission
18 hearings where he so eloquently stated:

19 This is the Downtown Eastside, right here in
20 Kitkatla, in Greenville, in Bella Bella, in
21 Hazelton. This is the Downtown Eastside.
22 Very few people are born there. They come
23 from these communities. They come from
24 everywhere around the province because our
25 communities now lack the resources to take

1 care of them. That is where they end up.

2 I believe that the evidence will mirror what Mr.
3 MacKay said in Prince Rupert.

4 Dr. John Lowman, who will also give evidence
5 here, has written a report for this inquiry that
6 examines provincial and municipal policing --
7 policies affecting sex trade workers. Dr.
8 Lowman's report confirms that 70 percent of people
9 residing in the Downtown Eastside are aboriginal.

10 You will also hear evidence that without
11 family and community support aboriginal women in
12 the Downtown Eastside are more vulnerable and more
13 likely to be victims of violence.

14 However, aboriginal women are not only going
15 missing in the Downtown Eastside. According to
16 the standing committee report referred to earlier,
17 over the past 30 years there have been
18 approximately 500 aboriginal women missing or
19 murdered across Canada and there are at least 30
20 women -- aboriginal women missing or murdered on
21 the Highway of Tears.

22 For anyone not familiar with the Highway of
23 Tears, it is in reference to Highway 16 in
24 Northern B.C. which stretches from Prince George
25 to Prince Rupert. Since 1975 there have been

1 approximately 30 aboriginal women who have gone
2 missing from the Highway of Tears.

3 Although I am aware that the terms of
4 reference in this inquiry are limited to the
5 Downtown Eastside, I would like to acknowledge
6 that missing and murdered aboriginal women is a
7 national issue.

8 I would now like to turn to the question of
9 systemic racism. I suggest that systemic racism
10 plays a significant role in a disproportionate
11 number of aboriginal women found missing and
12 murdered from the Downtown Eastside. It is no
13 secret that there are Canadian historical policies
14 based on overt racism towards aboriginal people,
15 policies created as a result of the *Indian Act*
16 such as the policy that made it illegal for
17 aboriginal people to raise money to advance land
18 claims or the outlawing of potlatches and other
19 ceremonial longhouse practices, the
20 disenfranchisement of aboriginal people with
21 respect to all levels of government, federal,
22 provincial and municipal, and the residential
23 school system.

24 I anticipate the evidence to reveal that
25 these policies were overtly racist due to the fact

1 that they were clearly based on one common
2 denominator: race.

3 You will no doubt hear evidence that existing
4 policies and systemic racism that led to the
5 disproportionate number of aboriginal missing and
6 murdered women are not so easily traced and I
7 anticipate that the evidence with respect to
8 systemic racism will not be easily elicited.

9 While there will be few documents, if any,
10 that reveal overtly racist comments and I do not
11 expect police witnesses to admit to actions based
12 on racism, I suggest that racism towards
13 aboriginal people played a significant role in the
14 missing women's investigations. The evidence of
15 systemic racism emerges from what is excluded from
16 the documentation.

17 There has been no acknowledgement of the
18 disproportionate number of aboriginal missing and
19 murdered women. For example, in preparation for
20 these hearings, in particular this opening
21 statement, I was unable to come up with a
22 definitive number of aboriginal women that went
23 missing from the Downtown Eastside. That fact is
24 not well documented. I wonder, Mr. Commissioner,
25 if the First Nation Summit had not submitted the

1 first missing -- list of missing women in 1997,
2 when would the police authorities in this city
3 have noticed?

4 One of the primary questions that the
5 aboriginal community wants answered is, what role
6 did racism play in the failed missing women
7 investigations?

8 I expect you will hear at various points the
9 VPD slowed down, stopped or abandoned their
10 inquiries. The aboriginal community wants to know
11 was racism a part of that?

12 I would now like to turn to the issue of
13 recommendations. In carrying out my role as
14 independent counsel, questions about the
15 recommendations have come up from the aboriginal
16 community, questions such as: Why should we
17 participate? What is to gain? How do we know
18 that the recommendations made just won't sit on a
19 shelf somewhere never to be implemented?

20 While I don't have an answer to that
21 question, with your experience as commissioner of
22 the commission of inquiry into policing in B.C.
23 and your involvement with various levels of court,
24 I feel that there is every opportunity to make
25 recommendations that cannot be ignored.

Prior to making your recommendations, I urge you to approach the recommendations in a holistic manner and keep two important questions in mind:

1. What systems are in place today that make aboriginal women vulnerable to violence; and
2. How do we bring aboriginal families back together?

At the conclusion of this inquiry, I will be urging you to make recommendations that reflect traditional and cultural strength of the aboriginal communities and that those strength should inform proposed policy recommendations, as well keeping in mind that for some aboriginal women the Downtown Eastside is the one place they feel accepted. Recommendations should also build on the positive supports that exist in the Downtown Eastside.

Before closing, I feel compelled to comment on the effect of the Attorney General's office to refuse funding to the non-institutional participants in this inquiry. Due to the refusal of the Attorney General's office to provide funding for legal counsel for the participant groups, many of the aboriginal participants have understandably withdrawn from the inquiry.

1 Part of my mandate, as set out by the
2 commission, is to take guidance from aboriginal
3 groups and organizations. When I accepted the
4 position of independent counsel representing
5 aboriginal interests, I did so with the hope that
6 I would receive guidance from the aboriginal
7 community as I perceive this guidance to be
8 fundamental to my role.

9 I feel it is my responsibility now to inform
10 you that while I have had some guidance from the
11 aboriginal community, and I have spoken with the
12 permission of Mr. Ward to the aboriginal families
13 represented by Mr. Ward, I have had little
14 guidance from aboriginal organizations, and in
15 response to that I wish to send this message: I
16 am still seeking your guidance and I want to do
17 the best job I can on your behalf.

18 I would also like to address the perception
19 that there is only one lawyer representing
20 aboriginal interests. As you know, I am assisted
21 by Darrell Roberts, QC of the law firm Miller
22 Thomson and Brian Baynham, QC of the law firm
23 Harper Grey.

24 Darrell Roberts has been practising law since
25 1964. Mr. Roberts spent the first five years of

1 his legal career in Prince George and throughout
2 his legal career has become familiar with
3 aboriginal issues. He provided legal counsel to
4 the Musqueam Indian Band in 1999, 2000 and in
5 2001. His current law firm, Miller Thomson,
6 maintains an active aboriginal law practice.

7 Brian Baynham has been practising law since
8 1973 and has spent many hours in the courtroom.

9 In addition, both Harper Grey and Miller
10 Thomson have articled students and junior lawyers
11 ready to assist when needed. Between Mr. Roberts
12 and Mr. Baynham there are many years of legal
13 experience. Mr. Roberts and Mr. Baynham, along
14 with me, will play a key role in the
15 cross-examination of witnesses.

16 The reason I wanted to outline the experience
17 and expertise of Mr. Roberts and Mr. Baynham along
18 with my own qualifications is to make it clear to
19 the aboriginal community that there is adequate
20 representation and support to receive their
21 guidance should they choose to participate.

22 THE COMMISSIONER: I think that's a good point you raise
23 because the media has through its own devices, so
24 we make it clear, there's nobody representing the
25 families other than Cameron Ward and -- or

representing aboriginal interests. And so your point is well taken. We have highly experienced and highly competent lawyers in Bryan Baynham and Darrell Roberts, so I take your point on that.

5 MS. GERVAIS: Thank you, Mr. Commissioner.

6 In closing, it is my hope that this inquiry
7 will come up with powerful recommendations to
8 alleviate the evil that has befallen aboriginal
9 women in the Downtown Eastside. I am optimistic
10 that these strong, positive recommendations,
11 coupled with answers to long held questions, will
12 make it possible for the aboriginal community to
13 heal. Thank you.

14 THE COMMISSIONER: Thank you, Miss Gervais. We'll take the
15 afternoon break.

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

17 (PROCEEDINGS ADJOURNED AT 3:07 P.M.)

18 (PROCEEDINGS RESUMED AT 3:22 P.M.)

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

20 MR. VERTLIEB: Mr. Commissioner, just to let you kn

21 we're at on the openings. We have -- not yet in
22 this order, but just so you know, we still have
23 Sean Hern on behalf of the police department and
24 police board.

25 THE COMMISSIONER: Yes.

1 MR. VERTLIEB: And Miss Tobias on behalf of the Government of
2 Canada. And we have Mr. Crossin, who wants to be
3 brief, concerning his representation of the police
4 union, and Miss White, Kelly White, who's one of
5 the representatives of the participant CRAB. And
6 there's one other, Don Larson, who's also with
7 CRAB, but he wishes to say a few words and I think
8 that's appropriate. So that's where we're at. We
9 may not finish today, and that's fine, but I think
10 everyone's done a good job to bring us to this
11 point. So in the order that we had, it would seem
12 that Mr. Hern is up next.

13 THE COMMISSIONER: I think you -- unless I missed, it what
14 about the Criminal Justice Branch?

15 MR. VERTLIEB: Didn't I say -- I'm sorry. No. They don't --
16 they've indicated no interest in making an opening
17 comment.

18 THE COMMISSIONER: Sorry?

19 MR. VERTLIEB: They've made -- they've had no interest in
20 making an opening comment according to our
21 information.

22 THE COMMISSIONER: I see. Okay. Mr. Hern.

23 MR. HERN: My name's Sean Hern. Mr. Dickson and I represent
24 the Vancouver Police Department and the Vancouver
25 Police Board.

1 I'd like at the outset to thank Miss Gervais
2 and Elder Harry for arranging in conducting the
3 opening ceremony yesterday.

4 The subject-matter of this inquiry could not
5 be more important. Dozens of vulnerable women
6 went missing from our community. At least 26 of
7 those women were murdered by Pickton and perhaps
8 many more. Many were aboriginal.

9 Pickton was known to the police and on
10 several occasions the VPD and the RCMP had
11 opportunities to take steps which might have
12 resulted in him being apprehended at an earlier
13 time than he was, and you will hear how for a
14 variety of reasons that did not happen and he
15 remained at large.

16 For the VPD's part, it has acknowledged that
17 it could have and should have done better.
18 Through Deputy Chief Constable Doug LePard the
19 department has expressed before, and I here
20 express again, its deepest regrets for the
21 shortcomings of the investigation.

22 On behalf of the department, let me say
23 directly to the families of the victims: The VPD
24 apologizes for its role in not catching Pickton
25 sooner. It is deeply sorry for the shortcomings

1 of the investigation and it regrets that it did
2 not understand earlier the terrible gravity of the
3 situation the missing women presented.

4 Chief Constable Chu and Deputy Chief LePard
5 have also expressed the department's conviction
6 that this must never happen again and, indeed, the
7 board holds that same conviction. And that
8 conviction informed the department's commissioning
9 of Deputy Chief LePard to conduct his internal
10 review of the missing women investigation which
11 resulted in the creation of the LePard report,
12 which is now marked as the first exhibit in these
13 proceedings.

14 In addition, in as early as 2006 the
15 department also called for this inquiry because
16 the department wants the facts about what happened
17 prior to Pickton's arrest to be known and needs
18 the community's perspective on what went wrong in
19 the investigation to assist in avoiding such
20 mistakes in the future. And those are the two
21 central questions in this inquiry with respect to
22 the police department's investigation: What went
23 wrong and how could it be prevented in the future?

24 The LePard report sets out the department's
25 and the board's understanding of those questions

1 at this time. Deputy Chief LePard was
2 comprehensive and unflinching in his review of the
3 investigation. That review is probably
4 unprecedented among police agencies for the scope
5 and rigor of its self-examination. He recommended
6 numerous internal changes to ensure that the
7 errors within the VPD's investigation of the
8 missing women do not occur again. And he also
9 examined the Coquitlam RCMP's flawed investigation
10 into Pickton between 1998 and 2002. He
11 demonstrated how much more could have been done if
12 the RCMP's resources had been properly marshalled
13 and prioritized.

14 All of the recommendations Deputy Chief
15 LePard made for the VPD have been implemented and
16 additional initiatives like the Sister Watch
17 program have been developed with the VPD's
18 recognition that new relationships had to be
19 formed in the Downtown Eastside and new approaches
20 adopted.

21 The VPD has also advocated for changes to be
22 made in collaboration with other police agencies
23 and the provincial government. I will not
24 summarize here the various findings and
25 recommendations Deputy Chief LePard made in his

1 report as he will testify in these proceedings in
2 a couple of weeks and will outline them for you
3 and answer any questions which you and other
4 participants have.

5 The VPD as it is constituted today stands by
6 the findings and recommendations in the LePard
7 report, but it is important for you to note that
8 it will be seen that in some cases the views and
9 perspectives of members and former members of the
10 department diverge, in particular as to whether
11 certain aspects of the police investigation were
12 deficient. There is no unified perspective being
13 put forward by the VPD witnesses.

14 While only Deputy Chief LePard had the
15 benefit of reviewing the investigation in its
16 entirety, each of the VPD witnesses will freely
17 articulate their perspectives and express their
18 views, Mr. Commissioner, and you will, of course,
19 weigh them and consider them in view of all the
20 evidence that is heard.

21 The Department and the Board will carefully
22 consider the evidence throughout this inquiry. We
23 will make submissions at the end when the
24 additional facts and additional -- potential
25 recommendations that will undoubtedly emerge from

1 this process. However, I do want to highlight a
2 few themes that I ask you to keep in mind as you
3 hear the evidence of the police witnesses.

4 First, the evidence you hear about the police
5 investigations into the missing women will always
6 be overshadowed by our present knowledge of the
7 terrible reality of what was occurring. Because
8 of that, I submit that you must always keep in
9 mind that you are reviewing the investigation with
10 the benefit of hindsight. When all of us look
11 back at the investigation now, we cannot help but
12 view the events through the prism of knowledge we
13 have since obtained that there was in fact a
14 serial killer at work and that killer was indeed
15 Pickton. While at different times in the
16 investigation the number of people had strong
17 suspicions that this was the case, they were
18 nevertheless theories to be weighed and considered
19 against others that were being perused and against
20 a frighteningly large number of suspects capable
21 of committing these crimes that live among us.

22 The hindsight that we now have is similar to
23 looking down at the landscape from above from a
24 bird's eye view. Today we see one clear path
25 connecting the Downtown Eastside to the horrors of

1 the pig farm, but during the investigation itself,
2 the investigators stood on the surface of a flat
3 landscape with hundreds of possibilities and few
4 landmarks to guide them. There was little to
5 suggest to the investigators which way to turn to
6 find the missing women and all reasonable
7 possibilities had to be explored.

8 Mr. Commissioner, yes, there were
9 shortcomings in the investigation, but the fact of
10 our hindsight bias must always be kept in mind in
11 this inquiry if the investigation is to be
12 assessed fairly and realistically.

13 A second point I submit that must be kept in
14 mind as you hear the evidence is that the
15 investigation was conducted by people, and even
16 those with the best of intentions and great skill
17 are not perfect. That human reality is
18 fundamental to this inquiry. In these hearings
19 you will, of course, meet the individuals who
20 conducted the police investigations. You will see
21 the diversity of personalities and backgrounds and
22 experiences among those police officers. You will
23 see the challenges and complexity of the policing
24 environment in the Downtown Eastside with respect
25 to addicted sex trade workers. You will see the

1 challenges managers faced in trying to balance
2 many competing demands with limited available
3 resources. You will see how different individuals
4 struggled to make sense of the disappearances and
5 came to different interpretations and how some
6 interpretations tragically were flawed. You will
7 see how some officers, particularly those most
8 involved with the investigation, displayed
9 enormous dedication to finding the missing women
10 and in many cases did excellent work. And you
11 will see how the investigation deeply affected the
12 officers who came into contact with it and,
13 indeed, how it haunts many of them today.

14 Mr. Commissioner, it is right that as a
15 society we view police agencies as public
16 institutions to be held to high standards.
17 Indeed, this inquiry is part of the process of
18 holding police agencies to society's expectations,
19 and we welcome it. But, Mr. Commissioner, it is
20 also essential that the human reality of police
21 institutions be acknowledged and understood along
22 the way and that a standard of perfection not be
23 applied.

24 A third theme that I expect will arise in
25 this inquiry, and the last I will touch on today,

1 is a fragmentation of policing in the Metropolitan
2 Vancouver area. Port Coquitlam is only a
3 30-minute drive from the Downtown Eastside and it
4 is policed by the RCMP, specifically the RCMP's
5 Coquitlam detachment. The Metro Vancouver area,
6 as you know, is a patchwork of municipal police
7 departments and RCMP departments. This
8 fragmentation of policing impeded the
9 investigation into Pickton. The VPD and the RCMP
10 have a good relationship and they are often very
11 capable at managing joint investigations and joint
12 operations, as seen in Project Evenhanded once it
13 got fully underway. However, prior to Project
14 Evenhanded the divide and jurisdictional
15 responsibilities between the VPD and the RCMP
16 resulted in a disconnect between the investigation
17 into Pickton in Coquitlam and the investigation
18 into the missing women in Vancouver. One police
19 agency overseeing Metro Vancouver's regional
20 priorities may well have prevented the Coquitlam
21 investigation of Pickton from floundering as it
22 did in the year 2000 and a regional police force
23 could have marshalled the task force that was
24 required in a fraction of the time it took to form
25 Project Evenhanded.

1 Among the most valuable recommendations you
2 could make, Mr. Commissioner I submit, concerns
3 the integration of policing in Metro Vancouver so
4 that jurisdictional divides do not again pose a
5 barrier to the success of an investigation of this
6 nature.

7 Mr. Commissioner, I submit that you should
8 not shy away from the question of regionalization
9 even if the provincial government doesn't appear
10 interested in hearing about it. The facts of this
11 case will, I believe, necessarily take you there.

12 So those are three themes that I suggest it
13 is essential you keep in mind when hearing the
14 evidence.

15 Before I sit down, allow me to say again that
16 the VPD and the Vancouver Police Board are
17 grateful for this inquiry. It is of the highest
18 importance that the public understands the facts
19 and that we work together toward the common goal
20 of ensuring that mistakes identified do not happen
21 again. We will examine the evidence closely and
22 respectfully. We welcome the views and the
23 submissions of the other participants. The VPD
24 has made many changes to date and we look forward
25 to receiving your views, Mr. Commissioner, about

1 what else can and should be done so that policing
2 in the region, particularly with respect to
3 vulnerable populations in the aboriginal
4 community, can benefit from your findings and
5 recommendations. Thank you.

6 THE COMMISSIONER: Thank you, Mr. Hern.

7 MR. VERTLIEB: I was just thinking about timing. I would like
8 to, if we could, get Don Larson in, but I
9 understand the DOJ will not be very long. Let's
10 deal with them because they're next, and then
11 hopefully we'll get Mr. Larson in today. Miss
12 Tobias, please.

13 MS. TOBIAS: Mr. Commissioner, my name is Cheryl Tobias.

14 THE REGISTRAR: Microphone, please. Microphone and name,
15 please.

16 MS. TOBIAS: Mr. Commissioner, my name is Cheryl Tobias, and I
17 and Mr. Brongers with me and my colleagues from
18 the Department of Justice appear on behalf of the
19 Government of Canada, which you have granted full
20 participant status in this inquiry. We represent
21 the Royal Canadian Mounted Police as well as many
22 of the individual RCMP members and other Crown
23 servants, active and retired, who will be
24 testifying at the inquiry before you, and we thank
25 you for the opportunity to present an opening

1 statement. There is much work to be done by all
2 of us, so rest assured that my remarks will not be
3 lengthy.

4 I want to speak about three matters. The
5 first is why this inquiry is so important; the
6 second, what my colleagues and those whom we
7 represent are doing to assist the inquiry; and,
8 third, what our hopes are for the outcome of this
9 inquiry.

10 So why the inquiry is important. In this I
11 am repeating what earlier speakers have said, but
12 it bears repeating. The disappearance of such a
13 large number of vulnerable and marginalized women
14 from the Downtown Eastside of Vancouver during the
15 period from 1997 to 2002 was in itself a terrible
16 tragedy, but it was the subsequent discovery that
17 many of these women were brutally murdered by a
18 serial killer that turned this tragedy into a
19 horrific nightmare, that the nightmare was
20 experienced not only by those closest to the
21 victims, but also by their extended families,
22 their friends and their communities. And while
23 Pickton's victims came from cities and towns
24 across British Columbia and elsewhere, the terror
25 that he inflicted was felt particularly strongly

1 in the aboriginal communities from which many of
2 these women came, as you heard most compellingly
3 earlier this afternoon.

4 What is not to be forgotten, however, is that
5 this tragedy also deeply touched the women and men
6 whose sworn duty it is to serve the people of
7 these communities and to try to the best of their
8 abilities to protect them from harm. The
9 disappearance of the women from the Downtown
10 Eastside, the subsequent criminal investigations
11 and the ultimately successful prosecution of
12 Pickton as the perpetrator of these crimes left a
13 number of outstanding key questions: Who was
14 working on the investigations into the
15 disappearances of these missing women? What was
16 done to investigate these disappearances generally
17 and Pickton as a suspect specifically? Where were
18 police resources deployed to investigate the
19 disappearances and Pickton? When did the police
20 have enough evidence to affect an arrest of
21 Pickton and why did it take until February, 2002
22 to arrest Pickton?

23 In order to obtain answers to these and other
24 questions, the Government of British Columbia has
25 called this commission of inquiry. The Government

1 of Canada and the RCMP are also keenly interested
2 in obtaining answers to these questions and,
3 therefore, fully supports this inquiry.

4 I'd like to say a few words about how the
5 government has supported this inquiry. The
6 Government of Canada's tangible support did not
7 begin just today with the start of these hearings.
8 Officials of the RCMP and the Department of
9 Justice have worked tirelessly over the past year
10 to gather evidence that will assist you in the
11 preparation of your final report. Most of the
12 events in question took place over 10 years ago.
13 They spanned a five-year time period. They
14 involved dozens of individual RCMP police officers
15 and civilian members. So this has been an arduous
16 task. To date we have gathered and disclosed well
17 over 75,000 pages of documents to the commission.
18 This has been a particularly challenging task
19 because the documents had to be vetted for
20 sensitive information, including personal
21 information that could identify vulnerable
22 individuals.

23 When Peel Police Deputy Chief Jennifer Evans
24 began her review of the police investigations,
25 arrangements were made for the attendance of

1 approximately two dozen RCMP witnesses so that she
2 could conduct detailed interviews to assist her in
3 writing her report. When commission counsel
4 requested a primer on the RCMP's policing
5 structure in this province, we provided it. And
6 these are but some of the examples of the
7 co-operation we have extended to the commission to
8 date and we want to assure you, Mr. Commissioner,
9 that we fully intend to maintain this co-operation
10 throughout the duration of these hearings.

11 I should also mention that in recognition of
12 the need to ensure that support is available to
13 witnesses who find testifying difficult, the RCMP
14 has offered to fund an independent support worker
15 chosen by British Columbia Victim Services who
16 will attend at the hearings and assist as required
17 and arrangements will be in place before the
18 family witnesses testify.

19 Finally, I'd like to speak about the hopes of
20 the Government of Canada and the RCMP in
21 particular, for the outcome of this inquiry. Out
22 of respect for the inquiry process, we will not
23 purport to set out today what we expect the
24 evidence to be tendered will show. This is a
25 commission of inquiry and ultimately it is up to

1 the commission to decide which information or what
2 information it wishes to consider and not the
3 participants. Instead, we would simply like to
4 set out what the Government of Canada and the RCMP
5 hope the inquiry will be able to achieve by the
6 conclusion of this process.

7 First, the retrospective fact finding. We
8 hope that the commission will be able to conduct a
9 thorough and comprehensive fact finding exercise
10 of what the police did in respect of
11 investigations into women reported missing from
12 the Downtown Eastside of Vancouver between
13 January, 1997 and February, 2002. The commission
14 must be permitted to understand not just what
15 investigative steps were pursued or not pursued as
16 the case may be, but the commission must also be
17 allowed to understand the circumstances and the
18 conditions that the police faced as they grappled
19 with the unique challenges of conducting homicide
20 investigations without any victims' remains or
21 indication of a specific crime scene and all the
22 while ensuring that police resources were properly
23 allocated to address all of the investigative
24 demands that existed at the time.

25 Secondly, in addition to looking back at what

1 happened over 10 years ago, we hope that the
2 commission will also be able to look to the future
3 and to produce recommendations that are meaningful
4 and actionable. This means that in addition to a
5 retrospective analysis of these historical
6 investigations that I just spoke about, the
7 commission must also examine the current ability
8 of the police in British Columbia to investigate
9 missing persons and suspected multiple homicides,
10 particularly when those investigations span
11 municipal boundaries within the province.

12 Progress in these types of police
13 investigations has been made since that 1997 to
14 2002 period and the commission will have to be
15 aware of these changes and improvements in order
16 to avoid making recommendations that are redundant
17 or unworkable. We look forward to providing the
18 commission with specific assistance in this regard
19 during the study portions of the inquiry, which we
20 understand will take place in Vancouver once the
21 hearings conclude.

22 Thirdly, constructive criticism. We hope
23 that if and when the commission finds it necessary
24 to identify flaws in certain acts or omissions of
25 the individuals entrusted with the investigations

1 under review, we hope that this will be done in a
2 constructive manner, that the objective in doing
3 so will be to further the public's understanding
4 of what might have been done differently and in
5 that way to assist in making recommendations for
6 the future. It is all too easy, Mr. Commissioner,
7 with the benefit of hindsight to take issue with
8 the past work done and decisions made by
9 individuals in circumstances where they did not
10 have all of the information that is known today.
11 And while fair and constructive criticism by a
12 commission of inquiry is to be expected when
13 warranted, we trust that the commission will not
14 have as its focus the desire to make findings of
15 misconduct or otherwise to punish officials whose
16 good faith and sincere wish that Pickton had been
17 caught earlier cannot be doubted.

18 Fourth, building bridges. Finally, it is our
19 sincere hope that this inquiry will also encourage
20 dialogue and building of bridges between the
21 police participants and the communities. After
22 all, they share a common interest in finding
23 answers to the questions posed by the tragedy of
24 the missing women and in forming recommendations
25 so that it is not to be repeated in the future.

Mr. Vertlieb in his address to you yesterday has already referred to that famous quote from Sir Robert Peel, and which we agree is very apt in these circumstances, that is relating to the relationship between the police and the members of the public, and that emphasis on collaboration we hope will continue through the hearing phase of this inquiry and indeed to the end of the inquiry.

That concludes my remarks, and thank you once again, Mr. Commissioner, for the opportunity to address you, and we look forward to assisting you with the difficult task that lies ahead.

13 THE COMMISSIONER: Thank you, Miss Tobias.

14 MR. VERTLIEB: Perhaps then Mr. Larson, and hopefully,
15 Commissioner, if could stay on and finish with Mr.
16 Crossin and then Miss White.

17 THE COMMISSIONER: All right.

18 MR. VERTLIEB: It would be nice if we could possibly finish.

19 THE COMMISSIONER: Yes, Mr. Larson.

20 MR. VERTLIEB: I should indicate, Mr. Commissioner, that Mr.
21 Larson is a representative of one of your
22 participants, CRAB.

23 THE COMMISSIONER: Yes.

24 MR. LARSON: Mr. Commissioner, there was some --

25 THE REGISTRAR: Your name, please.

1 MR. LARSON: My name's Don Larson, CRAB - Water For Life
2 Society. I'm speaking on the understanding that
3 Kelly White will also be able to speak either
4 today or tomorrow. I was a little surprised that
5 it was presented as an either/or situation and I
6 didn't find that very comfortable.

7 THE COMMISSIONER: Are you prepared to speak now?

8 MR. LARSON: Yes, I am.

9 THE COMMISSIONER: All right.

10 MR. LARSON: Both myself, Kelly White and our small
11 organization, which is a grassroots, independent
12 Downtown Eastside organization, have been involved
13 in this issue for about 20 years and that's why
14 I'm here today. I feel after all this time and
15 circumstance we do have a right to speak. And we
16 stayed in this commission partly out of respect to
17 the families of the victims and in the spirit of
18 the missing women.

19 We understand the concerns of the agencies,
20 but -- regarding lawyers, access to more lawyers
21 and access to documents. As Cameron Ward stated
22 in meetings, that there seemed not to be proper
23 access to some very important documents to him.

24 Nonetheless, I heard one speaker outside
25 yesterday calling for someone other than Wally

1 Oppal to be commissioner for this, and I don't
2 agree. I have been impressed with what you said
3 yesterday and how you've been treating people, and
4 personally I go by that. I'm also impressed with
5 the staff of the inquiry and the lawyers that are
6 here, Cameron Ward and Jason Gratl and others,
7 Robyn and the other lawyers. I'm impressed with
8 them. However, I do understand it's not a level
9 playing field, as the saying goes. It's not a
10 level playing field. And that's unfortunate, but
11 this is the inquiry we have.

12 I guess my first concern was years ago when I
13 read in the *Vancouver Sun* newspaper one day a
14 small article -- and it was on one of the front
15 sections -- that there was approximately 23, 24,
16 25 missing Downtown Eastside women. That was the
17 first I heard any recognition of that, anything
18 like that. So my first question -- not to be
19 answered today but my question is: Why did it
20 take that many missing women before the police
21 went public in the *Vancouver Sun* newspaper years
22 ago? As people would say, if that happened in
23 Kerrisdale, there wouldn't be 23, 24, 25 missing
24 Kerrisdale women before that went public. So I
25 think that was the first problem with the public,

1 you know, having some opportunity to reach out to
2 the police and say what's going on, but there is a
3 distrust. I'm not a street person. I'm not a
4 homeless person, but I've been involved at a
5 street level. Never had an office for CRAB -
6 Water for Life Society group, so I go from one
7 place to another down there, so I'm out there.
8 Anybody that wants to talk to me can do so.

9 The other thing that bothered me a lot was
10 when Detective Inspector Kim Rossmo was --
11 whatever the word is, released. He's obviously
12 well known as the leading geographical profiler in
13 the world. And when he was released, the message
14 was sent to me that the Vancouver City Police,
15 RCMP were not trying 100 percent on behalf of
16 these women. That was clear to me.

17 Also, Kelly's reminded me a few times many
18 years ago I guess our group was in support of
19 decriminalization of prostitution. We don't
20 support the legalization of prostitution. That's
21 an unknown. It may not make women safer.
22 Abolition isn't going to happen. In a perfect
23 world I guess it would, but it's not going to
24 happen. So I hope -- I don't know if it's
25 possible, but I'd like to see a recommendation

1 that recognizes decriminalization of prostitution,
2 only in order to make it safe -- safer for sex
3 workers.

4 I don't know what year it was. It might have
5 been around 1990, 1991. Kelly phoned me one day
6 and said, "Come on down to Main and Hastings.
7 We're going to do a remembrance" -- I don't know
8 what the exact word is -- "for these missing
9 women." And that was before the first memorial
10 march, women's memorial march. She basically
11 said, "Well, I need a white guy there." And I
12 said, "Oh, okay." I didn't like the sound of
13 that, but I went down there. And there was --
14 Kelly was there, Main and Hastings in front of
15 Carnegie, and there was about six or seven native
16 women who I didn't recognize. They were young
17 women, fairly well dressed, better than many
18 people on East Hastings. And so we were there to
19 do some kind of remembrance of the missing women,
20 which is basically to go down the street, I guess,
21 and stop at some of the places where these women
22 had been murdered.

23 And, unfortunately, I'm just standing there
24 and two -- it was either two or three Vancouver
25 City police officers in uniform came over from the

1 police station quite quickly, and I guess the word
2 is confronted us, or Kelly, and she was elbowed in
3 the ribs quite hard by one of the police officers.
4 And I'm looking, going, oh, I don't know. This
5 isn't good. But she came over -- Kelly came over
6 to me quite calmly and said, "Go in with these --
7 these two police officers into Carnegie and talk
8 with them. Tell them all we want to do is go down
9 the street for a block." I think the original
10 intention was to go further into the community and
11 do ceremonies of some sort, remembrances. And so
12 I did and they came in. And I didn't know what to
13 say to them. I just said, "You know, this is just
14 a little event. It's harmless. And this is for
15 the missing women and, you know, they're just
16 going to go one block down. Why not just let them
17 do that?" And, well, they did. And the two
18 officers followed Kelly and the other six or seven
19 native women down to Columbia and Hastings and
20 then that was the end of that.

21 But that was an introduction which I had
22 forgotten over the years, I guess a few police
23 officers' attitudes towards not just native women,
24 but actually the missing women. So I wanted that
25 to go on record as just an incident that I was

1 there to see.

2 I personally haven't lost any people to
3 Pickton or other serial killers that I believe are
4 still in the Downtown Eastside community. And I
5 went to the police about 20 years ago, went into
6 the police department a couple of times. I had no
7 clue how to talk to them. And I says, "You know,
8 I think there's many women being murdered and
9 there's a serial killer down here." And, of
10 course, I didn't have proof. And so I talked to
11 them a couple times and basically I was told not
12 to come back; that they didn't really want to talk
13 to me about that.

14 I also want to just briefly say I agree this
15 is a Canadian-wide issue, B.C. issue, it's been
16 said by other people, and as you said it the other
17 day, yesterday, it's a world issue. And we have a
18 window of opportunity to shine a light from this
19 Missing Women Inquiry into the world, not just
20 Downtown Eastside or even Northern B.C., but to
21 the world. I agree with you on that. And I hope
22 that happens.

23 And I hope like the songs of Kelly today and
24 Eugene Harry yesterday, the words of Eugene Harry
25 from the Squamish Nation, I hope that sticks with

1 me and I hope it sticks with everybody in this
2 courtroom because it's more than just evidence.
3 It's our spirit and trying to keep some goodwill
4 towards all of us.

5 And my last comment is, like, our group has
6 been involved, as I said, for about 20 years.
7 We've done about 17 or 18 vigils, which we now
8 call Honour Our Women ceremonies. There's only
9 about three dozen people down there on 11:00 a.m.
10 on February 14th in remembrance of the missing
11 women. We had two inscribed boulders placed, one
12 in Crab Park at the foot of Main in remembrance of
13 the missing and murdered women, and another one
14 for Wendy Pool, who was a native woman murdered,
15 brutally murdered in what was the Dera Four
16 Sisters Co-Op Building at Alexander and Columbia
17 in about 1989, '90 in the winter, unsolved. And I
18 did speak to the police about that. I had my own
19 theories and I was listened to, but I don't think
20 anything was really done with it.

21 Kelly White and myself, Fred Arrance, Arrance
22 family, we buy 125 carnations for the missing
23 women, distribute them on East Hastings and at the
24 boulder at Crab Park on February 11th each year.
25 And Kelly and others participate also in the

1 march. I was at the first two meetings of the
2 Women's Memorial March Committee and, to be
3 honest, I didn't at some point really feel welcome
4 as a white guy and I thought, well, maybe it's
5 time to just go talk to the police themselves
6 directly. And Kelly stayed with the meetings and
7 the Women's Memorial March.

8 So there's a lot of politics involved in
9 this, my last comment, and I do respect the people
10 that were outside yesterday. Nonetheless, at some
11 point this is the inquiry. You are the
12 commissioner of the inquiry and these are the
13 people that are here and I respect that. I want
14 to be inside here with the families that I've just
15 started talking to, a few of them, and in the
16 spirit of the missing women I want to be inside
17 with this commission of inquiry rather than one
18 more voice kind of ranting outside at this point,
19 if I may put it that way. Thank you.

20 THE COMMISSIONER: Thank you for coming, Mr. Larson. I
21 appreciate your attendance.

22 MR. VERTLIEB: I'm in your hands, and we all are, obviously,
23 Mr. Commissioner. It's the time for a break. I
24 don't want Miss White to feel any time pressure
25 and Mr. Crossin, and I'm just not sure. It's up

1 to you.

2 THE COMMISSIONER: I'm fine. It depends on everybody else's
3 schedules here.

4 MR. CROSSIN: I'll be five minutes.

5 THE COMMISSIONER: All right.

6 MR. CROSSIN: Do you want me to go now?

7 My name is Crossin, and with me Elizabeth
8 France, and we represent the Vancouver Police
9 Union. As you know, sir, that consists of
10 hundreds of police officers.

11 In that role as counsel to the union, we have
12 been asked to represent the interests of certain
13 members or former members concerning the issues at
14 this inquiry. I -- in the interests of time, I
15 adopt the remarks of Mr. Hern. I thought they
16 were eloquent and I fully endorse them on behalf
17 of the Vancouver Police Union.

18 I do want to address, though, briefly in my
19 opening a discrete issue. I expect you will
20 eventually be hearing from the key members of the
21 investigative team when they give viva voce
22 evidence ultimately. In addition, you will have
23 before you an extensive documentary record
24 concerning the evolution of the investigation, and
25 you will have this because key people produced an

1 extensive amount of material concerning the daily,
2 weekly and monthly efforts concerning this
3 investigation. And in my view that record and the
4 evidence from these key members is going to be
5 very helpful to you in answering the critical
6 questions before you and answering those questions
7 accurately.

8 Now, you have heard extensive remarks over
9 the last day or so concerning a particular view
10 held concerning the team of police officers
11 engaged in this very difficult investigation.
12 Counsel has suggested, and I quote:

13 The police probably couldn't have cared less
14 what happened.

15 And counsel urged that oral view on you. I want
16 to take a moment to reference just a couple of
17 those officers who are said couldn't have cared
18 less. There are more, but in the interests of
19 time I reference two. They are Sergeant Geramy
20 Field, whose last name now is Powell, but I will
21 refer to her as Field, and Detective Constable
22 Lori Shenher.

23 In July, 1998 both were assigned to the
24 missing women investigation. In July, 1998
25 Sergeant Field was in charge of a homicide unit in

1 Vancouver. She was also assigned as the
2 supervisor to the missing women investigation.
3 Prior to this point in time, Sergeant Field spent
4 many years with CLEU, as you know is the
5 organization investigating organized crime, and,
6 in fact, had been in charge in Vancouver of the
7 Sexual Offence Unit for the Vancouver Police
8 Department. She is currently assisting the RCMP
9 in relation to the Highway of Tears investigation
10 that has been referenced over the last day or so.

11 I think the evidence will in fact disclose
12 she had a lot on her plate -- there is no doubt
13 about it -- when she began her responsibilities in
14 July of 1998. But I also say to you that the
15 evidence will show she nevertheless worked
16 tirelessly and with great compassion on behalf of
17 the victims in this matter.

18 You will conclude, in my respectful
19 submission, that Sergeant Field has spent over 35
20 years of her life serving the public as a police
21 officer, all the public, and her dedication and
22 professionalism will become apparent to you.

23 Detective Constable Lori Shenher was less
24 experienced in July of 1998, but equally dedicated
25 to the task. She was well familiar with the

1 dynamics of the Downtown Eastside. She had spent
2 several years working there on foot and in a
3 patrol car. She had spent two and a half years on
4 the strike force conducting covert surveillance in
5 a wide variety of criminal activity. She spent
6 many months as an undercover operator in the
7 Downtown Eastside relating to the sex trade. In
8 my submission, the evidence will show beyond
9 prevention that Lori Shenher gave all she had to
10 give to this investigation as a file co-ordinator
11 and an investigator. By the end of 2000,
12 beginning of 2001 she was physically and
13 emotionally spent as a result of her efforts on
14 behalf of the victims and families associated with
15 these terrible crimes. She gave her heart and
16 sole to this endeavour with the utmost compassion,
17 sensitivity and goodwill, and I have absolutely no
18 doubt the evidence will disclose that to you.

19 Ultimately you will in fact assess the effort
20 and decision making of Field and Shenher. You
21 will no doubt do so by standing in their shoes,
22 resisting, as has been mentioned from time to
23 time, the luxury and comfort of 20/20 hindsight.
24 You may well find mistakes were made. Few of us
25 in this room could withstand the kind of scrutiny

1 that we are about to embark upon. You may well
2 find a particular judgment or course of action was
3 off the mark, but you may also find the unique
4 nature of the circumstances was a significant
5 factor.

6 You are well familiar with our justice
7 system. You were a prosecutor. You may have even
8 defended from time to time. I don't know. You
9 were a trial judge. You were appellate judge.
10 You were the chief law enforcement officer of this
11 province. You will hear evidence and you will
12 probably not be surprised to learn there were at
13 this time during the relevant time, and are,
14 hundreds of men in this province and city that
15 violate the sanctity of women. They commit
16 terrible sexual atrocities. They torture them.
17 They kill them. That was the landscape of this
18 criminal investigation. But if you do find
19 failings and you do find they were off the mark,
20 you will find that they were the flaws of well
21 intentioned, dedicated police officers.

22 Finally, if I may say, I have listened to the
23 accusations that many shortcomings were borne from
24 ulterior purpose or oblique motive, that what we
25 are to infer from human failing is prejudice,

1 callousness and indifference. And my respectful
2 submission to you is you will not find that to be
3 so. You will find the work of Shenher and Field
4 and others in the circumstances to be remarkable.

5 And with all due respect to the views
6 expressed to the contrary, I submit with the
7 greatest of deference that whatever the
8 failings -- and you will find failings -- you will
9 conclude the accusations accompanying that of
10 sinister and improper motive and purpose in
11 relation to those failings is simply not supported
12 by the evidence. Thank you.

13 THE COMMISSIONER: Thank you, Mr. Crossin.

14 MR. VERTLIEB: And then finally, Mr. Commissioner, all of us,
15 of course, know that only one person would
16 normally speak for one participant, but I am going
17 to ask that leeway be given so that Miss White can
18 speak. And I should say to you and to all my
19 colleagues that Miss White and Mr. Larson have
20 been to the participant meetings. They've been
21 helpful and they're genuinely engaged in the
22 process and we appreciate their help.

23 THE COMMISSIONER: All right. Thank you.

24 MR. VERTLIEB: Miss White?

25 MS. WHITE: Thank you for the privilege of taking a few moments

1 of time considering the long day as well,
2 Commissioner, appreciations and for
3 acknowledgement of our group. We haven't -- we
4 have no knowledge, Don and I, of public inquiry or
5 legal structure. We have a little bit of
6 knowledge of that.

7 THE COMMISSIONER: I'm not so sure all of us are. We're all
8 doing our best here and you can feel comfortable
9 that we're all -- we're patient. We'll listen to
10 you. So take your time and tell me what you want
11 me to hear.

12 MS. WHITE: Thank you.

13 In the spirit of the support of the families,
14 we arrived in -- oh, I'm Kelly White. I'm from
15 Nanaimo.

16 THE COMMISSIONER: Yes.

17 MS. WHITE: And I'm Salish, Musqueam and co-founder of the
18 group -- co-founding group of the Missing and
19 Murdered Women's Memorial Marches. And at this
20 time we thank the nine cities across the country
21 that march by the thousands for missing and
22 murdered women, that abortion of justice that is
23 going on with the missing and murdered women in
24 our country be aware of to the public. We also
25 celebrate with Bolivia, Peru and in Washington

1 State who have five memorial -- five cities with
2 memorial marches on February 14.

3 Our group is essential with the community of
4 thousands of people that created Crab Park in 1997
5 and we thought that was the end of the murders.

6 We support the families with unconditional support
7 and we celebrate that something is going to happen
8 at the rise of the -- of the public's demand that
9 there be answers to what happened in the -- in the
10 community with the community facing this abortion
11 of justice throughout the Pickton trial.

12 We -- we are compelled to stay with
13 supporting the families for their sustenance and
14 security and, as previously, we've also invited
15 the commission participants itself to help us to
16 create a memorial pole at Crab Park for a
17 community healing process.

18 Having participated in the Downtown Eastside
19 community for -- since -- well, I'm from Musqueam.
20 My parents and my grandparents are from Musqueam
21 and I worked with the prison systems in the early
22 1980s and we developed a process for healing
23 relations with the justice system and aboriginal
24 people in the early 1980s, and that enhanced
25 judges, lawyers, police, guards to come into our

1 ceremonies so they could better understand our
2 healing of our -- over 55 percent of our people at
3 that time were incarcerated. Now we came out to
4 the alleged free world of our people and see the
5 onslaught of the -- we privately went to
6 ceremonies at the pretrial centre. As you may
7 recall, my late cousin was dismembered there and
8 we had private ceremonies previous to going public
9 in 1990.

10 We celebrate the heart of the community even
11 though this is a tragic event and something that
12 we would rather didn't happen and that did happen
13 and trying to put medicine to that remedy. I
14 acknowledge that the families have been forcefully
15 removed from their homes. They've been forcefully
16 removed from their communities and the ones
17 that -- Downtown Eastside, I don't know
18 individually each of the families that were -- I
19 didn't engage with them. I didn't know their --
20 the -- as well as Mr. Ward how -- how each family
21 was, but without knowing them we went out since
22 1990 to support the families, without knowing
23 their names, and I'm honoured to meet some of the
24 families and to paddle with them to a healing
25 journey process.

1 I reiterate that the families have been
2 denied their human rights through this process and
3 have been denied political, economic, legal access
4 for a long time until now and celebrate that the
5 institutions have -- that you're involved with
6 come to engage process with the families in the
7 community at large so that we could work together
8 as one voice and one family.

9 I approached the commission a little shy of
10 trust. Of course, you know we have heard for days
11 violations and the predicaments that our people
12 have had as a colonial -- colonized people without
13 discrimination. We approached the families here
14 as family. We're not enemies of the Vancouver
15 Police Department. We don't put hate on to the
16 RCMP either. We don't -- I don't approach here
17 with blame or hatred to anyone of what happened to
18 the women, but with great enthusiasm that we
19 should be -- pay special respects to the regards
20 of the families involved here; that they've been
21 denied their right to life, their spiritual
22 relationship with their traditional places. And
23 throughout '97 till 2002 our group fought for the
24 remains of the people so they could be repatriated
25 and have memorials. And we still work with the

1 community and invited this commission to
2 participate with the healing process of -- and
3 supporting all of the families with those
4 endeavours.

5 We are reiterating that the families have
6 right to redress. Things have happened that
7 didn't serve justice to their family members, the
8 beloved sisters; that we are here in their
9 concern.

10 And with that, Commissioner, I acknowledge
11 the families that are here and not here and
12 express condolences as high as the mountains and
13 as many stars as there are in the land that this
14 never happens again. I am appreciative of the
15 families that are being here to show us that they
16 have the strength to go through this process again
17 after going through the horrendous Pickton trials.

18 I recognize that the families have with us --
19 before we went public in 1990 that all of these
20 families have approached -- a lot of these
21 families have approached us. MLAs and MPs have
22 approached our group to help the families and
23 figure out something to do.

24 And throughout this commission I'm totally
25 unaware of what to do with this commission. I

1 just -- I just think that it should go to a
2 promising -- a better place than the -- than the
3 previous trials that went nowhere to be shelved.

4 And with that I reiterate that the families
5 and our families that are from here have a right
6 to determine our own identity and our own
7 representation and our customs and our traditions
8 and that the -- we have a right to develop our own
9 jurisdictional representatives, spirituality,
10 traditional procedures, practices in any cases
11 where they exist, but I feel that we've been shied
12 off of that during this commission, but I still feel
13 compelled to be here.

14 However this commission goes, Commissioner,
15 please be advised that we recognize -- reiterate
16 that these families still have the right to
17 recognition and observance of repatriation and
18 memorials of their families and that the country
19 should do something in honour of those families
20 that they have engaged these many professionals
21 here to bunt that. And the missing and murdered
22 of our women can happen. We've developed
23 resources. We've worked hard from the community,
24 from our families to legislature to parliamentary
25 proceedings. We even had investigations from

1 United Nations come over here to see and even
2 though we don't have nothing, we don't have
3 anything, we don't have homes, we don't have
4 offices, you know, we don't have staff, we don't
5 have payroll, but we have heart. We have honour.
6 And we invite this inquiry to that honour, to
7 recognize the freedom and the rights of all
8 indigenous people.

9 It seems like every day I met with the
10 police. I met with police relations for four
11 years in the early eighties and I met with police
12 relations during the trials of my brother-in-law
13 and the trials of my children and juvenile
14 delinquents. It's always the same. You know,
15 it's that -- that blatant disregard of our right
16 to life is there. And I'd like to announce the
17 Declaration of Indigenous People that could be
18 announced as a part of this. I have the text
19 here. I would like that to be somewhere in the --
20 in the commission for remedies to be proposed as
21 the outcome.

22 I didn't think that the murder of our women
23 would be so held far and I didn't think that it
24 would go this far either; that now that we are
25 here and we have a foundation, it's going to be

1 hard to build trust. Our groups out there want a
2 witness and they're raging, they're mad and
3 they're raw and now the privilege to
4 participate -- I understand the rage of the
5 communities that were not given government. I
6 kind of look at it like -- I think we're not a
7 police state, but how come only the police have
8 lawyers and the family have to depend on one
9 lawyer? And I'm not saying -- belittling Cameron
10 Ward and their team. I think the essence of
11 spirit of the movement of better justice issues
12 lies within their hearts and their soul as well as
13 the rest of the commission staff, Commissioner.

14 And with that I pledge to stay with the
15 families and that -- with this hearing that even
16 though the missing and the murder continue on
17 while we speak here at large -- and a very large
18 amount of our women and children and men and boys
19 are killed in this community. I think that I came
20 here to say throughout the thick and thin of it
21 all that I'd like to see is the exercise of the
22 Declaration of Rights of Indigenous Peoples
23 enhanced in the jurisdiction of all police levels
24 in the country.

25 I know that -- I understand that RCMP are

1 questionable to be stayed in their province's
2 areas. I don't want to move anybody out of office
3 or send anyone back to their countries, but I
4 invite the doctrines of our faith and our belief
5 which constitutes the honour of all our family,
6 which we are one.

7 Some of us are black and some of us are brown
8 and some of us are Oriental and some of us are --
9 you know, I'm aggressively brown. That's the way
10 police looked at me for my entire life. I was
11 charged with being aggressively brown. I was
12 guilty with the Mohawks for being brown. I was
13 guilty with Gustafsen, protecting the sun dance
14 for being brown. I don't want to come here being
15 guilty for being brown and I don't want our
16 families over here and over here, the other Asian
17 and white and black families, to feel that they
18 were aggressively poor; that we must create a
19 remedy for that, and that remedy isn't going to be
20 pointing fingers and creating hatred towards each
21 other.

22 When this inquiry is finished, I don't want
23 to go home and be mangled by 18, 19 police in my
24 home, carrying me out of bed. They're trying to
25 rip my limbs apart for having said something that

1 I need to say. That has been done in the past.
2 And I wouldn't want that to happen to any single
3 body in this room or any of the families or any
4 relatives of the families.

5 I seek protection for every single one of the
6 witnesses beyond the call of duty of the court
7 process, because this abortion of justice needs to
8 have a remedy, and part of that remedy would be to
9 know that the families and all the witnesses that
10 testify here will not be harassed, intimidated of
11 jobs or fired of jobs or laid off or not available
12 for jobs as I was since I've been at United
13 Nations since 1988.

14 With that, in the highest of the honours, I
15 would like to develop a trust of RCMP and
16 Vancouver Police relations that needs an attitude
17 adjustment towards the poor of our people and the
18 women of our people and the men of our indigenous
19 people. Without prejudice, my learned friends, I
20 leave that up to you.

21 (TRADITIONAL LANGUAGE SPOKEN)

22 MS. WHITE: We became here with crisis and now it's up to you
23 and we support the endeavours of a good way to
24 walk out of here without injury or threat of
25 safety to any one of our families. *Hy cha ca*

1 *siem*, thank you in the language of our Salish,
2 *owahu* in the language of our Hawaiian families and
3 *ohawa* in the language of our Haida families.

4 Thank you for the honour of time.

5 THE COMMISSIONER: Thank you, Miss White. We'll adjourn.

6 THE REGISTRAR: The hearing is now adjourned until ten o'clock
7 tomorrow morning.

8 **(PROCEEDINGS ADJOURNED AT 4:25 P.M.)**

9 Time: 5 hours

10 I hereby certify the foregoing to be
11 a true and accurate transcript of the
12 proceedings transcribed herein to the
13 best of my skill and ability.

14 Kathie Tanaka, Official Reporter

15 UNITED REPORTING SERVICE LTD.

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