

1 October 20, 2011

2 Vancouver, B.C.

3 **(PROCEEDINGS RECONVENED AT 10:30 A.M.)**

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

5 MR. BAYNHAM: Mr. Commissioner, Bryan Baynham on behalf of the
6 aboriginal interest in women. I've had
7 discussions with Mr. Gratl and Mr. Ward about our
8 concerns about the exhibits going in. The
9 exhibits, for example, of Shannon and Kerr and
10 Lowman have all gone in with all the appendices.
11 We're concerned that various versions of the
12 Williams report have been produced, some with or
13 without the appendices, but apparently, based on
14 what we can determine, some of the versions of it
15 only a partial appendices, and we want to make
16 sure that the exhibit that's filed has all the
17 appendices because there's a great number and
18 we're concerned about that. Mr. Vertlieb assured
19 us that it would be done. I don't think it's been
20 done now. I don't know whether Miss Tobias can
21 assist us in that regard, but we want to make
22 sure -- that's a very crucial report and we want
23 to make sure it's complete and the record is
24 complete in that regard.

25 THE COMMISSIONER: All right. Miss Tobias?

1 MS. TOBIAS: Good morning, Commissioner. Cheryl Tobias for the
2 Government of Canada. I can advise, Mr.
3 Commissioner, that we -- all the appendices have
4 been disclosed. They're all in the concordance
5 database. And our staff have prepared a document
6 sort of mapping out the concordance ID numbers to
7 the different appendices so that counsel can
8 assure themselves that they have access to all of
9 them. As for tendering the appendices and putting
10 them into evidence as an exhibit at this point,
11 you may or may not recall that there is a question
12 that has yet to be resolved about whether the
13 documents that have been disclosed need to be
14 further vetted before they become public
15 documents, and so that is what is between the
16 disclosure and the filing.

17 Now, it should be noted that the appendices
18 to the Williams report are very lengthy. My
19 colleague Mr. Majawa has advised me that the page
20 estimate for that is about 4,400 pages and, for
21 example, it includes as one appendix the entire
22 file from the '97 -- 1997 investigation in
23 Coquitlam and another appendix is the entire file
24 to date from the 1998 investigation. So it's not
25 simply a matter of a few documents.

1 I understand my friend's concern that they
 2 want to be able to -- which I think, and they can
 3 clarify, is that they be able to put documents to
 4 a witness, speak to various documents, and have
 5 that be on the record as it were. My suggestion
 6 for dealing with that -- because, frankly, given
 7 the volume of documents and the nature of the
 8 documents, I should be very surprised more than a
 9 small fraction of them are ever required in that
 10 particular way. What I suggest is that counsel,
 11 knowing what the documents are, if they wish to
 12 put any document to any witness or refer to it in
 13 argument or in any other way that they do so and
 14 that the document simply be marked for
 15 identification for a couple of days until it can
 16 be appropriately revetted in accordance with
 17 whatever procedure is agreed upon between counsel
 18 and/or ordered by you. And so --

19 THE COMMISSIONER: All right. Mr. Baynham? So as I
 20 understand, the concern here is the voluminous
 21 nature of the appendices and -- and, secondly,
 22 whether or not all of the material that's
 23 contained therein is relevant. So what's your
 24 suggestion?

25 MR. BAYNHAM: Well, I see it a little bit differently. I

1 raised the issue of the LePard report initially
 2 because I was concerned that there was different
 3 versions of the LePard report that were produced,
 4 one that had more redactions than the one that was
 5 actually filed and then it became an exhibit in
 6 these proceedings as part of Mr. Vertlieb's
 7 opening. And so we dealt with the LePard report
 8 in that fashion and I understood the Williams
 9 report was going to be dealt with on the same
 10 basis; in other words, the -- the Williams report
 11 would go in with all of the appendices attached.
 12 And that was my understanding and I gather that's
 13 not what happened. There's -- I'm not sure what's
 14 gone on in as an exhibit now. So I think the
 15 first thing we need is if Miss Tobias could send
 16 us this -- is it a concordance or -- because I
 17 certainly don't have anything approaching what --
 18 what she has in what looks like about a five-inch
 19 binder.

20 MS. TOBIAS: I should say this isn't it.

21 MR. BAYNHAM: Oh, okay. I thought you were referring to it.

22 THE COMMISSIONER: Why don't I leave it with counsel to see if
 23 you can work this out and if you can't, then we'll
 24 have to deal with it. I agree with you that
 25 obviously we need full disclosure; however, there

1 are -- there are issues that have been raised here
2 by Miss Tobias that may well warrant further
3 examination of this. I'm in your hands.

4 MR. BAYNHAM: If you could send me a copy of your -- of this
5 concordance that will tell us what's in the
6 report.

7 MS. TOBIAS: I'm having a little trouble with the technology.
8 Yes. And I should be clear, Mr. Commissioner.
9 The entire report and all its appendices have been
10 disclosed. And I have --

11 THE COMMISSIONER: Has it been filed?

12 MS. TOBIAS: It has not been filed. Mr. Vertlieb filed the
13 report itself the first day when he was in his
14 opening. You may recall that. It was our
15 understanding prior to that -- and maybe there's
16 some miscommunication -- that all Mr. Vertlieb
17 intended to do at the time was what he did, which
18 was to file the body of the report. Of course,
19 Williams is to be a witness sometime further down
20 the road. But to get back to basics, as you
21 observed, disclosure is very important.
22 Disclosure has been made. I have with me today
23 copies of the concordance that will tell counsel
24 how to find what we disclosed to the commission on
25 the commission's website on concordance. So

1 that's what I have with me today. That's what I
2 will provide. And I'm more than happy to discuss
3 further with my friends any concerns.

4 THE COMMISSIONER: I'm going to leave it there because I
5 think -- I don't want to take up valuable time
6 here dealing with issues that counsel can deal
7 with outside the inquiry. If you can't deal with
8 them, then I'll deal with it.

9 MR. BAYNHAM: I think that's satisfactory. If you send it to
10 me, I have the assistance that can sort it out and
11 I will co-ordinate things on behalf of the other
12 counsel.

13 THE COMMISSIONER: Thank you.

14 MR. GRATL: Mr. Commissioner, Jason Gratl, independent counsel
15 for affected individuals and groups in the
16 Downtown Eastside, resuming cross-examination of
17 Dr. Lowman.

18 THE COMMISSIONER: Thank you for coming, Dr. Lowman.

19 **JOHN LOWMAN:** Resumed

20 **CROSS-EXAMINATION BY MR. GRATL:**

21 Q Dr. Lowman, you have before you Exhibit A, a
22 document marked as Exhibit A For Identification.
23 Could I ask you to turn to page 28, please?

24 A Excuse me. I just need my glasses. Yes.

25 Q This is a memo dated February 23rd, 1997?

1 A Yes.

2 Q From Constable Russ Mitchell to Inspector Gary
3 Greer?

4 A Yes.

5 Q The subject heading is "Prostitution status
6 update - anticipated community response"?

7 A Yes.

8 Q If you could turn to the second page of that memo,
9 please, the paragraph beginning "So".

10 A Yes.

11 Q I'll just start reading at the second sentence
12 and I'll ask you if you concur in your expert
13 opinion with the words set out by Constable
14 Mitchell:

15 It is possible to all but eliminate the trade
16 from a given area, employing 'zero tolerance'
17 strategies, though by doing so we may doom
18 other communities to a similar fate. Even if
19 a coordinated 'zero tolerance' initiative by
20 all local police agencies was contemplated to
21 attempt driving the trade from the Lower
22 Mainland, this would require a dedication and
23 coordination of resources not likely in the
24 present atmosphere of fiscal restraint. And
25 the likelihood of success is questionable,

1 given that the transiency of many
2 street-level participants is of a relatively
3 local nature; they are bound to the area by
4 factors such as economic restraints,
5 influence of pimps, drug dependency and its
6 easy availability here, and the volume of
7 'johns' on the various local strolls.

8 Professor, I wonder, to what degree do you concur
9 with Constable Mitchell's opinion as set out in
10 this memo?

11 A I think it concurs with the research that we
12 talked about in previous days regarding
13 displacement and law enforcement efforts. I
14 wonder if it may be a little overstated in terms
15 of the way that people are bounds to certain
16 areas, but the logic nonetheless is sound.

17 Q All right. And if I can synopsise, then, it
18 appears that what Constable Mitchell is saying
19 here is that even if a zero tolerance approach to
20 street-level sex work were taken throughout the
21 entire Lower Mainland, that still might not
22 displace street-level sex workers from the
23 Downtown Eastside?

24 A Correct.

25 Q And primarily because of the attachment of

1 street-level sex workers to the -- to the local
2 area?

3 A Yes.

4 Q Turning then to the relationship between the
5 police and street-level sex workers, in particular
6 women. I'd like to make reference to Exhibit C of
7 your report -- or Appendix C of your report.

8 A That one I don't have in front of me, the
9 appendices.

10 Q It's Exhibit 3, I think, your report.

11 A Yes, but I don't have the appendices of it in
12 front of me.

13 MR. GRATL: I wonder, Mr. Giles, whether you could be of
14 assistance.

15 THE REGISTRAR: Which one is it?

16 MR. GRATL: This is Professor Lowman's report.

17 THE COMMISSIONER: Where are we?

18 MR. GRATL:

19 Q Exhibit -- or Appendix C. It's a -- number 4.
20 It's a March, 1995 report entitled "Assessing the
21 Violence Against Street-Involved Women in the
22 Downtown Eastside/Strathcona Community"?

23 A Yes.

24 Q You have -- you have appended this report to your
25 expert report. I take it that's because you vouch

1 for its methodology?

2 A Yes.

3 Q You consider that the information set out in the
4 report to be valid and accurate?

5 A Yes.

6 Q All right. At page 37 -- or if we can turn
7 firstly to page 18 of the report. We can see that
8 there's a quantification of the number of
9 respondents -- respondent street-level sex workers
10 setting out why they did not use various services
11 to deal with violent experiences?

12 A Yes.

13 Q 33 percent felt that they were treated with
14 disrespect, felt judged or were embarrassed by the
15 service or persons?

16 A Yes.

17 Q That's a purely subjective -- or a matter of
18 perception of sex workers?

19 A It is their perception, yes.

20 Q Because of their understanding, they would
21 anticipate poor treatment?

22 A Yes.

23 Q And I mean poor treatment not in terms of
24 violence, but just on a social level?

25 A Yes.

1 Q And that poor treatment on a social level is of
2 sufficient gravity to prevent them from accessing
3 services?

4 A Yes.

5 Q At a time plainly when you need those services?

6 A Yes.

7 Q 27 percent of respondents did not believe that the
8 services were effective?

9 A Yes.

10 Q And a further 20 percent did not know what
11 services were available?

12 A Yes.

13 Q 13 percent did not want the police involved?

14 A Yes.

15 Q 7 percent believed that no one would care?

16 A Correct.

17 Q And 7 percent were afraid to tell anyone?

18 A Yes.

19 Q And, in particular, that's in relation to, as I
20 read the report, violent experiences. 7 percent
21 of sex workers who had been a victim of violence
22 believed that no one would care about their
23 victimization?

24 A That was their perception.

25 Q And 7 percent of sex workers who were victimized

1 by violence were afraid to tell anyone?

2 A Yes.

3 Q Overall the report concludes that there was a lack
4 of trust for services?

5 A Yes.

6 Q And this -- this report ties the lack of trust for
7 services in with the Workers' Compensation finding
8 that -- that -- the judgment that refused them
9 compensation for injury suffered in the line of
10 work?

11 A That was tied in at some point in Currie's report,
12 yes.

13 Q Aside from lack of Workers' Compensation coverage,
14 there's also lack of coverage for lots of other
15 government programs; isn't that correct?

16 A Yes.

17 Q And that includes employment-related programs like
18 employment insurance?

19 A Yes.

20 Q It includes pension plan disability?

21 A Yes.

22 Q It also includes employment standards, basic
23 employment standards coverage?

24 A Yes.

25 Q Now, what it doesn't include, of course, is

1 taxation authority?

2 A Yes.

3 Q Sex workers are recognized and their income is
4 recognized for taxation purposes?

5 A Yes.

6 Q So the government is in effect prepared to reach
7 into sex workers' pockets and take out a portion
8 of their earnings, but the government -- when it
9 comes to providing services or providing coverage,
10 the government is not quite so generous?

11 A That would be one way of characterizing it.

12 Q And, in particular, sex workers are carved out
13 from the set of government entitlements that all
14 employees enjoy?

15 A Are we talking about sex workers in general or
16 street-level sex workers in particular?

17 Q Well, street-level sex workers in particular.

18 A To the -- I mean this becomes a little bit
19 complicated to the extent that they're not
20 formally employed. When you talk about some of
21 the arrangements with indoor sex workers, they're
22 treated as independent contractors rather than
23 employees, although when you look at the control
24 that's exercised over them by the proprietors, in
25 my view they are far more like employees than

1 independent contractors, but defining them that
2 way excludes them from the various benefits that
3 you mentioned. In the case of many of the
4 street-level women, there is technically no
5 employer, so none of those kinds of benefits apply
6 in my understanding.

7 Q Thank you. And, of course, in the province of
8 British Columbia there's a criminal victims
9 compensation regime; is that correct?

10 A Yes. Yes.

11 Q The criminal injuries compensation regime is
12 funded in part by victim fine surcharges imposed
13 on perpetrators?

14 A That's my understanding.

15 Q In Criminal Code as part of the sentencing
16 process?

17 A Yes.

18 Q So funds paid by perpetrators of violence and
19 perpetrators of other offences are paid into a
20 fund and then disbursed by the Government of
21 British Columbia?

22 A Yes.

23 Q There's an application process. Victims of crime,
24 especially violent crime, can fill out a form, set
25 out the details of their victimization and receive

1 compensation, however meagre, in proportion to
2 their suffering at the hands of a perpetrator?

3 A That is my understanding.

4 Q Sex workers are excluded from that regime; is that
5 correct?

6 A I don't know that there's a policy to exclude them
7 from that regime. I am familiar with one case
8 under the *Criminal Compensation Injury Act*, which
9 is quoted in Currie's report, where a person is
10 denied compensation on the grounds that -- and the
11 term that's used, prostitution, is inherently
12 dangerous, and so effectively the victim of the
13 violence is held responsible for the violence
14 occurring in that sense. Obviously it's not
15 saying the person who perpetrated the violence
16 didn't do it, but it's implying that the victim
17 puts themselves in the position. The violence is
18 in that sense victim precipitated.

19 Q And, Professor Lowman, can you please turn to page
20 105 of Exhibit 1? This is a memorandum from --
21 again from Constable Russ Mitchell to Inspector
22 Gary Greer?

23 A Yes.

24 Q Of the Vancouver Police Department?

25 A Yes.

1 Q The subject heading is "BC Civil Liberties
2 Association's Position Paper on the DISC program"?

3 A Yes.

4 Q And we went through the Deter and Identify Sex
5 Consumers Program the last time you were on the
6 stand?

7 A Yes.

8 Q So we don't need to do that. But needless to say,
9 it appears from the memorandum that the BC Civil
10 Liberties Association has taken issue with the
11 DISC program?

12 A Yes.

13 Q They prepared a memorandum or position paper on
14 the DISC program and provided it to the Vancouver
15 Police Department?

16 A Yes.

17 Q And it appears that this memorandum is Constable
18 Mitchell's response to the BCCLA's position?

19 A Yes.

20 Q If you could turn over to page 3 of the memorandum
21 at page 107 of the -- of Exhibit 1.

22 A Yes.

23 Q At the bottom -- bottom paragraph under the
24 heading "Protection of Prostitutes"?

25 A Yes.

1 Q I'll just read this to you and then I'll ask you
2 to what extent the Vancouver Police Department in
3 your experience adopts the attitude or approach of
4 Constable Mitchell with respect to protection of
5 prostitutes.

6 A Yes.

7 Q
8 The BCCLA is concerned about the dismal
9 record we (who is 'we'?) have of protecting
10 sex trade workers. I agree that they deserve
11 no less protection than any other citizen;
12 the question is whether they deserve more?
13 There is a legal doctrine known as *volenti*
14 *non fit injuria*, also known as 'assumption of
15 risk'. Although it is a civil doctrine
16 generally applied to lawsuits arising out of
17 personal injury, it is somewhat apropos here.
18 Should society be held liable to provide
19 enhanced protection to those who voluntarily
20 assume such obvious personal dangers (an
21 underlying question of course is whether, or
22 how many, prostitutes (juvenile or adult)
23 assume this risk voluntarily?)

24
25 A Yes.

1 Q It appeared on the face of it -- and I just ask
2 this of you so that I can characterize your
3 understanding of my question. It appears on the
4 face of it that the Vancouver Police Department in
5 the person of Constable Mitchell in this memo is
6 saying that there's some serious doubt about
7 whether street-level sex workers should have
8 enhanced protection because they voluntarily
9 assume the risk of violence committed against
10 them?

11 A That is Constable Mitchell's position, yes.

12 MR. GRATL: Do you believe that affects -- that is the official
13 position of the Vancouver Police Department?

14 THE COMMISSIONER: I don't know how he can answer that.

15 MR. GRATL:

16 Q Have you spoken to other police officers who
17 manifested the same attitude?

18 A I've heard other police officers.

19 MR. HERN: Mr. Commissioner.

20 THE COMMISSIONER: Those are questions that really should be
21 asked of the Vancouver Police. I could understand
22 you asking some of these questions, but really, as
23 I said yesterday, some of this evidence is really
24 of limited value. If the police are going to come
25 here and testify, then I would suggest, with

1 respect, that maybe those questions ought to be
2 asked of them unless Dr. Lowman's in a position
3 where he can tell us personally, from personal
4 knowledge, as to what the -- what the official
5 position is of the Vancouver Police.

6 MR. GRATL:

7 Q I'm happy to confine my question to that specific
8 area, Professor Lowman's personal knowledge.
9 Professor, do you have personal knowledge of an
10 official Vancouver Police Department position on
11 that issue?

12 A No.

13 Q Could we return, then, to Exhibit C of your
14 report?

15 A Okay.

16 Q At page 37 of Exhibit C the report speaks to
17 access of police services by street-level sex
18 workers in the past six months?

19 A Yes.

20 Q 63 percent had indicated that they did not
21 access -- they had not accessed police services
22 during the last six months?

23 A Yes.

24 Q And for those that did not access police or their
25 services, 44 percent didn't access them because

1 they did not believe they would get help from the
2 police or they thought it was a waste of time?

3 A That was their perception. Yes.

4 Q 34 percent did not access the police or police
5 services because they did not trust the police or
6 police services?

7 A Yes.

8 Q 25 percent simply stated that they avoid the
9 police?

10 A Yes.

11 Q And over the page, 83 percent of street-level sex
12 workers indicated they did not report all crimes
13 or traumas to the police?

14 A Sorry. Where is that?

15 Q It's right in the middle of the page under the
16 heading "Do you currently report all crimes or
17 traumas to the police?"

18 A Yes.

19 Q 83 percent of the women respondents who formed
20 part of the study did not report all crime or
21 traumas to the police?

22 A Yes.

23 Q And over the page on page 39, sex workers were
24 were asked what, in their opinion, could improve
25 the services of the police. 97 percent indicated

1 they wanted more respect for themselves and other
2 street-involved women and that they wanted -- that
3 they wanted the police to take bad dates
4 seriously?

5 A Yes.

6 Q 97 percent?

7 A Yes.

8 Q 89 percent believed that there should be more
9 education and training of the police about
10 street-involved women?

11 A Yes.

12 Q 35 percent wanted an increase of the number of
13 female officers on the force?

14 A Yes.

15 Q At page 10 of Exhibit 1 -- or, rather, we might as
16 well identify the document. At page 1 of Exhibit
17 1, this is the Juristat Centre for -- Canadian
18 Centre for Justice Statistics publication?

19 A Yes.

20 Q It's listed as a Statistics Canada publication?

21 A Yes.

22 Q It was published in '95, was it?

23 A I believe it was '97, wasn't it?

24 Q Is it '97? February, 1997. It's on page 2.

25 A Yes.

1 Q Published under the authority of the minister
2 responsible for Statistics Canada?

3 A Yes.

4 Q And copyright Minister of Industry, 1997?

5 A Yes.

6 Q And you've referred to this report in your
7 previous testimony?

8 A Yes.

9 Q And have you reviewed this report?

10 A Many times.

11 Q And you consider it to be accurate in all
12 respects?

13 A To my knowledge.

14 Q At page 10 of the Juristat report, under the
15 heading on the right-hand column "Women usually
16 face more serious sanctions than men"?

17 A Yes.

18 Q That section refers to sanctions imposed as part
19 of a sentencing proceeding?

20 A Yes.

21 Q And, in particular, what was being compared by the
22 Statistics Canada analysts was the sanctions
23 imposed for the communication offence?

24 A Yes.

25 Q And so, of course, police arrest and Crown counsel

1 prosecute and judges convict and impose sentences
2 on both men and women for the communicating
3 offence?

4 A They did up until the introduction of the
5 prostitution offender program, yes. That program
6 would not have been in effect during the period
7 that these data relate to.

8 Q On the face of the Criminal Code offence, though,
9 it's gender neutral? There isn't one offence for
10 men and another for women?

11 A Correct.

12 Q It's one offence for all persons?

13 A Yes.

14 Q But that offence has application equally to both
15 men and women?

16 A Yes.

17 Q But what the Statistics Canada report shows is
18 that there's a differential application of that
19 communication section on men and women?

20 A Yes.

21 Q In the context where the men tend to be johns and
22 the women tend to be sex workers?

23 A Yes.

24 Q All right. Could you tell us what the -- what the
25 result was in terms of the level of imprisonment

1 imposed on men and the level of imprisonment
2 imposed on women?

3 A 39 percent of the women convicted for
4 communicating went to prison as compared to 3
5 percent of the men.

6 Q And how about the imposition of probationary
7 terms? How does that split up in terms of gender?

8 A It's difficult from this graph to detect the
9 probation segment of the pie chart from the other.

10 Q If I can refer you to the text in the paragraph
11 under "Women usually face more serious sanctions
12 than men"?

13 A Okay. 22 percent of women were put on probation.
14 I don't immediately see the proportion for men.

15 Q Just in the following sentence:

16 In contrast, that the majority of men (56
17 percent) were fined.

18 A Yes.

19 Q Only 3 percent were jailed?

20 A 13 percent were given probation.

21 Q 13 percent were put on probation?

22 A Yes.

23 Q So what the Statistics Canada reports is that
24 the -- the leading hard edge of the communication
25 offence falls on women, falls on street-level sex

1 workers, not on the customers?

2 A It most certainly does. There is one other
3 variable that needs to be taken into consideration
4 in the sentencing, which is it's more likely that
5 a sex worker will get a prison sentence on a
6 second or third offence, so there is recidivism to
7 be taken into consideration in understanding this
8 data. But even what we did in 1988 and '89 was
9 look at sentences for just first offences and
10 those two are disproportionate.

11 Q Maybe you can speak to the numbers, sir. Are you
12 in a position?

13 A I would have to go back into the report to look at
14 that. There were a variety of ways that there
15 were -- well, that was a point where for every one
16 client charged -- this is our evaluation of the
17 communicating law done for the Department of
18 Justice. For every one client charged, three sex
19 workers were charged.

20 Q All right.

21 A That was the ratio. There was also use of --
22 there was differential use of arrest mechanisms,
23 so that women would be held overnight or for the
24 weekend instead of giving them an appearance
25 notice. That was entirely different when it came

1 to the treatment of clients. There were -- very
2 few of them were held.

3 Q So in, say, the 10-year period leading up to
4 the -- the investigative period to which this
5 inquiry is paying attention, namely 1997 to
6 2002 -- in the 10-year period prior to that period
7 from 1987 to 1997, if street-level sex workers
8 formed the opinion that the communicating law was
9 primarily targeting them and not the johns, would
10 that be a reasonable opinion to form?

11 A It would be a reasonable opinion to form if they
12 had those data in front of them. I'm not sure how
13 they would necessarily know those statistics.

14 Q Well, all -- I'm not suggesting that they would
15 know the statistics. I'm suggesting that if they
16 had lived experience of being -- of working
17 street-level sex work for a number of years, they
18 might form the impression that the target of the
19 communicating offences tended to be women, female
20 sex workers rather than the johns? They might
21 be -- that might be reasonable based on a properly
22 measuring sample?

23 A I'm not sure about that. They would certainly
24 know that they themselves are a constant target of
25 law enforcement because hundreds of charges were

1 laid every year against sex workers on the street
2 level.

3 Q All right. But given -- then given -- quite apart
4 from the subjective perceptions of street-level
5 sex workers, from the perspective of a researcher,
6 from the perspective of an expert in the field, it
7 does look to you that in the 10-year period prior
8 to 1997, the communicating law in its enforcement
9 primarily targeted and punished sex workers rather
10 than the johns?

11 A Of that there is no doubt, and it continued when a
12 diversion program was created for clients, but no
13 similar program was created for sex service, which
14 made the differentially more extreme, especially
15 when they were not charged. So you have one group
16 of people who were subject to criminalization and
17 another group who was diverted out of the system
18 altogether.

19 Q So you're saying that innovations in terms of
20 going softer on johns were not replicated by
21 innovations to go softer on sex workers?

22 A Well, the purpose of the prostitution offender
23 program in a sense was not to get softer with
24 johns, but to create a greater price, the loss of
25 a day, the charging of a fee to attend the johns

1 school and a moral story passing as education. So
2 the purpose was to achieve -- I think one way of
3 putting it was a sort of punishment
4 extrajudicially.

5 Q So it enhances the extrajudicial humiliation and
6 inconvenience for a john without criminal
7 consequences?

8 A Yes.

9 Q But, of course, no such resources were expended on
10 sex workers; for example, to channel them into
11 counselling for childhood traumas?

12 A There was no jane school.

13 MR. GRATL: Professor Lowman, if you'll -- if you'll allow me,
14 I want to get into your opinion on recommendations
15 to enhance the safety of street-level workers, sex
16 workers, and improve their relationship with the
17 police, but I expect that I may be 15 minutes on
18 that topic, maybe half an hour, and I wonder if --

19 THE COMMISSIONER: Let's keep going.

20 MR. GRATL:

21 Q One of the ways to improve access to policing
22 services for sex workers would be to have a policy
23 that police officers are required not to execute
24 outstanding warrants against sex workers in cases
25 where they're reporting violent crime?

1 A Sorry. What's the question?

2 Q Would it enhance the safety of sex workers or
3 enhance their access to police services to require
4 police officers to refrain from executing arrest
5 warrants?

6 A It would remove one of the perceived impediments
7 that sex workers have to reporting bad dates.

8 Q How about a similar policy in respect of not
9 arresting for sex work itself, not arresting under
10 communication laws?

11 A Again, depending upon how that was communicated to
12 the women, because we've already seen in the
13 creation of an orange light district the
14 impression was given to them that they wouldn't be
15 arrested as long as they worked in certain areas.
16 I believe at one time PACE asked for a moratorium
17 on the use of the communicating law against
18 street-level sex workers, the whole idea being
19 that as long as you have that law and its
20 enforcement, you create a barrier. You create
21 this adversarial relationship that we referred to
22 before, which again increases the likelihood that
23 the women will not report bad dates.

24 Q And similarly with respect to arrests for what is
25 referred to within the police services as an NIP,

1 the narcotics in possession?

2 A Yes.

3 Q Currently if a street-level sex worker is the
4 victim of violence and has controlled substances
5 on her person, she'd have to take that off her
6 person in order to report?

7 A Yes.

8 Q And if she did that, she might risk losing her
9 drugs?

10 A Yes.

11 Q That might make her disinclined to report?

12 A Yes.

13 Q So a policy of requiring police to forebear from
14 arrest under the *Controlled Drugs and Substances*
15 *Act* might enhance access to police services or
16 safety mechanisms for sex workers?

17 A Yes. Especially if it was combined with a variety
18 of other initiatives and especially if it's
19 combined ultimately with initiatives that are just
20 not restricted to law, but deal with many
21 underlying issues that drive their involvement in
22 sex work.

23 Q All right. In addition to arrest for all those
24 possibilities, warrants, sex work offences,
25 possession of narcotics, there's also a potential

1 for arrest for breach of bail conditions,
2 probation conditions, parole conditions?

3 A Yes. The no-go orders on many of those orders.

4 Q And those conditions tend to be fairly common
5 because of the high rate of involvement with sex
6 workers with the criminal justice system?

7 A Yes.

8 Q Currently police officers, frontline police
9 officers in the Vancouver area enjoy the
10 discretion whether or not to arrest for those
11 things, warrants, breaches of bail, possession of
12 narcotics. Police officers have the discretion
13 not to arrest for those things and actually take a
14 complaint of a serious assault; is that correct?

15 A That is my understanding, yes.

16 Q But that's done on an individual officer,
17 case-by-case basis?

18 A That is also my understanding.

19 Q So there's no guarantee, general guarantee to sex
20 workers that the officer they approach won't
21 arrest them?

22 A Yes.

23 Q And would it, in your opinion, assist matters to
24 have a formal policy in place to require officers
25 not to arrest sex workers for any reason if they

1 come -- if they approach the police for the
2 purpose of reporting a serious violent crime or a
3 sex crime?

4 A I believe that would increase the likelihood of
5 reporting.

6 Q All right. Thank you. And I take it, to your
7 understanding, it's the director of police
8 services that enjoys the discretion to employ --
9 to impose a policy of that sort over policing
10 activities in the province of British Columbia?

11 A That is my understanding.

12 Q And that would be Kevin Begg, who's the assistant
13 deputy minister and also acts as the director of
14 police services; is that correct?

15 A If that is the current occupier of that position,
16 yes.

17 THE COMMISSIONER: I'm not so sure he's in a position to say
18 who in government, if anyone, makes those
19 decisions. In fact, I can tell you it would not
20 be Kevin Begg. Those matters about charging and
21 not charging is a separate function. That's a
22 function of the Criminal Justice Branch. But, in
23 any event --

24 MR. GRATL: Yes. I was just speaking for a moment about *Police*
25 *Act* policies, policy issues under the *Police Act*

1 rather than charge approval. One of the access
2 barriers to police services, Professor Lowman, is
3 the reputation of the criminal justice system in
4 how it treats sex workers as victims?

5 A Yes. I think that's correct.

6 Q That is, there's a -- there's a tendency for sex
7 workers to believe that the criminal justice
8 system, if they report violent offences committed
9 against them, will replicate their victimization?

10 A That is true of street-level sex workers.

11 Q That they'll be -- that in effect they'll be
12 revictimized if they are forced to take the stand?

13 A Yes.

14 Q Because testifying for street-level sex workers is
15 a very intimidating prospect?

16 A Yes. I believe that many of them would find that
17 to be the case.

18 Q There's a lot of potential for humiliation and
19 effectively degradation, exploration of their
20 sexual histories?

21 A Yes.

22 Q And of their criminal records?

23 A Yes.

24 Q And of their drug use?

25 A Yes.

1 Q And there's a live prospect that there won't be a
2 conviction; that they will in fact -- the sex
3 workers will be put on trial rather than the
4 perpetrators of violence against them?

5 A Effectively, yes.

6 Q And I take it that they're -- that the reputation
7 of the criminal justice system could be improved
8 in that regard?

9 A Yes.

10 Q Are you in a position to comment exactly how or is
11 that within the -- within the area of your
12 expertise?

13 A Exactly how --

14 Q How the criminal justice system could be improved
15 to enhance its reputation with sex workers?

16 A I mean one could -- that question could be taken
17 in so many different ways. The criminal justice
18 system includes the nature of law itself, the
19 messages in law, how courts handle situations, how
20 police handle situations, how victim services
21 handles situations, on and on and on. It's a very
22 wide question.

23 Q Yes. And almost deliberately so. Aside from the
24 arrest portions dealing with police which forms
25 one barrier to access to justice, the court

1 system, the court part of things forms another
2 barrier to access to justice?

3 A Yes.

4 Q And so the subjective perception, and objectively
5 borne out in the research as well, is that the
6 criminal justice system isn't -- is not friendly
7 to sex workers?

8 A In general, yes.

9 Q Are there any proposals, to your knowledge, to
10 enhance sex worker access or improve their
11 treatment within the courts?

12 A At this present time I'm not in a position to be
13 able to make a judgment about that.

14 Q Fair enough. One of the safety enhancing
15 aspects -- or one of the -- one of the self-help
16 remedies that sex workers can put in place is to
17 employ drivers or spotters or boyfriends or pimps
18 or even security guards to watch out for them as
19 they have interactions with johns?

20 A Yes.

21 Q They can take note of a person's discussion?

22 A Yes.

23 Q They can record licence plates?

24 A Yes. Sometimes women will actually employ a
25 spotter, who is a person whose role is to take

1 licence plate numbers. They may work with a
2 partner, another sex worker who performs the same
3 role, a variety of ways that that can be done, but
4 one of the tendencies that the research over the
5 years shows is that for a variety of reasons
6 they're less likely to do that in certain
7 circumstances because of the nature of the law
8 itself.

9 Q Not only because they're hurried and want to
10 continue their transaction because of concern
11 about being arrested?

12 A That's part of it.

13 Q But also because anybody who assists a sex worker
14 in enhancing her safety and does so for any
15 compensation is at risk of being prosecuted for
16 living off the avails of prostitution?

17 A Yes. Any living in whole or in part. The case
18 law qualifies that to some extent by saying that
19 the relationship must be parasitic, but it leaves
20 it open to debate about exactly what parasitic
21 means.

22 Q Returning, then, to Exhibit -- or Appendix C --

23 A Yes.

24 Q -- of your report.

25 A Yes.

1 Q At page 41.

2 A Okay.

3 Q When asked what -- what could be done to minimize
4 or eliminate the number of bad dates experienced
5 by sex workers, 67 percent of working women
6 suggested that a buddy system could be
7 implemented?

8 A Yes.

9 Q So that's from the sex workers themselves?

10 A Yes.

11 Q Their view. 62 percent of sex workers wanted more
12 street level and mobile outreach services such as
13 the needle exchange van?

14 A Yes.

15 Q 62 percent would like more intervention and
16 education of young persons entering the sex trade?

17 A Yes.

18 Q 43 percent wanted more training and education
19 relating to the sex trade for the police?

20 A Yes.

21 Q 41 percent recommended a safe house or shelter for
22 street-involved women?

23 A Yes.

24 Q And then referring to a safe house or shelter for
25 street-involved women, one of the barriers that --

1 is a Criminal Code barrier for street-involved
2 women to engage in sex work inside their own
3 house; isn't that correct?

4 A Correct. Bawdy house provisions.

5 Q And so if -- I'm -- again, I'm not asking you to
6 testify about changes in the law, only about
7 changes in the discretionary application of the
8 law. If the police changed the discretionary
9 application of the law to overlook sex workers
10 engaging in sex work in their own homes rather
11 than on the street, that would improve the safety
12 of sex workers; is that correct?

13 A Yes.

14 Q In your report you discuss that for a sex worker
15 to have regular clientele, it might be beneficial
16 in terms of safety?

17 A Yes.

18 Q Regular clientele, of course, they've already
19 screened their regular clients?

20 A Yes. They've already formed an opinion about who
21 he is, how dangerous he is.

22 Q And so not arresting regular johns might enhance
23 the safety of street-level sex workers?

24 A Yes. I mean as a generalization. There are
25 exceptions.

1 Q In your -- in your report you also suggest that
2 the -- at the municipal level bylaws and licences
3 could be issued for low cost or non-profit
4 brothels?

5 A That would be one approach to creating safer
6 circumstances for the conduct of sex work.

7 Q Because, again, it's isolation that enhances the
8 danger?

9 A Yes. If there's a third party somewhere in close
10 proximity to the place the interaction occurs,
11 it's far less likely -- we talked about this in
12 terms of serial killers. They don't pick women in
13 massage parlours.

14 Q You testified earlier about the pervasive belief
15 of street-level sex workers that the police just
16 don't care about violence against them?

17 A There is a pervasive perception of that sort, yes.

18 Q I take it that could be ameliorated if the police
19 regularly monitored strolls?

20 A I think that would help depending upon how that
21 monitoring occurred and what it consisted of.

22 Q The -- I just want to refer just compendiously to
23 Appendix C at pages 41 and 42. There are
24 suggestions about how -- there are recommendations
25 also at page 43 about how they -- how violence

1 against sex workers might be diminished. Do you
2 concur with those recommendations?

3 A The ones on page 43?

4 Q Yes.

5 A In general when it comes to primarily legal
6 initiatives, yes, but ultimately for the group of
7 women that we're talking about, while we need to
8 do these things, ultimately the real issues are
9 dealing with poverty, racism, feminization of
10 poverty, effect of colonialism on aboriginal
11 peoples. I just -- it may not be my place to add
12 that when you're asking questions about the law,
13 but I feel it's necessary to say that these are
14 all embedded in much broader, more difficult
15 issues.

16 Q I'm probably the last person to try to simplify
17 these matters.

18 A No. I wasn't saying that you were, but I know
19 that comments that I make are often misinterpreted
20 and misused and so I added those comments to try
21 and stem the tide the way certain spin doctors
22 will misuse what I say here.

23 Q I understand. Within the Vancouver Police
24 Department is there a training program currently
25 to allow the Vancouver Police Department to

1 understand the specific context of policing
2 street-level sex workers?

3 A Currently I don't know.

4 Q And within the RCMP is there a specific training
5 program for -- for police to receive training
6 regarding the specific context of street-level sex
7 workers?

8 A Not to my knowledge, but my knowledge might not be
9 up to date in that regard.

10 Q In terms of the conceptual apparatus that the
11 police bring to bear to their relationship with
12 street-level sex workers, would it improve matters
13 for the police to understand that -- or to take a
14 medical -- to view street-level sex workers
15 through a medical rather than a criminal law lens?

16 A Yes. I think so.

17 Q Those are my questions. Thank you, Dr. Lowman.

18 A Thank you.

19 THE REGISTRAR: Mr. Gratl, before you sit down, I noticed that
20 you referred to Exhibit 1, which is in fact the
21 LePard report. For clarity of the record, the
22 actual document you're referring to was For
23 Identification A.

24 MR. GRATL: Oh, thank you, Mr. Giles. Yes.

25 MR. DICKSON: Commissioner, would you like to keep going or

1 would you like to take the morning break?

2 THE COMMISSIONER: Madam Reporter, do you want a break? We'll
3 put this on the court reporter. Us judges have
4 done that historically for years. When they want
5 to take a break, they always blame it on to the
6 reporter.

7 THE REGISTRAR: The hearing will now recess for 10 or 15
8 minutes.

9 **(PROCEEDINGS ADJOURNED AT 11:29 A.M.)**

10 **(PROCEEDINGS RESUMED AT 11:44 A.M.)**

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

12 THE COMMISSIONER: Mr. Dickson.

13 **CROSS-EXAMINATION BY MR. DICKSON:**

14 Q Yes, Mr. Commissioner. Tim Dickson for the
15 Vancouver Police Department and Police Board.

16 Professor Lowman, I would like to ask you
17 first a little bit more about the communicating
18 law. You will agree with me that its purpose was
19 to address the public nuisances associated with
20 street prostitution?

21 A Yes.

22 Q And it came into effect in 1985?

23 A December the 20th.

24 Q And before that time, the relevant law for street
25 prostitution was soliciting?

1 A Yes.

2 Q And the soliciting provision proved very difficult
3 to enforce as a result of the Supreme Court of
4 Canada's decision in *Hutt* in 1978?

5 A Yes.

6 Q And essentially that case said that solicitation
7 for the purposes of the law has to be pressing and
8 substantial -- sorry -- pressing and --

9 A Persistent.

10 Q Persistent. And that meant that the police could
11 not use undercover officers very effectively?

12 A There was a period of about three years where
13 police in Ontario kept enforcing the law, but the
14 way they did it was to take a series of approaches
15 by a prostitute to different customers. That was
16 successful for a while. When it was tried in
17 Vancouver in 1981, the courts ruled that each
18 approach had to be dealt with as a discrete
19 incident. It was pretty much at that point across
20 the country the law fell into disuse.

21 Q Essentially at that point it was found to be
22 ineffective?

23 A Yes.

24 Q And we had the civil injunction case in 1984 and
25 you've been referred to that?

1 A Yes.

2 Q And that case concerned street prostitution in the
3 West End?

4 A Yes.

5 Q And residents in the West End there formed
6 associations and complained of the street
7 prostitution?

8 A Yes.

9 Q And the injunction was sought and obtained by the
10 provincial Attorney General?

11 A Yes.

12 Q And in its reasons for granting the injunction, I
13 think it's fair to say that the chief justice
14 expressed frustration with the ineffectiveness of
15 the criminal law; is that --

16 A That's my recollection, yes.

17 Q In 1983 just before the civil injunction case, the
18 federal Minister of Justice formed the Fraser
19 Committee and that was mandated to study street
20 prostitution?

21 A And -- prostitution and pornography in general.

22 Q Yes. And it released its report in 1985 with a
23 number of recommendations, including for law
24 refining?

25 A Yes.

1 Q And I want to take you, if I can, to another
2 Parliamentary report and that's the 2006 standing
3 committee report. You're familiar with that?

4 A Subcommittee on solicitation laws.

5 Q That's exactly right.

6 A Yes.

7 Q And, Mr. Giles, if the witness could have one of
8 the binders that I handed up to you. Thank you
9 very much. And this report is behind Tab 3, Dr.
10 Lowman.

11 A Okay.

12 Q And if we just see on the front page there, it's
13 called *The Challenge of Change - A Study of*
14 *Canada's Criminal Prostitution Laws*, and it's
15 December, 2006?

16 A Yes.

17 Q You're familiar with this report?

18 A I've read it many times.

19 Q Yes. You were a witness before the committee?

20 A I was.

21 MR. DICKSON: Mr. Giles, if I could enter that as the next
22 exhibit, please.

23 THE REGISTRAR: Single tab or the full document?

24 MR. DICKSON: Just the single tab.

25 THE COMMISSIONER: I take it there are no objections?

1 MR. GRATL: From what I can see, I doubt that there will be --
2 Jason Gratl for Downtown Eastside communities.
3 From what I can see of the entire binder, I think
4 it would be efficacious to mark the entire thing
5 for identification now and then mark it as an
6 exhibit in its entirety later. I can't see that
7 there would be any objection to any of those
8 exhibits.

9 THE COMMISSIONER: Well, then why are we worried about marking
10 it for identification if nobody has an objection
11 to its relevance? Then it ought to be filed as an
12 exhibit. Is that all right?

13 MR. DICKSON: Yes. And, Mr. Commissioner, I just intend to
14 mark this one tab as an exhibit. The others are
15 two cases and I don't think they're appropriate.
16 And the map I'm not going to refer to.

17 THE REGISTRAR: Tab 3 will be marked as Exhibit Number 10.

18 **(EXHIBIT 10: The Challenge of Change - A study of**
19 **Canada's Criminal Prostitution Laws - Report of**
20 **the Standing Committee on Justice and Human**
21 **Rights, December, 2006)**

22 MR. DICKSON:

23 Q Yes. Dr. Lowman, then if we could go to page 40
24 of this report. Starting down at the bottom of
25 page 40, it describes the Fraser Committee?

1 A Yes.

2 Q And -- and in the last sentence that begins on
3 that page, it says:

4 The committee found that although most
5 Canadians opposed the further criminalization
6 of prostitution-related activities, there was
7 wide support for initiatives that would deal
8 with the nuisances associated with
9 prostitution.

10 A Yes.

11 Q And it ultimately concluded that prostitution was
12 a social problem that required both legal and
13 social reforms?

14 A Yes.

15 Q And down in the next paragraph, it says:

16 In terms of its recommendations, the Fraser
17 Committee provided suggestions for a reform
18 that could address the root causes of
19 prostitution. The committee recommended that
20 governments commit themselves to removing
21 social, gender and inequalities, ensuring the
22 provision of social programs for women and
23 children and directing more funding to
24 community groups involved with current and
25 former prostitutes.

1 Is that correct?

2 A Yes.

3 Q And then the next paragraph addresses the Fraser
4 Committees's recommendations for legal reform?

5 A Yes.

6 Q And one of them was that the bawdy house
7 provisions be replaced by a provision that would
8 allow the use of premises for the purposes of
9 prostitution if it's restricted to only one or two
10 workers?

11 A Yes.

12 Q And going down in this paragraph, it addresses
13 street prostitution and it says here:

14 As to street prostitution, the committee
15 focused on the public nuisance aspect noting
16 that it "would be unreasonable to relieve
17 prostitutes of all legal responsibility for
18 criminal acts or specific nuisances caused by
19 their activities." As regards this aspect,
20 the committee recommended a new offence
21 involving repeated disturbances by
22 pedestrians or motor vehicles for the
23 purposes of prostitution.

24 A Yes. It made that comment in the context of
25 saying there must be a reform of the entire

1 compendium of prostitution statues, not one at a
2 time, and I think that comment of theirs has to be
3 taken in that context.

4 Q Yes. Yes. And it's still -- in their mind
5 there's still a role for the law in addressing the
6 nuisance component of street prostitution?

7 A Yes.

8 Q And if we look down at the bottom of this page 41,
9 it goes on to address the communicating law, which
10 came into effect in December, 1985?

11 A Yes.

12 Q And that was after Parliament had the Fraser
13 Committee report?

14 A Yes.

15 Q And if we turn over the page, it addresses the
16 purpose of the law and it says in the last
17 sentence in this paragraph at the top of page 42:

18 By focusing on the public aspects of
19 prostitution, the goal of the communicating
20 law was obviously to address the nuisance
21 problem. It wasn't to address the overall
22 prostitution issue.

23 A When the Minister of Justice introduced the law,
24 he made that very, very clear. John Crosbie was
25 the minister at the time, so yes.

1 Q You agree with that characterization?

2 A Yes.

3 Q So Parliament chose to address the nuisance
4 problem. It chose to give the criminal justice
5 system a law that would treat some of the symptoms
6 of prostitution and not its underlying causes?

7 A Well, I would say that it chose to address the
8 nuisance problem in a way that the Fraser
9 Committee recommended against, because without all
10 of the other legal reforms, I think the Fraser
11 Committee position is quite clear. If
12 prostitution is legal, but we don't decide where
13 and under what circumstances it can occur, we're
14 not going to deal with these problems, so just to
15 make that contextual point.

16 Q Thank you. And you have Exhibit A For
17 Identification on your podium, do you? That is
18 the materials that Mr. Gratl gave to you. The
19 Juristat report is at the front of that document?

20 A Yes.

21 Q And if we go to page 2, there's a couple of
22 passages I'd like to take you to. The second
23 paragraph on that page we have already seen in
24 your testimony, I believe. It says:

25 Street prostitution is a controversial issue,

1 with legal, social, health and economic
2 implications.

3 Do you remember that?

4 A Yes.

5 Q That was quoted in -- that was quoted in the
6 Vancouver Police Department's 1997 media release?

7 A Yes. I believe it was.

8 Q Yes. And the next paragraph down says this:

9 A different perspective is presented by
10 ordinary citizens faced with street
11 prostitution in their communities. Indeed,
12 many of them feel that they are the victims,
13 since the trade usually brings added traffic,
14 loitering, noise and drugs. In some
15 neighborhoods inhabitants are mistaken for
16 prostitutes or clients, while children
17 playing outside are exposed to discarded
18 condoms and needles.

19 A Yes.

20 Q And that's a perspective that is sometimes put
21 forward?

22 A Yes.

23 Q And, indeed, prostitution does cause some
24 nuisance. Street prostitution does have some
25 effects in neighborhoods that can be characterized

1 as a nuisance?

2 A Yes.

3 Q And if we go down to the bottom of that -- the
4 same page, the purpose of the communicating law is
5 again described, and it says this in the middle of
6 the last full paragraph:

7 The purpose of the communicating law which
8 remains in force today is to maintain public
9 order by making prostitution less visible and
10 therefore less of a nuisance to the general
11 public.

12 A Yes.

13 Q And that's a fair characterization?

14 A Yes.

15 Q And if prostitution is to become less visible,
16 without the root causes of prostitution being
17 addressed, then the trade has to move to less
18 visible places or be conducted at less visible
19 times?

20 A Or be moved indoors.

21 Q Or be moved indoors?

22 A Yes.

23 Q And that -- and leaving aside the moving indoors,
24 concentrating for the moment on it being moved to
25 less visible places, that's the issue of

1 displacement?

2 A Yes.

3 Q And what Parliament pronounced in the
4 communicating law was that prostitution is to be
5 displaced to places where it's going to be less
6 visible?

7 A Where does it say that?

8 Q Well, that is the effect of the law, is it not?

9 A The effect of the law --

10 Q That is the purpose of the law?

11 A The purpose of the law was to -- my understanding
12 is to address street prostitution, is to
13 eradicate, not to move it around. If the purpose
14 was to move it around, the law would have been
15 designed in a way that allowed it to be moved
16 around.

17 Q The purpose of the law, as we've just seen, is to
18 make it less visible?

19 A That is true.

20 Q If we could turn into this brief of materials that
21 I provided to you. It's the binder, the black
22 binder, and to Tab 4. This is the prostitution
23 reference. And this is a decision of the Supreme
24 Court of Canada in 1990?

25 A Yes.

1 Q And obviously it's a constitutional reference?

2 A Yes.

3 Q In part on the communicating law and in this case
4 the Supreme Court of Canada upheld the
5 communicating law?

6 A Yes. Under Section 1. It did find it contravened
7 the Charter, but under Section 1 held it as
8 reasonable.

9 Q Yes. Under Section 1. And I'll just take you to
10 the head-note if I can. It's on page 2 and it's
11 in the middle of the page. It's -- it's the first
12 paragraph under the paragraph that says "Per
13 Dickson".

14 A Beginning "The limits"?

15 Q Yes.

16 The limits of freedom of expression imposed
17 by the communicating law are justifiable
18 under Section 1 of the Charter. The
19 communicating law is aimed at taking
20 solicitation for the purposes of prostitution
21 off the streets and out of public view and to
22 that end seeks to eradicate the various forms
23 of social nuisance arising from the public
24 display and the sale of sex. These include
25 street congestion, noise, harassment of

1 nonparticipants and general detrimental
2 effects on passersby or bystanders,
3 especially children. The legislation,
4 however, does not attempt at least in any
5 direct manner to address the exploitation,
6 degradation and subordination of women that
7 are part of the contemporary reality of
8 prostitution. The elimination of street
9 solicitation and the social nuisance which it
10 creates is a government objective of
11 sufficient importance to justify elimination
12 on freedom of expression.

13 And that's a fair summary of a large component of
14 the Supreme Court of Canada's decision?

15 A Which it will be revisiting soon presumably.

16 Q Yes. And I'll ask you about that a little later
17 on. Now, the phenomenon of displacement of street
18 prostitution, that's not confined to Vancouver?

19 A I doubt it.

20 Q It occurs in Toronto, certainly?

21 A I believe so, yes.

22 Q And it occurs in suburbs surrounding Vancouver,
23 such as Surrey and New Westminster and Burnaby?

24 A Yes.

25 Q And just in Vancouver you have testified as to

1 some of the displacement that has occurred in this
2 city?

3 A Yes.

4 Q And, again, first from the West End because of the
5 injunction? Yes?

6 A Yes.

7 Q And then it went up to Mount Pleasant, and that
8 met with a great deal of resistance from
9 residents?

10 A It went to Mount Pleasant, also to
11 Richards/Seymour area.

12 Q Yes. And in Strathcona in the mid-1980s the
13 stroll spilled into the residential areas along
14 Pender and Keefer Streets?

15 A Yes.

16 Q And, again, this met with real resistance from
17 residents?

18 A Yes.

19 Q And so the police and local service providers
20 facilitated the relocation of the stroll to
21 Hastings and Cordova and that became a tolerant
22 zone?

23 A Yes.

24 Q And I want to take you, if I can to your Appendix
25 G in your report and to page 7, please. And we've

1 seen portions of this paragraph. It's the large
2 paragraph at the bottom of the page, but I want to
3 read in the whole paragraph. "According" -- just
4 for the context, Dr. Lowman, here -- if we flip
5 over the page, here you're talking about the
6 containment strategy, correct?

7 A Yes.

8 Q You're talking about the creation of this tolerant
9 zone?

10 A Yes.

11 Q And you're writing in 1995 for the Department of
12 Justice?

13 A Yes.

14 Q And you say here on page 7 at the bottom:

15 According to our counts, the containment
16 strategy is working for the time being
17 anyway. A variety of forces can upset the
18 balance. One key difference in the 1990
19 situation is that displacement is occurring
20 interjurisdictionally, not just within
21 Vancouver. Also, there is no actual
22 assurance that the next police administration
23 will adopt the same approach and no guarantee
24 that some politician will not rise from the
25 ranks to attack the tacit policy of

1 tolerating the street trade in certain areas.

2 Yes?

3 A Yes.

4 Q And just pausing there for a moment, that would be
5 a -- that would be a negative outcome. That would
6 be an unhelpful outcome for a politician to rise
7 from the ranks and attack this tacit policy?

8 A Depending upon what set of criteria one was
9 employing. So if the criteria is purely
10 containment without consideration of what other
11 consequences there might be and so one is
12 restricted simply to the visibility issue, then
13 yes.

14 Q And you go on and say this:

15 Without a fundamental change to the law and
16 other prostitution policy, from the police
17 perspective the containment strategy is
18 perhaps the best practical enforcement
19 solution they can offer to deal with the
20 nuisances attributable to street
21 prostitution. It keeps the lid on problems,
22 but should the police be put in the position
23 of having to make the law in this way? Also,
24 because the strategy is geared mostly to
25 solving nuisance problems, it does not

1 address wider issues raised by the
2 prostitution trade. At the ground level it
3 means that persons who prostitute are
4 gradually pushed into darker commercial areas
5 where women may be more prone to
6 victimization. By accommodating them the
7 containment strategy does nothing to resolve
8 the fundamental contradictions of the law
9 which necessitates such compromises and it is
10 not designed to address the conditions which
11 produce prostitution in the first place.

12 And here you're writing for the Department of
13 Justice and you're saying, look, the police are
14 putting into effect this tolerance zone solution.
15 That's the best practical enforcement solution
16 from their perspective, but what really needs to
17 happen are more fundamental changes?

18 A Yes.

19 Q And so the situation is this: The police have a
20 mandate to enforce the law that has as its purpose
21 removing prostitution from the streets and from
22 view, yes?

23 A Yes.

24 Q And residents and local politicians are pressuring
25 the police to remove prostitution from their

1 areas?

2 A Yes.

3 Q And -- but when the police do enforce the law, the
4 prostitution -- the street prostitution, it
5 doesn't go away. It just goes somewhere else?

6 A That's the general pattern.

7 Q And that causes problems for the new area that it
8 goes to?

9 A Yes.

10 Q And it causes problems for the women, including by
11 potentially making them alone?

12 A Yes.

13 Q And at this time in the early mid-nineties it's
14 clear to everyone -- certainly it's clear to the
15 department that if street prostitution is really
16 going to be addressed, then that has to be done by
17 all three levels of government in a co-ordinated
18 fashion?

19 A Yes.

20 Q And the best practical response the police can
21 offer at least from an enforcement standpoint is
22 to create its own intolerance?

23 A In terms of those issues, yes.

24 Q And at this time there was an accompanying shift
25 in enforcement attitude in the Vancouver Police

1 whereby women in the street sex trade were seen
2 more and more as victims of circumstances and the
3 focus of enforcement increasingly became placed on
4 pimps and customers?

5 A We've seen that in one part of the police
6 department, but we've also seen how that was not
7 the policy of another part of the police
8 department. But yes. The -- the 1997 press
9 release indicates that mentality as articulated in
10 that particular case in that press release.

11 Q Yes. Yes. And there are other sources, but I'm
12 not going to take you to them now. But looking --
13 you were taken by Mr. Gratl to the Juristat
14 report?

15 A Yes.

16 Q And he was asking you there about patterns of
17 charging johns versus sex trade workers?

18 A Yes.

19 Q And that was in 1997?

20 A Yes.

21 Q And since 1997, again police practices in this
22 regard have changed a great deal?

23 A Yes.

24 Q And are you -- are you aware of the changes? Have
25 you studied them?

1 A In what respect?

2 Q In the practices of charging under the
3 communicating law within the VPD?

4 A Yes. We've looked at the -- you'll recall we
5 looked at the number of charges that had been laid
6 over that period.

7 Q Yes. And have you looked at those practices in
8 the 2000s?

9 A In the 2000s?

10 Q Yes.

11 A Not in the same detail, no.

12 Q And charges against sex trade workers in the 2000s
13 have declined dramatically?

14 A Yes.

15 Q And these days there are extremely few charges
16 against sex trade workers laid by the VPD?

17 A That's the indication over the period of -- that
18 we have those stats, yes.

19 Q Yes. But your view, Dr. Lowman, is that the
20 primary cause or -- of the distrust you observe
21 that sex workers have for the police is the effect
22 of the criminal laws relating to communicating for
23 the purpose of prostitution and illicit drugs?

24 A And various informal tactics, not just enforcement
25 of various laws, but the informal tactics.

1 Q And your --

2 A Sorry. I was just going to let the sirens fade a
3 little bit. No. I mean police use a variety of
4 informal tactics in order to keep order in an area
5 that never appear in any statistics because they
6 don't involve law enforcement. So there's that
7 whole interaction that has to be taken into
8 consideration as well.

9 Q Absent the law being reformed, your view is that
10 the best approach for the police to minimize the
11 distrust that -- in the community is to build
12 links in the community and foster more
13 communication with the community?

14 A That would certainly be part of that.

15 Q And you testified last day, I believe, that you
16 haven't studied changes made in that regard by the
17 VPD since 2002?

18 A No.

19 Q Turning to what are often called survival sex
20 trade workers, the great majority of them are
21 deeply drug addicted?

22 A Yes.

23 Q And they work in the sex trade much of the time to
24 get money for their next fix?

25 A Yes.

1 Q And when they are in need of a fix, they're short
2 of money, working in the sex trade and earning
3 money so they can get their fix is a singular
4 focus at that point in time?

5 A It can be, yes.

6 Q And they will take risks to get the money that
7 non-addicted people would not take?

8 A I think that's fair to say, yes.

9 Q And that includes getting into cars with strangers
10 to perform sexual services?

11 A That is correct.

12 Q And when a street prostitute, street sex worker is
13 working, she generally wants the police to leave
14 her alone so that she can get her customer and get
15 the money?

16 A Yes.

17 Q Street sex workers don't want police checking
18 potential dates that are hanging around because
19 that's bad for business?

20 A Yes.

21 Q That will prevent them from finding a date and
22 getting the money they need for drugs?

23 A Under the current configuration of laws, areas and
24 practices, yes.

25 Q And under that current configuration, normally

1 street sex workers in the Downtown Eastside are
2 getting into cars with strangers and then driving
3 somewhere else to perform the services?

4 A Usually, yes.

5 Q They're meeting their clients on the strolls, but
6 the services are performed somewhere else?

7 A Yes.

8 Q And usually somewhere else is a more isolated
9 location?

10 A Yes.

11 Q It's a more private location?

12 A Yes.

13 Q And they don't want police to follow them in -- in
14 the car with their date because that is also bad
15 for business?

16 A Under the present set of practices, yes.

17 Q And if the date becomes violent, then it's
18 generally going to become violent in the more
19 remote location that they're driven to?

20 A Yes.

21 Q And it's at that moment that the police are needed
22 to intervene and apprehend the man?

23 A Yes.

24 Q And what do you say that the police should do to
25 address that scenario?

1 A An entirely different approach to the way the
2 containment zones had worked under the
3 configuration of law given the politicians would
4 change it. A variety of different kind of things
5 could have been done if there was a consistent and
6 co-ordinated effort amongst the various players
7 who could have been involved, including police,
8 various social service agencies and so forth. So
9 that if we actually -- if we had actually designed
10 a set of policies using a multi-agency approach so
11 that it was going to be recognized that these
12 individuals -- given that we haven't found
13 solutions to addiction and poverty and all of
14 those other things, if we had created some kind of
15 environment that was monitored whereby all of the
16 kinds of fears and concerns that you described
17 that produce the pattern of behaviour that you
18 just described, it might have been a much
19 different situation in terms of not getting to the
20 point where the police have to do something at the
21 point the violence occurs, but having a situation
22 that was monitored in a way that the violence
23 couldn't occur in the first place.

24 Q Well, where's that monitoring taking place?

25 A Well, I mean if you were to set up a formal

1 location -- one of the things that I mention in my
2 report is Grandma's House, a non-profit society --
3 a moratorium on the enforcement of these laws,
4 some kind of area where people could go until we
5 solve these bigger problems that put them there in
6 the first place. So -- and as long as we've got
7 legal prostitution, but we refuse to decide where
8 and under what circumstances it should occur, we
9 simply perpetuate these problems.

10 Q And Grandma's House is an indoor location?

11 A That was an indoor location.

12 Q Yes. And is your -- are you saying that all of
13 the street prostitution in the Downtown Eastside
14 could be moved indoors?

15 A I don't know about that. I don't think anybody is
16 under the illusion that there's -- you know, you
17 could suddenly get rid of street prostitution
18 overnight in that way, but I think you could have
19 a variety of different kinds of situations where
20 people did not feel the threat of the long arm of
21 the law.

22 Q And, as you say, this -- if that approach is to be
23 taken, it's one that has to be taken involving the
24 police, but involving a wide number of groups and
25 different levels of government; is that fair?

1 A That would be the best way to do it. But the
2 truth of it is that we've had a system where we've
3 had legal prostitution being practised in
4 Vancouver in the sort of middle and upper levels
5 of the prostitution business without any
6 interference from the police and with municipal
7 licensing.

8 Q Indeed. Now, you testified last day as to your
9 view of Mr. Pickton's modus operandi?

10 A Um-hum.

11 Q And you said he was a predator and he picked up
12 women intending to kill them?

13 A At least some. I suspect some of his victims,
14 yes.

15 Q And you're not an expert on serial killers, are
16 you?

17 A Not in a broad sense, but I've certainly studied
18 serial killers of prostitutes because one of the
19 things that I've studied is violence against
20 prostitutes, which means serial killing becomes a
21 part of that study.

22 Q You're not an expert on Pickton?

23 A I'm not an expert on Pickton.

24 Q You referenced Stevie Cameron's book in your
25 testimony and you read that book?

1 A Yes.

2 Q And you were citing information from that book?

3 A Which was at the trial.

4 Q And have you read all of the trial transcripts?

5 A I have not read all of the trial transcripts, no.

6 THE COMMISSIONER: Yes.

7 MR. GRATL: I'm objecting to this line of questioning. It
8 appears that Mr. Dickson at this point is
9 intending to requalify or narrow the range of
10 Professor Lowman's expertise and if he is to do
11 so, he ought to do so formally.

12 THE COMMISSIONER: I don't understand the objection.

13 MR. GRATL: Well, I think Mr. Dickson is attempting to limit
14 the range of Professor Lowman's expertise and if
15 so, he -- he ought to have taken that objection at
16 the point when Professor Lowman was qualified to
17 give evidence.

18 THE COMMISSIONER: Well, no. I don't think that's the case at
19 all. All he's doing is questioning his -- it has
20 nothing to do with qualifications. All he's doing
21 is questioning his conclusions -- or his opinions,
22 I should say, regarding the activities of Pickton.
23 I don't think it's anything more than that.

24 MR. GRATL: But the difficulty, I suppose, is with the form of
25 the question. Mr. Dickson is asking Professor

1 Lowman are you an expert in X, are you an expert
2 in Y.

3 THE COMMISSIONER: Well, I think perhaps that was an
4 unfortunate phrase that he used when he said are
5 you an expert on Pickton. I didn't know what that
6 question meant either, but I think that he's
7 clarified it since then. All right.

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

9 MR. DICKSON:

10 Q Yes. Thank you, Mr. Commissioner. Those are my
11 questions on that -- on that subject.

12 A Okay.

13 Q Now, I want to turn to decriminalization. You
14 have long advocated decriminalization of
15 communicating and of bawdy houses, correct?

16 A Yes.

17 Q Yes. But you acknowledge that there are opinions
18 on both sides of this issue?

19 A Very much so.

20 Q Yes. And if we go back to the -- to the binder of
21 materials that I handed up to you -- or Mr. Giles
22 handed to you and back into the Parliamentary
23 report, the standing committee report. And that's
24 now Exhibit 10 at Tab 3. There were many dozens
25 of witnesses that appeared before the standing

1 committee?

2 A Yes.

3 Q And it was looking into the issue, among other
4 things, of whether the communicating law should be
5 removed?

6 A Yes.

7 Q And whether the bawdy house laws should be
8 removed?

9 A Yes.

10 Q And, again, you were a witness before the standing
11 committee?

12 A Yes.

13 Q And there were other academics who appeared and
14 government officials, police officers, community
15 organizations, service providers and the like?

16 A Yes.

17 Q Maggie de Vries was a witness, I saw?

18 A Yes.

19 Q Ultimately the committee was split in its
20 conclusions, yes?

21 A Three of the parties believed that consenting
22 adult prostitution should not be a criminal
23 offence and one party believed that both buying
24 and selling sex should be a criminal offence with
25 the exception of the first time a person was

1 detected selling sex, at which point they would
2 get a warning, otherwise both buying and selling,
3 whether indoors or outdoors, would be criminal
4 offences. That was the Conservative party's
5 position. The Liberals, Bloc and NDP believed
6 that consenting adult prostitution should be
7 legal.

8 Q Yes. And if you could just turn to page 85
9 quickly in this report just on this issue.
10 There's just a bit of a summary paragraph there.
11 And the committee says this:

12 As in other countries, there is little
13 consensus in Canada surrounding the issue of
14 adult prostitution, although there is
15 unanimous agreement that the sexual
16 exploitation of minors through prostitution
17 must not be tolerated.

18 A Yes.

19 Q
20 This conclusion became clear to the
21 subcommittee after hearing the testimony of
22 approximately 300 witnesses at public and
23 private hearings held in various cities at
24 various times.

25 A Yes.

1 Q

2 As we have seen throughout our review of the
3 Criminal Code provisions dealing with
4 prostitution, differing opinions relate to
5 the nature of prostitution, its causes and
6 effects as well as the measures that should
7 be taken to address it.

8 A Yes.

9 Q And that's a fair statement?

10 A Very much so.

11 Q Yes. And as you mentioned earlier, currently the
12 issue of the constitutionality of the
13 communication and bawdy house provisions is before
14 the courts in Ontario?

15 A Yes.

16 Q Mr. Gratl asked you in his cross-examination
17 earlier this morning a little bit about policies
18 being put in place in the policing world as to
19 essentially a moratorium over charging?

20 A Yes.

21 Q And a moratorium over enforcing warrants if a sex
22 trade worker is reporting a serious crime?

23 A Yes.

24 MR. DICKSON: And you're not an expert on the legal issues that
25 come into play over how officers should exercise

1 their discretion about whether to enforce --

2 THE COMMISSIONER: Don't answer the question.

3 MR. DICKSON: -- court-ordered warrants?

4 THE COMMISSIONER: Yes.

5 MR. GRATL: Again, there's what appears to be a challenge to
6 the qualifications of the witness and, in my
7 submission, at an inappropriate time. Perhaps
8 that question could be rephrased just to address
9 what knowledge the witness might have in --

10 THE COMMISSIONER: It's cross-examination. He asked you're not
11 an expert in the legal -- what was it?

12 MR. DICKSON: Yes, Mr. Commissioner. The legal issues that
13 come into play over how officers exercise their
14 discretion.

15 THE COMMISSIONER: There's nothing wrong with that question.
16 It might go to weight. The answer may well go to
17 weight. Okay. Go ahead.

18 THE WITNESS: Sorry. Could you repeat the question?

19 MR. DICKSON:

20 Q You're not an expert over the legal issues that
21 come into play over how officers should exercise
22 their discretion as to such things as enforcing
23 court-ordered warrants?

24 A No.

25 MR. DICKSON: Thank you, Mr. Commissioner. Those are my

1 questions.

2 THE COMMISSIONER: All right. Thank you. Anything, Miss
3 Tobias?

4 MS. TOBIAS: Thank you, Commissioner. Cheryl Tobias for the
5 Government of Canada. I'm noting the time. Is it
6 your intention to --

7 THE COMMISSIONER: All right. How long do you think you'll be?

8 MS. TOBIAS: Fairly similar to Mr. Dickson.

9 THE COMMISSIONER: All right. Thank you. You're under
10 cross-examination, Dr. Lowman.

11 THE REGISTRAR: The hearing will now adjourn until two o'clock.

12 (PROCEEDINGS ADJOURNED AT 12:27 P.M.)

13 (PROCEEDINGS RESUMED AT 2:02 P.M.)

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

15 THE COMMISSIONER: Miss Tobias.

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

17 Q Thank you, Mr. Commissioner. Cheryl Tobias for
18 the Government of Canada.

19 Mr. Lowman -- or sorry -- Dr. Lowman, do you
20 have your report with the appendices before you?

21 A Yes.

22 MS. TOBIAS: That's Exhibit 4, I believe, Mr. Giles?

23 THE REGISTRAR: His report?

24 MS. TOBIAS: Yes.

25 THE REGISTRAR: I think it's 3.

1 MS. TOBIAS:

2 Q I beg your pardon. Exhibit 3. Would you please
3 turn to page 26 of your report?

4 A Okay.

5 Q And at the bottom of page 26 and the top of page
6 27 you've set out two different kinds of violence
7 that occurs in prostitution and you've referred to
8 that before, yes?

9 A Yes.

10 Q And your definition of the predator -- of
11 predatory violence included this statement:

12 The offender poses as a client.

13 Do you see that?

14 A Yes.

15 Q
16 In order to get the intended victim to a
17 secluded location where he can carry out his
18 attack.

19 A Yes.

20 Q And that in the following paragraph you set out
21 that the purpose of that is to have the victim
22 under their control?

23 A Yes.

24 Q And you described Mr. Pickton as a predator of
25 this nature?

1 A Yes. I believe that certainly some of the
2 situations he was involved in would be of a
3 predatory kind.

4 Q And you say on the same page -- you talk about
5 them fearing being identified. And, in
6 particular, in your reference to Gary Ridgway you
7 refer to that; is that correct?

8 A Correct.

9 Q Now, it appears by their very nature a predatory
10 so-called customer is not going to go to a massage
11 parlor or something else that might be classified
12 as a bawdy house?

13 A Correct.

14 Q And nor is such a person going to go to a place
15 such as Grandma's House; in other words, a
16 non-commercial establishment?

17 A Yes. A place where other persons are likely to
18 see them.

19 Q And if I can go back to -- sorry. I'm just
20 looking for my page reference here. I don't
21 remember exactly where the reference is, but you
22 do say that the predator poses as a client?

23 A Yes.

24 Q And so I take it from that that the person doesn't
25 look particularly different from any other client?

1 It's just a man in a car?

2 A Yes. And a person may be a client at one point
3 and a predator at a different point. These are
4 not -- those are not mutually exclusive
5 categories. But for a person who has premeditated
6 robbery, assault or whatever it might be, that is
7 the category that I put the predator. And why I
8 refer to that person posing as a client, because
9 their intention is something other than being a
10 client.

11 Q Okay. So either way, whether it is a man who
12 might, shall we say, fly off the handle suddenly
13 and unexpectedly or someone who plans an attack,
14 neither person looks particularly distinctive?

15 A No.

16 THE COMMISSIONER: Particularly what?

17 MS. TOBIAS: Distinctive.

18 THE WITNESS: No. I've heard some women claim that they have a
19 form of radar which might alert them to certain
20 characteristics, but in general it sounds like
21 there is no clear distinction.

22 MS. TOBIAS:

23 Q And if I may refer you to page 22 of your report.

24 A Okay.

25 Q Near the bottom of the page you say:

1 There is not enough research specifically on
2 men who perpetrate violence against
3 prostitutes to be able to ascertain on what
4 grounds they may be distinguishable from men
5 in general or men who buy sex.

6 A Yes.

7 Q And that, I assume, goes along with some of the
8 research on serial killers, what distinguishes a
9 serial killer from someone else. Is that what you
10 mean?

11 A Well, that was not what I meant by that particular
12 statement because I wasn't separating out serial
13 killers necessarily.

14 Q So you were including men who might become violent
15 in the course of obtaining sexual services?

16 A Yes.

17 Q And to state the obvious, someone who is trying to
18 bring a woman under her control is not going to
19 have knives and guns and handcuffs and things like
20 that out in open view?

21 A Correct.

22 Q But, sir, it's also true, is it not, that even --
23 there are some men who may not be predators per se
24 or predators at all in fact who simply won't go to
25 a massage parlor or some such establishment

1 because they want to remain anonymous for other
2 reasons?

3 A That's true.

4 Q So if a woman approaches a man in a car and he
5 wants her to get in the car, it doesn't
6 necessarily mean that he's a dangerous predator?

7 A Well, there is a school of thought which defines
8 prostitution as violence against women, so I have
9 to be clear at this point that what I'm using is
10 Criminal Code definitions of violence. There are
11 a variety of reasons why a man might go to an east
12 side street prostitution stroll. You may recall
13 that I mentioned at one point in testimony that
14 most of the clients charged under the
15 communicating rule come from the east side of
16 Vancouver, so it's a matter of price as well.
17 That shows very distinctively when we looked at
18 the locations in which those men lived, and
19 they're only prosecuted in the east side strolls,
20 which at that time were the Downtown Eastside
21 itself, areas like Franklin and Pandora and
22 perhaps areas up on Broadway. They were not
23 prosecuting anybody purchasing sex on the
24 Richards/Seymour stroll at that time. So there's
25 a variety of factors. I'm not quite sure I'm

1 answering the question that you posed in the first
2 place.

3 Q I think perhaps you are getting a little off the
4 track.

5 A Yes.

6 Q But my point is that let's say there's a man on
7 the Downtown Eastside in a car and he's going to
8 look for sexual services and he doesn't want to go
9 to an establishment. If you assume that, what I'm
10 putting to you is that that man isn't necessarily
11 a predator?

12 A No.

13 Q Now, the other side of the equation, if I can put
14 it that way, is the woman, and there has been much
15 discussion in your evidence about the
16 characteristics of women who provide sexual
17 services on the Downtown Eastside as being
18 largely, if not entirely -- if not always, a user
19 or an addict of drugs?

20 A A large proportion.

21 Q And you have set out in your report, in fact, and
22 we've heard over the last day's evidence how
23 such -- how addiction to drugs can drive a woman
24 to very risky behaviour?

25 A Yes.

1 Q And that's in order to obtain drugs or in order to
2 obtain the price of drugs?

3 A Yes. Money to buy drugs, yes.

4 Q And so that might be one motivation for getting
5 into a car and agreeing to go somewhere else
6 instead of having what I think is being referred
7 to as a car date or a date in the immediate
8 vicinity?

9 A Yes.

10 Q And another scenario that's common, I would
11 suggest, is that customers might offer to pay more
12 for something that's more risky such as pay more
13 for sex without a condom, for example?

14 A Yes.

15 Q And similarly might offer to pay more if the woman
16 will go somewhere else with him?

17 A Yes.

18 Q And that occurs?

19 A Yes.

20 Q So if we put those two things together, you've got
21 a man who may or may not be a predator. He looks
22 like every other customer, or at least he doesn't
23 look distinctively different, and he asks a woman
24 who is perhaps drug sick, certainly wants the
25 price of a fix, to go somewhere else?

1 A Correct.

2 Q And that will happen?

3 A Yes.

4 Q And that will happen even if there is a Grandma's
5 House down the street?

6 A That could happen even if there's a Grandma's
7 House down the street.

8 Q Mr. Commissioner, I am handing up two copies of a
9 document taken from the disclosure. I've provided
10 my learned friends with copies.

11 A Thank you.

12 Q And this document I'm going to ask to be marked
13 for identification at this point, but it is the
14 document taken from one of the summaries that has
15 been disclosed into the investigative steps taken
16 with respect to a particular missing woman, Ann
17 Clark. But if you turn over the page, you'll see
18 that the second page in the extract -- this is an
19 extract of page 11. You'll see that on the bottom
20 right-hand corner of the document. And the reason
21 I'm using it is because these pages contain
22 summaries of evidence given at the trial of Robert
23 Pickton and there are a couple of situations that
24 I would like to put specifically to Dr. Lowman.

25 So, Dr. Lowman, if you would flip over to the

1 second page of the extract, which has the page 11
2 on the bottom right-hand corner.

3 A Okay.

4 Q You will see in the middle of the page, during the
5 trial of Robert Pickton admissions were made in
6 regards to a couple of Crown witnesses whose names
7 are blanked out.

8 A Okay.

9 Q So what I want to ask you about is the situation
10 set out in these particular passages. So with
11 respect to the first woman, the evidence was that
12 she was a sex trade worker on the Downtown
13 Eastside and that in the late evening hours of
14 March 22nd, 1997, she was standing on the corner
15 of Princess Avenue and Cordova Street in the
16 Downtown Eastside of Vancouver when she was
17 approached by Pickton. He was driving a red
18 pickup truck. She offered sexual services to him
19 at a price and he asked her to go to his residence
20 and he offered a higher price as payment.
21 Initially she told him that his residence was too
22 far and he says that he will take her back and she
23 agrees to go. So that sounds pretty much like the
24 scenario I just set out?

25 A Correct.

1 Q So that's a negotiated settlement, if I can call
2 it that way, for doing something that otherwise
3 she would prefer not to do in the sense that he
4 had to pay more to convince her?

5 A Understood. Yes.

6 Q Then turn over the page, please, to the next page.
7 There's another scenario set out there and, again,
8 this evidence was admitted. And that is that in
9 the fall of 1999, the second woman was addicted to
10 narcotics, working as a sex trade worker in the
11 Kingsway and Joyce Street area. In the early
12 morning hours she was working by hitchhiking, was
13 approached by Robert Pickton, the only occupant of
14 a vehicle. They had a discussion. She offered to
15 provide sexual services in exchange for money.
16 She inquired if he was agreeable to receiving
17 sexual services in his vehicle. He said he did
18 not want to be caught by police in his truck and
19 he would rather they went to his residence and he
20 offered to drive her back. They agreed to payment
21 of a hundred dollars to go to his residence. So
22 something similar?

23 A Yes.

24 Q And I would suggest to you that that is a common
25 kind of scene, not at all -- well, let me rephrase

1 that. That's something that you've heard of and
2 it's not something you would expect to be at all
3 unusual?

4 A It's certainly something that one would hear of.
5 How unusual it is, I don't know because we don't
6 have statistics that would show the number of
7 incidents where there was an attempt to make
8 somebody go outside their normal operating zone,
9 if you will, if I can call it that. But yes,
10 not -- I wouldn't think that's unusual.

11 Q Would you turn, please, to page 23 of your report?

12 A Okay.

13 Q And this is where you set out the results of a
14 study you did in which you asked the respondents
15 who were men who bought sex to answer questions
16 about the violence that they might have
17 perpetrated?

18 A Yes.

19 Q And your conclusion is that much more research of
20 this sort is needed?

21 A Yes.

22 Q And I suggest to you that you have done a great
23 deal of research on prostitution from the woman's
24 point of view, but there is very much more that
25 needs to be done on the other side of the equation

1 as well?

2 A Yes. That's -- we did have this one study that
3 was quite extensive funded by the Province of
4 British Columbia and there is now a follow
5 study -- a follow-up study being done by Chris
6 Atchison. He released the first results of that
7 in January, 2010. He has over 800 clients in that
8 study. And when it comes to self-reported
9 violence, it shows very similar results to this.
10 But yes. We need more research on the sex
11 consumed.

12 Q Because, of course, self -- self-reported
13 violence, especially extreme violence, is not a
14 particularly reliable indicator?

15 A We've got no real way of knowing how reliable that
16 is.

17 Q And would you agree that when it comes to
18 preventing violence that attention needs to be
19 paid just as importantly to the customer as to the
20 sex trade worker?

21 A Yes.

22 Q Would you look at page 23 of your report, please,
23 at the bottom? You talk -- you say that survival
24 of sex trade workers in the Downtown Eastside --
25 this is the last paragraph.

1 A Okay.

2 Q You say "They're unable -- and you refer to "like
3 their counterparts in the high track, pay for
4 rooms and local hotels for half-hour increments."
5 Did you mean to say that they never use hotels?

6 A No. Not that they never use hotels.

7 Q And would it be true, in your view, to say that
8 it's not unusual for women to have access to
9 hotels?

10 A On the Downtown Eastside?

11 Q Yes.

12 A As a place to turn tricks?

13 Q Yes.

14 A It would happen. I would not be able to give you
15 a percentage of the number of dates that are in
16 hotels as opposed to in cars.

17 Q Now, while we're in the vicinity in your report,
18 on page -- at the bottom of page 21 and the top of
19 page 22, you set out some information from Tamara
20 O'Doherty's study on indoor prostitution?

21 A Yes.

22 Q And I'm looking at Table 7 at the second column
23 entitled "O'Doherty 2007".

24 A Okay.

25 Q And immediately underneath that it says: "N

1 equals 39"?

2 A Yes.

3 Q She had 39 --

4 A Respondents.

5 Q -- respondents?

6 A And the table -- the figures in the tables -- this
7 is one of the ones that I sent the correction.
8 Those are percentages rather than numbers.

9 Q Okay. Going back to page 17, this is where you
10 set out the description of those 39 women.

11 A Okay.

12 Q And this is something you've referred to before or
13 you've been asked to refer to before. In the
14 middle of the page you talk about the majority of
15 the 23 women who reported their race. So not all
16 of them did?

17 A Right.

18 Q And they were Caucasian?

19 A Yes.

20 Q And they also described their education. And we
21 looked before at the percentage. 36 percent had a
22 post-graduate degree?

23 A Yes.

24 Q Of which five individuals had a Ph.D.?

25 A Yes.

1 Q So that would appear to be a very unusual sample
2 of the population let alone the section
3 prostitutes; would you not agree?

4 A We really don't know. I know quite a few female
5 professors who were former prostitutes.

6 Q I'm sure you're not suggesting that that is a
7 common theme among professors?

8 A I'm not suggesting it's a common theme about
9 professors. I'm suggesting we don't know.

10 Q I think that's the point, isn't it? So where I'm
11 going with this is this study is really no
12 indication that is at all reliable? In other
13 words, we can't make any general conclusions about
14 what indoor prostitutes are like based on this
15 study?

16 A We cannot make any generalizations from any study
17 because none of them use probabilistic samples.
18 The only way that we can make generalizations is
19 across studies until -- and so until we get a
20 whole lot more studies like O'Doherty's, which is
21 what she's now doing -- she's doing an across
22 Canada sample -- we have no idea how
23 representative that particular sample might be,
24 although one wonders whether the very first time
25 one actually targets samples, that kind of

1 population instead of going to the much easier
2 groups to sample, i.e. street prostitutes -- one
3 wonders if one has an entirely unrepresentative
4 sample the first time one does it. But do we
5 know? No, we don't.

6 Q That said, however, the smaller the sample, the
7 more dangerous it becomes to generalize?

8 A That depends upon -- sorry. That depends upon the
9 size of the population one is sampling from, which
10 is something we also don't know. So yes. If
11 you're saying that there's lots of sampling
12 problems and generalization problems, that is most
13 certainly true. There are other ways of getting
14 at these issues, which I deal with at various
15 points in the report too when it comes to race and
16 violence, comparing homicide rates of different
17 kinds of sex workers.

18 Q One thing you haven't mentioned a great deal about
19 is pimping. You did say that the women on the
20 Downtown Eastside generally aren't pimped?

21 A Depending on how you define a pimp.

22 Q Okay. Let me give you a broad definition. A pimp
23 could be a man who controls a woman and controls
24 her income and all those other aspects. That's
25 sort of a classic definition.

1 A Okay.

2 Q And let's add to that a man who lives with a woman
3 and perhaps is described as her boyfriend, but who
4 makes sure that she's out on the streets earning
5 money perhaps to support his drug habit.

6 A That latter definition is the one that gets much
7 more difficult because that might start out as a
8 relationship that didn't look like that. It might
9 evolve into a relationship that looked like that.
10 If one reads Dr. Shannon's research, you see --
11 various papers that she's written, you see that
12 described. So if that is how one defines a pimp,
13 then you do find pimping, but not -- not complete
14 control of the stroll that you would see in what
15 is normally referred to as high track, which is an
16 area that is controlled exclusively by men who are
17 specifically looking to make a living out of
18 women, turning women out specifically for the
19 purpose of prostitution, who control each of the
20 corners on the stroll. That is the sort of
21 classic type of pimping. That is where that word
22 originates. And so you can go all the way to any
23 person who makes any kind of money off the
24 prostitution of another person.

25 Q Yes. But if you don't mind my interrupting. That

1 wasn't my question. I understand what you're
2 saying, but let's turn to, if I can call it, the
3 boyfriend style pimp that I referred to earlier.

4 A Okay.

5 Q Okay? You say that you can expect to find that
6 kind of phenomenon on the Downtown Eastside?

7 A Yes. But not all boyfriends are pimps.

8 Q No, no. I'm not suggesting --

9 A Or on the Downtown Eastside.

10 Q No. But for the purpose of this question I'd like
11 you to restrict your answer to the phenomenon on
12 the Downtown Eastside.

13 A Okay.

14 Q And so there are the boyfriend style pimps there?

15 A I want to be very careful about how I respond to
16 that. Some boyfriends in the situations you
17 described would constitute what you have defined
18 as a pimp and some would not.

19 Q There are some down on the Downtown Eastside?

20 A Yes. There are some boyfriends who would fit your
21 description of a pimp.

22 Q Okay. Let me ask you about something else. For
23 the drug addicted women, the drug dealer is a very
24 important person?

25 A Yes.

1 Q And the women are at substantial risk from time to
2 time, are they not, of violence from the drug
3 dealer?

4 A Yes.

5 Q If they don't get money or for whatever other
6 reason?

7 A Yes.

8 Q And so reluctance to go to the police might well
9 have a lot to do with the response of the drug
10 dealer if there is a complaint? For example -- if
11 I can just finish my question. For example, a
12 drug dealer who beats up a woman because she
13 hasn't paid or if she's gone to a different drug
14 dealer?

15 A That's another source of violence. But when we've
16 been talking so far about violence, we've been
17 talking about it in the context of what happens in
18 prostitution.

19 Q I understand that. But what I am exploring with
20 you is part of why a woman who gets assaulted is
21 not necessarily going to approach the police.

22 A Understood. You're saying that these other
23 factors also play a part in that process.

24 Q Yes.

25 A Yes.

1 Q And, similarly, if we go back to the boyfriend of
2 the kind who is also a pimp, there might be a lot
3 of fear factors there: Haven't made enough money,
4 might be assaulted, and so on?

5 A That's a possibility, but that person also might
6 encourage the woman.

7 Q To do what?

8 A To go to the police. He might. The reason I say
9 that is because we have an interview that's
10 published in my report in 1996 where I'm
11 interviewing a woman and her boyfriend is there,
12 and it's clearly something that they interacted
13 over. I'm not sure whether you would define this
14 particular individual as a pimp in the sense that
15 you've defined it. I would say from my knowledge
16 of that relationship at some points he was and at
17 some points he was not a pimp.

18 Q Well -- but I -- I'm restricting my question to a
19 particular kind of situation that you've said does
20 occur and I'm simply putting to you that a man who
21 has a stake in a woman's earnings as a prostitute
22 is not going to be very -- look very kindly on her
23 taking complaints to the police, especially
24 complaints about how he has treated her?

25 A But that's a complaint about how he has treated

1 her. We're talking about different things here.

2 Q Well --

3 A His complaint -- her complaint about how a client
4 has treated her --

5 Q Sorry, sir. I asked you specifically about
6 complaints about how he has treated her.

7 A Okay. Sorry. I didn't understand that that was
8 what you were asking me.

9 Q Yes, I did. But my point, sir, is that --

10 A It sounds like --

11 Q -- there's a lot of discussion about the
12 relationship between the sex trade workers and the
13 police?

14 A Yes.

15 Q Yes?

16 A Yes.

17 Q And I'm simply putting to you that there are other
18 things that play into that relationship aside from
19 matters to do strictly with the prostitution
20 itself?

21 A Agreed.

22 Q Now, while we're speaking about the way that the
23 police treated the Downtown Eastside sex
24 workers -- and you were very careful in your
25 evidence right from the beginning to say that

1 there were some police officers that were very
2 cognizant of the kinds of situations that sex
3 trade workers are in. They're sympathetic. They
4 treat them as human beings like any others and
5 that others look down on prostitutes. They're not
6 given the time of day, even so far as abusing
7 them?

8 A Yes.

9 Q So we have both kinds?

10 A Yes.

11 Q Now, isn't it true, though, that the -- that sort
12 of attitude is a reflection of the split in
13 society at large? There are people in both camps?

14 A Yes.

15 Q So it's not that the police are unique as a body?

16 A They have a unique responsibility.

17 Q Oh, fair enough. But in terms of their --

18 A In terms of their attitude?

19 Q In terms of the state of knowledge about the
20 circumstances of women?

21 A Agreed.

22 MS. TOBIAS: And I'd like to turn to some of your research on
23 the violence here, and page 31 of your report.

24 THE COMMISSIONER: 31?

25 MS. TOBIAS:

1 Q Yes. 31.

2 A Okay.

3 Q Now, briefly put, the research you set out on page
4 31 and 32 deals with the number of homicides in an
5 earlier period and the number of homicides in the
6 later period, and what you have set out there is
7 that the research earlier appears to reflect a
8 much lower incidence of homicide in relation to
9 sex trade workers than later; is that a fair
10 summary?

11 A Yes. The divide being roughly the sort of 1980s.

12 Q Now, with respect to the earlier period, your
13 research relied to a significant extent on
14 newspaper reports?

15 A It was a -- it does rely on newspaper reports, but
16 also on reports from VPD and the RCMP macro
17 databases that existed at that time, so that we
18 were trying to trace the number of homicides from
19 a variety of different sources. But yes.
20 Newspapers also figured in that.

21 Q But the police records were not complete. That's
22 why you looked elsewhere?

23 A The police records weren't kept in the same way as
24 in later periods, which made it easier to trace
25 those murders. But at various points you can't

1 rely on any single database, so we used what is
2 called a triangulation of research methods where
3 you use as many sources as you can to create a
4 profile. The further you go back, the more
5 difficult that is.

6 Q Fair enough. But you couldn't -- as you've said,
7 you couldn't take the kind of data that you needed
8 from the police database to be able to analyse the
9 rate at which sex trade workers were being
10 murdered?

11 A Not with complete accuracy, but I would find it
12 very surprising that there had been a lot of
13 murders of sex workers that was not recorded
14 either in police files as such, through trials or
15 through newspapers, because it's a highly
16 newsworthy topic.

17 Q It became much more newsworthy after the *Hutt*
18 decision and with all the other activity with the
19 neighborhoods and so forth, did it not?

20 A But one of the things about the period prior to
21 that --

22 Q Can you answer my question, please?

23 A I was going to try to do that. Could you ask it
24 again?

25 Q Yes. Yes, I will. The -- or perhaps I'll

1 rephrase it a little bit. The various data that
2 you were using from the police didn't
3 necessarily -- although obviously they're going to
4 record murders, and so far they have those in
5 their files, the records that you were looking at
6 didn't necessarily tell you that a particular sex
7 trade worker had been killed because she's a sex
8 trade worker; in other words, in a way that's
9 connected to her prostitution?

10 A Oh, okay. That you couldn't determine for sure,
11 no.

12 Q And, similarly, the same is true of the newspapers
13 because they, after all, are taking their
14 information from the police?

15 A They are taking their information from the police.
16 They may be taking their information from the
17 trial. And so to the extent that they report the
18 evidence that occurs in the trial, you can
19 determine that on occasion, but there are so few
20 murders in that period that it's a moot point.

21 Q Where I'm going with this is that your data during
22 the later period was much more accurate -- or at
23 least that's what I took from your description?

24 A I think that's true, but the idea that we may have
25 missed murders in the earlier period seems highly

1 unlikely to me. Are we able to ascertain the
2 exact circumstances in terms of whether the murder
3 was related to a client or, say, a drug dealer or
4 whatever the case might be, then no, except where
5 it was referring to a trial, but there are so few
6 cases that it's almost a moot point.

7 Q I want to return to the question of the
8 communication law and the bawdy house laws and the
9 living off the avails. Those are the three
10 categories that you talked about in your paper --
11 or your report.

12 A Okay.

13 Q You focused on their application and what, in your
14 opinion, are their effects on the Downtown
15 Eastside in your report?

16 A To some extent, yes.

17 Q It's obvious that -- well, let me back up a little
18 bit. The particular conditions on the Downtown
19 Eastside are perhaps not unique, but there are
20 certainly other situations all over the country,
21 other kinds of circumstances of prostitution I
22 mean?

23 A Sorry. I'm not understanding the question.
24 Prostitution is highly varied if that's the answer
25 (sic), yes.

1 Q Well, yes. And the kinds of phenomenon you find
2 in survival sex trade on the Downtown Eastside are
3 not universal?

4 A No.

5 Q But the law is applicable universally throughout
6 the country. That's what the criminal law is
7 supposed to be?

8 A Yes. They're certainly not applied that way.

9 Q So law is by necessity a general application and
10 it is not nor could it be tailored specifically to
11 the Downtown Eastside?

12 A As federal law, no. It could not.

13 Q And we've also heard a good deal of evidence about
14 the effect of the communication law, as I think
15 Dr. Shannon called it, rushing the transaction.
16 And by that I take it that a woman on the street
17 and the potential customer negotiate very, very
18 quickly because what they're doing is illegal?

19 A Correct.

20 Q They're not supposed to be doing it at all?

21 A Right.

22 Q So in a literal sense, if the law was obeyed,
23 prostitutes wouldn't be getting into cars on the
24 Downtown Eastside?

25 A They are in a catch-22 because it's difficult to

1 know how they should conduct the legal act of
2 prostitution. But yes. There is an offence if
3 there is a communication in a public place for the
4 purpose of buying or selling sex.

5 MS. TOBIAS: So it's not strictly true, is it, to say that it's
6 the law that creates the danger?

7 THE COMMISSIONER: The law that creates?

8 MS. TOBIAS:

9 Q The danger. It's breaking the law. And I'm going
10 to ask you about -- that sounds very cold, but
11 what I'm trying to do is dissect the situation
12 because really when you make that statement,
13 you're talking about a lot of things at once, are
14 you not?

15 A Yes, you are.

16 Q So -- so if I can take them apart.

17 A Okay.

18 Q The law says that you cannot communicate in a
19 public place for the purpose of engaging in
20 prostitution?

21 A Correct.

22 Q So what we're talking about is a phenomenon where,
23 for reasons that we'll explore in a moment, women
24 are -- and the customers are doing just that, but
25 they do it much more quickly than they otherwise

1 would to avoid arrest?

2 A Correct.

3 Q Now, you spoke a moment ago about prostitution not
4 being illegal. What you mean by that, sir, is
5 that there isn't a similar prohibition in the
6 Criminal Code against prostitution?

7 A Correct.

8 Q In other words, it's not illegal?

9 A Which means it is legal.

10 Q Well, just bear with me here. There is no
11 prohibition in the Criminal Code against providing
12 sex for money?

13 A Correct.

14 Q And I take it that you interpret that because
15 there isn't that prohibition that there is a right
16 to do that in some -- in some way?

17 A I interpret the many years of debate in courts and
18 in parliaments about that very point and the
19 disagreement even on the Supreme Court of Canada
20 in the 1990 reference case --

21 Q Well, sir, that --

22 A -- to come to the conclusion --

23 Q Take one thing at a time.

24 A To come to the conclusion that prostitution is
25 illegal.

1 THE COMMISSIONER: Just a minute. You have to listen carefully
2 to the question. And I'd ask that you not speak
3 one on top of the other because it becomes
4 extremely difficult for the reporter to take all
5 of that down.

6 MS. TOBIAS:

7 Q I apologize, Mr. Commissioner.

8 A Me too.

9 Q So, sir, to return to my question, the Criminal
10 Code does not prohibit selling sex for money?

11 A Yes.

12 MS. TOBIAS: And so when you say -- well, I'm actually not
13 entirely sure of how you would phrase this. Would
14 you say that because of -- in those circumstances
15 your view is that a prostitute has a right to sell
16 sex?

17 MR. GRATL: Earlier -- earlier Mr. Dickson rose to make a --
18 asking a question about whether or not --

19 THE COMMISSIONER: Your objection is that counsel's asking here
20 for a legal opinion?

21 MR. GRATL: Effectively asking for a legal opinion, but also to
22 my mind steering the witness in the wrong
23 direction.

24 THE COMMISSIONER: Sorry?

25 MR. GRATL: Of course, it's legal to do things that aren't

1 prohibited by the Criminal Code. My friend knows
2 that. She's trying to elicit the opposite
3 suggestion from the witness here, trying to get
4 out of his mouth that there's a right to engage in
5 sex work. And, of course, that sort of notion
6 isn't known to law and so it's objectionable on a
7 number of fronts.

8 THE COMMISSIONER: There's no -- there's nothing wrong with her
9 question save and except for the fact that she's
10 asking for a legal opinion, but this witness by
11 virtual of his expertise has appeared before law
12 makers, so he's entitled -- and he has given
13 considerable evidence so far in chief, from
14 cross-examination of other witnesses where he
15 thinks the law should go, so go ahead and ask.

16 MS. TOBIAS:

17 Q Thank you, Commissioner.

18 And to be clear, sir, what I am trying to do
19 is unpack the statements that you have made into
20 their constituent parts to try and understand the
21 appropriate process. I'm actually not asking you
22 for what the law is at large because Mr.
23 Commissioner will be the judge of that, but I'm
24 asking -- I'm trying to elicit what you mean when
25 you say that there's no prohibition against

1 selling sex. Is that clear?

2 A Okay.

3 Q So let me go back to where I was. So given that
4 there's no prohibition against selling sex for
5 money, you say -- I'm asking you are you saying
6 that therefore there has to be a way for a woman
7 to sell sex?

8 A What I say and the very careful phrasing that I
9 use is in my opinion on the basis of research,
10 mine and others, is that the law materially
11 contributes to violence against street
12 prostitutes, and the kinds of ways that that law
13 materially contributes to that violence is very
14 well summarized by Justice Himel. In the section
15 that I included in the report is her judgment
16 describing precisely those ways. So I think if I
17 were to reference her reasoning on those grounds,
18 I would say I think she got it right.

19 Q Well, perhaps you can -- you can be more specific
20 because I'm not asking what she meant and I don't
21 have it in front of me and I'm not trying to argue
22 with you. I'm trying to understand your reasoning
23 in -- more specifically. So -- so what I'm asking
24 you is are you saying -- are you premising your
25 conclusion that the law endangers prostitutes on

1 the principle that there has to be some way to
2 practise prostitution? That's what I'm asking
3 you.

4 A I don't think that my analysis of the way that the
5 law materially contributes to violence against
6 prostitutes needs to be based on that assumption,
7 no. And so when -- if you look at pages 25 and
8 26 --

9 Q Of your report?

10 A Yes. You will see me referring to Justice Himel's
11 description of those very material forces, which
12 is why I included them there, because I thought
13 they summarized very well the way that the law
14 materially contributes to violence against
15 prostitutes.

16 Q But I don't see her really taking apart these
17 particular strands of thought that I'm trying to
18 explore with you, so --

19 A Well, to say that something -- sorry. To say that
20 something materially contributes is to say that it
21 is one of several factors. You have been
22 identifying some of the other factors that may be
23 involved. They do not negate the material
24 contribution that the law makes.

25 Q Let me put it this way then: I take it that you

1 do agree, though, that if the law was meticulously
2 observed, women would not be rushing transactions
3 or jumping into cars and going away with
4 potentially dangerous men?

5 A If the law was meticulously observed, I suppose
6 that is true of all crime.

7 Q Okay.

8 A Which would make my job redundant and yours.

9 Q So let me turn to the other side of the equation.
10 You talked as well about the situation of poverty
11 and other social conditions that motivate, if I
12 can put it that way, the women to do what they
13 know is not legal?

14 A Yes.

15 Q So all those ideas are wrapped up together in the
16 statement that the law -- the communication law
17 endangers women by forcing them to rush the
18 transaction?

19 A It has a material contribution in that respect.

20 Q Now, you referred in your evidence earlier to the
21 fact that there is some controversy about what it
22 is about -- about violence and prostitution.
23 Specifically you referred to the fact that there
24 is a contingent of people who regard prostitution
25 as inherently violent?

1 A Yes.

2 Q And so that's a different opinion, yes, than
3 yours?

4 A Yes.

5 Q And it's an opinion that is nevertheless shared by
6 some academics, some people in the community, some
7 community groups and, indeed, some prostitute
8 women as well?

9 A Yes.

10 Q It's not just the members of the Conservative
11 party that were on the standing committee?

12 A I didn't do a survey of the people who support
13 that law to find out what they vote.

14 MS. TOBIAS: Thank you. Those are my questions.

15 THE COMMISSIONER: Thank you, Miss Tobias. Any -- any other
16 questions? Thank you. Thank you, Dr. Lowman.

17 THE WITNESS: Thank you, Commissioner.

18 THE COMMISSIONER: Thank you for appearing. Okay.

19 MR. VERTLIEB: I'm in your hands. We still have -- there's a
20 couple of procedural issues that I'd like to deal
21 with, if Dr. Lowman can stand down.

22 THE COMMISSIONER: You're excused, Dr. Lowman.

23 **(WITNESS EXCUSED)**

24 MR. VERTLIEB: I can either outline them briefly, then take the
25 break or take the break and come back.

1 THE COMMISSIONER: How long will it take?

2 MR. VERTLIEB: Let me just tell you where I think we're at
3 right now. First thing, I want to discuss the
4 subject of will says. One of the participants
5 again today requested will says from Mr. Ward
6 respecting his clients and I'm pleased that Mr.
7 Ward has decided now to lead his own clients
8 through the evidence. I think that's really a
9 good way to do it. Mr. Ward had sent an e-mail
10 thinking that I was seeking an order that he
11 provide will says, and I want you to know that as
12 your counsel we are not seeking any orders. I
13 just wanted to say that if Mr. Ward can provide
14 those, it would minimize perhaps any inconvenience
15 to his clients, because my concern is that if the
16 parties that had a direct interest in what they
17 say are caught off guard, that they may need some
18 time to check on their records, which might mean
19 that witness --

20 THE COMMISSIONER: These are will says for who?

21 MR. VERTLIEB: His clients, his family members who are giving
22 evidence.

23 THE COMMISSIONER: Oh.

24 MR. VERTLIEB: So I just wanted to let you know that if Mr.
25 Ward can do that, that might be helpful to

1 minimize inconvenience to his own clients so they
2 wouldn't be stood down while counsel checked
3 records because they haven't heard of events that
4 need to be inquired.

5 THE COMMISSIONER: So what do you want me to do?

6 MR. VERTLIEB: Nothing. I just want you to be clear that we're
7 hoping to resolve that. We've made some progress.

8 The second thing is there is the need,
9 though, for you to make a decision, hear full
10 argument on this subject of disclosure of
11 sensitive information. And counsel for the VPD
12 and DOJ have been interested in this subject for
13 some time.

14 THE COMMISSIONER: All right.

15 MR. VERTLIEB: And it is a live issue and it does require some
16 attention. And so what I had hoped to do is after
17 the break is to have counsel for the VPD and DOJ,
18 in whichever order they prefer, to commence their
19 submissions to you on their concerns. I know that
20 Mr. Ward's not here and he may want to speak to it
21 and others will as well, so I don't think we'll
22 finish today, but we certainly could take
23 advantage of the time and get that discussion
24 started and allow you to start hearing with a view
25 to making --

1 THE COMMISSIONER: All right. We'll take the break. And are
2 you prepared to go ahead in your application, Mr.
3 Hern?

4 MR. HERN: I'm prepared to speak to it. It's actually not a
5 formal application by the VPD, but it's an issue
6 that has to be brought to your attention. I'm
7 probably the best to do that and I'm happy to do
8 that this afternoon.

9 THE COMMISSIONER: Miss Tobias, is this your application?

10 MS. TOBIAS: Yes, Mr. Commissioner. I'm happy to put it
11 forward.

12 THE COMMISSIONER: All right. Does Mr. Ward want to be here
13 for this?

14 MR. CHANTLER: Mr. Commissioner, Neil Chantler on behalf of the
15 families. I believe Mr. Ward would like to speak
16 to this issue.

17 THE COMMISSIONER: Okay. Where is he?

18 MR. CHANTLER: And he's unavailable this afternoon.

19 THE COMMISSIONER: Is he available?

20 MR. CHANTLER: I think he's unavailable this afternoon.

21 THE COMMISSIONER: He's unavailable?

22 MR. CHANTLER: Yes.

23 THE COMMISSIONER: Mr. Baynham?

24 MR. BAYNHAM: Bryan Baynham. My understanding is that Miss
25 Tobias and Mr. Hern would put forward their --

1 their position this afternoon and then we'd have a
 2 chance to respond. I'm not -- I'm not prepared to
 3 respond today because I wasn't -- particularly
 4 because I wasn't aware of the status of the
 5 Williams report going in, and I think that's
 6 crucial and this touches on the issue I raised
 7 this morning, but I think we can profitably spend
 8 the time by hearing from Mr. Hern and Miss Tobias
 9 and hopefully then we will have a chance tomorrow
 10 and over the weekend to formulate a response and
 11 at least limit the number of issues over which we
 12 have our view.

13 MR. VERTLIEB: I think Mr. Baynham says it well and correctly.
 14 The thought was to at least have the VPD and the
 15 DOJ tell you their concerns and start the
 16 discussion, because we do need to deal with them.

17 THE COMMISSIONER: All right. So we'll come back after the
 18 break.

19 MR. VERTLIEB: I'd like to do that, if you don't mind, and then
 20 hear those submissions after the break and then
 21 adjourn on the subject.

22 THE COMMISSIONER: All right.

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

24 **(PROCEEDINGS ADJOURNED AT 3:04 P.M.)**

25 **(PROCEEDINGS RESUMED AT 3:25 P.M.)**

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

2 MS. TOBIAS: Mr. Commissioner, Cheryl Tobias for the Government
3 of Canada. Mr. Giles has kindly reminded me that
4 I didn't complete the request to have the document
5 that I put forward and put to Dr. Lowman marked.
6 I'd ask that it be marked as an exhibit for
7 identification. And as memory serves, we would
8 now be at B?

9 THE REGISTRAR: That's correct. It would be marked as For
10 Identification B.

11 THE COMMISSIONER: Thank you.

12 (EXHIBIT B FOR IDENTIFICATION: Document entitled
13 "Executive Summary Regarding Nancy Ann Clark, also
14 known as Nancy Ann Greek, and Nancy Jasper)

15 MR. HERN: Yes, Mr. Commissioner. So this afternoon I will
16 just introduce this issue of protecting
17 confidential information that is contained within
18 the documents that have been produced to the
19 commission by the police agencies. It's really --
20 this is really an issue, in my submission, for the
21 commission to grapple with because --

22 THE COMMISSIONER: Is there -- is there any doubt that
23 information that is of confidential nature -- when
24 I say "confidential", I mean sensitive nature --
25 that may identify innocent third parties or is a

1 part of a narrative that may not be relevant or
2 probative to what we're doing here, is there any
3 doubt that that should be -- should remain
4 confidential?

5 MR. HERN: I haven't heard it -- and I've been working this
6 idea for a while. I haven't heard any objections
7 to it, but there may be some disagreements about
8 the process by which we address the issue. So in
9 my submission, a non-publication order will need
10 to be issued by yourself. And the terms of that
11 may be up for some issue. But I don't think
12 there's any dispute -- and there just -- there
13 simply can't be -- when you look at the documents
14 that have been produced that there are extremely
15 sensitive third-party confidentiality issues on a
16 variety of fronts. Now that I've said that, I
17 just remember Mr. Gratl at least a week ago took
18 issue with the notion that a suspected sex
19 offender or perhaps other offender, that their
20 name would be subject to the protocol, so there
21 may be an issue there. I don't know.

22 THE COMMISSIONER: Well, historically in the criminal justice
23 system we've always taken the position that if
24 there are third parties who -- who may only be
25 suspects, only be suspects, or where there are

1 privacy interests involved, we keep -- there's
2 usually a prohibition of the ban of the -- a ban
3 on publication of those names.

4 MR. GRATL: No, Mr. Commissioner. What -- what you may have
5 heard me take issue with last week was the request
6 for a ban on publication of the names of convicted
7 sex offenders and, generally speaking, I'm of a
8 mind that the ban on publication sought by the
9 police agencies is a little overbroad. And I have
10 a secondary concern that the police agencies have
11 refused to divulge the names of potential
12 witnesses, potential suspects and other persons
13 even to the other participants' counsel under an
14 undertaking not to reveal to any person those
15 names. So it's not even possible at this point
16 for the non-institutional participants to
17 second-guess or to double-check or verify whether
18 it in fact is in the public interests or whether
19 information is relevant. So we're operating in
20 the dark here. And what we don't want is we don't
21 want a process whereby the institutional
22 participants may at their sole discretion select
23 what -- what information may or may not be put
24 into the public realm. There ought to be some
25 safeguards to ensure that if there is an argument

1 for publicity somebody can make that argument.
2 And right now there is no such person. It's the
3 RCMP and the VPD have exclusive control over that
4 information. And, frankly, this -- the matters
5 here are of a sensitive nature not only for
6 third-party interests, but also for police
7 accountability purposes, and there's a great deal
8 of institutional incentive to limit the flow of
9 information. So -- so some safeguards are
10 appropriate and we simply don't have any at this
11 point.

12 MR. HERN: So what we're hearing here are two separate issues.
13 The -- if you look at my -- the second paragraph
14 of this letter of September 29 where I introduce
15 this issue as something that needed to be dealt
16 with, that second paragraph, as it says:

17 As you know, reductions have already been
18 made to the documents produced by the police
19 agencies to the commission. The bulk of the
20 redactions that have been made to date remove
21 the names of persons of interest in ongoing
22 investigations.

23 So that's an ongoing investigative privilege that
24 the RCMP has advanced because what we're doing in
25 this inquiry is we're carving out the Pickton

1 investigation from a much broader and ongoing
2 investigation into the rest of the missing women
3 that continues to be conducted by Project
4 Evenhanded. And so -- so as not to -- not to
5 cause this commission to compromise those
6 investigations, this investigative privilege was
7 advanced by the RCMP and adhered to by the VPD
8 when producing the documents. So the ones that
9 all participants have have some redactions on
10 them. So that's a different issue. Mr. Gratl
11 takes issue with whether the redactions that have
12 been made as per the RCMP's request are properly
13 advanced under the investigative privilege and
14 whether counsel should be entitled to look at the
15 actual names of those people. So that's -- that
16 is a separate issue. What we're dealing with here
17 is names that are -- identifying information that
18 is not redacted in the documents that are produced
19 that are going to be forwarded in advance to
20 witnesses and will become exhibits within this
21 proceeding, how best to deal with that.

22 And you'll see that I have drafted a
23 non-publication order that should be before you as
24 well, Mr. Commissioner. And this is -- and I
25 entirely appreciate the concern that may be

1 advanced by media, by Mr. Gratl or others that the
2 publication ban not be overbroad. And so this is
3 a -- this is a draft which is -- so that really we
4 can all -- all craft together here a proper
5 publication ban that respects the commission's
6 process but nevertheless protects third parties
7 from being injured by the commission process.

8 And you can see that the proposed ban is
9 pursuant to Section 9 of the *Public Inquiry Act*,
10 which authorizes you to have rules of procedure
11 and -- and so that nonpublication order would come
12 under Section 8 of your rules of -- your practice
13 and procedure directives. And the proposed ban
14 would be that there be no publication or broadcast
15 by any means, including on the Internet or through
16 social media, of any information contained in
17 adoption records or any information that could
18 reveal the identity of any living person
19 identified as an actual or potential victim,
20 witness, suspect or accused with the exception
21 that such persons may be referred to by their
22 initials or unique identifier. This order does
23 not apply, however, to the persons listed in the
24 attached Schedule A to this order as amended from
25 time to time. And what -- the names I've got on

1 the Schedule A are, as you can see --

2 THE COMMISSIONER: I see those names. But the objection here
3 is that the -- Mr. Gratl and his clients and
4 people that he represents are in the dark, and
5 basically what he's saying is that how do we know
6 that your quest for banning the publication of
7 those names is not overly broad and does not take
8 into account those names that ought to be
9 disclosed in the public interests? That's what
10 he's saying.

11 MR. HERN: So different issue than what I'm trying to advance.

12 THE COMMISSIONER: Why don't we do one issue at a time.

13 MR. HERN: Right. And I don't want to do Mr. Gratl's issue at
14 this time. What I'm asking is that the commission
15 consider the question of -- the concept of
16 third-party information that all participants
17 have, because they have access to all the
18 documents that have been produced to this
19 commission by virtue of this commission's power to
20 gather the documents, so that's why I say it's
21 really the commission's issue in the sense that
22 the commission now has custody of these documents
23 and it now -- I say it needs to consider the
24 obligation it has to third parties.

25 THE COMMISSIONER: Yes.

1 MR. HERN: So Mr. Gratl has all this information. Everybody
2 has access to it. The question is does it get --
3 every exhibit so far has been posted onto the web
4 and this proceeding is live webcast, and so the
5 question is -- and the concern is that when it
6 gets tendered as an exhibit with those third party
7 names and private information, it's immediately
8 going -- potentially compromising their privacy by
9 virtue of becoming an exhibit. So that's the
10 issue, is how do we deal with things that are
11 going to become exhibits?

12 THE COMMISSIONER: What are your comments about that?

13 MR. GRATL: There are, in my submission -- in my submission --
14 Jason Gratl, counsel for affected individuals,
15 organizations from Downtown Eastside. In my
16 submission, the categories may well be overly
17 broad, so protecting all third party identifiers
18 seems to me a little too sweeping. And also with
19 respect to my friend Mr. Hern, these two issues
20 are not separate. That is to say the identities
21 of the people listed as exceptions in Schedule A
22 to the order that my friend is seeking cannot be
23 ascertained with any confidence unless all
24 participants' counsel are provided with an
25 indication of who the people are that we might be

1 dealing with. That's all I can say at this point.
2 It's just -- it's extremely difficult to first
3 grant the publication ban and then deal at some
4 later separate time with this question of how we
5 go about ascertaining whether the exceptions are
6 appropriate or not.

7 THE COMMISSIONER: Well, I think that the general rule is
8 there's a presumption of openness. That's the
9 starting point. And -- but we've historically,
10 for good reasons and in the public interest,
11 prohibited the publication of those names where
12 the -- the -- an ongoing investigation is being
13 compromised or where there are innocent third
14 parties who -- who have a right to privacy.
15 That's -- I'm speaking in a very -- that's a very
16 broad, general statement, but that's -- that's
17 really the rule.

18 MR. GRATL: Mr. Commissioner, what my friend's really proposing
19 here is a rule that says any third party to this
20 proceeding and the names of all third parties to
21 this proceeding with the exception of persons
22 listed under Schedule A must be -- A, must be --
23 or, rather, what my friend is proposing is a rule
24 that all persons are prohibited from publishing
25 the names of all third parties to this proceeding

1 with the exception of the specific names listed
2 under Schedule A. That is a much broader and more
3 sweeping publication ban than I've ever seen in my
4 short years of practice. And in my respectful
5 submission, you should not accede to that, the
6 scope of such a request, without first having a
7 look at Schedule B and seeing which names are on
8 Schedule B and certainly not without having a
9 process in place to allow for the -- the
10 ascertainment of the names on Schedule B in a way
11 that meets the public interest in publicity and
12 openness. And certainly I would also remark that
13 in an application of this type, which would
14 effectively be a complete gag order on the names
15 of all third parties to this proceeding, certainly
16 *Regina v Mentuck* is authority for the proposition
17 that the media ought to be given appropriate
18 notice of an application at this time.

19 MS. TOBIAS: Mr. Commissioner, I'm Cheryl Tobias for the
20 Government of Canada. I think that Mr. Gratl has
21 asked -- has to answer questions to the
22 commissioner, which is: Is there any opposition
23 here? I think that, as Mr. Vertlieb indicated
24 earlier, the objective here is for Mr. Hern and me
25 to set out to you the basis for our position in

1 this matter and to give my learned friends an
2 opportunity to respond at some initial time, but
3 as it were to lay the foundation, so with your
4 leave that's what I would propose to do.

5 I think that it will save time in the long
6 run if we take this a step at a time and just -- I
7 would like to in effect fill you in on how we got
8 to where we are today. The beginning point is, of
9 course, that the principle on which disclosure was
10 made is that the parties or the police agencies
11 disclosed material to the commission in a form in
12 which it could be disclosed to the participants'
13 counsel under the undertakings and so forth that
14 they have made. And I will hand up my friend's --
15 somewhere in here I should have a copy of the
16 initial disclosure protocol.

17 Mr. Giles, would you produce this, please?

18 So the starting point is the protocol, and
19 you heard that there is some concern about that.
20 And so, in other words, when it came to disclosing
21 matters to the commission and through them to the
22 other parties, if you look on page 2 -- this is
23 now on the Missing Women Inquiry website -- there
24 is a list of the kind of information that has been
25 redacted and the reason for it. And I think a

1 quick look at the list will make it very clear
2 that these are very important and necessary
3 redactions: The publication ban that was ordered,
4 matters of privilege, matters of police
5 investigative techniques, which, of course, Mr.
6 Commissioner, are protected by the common law,
7 matters that would divulge details that would be
8 prejudicial to ongoing investigations, and so
9 forth. So included in that, if you look at page
10 3, are irrelevant personal identifiers and so
11 forth.

12 Now, what was done and what is important to
13 note is that for sex trade workers, for persons of
14 interest, for victims, they were given numbers so
15 that -- not victims, but sex trade workers and
16 persons of interest, they were given unique
17 numbers so that you -- by going through the
18 materials, you can tell it's the same person
19 that's appearing the next time. It's just that
20 you don't know their actual name. And our
21 position, Mr. Commissioner, on that was that for
22 the purposes of this inquiry, it was not important
23 to know the person's name. It might be important
24 to know when a certain person is being referred to
25 more than once.

1 And the principles on which we came by these
2 particular categories, apart from questions of
3 privilege, that apply to the parties, when it came
4 to identifying the person's interest and the sex
5 trade workers, of course, we don't act for those
6 persons, Mr. Commissioner, but the law, as you
7 have observed, recognizes the importance even in
8 criminal proceedings of not disclosing information
9 that is important to the privacy of third parties
10 where it's not relevant.

11 And I'm sure that you're familiar with the --
12 with the jurisprudence on that, but I think it may
13 be of assistance to recall that the Supreme Court
14 of Canada in the *O'Connor* case, for example, dealt
15 with situations where third-party interests were
16 necessary to be protected and where the Court very
17 definitely set out the duty of the Courts and the
18 prosecutor to -- to preserve the dignity and the
19 privacy of third parties who were caught up in the
20 criminal litigation process.

21 And in the decision of the Supreme Court of
22 Canada in *Mills*, the Court observed in particular
23 that the details that -- that -- let me back up a
24 little bit. The Court said that:

25 In fostering the underlying Charter values of

1 dignity, integrity and autonomy, it is
2 fitting that Section 8 of the Charter should
3 seek to protect the biographical core of
4 personal information.

5 And this would include information which tends to
6 reveal intimate details of the lifestyle and
7 personal choice of the individual. And in the
8 same case the Court said:

9 In assessing applications for production --
10 Which is kind of what we're dealing with here.

11 -- the Court must determine what weight
12 should be given to the interests protected by
13 privacy and the right to a fair trial in the
14 particular circumstances of each case.

15 Generally speaking, the rights of third
16 parties will be given greater weight where
17 the confidential information sought to be
18 disclosed is highly relevant. Persons'
19 privacy interests will be very high where the
20 confidential information concerns their
21 personal identity.

22 And that's from paragraph 94 of the *Mills* case.

23 And going back to the *O'Connor* case, at page
24 194 -- and this is a phrase that I'm sure you'll
25 recognize because it's used often -- the Court

1 said:

2 What the law demands is not perfect justice
3 but rather fundamentally fair justice which
4 balances all relevant interests, the right to
5 a fair trial with privacy interests of third
6 parties and the need for a workable and
7 efficient justice system.

8 And those, Mr. Commissioner, are the principles
9 that we have guided ourselves by in making these
10 decisions to the best of our ability to do so and
11 now, of course, those are the principles that you
12 must apply in this context.

13 I would reiterate that the principles that I
14 refer to are the ones that are applicable in the
15 course of a criminal trial when the accused's
16 liberty is at stake. Of course, this is a
17 different matter. It's very important, but the
18 principles I submit remain the same.

19 Now, as I've said, the -- I'm focusing on the
20 particular aspects that Mr. Gratl has dealt with,
21 which is the identity of the persons of interest
22 and the sex trade workers. Those, in my
23 submission, are -- those names are of no relevance
24 or marginal relevance to this inquiry. Our
25 position has been that the initial redaction was

1 as I've set out -- or as is set out in the
2 bulletin I've handed up. Our position has been
3 that if any party has a question about or thinks
4 that a particular document is redacted too much,
5 we're quite prepared to go back and look at it
6 again and see if it can be redone, but those are
7 very basic concerns.

8 Now, with respect to the ban on publication
9 that Mr. Hern has referred to, we are now going a
10 further step because, of course, the redactions
11 were done initially on the basis that they would
12 be -- the documents would only be seen by a select
13 group of individuals and they would not become
14 public. Now we are talking about taking certain
15 of those documents and putting them into the
16 public arena. And so these questions of privacy
17 come to the fore with great -- while they're very
18 important -- one of the documents I've handed up,
19 it should be a letter dated August the 22nd from
20 me to Mr. Vertlieb. Do you have that,
21 Commissioner?

22 THE COMMISSIONER: Yes.

23 MS. TOBIAS: And this is in a way dealing with a different
24 topic, but if you look on page 2 and 3, there's a
25 series of different kinds of --

1 THE COMMISSIONER: Wait a minute. This is a letter dated?

2 MS. TOBIAS: August 22nd, 2011.

3 THE COMMISSIONER: No. I have October. No. I don't have
4 that. I have your letter of October the 6th.
5 And -- oh, no. I do. I have it right here.

6 MS. TOBIAS: You have it? Now, this -- if you look on page 2,
7 there are some categories there that illustrate
8 why we and the Vancouver Police Department are
9 concerned that there be a publication ban of the
10 kind that Mr. Hern has mentioned to you. These
11 are the kinds of details that we propose really
12 need to be removed to protect the privacy
13 interests of the persons involved; adoption
14 records, for example. And as set out, of course,
15 some individuals identified are unaware that they
16 were adopted and others would not want it revealed
17 in public. Bad date lists and john lists.
18 Numerous individuals that were identified at some
19 point during the investigation but not charged
20 with any particular offence may be identified.
21 The subjects of anonymous tips, victims' names,
22 associated persons' interests, their addresses,
23 their -- different forms of their identification,
24 photographs, for example, photographs of a
25 sensitive nature, including crime scene

1 photographs, some of which would have to be
2 further redacted in my respectful submission and,
3 yes, possible vetting oversights. The matters are
4 dealt with carefully the first time, but with such
5 a volume of documents, Mr. Commissioner -- we're
6 talking about something over 80,000 pages of
7 documents -- we need to make sure that the very
8 small subset of documents that end up being marked
9 and available to the public -- we need to check to
10 make sure that there have not been any errors.
11 And then we have the personal information relevant
12 to the investigation.

13 And I might mention as well that ongoing
14 investigations are ongoing and what is sensitive
15 may change with time, and it's particularly
16 important that any vetting oversights in that
17 direction have been corrected. And so I think
18 that this suffices to identify for you the
19 compelling nature of the personal information that
20 needs to be dealt with by way of a publication
21 ban.

22 Now, my friend Mr. Gratl has indicated that
23 part of the objection is, well, why should the
24 parties rely on counsel for -- the RCMP counsel
25 for the VPD? Well, with respect, Mr.

1 Commissioner, the answer is that even in criminal
2 proceedings ordinarily the Crown and the police do
3 take care of those matters and if eventually
4 there's a matter that cannot be resolved, the
5 judge looks at the material, but it is not simply
6 distributed to counsel or other parties and, in my
7 submission, the procedure in this inquiry should
8 be no less rigorous.

9 THE COMMISSIONER: All right. Thank you.

10 MR. GRATL: Mr. Commissioner, I just rise to indicate that, of
11 course, in my role I'm very sensitive to the need
12 to protect third-party information of sex workers.
13 That's very important. And I agree with that
14 statement of the Government of Canada as far as it
15 goes.

16 THE COMMISSIONER: So what are you opposed to then?

17 MR. GRATL: Well, I mean my friend from the Department of
18 Justice just simply has misstated what the
19 standards for disclosure are in criminal cases.
20 In criminal cases, of course, the defendant
21 receives the names of all witnesses and the names
22 of all other potential accused or suspects in the
23 ordinary course. That's the *Regina v Stinchcombe*.
24 It's a well known rule and my friend just has
25 misstated the law and, indeed, misstating the

1 practice. So I think that's a starting point.
2 But quite beyond that, the sweeping publication
3 ban sought over the names of all third parties
4 aside from participants, it's just unheard of.
5 And having a small schedule of other individuals,
6 that's a process that's just unknown to the --
7 that's unknown to inquiries, public inquiries. It
8 would take away the right and the legitimacy of
9 the public aspect of this inquiry. It would turn
10 it -- in effect into a private inquiry, an inquiry
11 simply of police matters that the police have
12 deemed to be of sufficient moment to have them
13 publicized, and it's simply not appropriate. But
14 I just pause, though, to say, Mr. Commissioner, I
15 first heard of the form of publication ban my
16 friends were seeking when they rose to tell you
17 about the form of that publication ban. Prior to
18 that, I hadn't heard any inkling of their plan
19 and, indeed, I still hadn't received a copy of the
20 form of publication ban that they proposed. I
21 just caught a glimpse of a copy that my friend Mr.
22 Baynham has.

23 And with all due respect, I would like to
24 have an opportunity to bring a more fulsome
25 account of our -- or make more fulsome

1 submissions.

2 THE COMMISSIONER: I'm not going to hear partial arguments.

3 Mr. Hern, anything more?

4 MR. HERN: Just this: That everyone, all the participants,
5 have had the -- this proposed protocol on page 2
6 of my letter of September 29, and they've had that
7 since then. I've circulated it to everybody. I
8 think it would be prudent for full responses.
9 This was intended just to be an introduction to
10 the issue. It's an issue that commission counsel
11 certainly needs to weigh on because, as I say,
12 it's really an issue for the commission about what
13 documents it will publish. And the gravity of it
14 at the end of the day is that, for example,
15 husbands or fathers may find themselves on the
16 suspect list that have been produced by the police
17 in the investigation. Mothers and daughters may
18 find themselves having reports to Crown counsel
19 within the police material placed before witnesses
20 here as exhibits and introduced into evidence.
21 And so some of this information could not be more
22 sensitive.

23 And with respect to who's going to do the
24 redacting, the reason that it needs -- this issue
25 needs to be raised is because the redacting is

1 occurring not before the participants get it, but
2 when the document gets placed to a witness and
3 then when it goes -- when it gets stamped by Mr.
4 Giles into evidence here. It's somewhere in that
5 period that the redacting has to occur.

6 THE COMMISSIONER: It's done on a case-by-case,
7 document-by-document basis.

8 MR. HERN: Certainly with respect to if there's identifying
9 information in that document, then it would need
10 to be taken out before it gets posted on the web.
11 If there isn't, then it doesn't need to be
12 redacted.

13 If I can just say one more thing, Mr.
14 Commissioner, is that commission counsel has
15 indicated that the commission doesn't have the
16 resources to do that itself and so they -- they
17 have suggested that the police agencies should be
18 doing this redacting during the course of this
19 inquiry. And setting up a protocol to do that and
20 get people to actually be ready to do it, given
21 the volume of documents here, it is important to
22 us to have this matter ascertained.

23 THE COMMISSIONER: Thank you. What's -- Mr. Vertlieb, what's
24 commission counsel's position?

25 MR. VERTLIEB: Well, you can see why I wanted this discussion

1 to begin. It was clear to me when Mr. Hern and
 2 Miss Tobias raised it at a counsel meeting that it
 3 was not going to be something that we could come
 4 to agreement on because there are live concerns.
 5 I just wanted you to start -- to start hearing
 6 about this in a way whereby my learned friends
 7 could present their concerns to you. It's obvious
 8 as well that other people will need to make
 9 submissions. I think we've accomplished as much
 10 as we can do today. I think we need to hear the
 11 submissions of everyone and then reflect on it and
 12 see how to come to some resolution.

13 THE COMMISSIONER: Yes. That's the first I've seen any of
 14 these documents, obviously. Mr. Baynham, is there
 15 anything you want to say before I --

16 MR. BAYNHAM: No, other than I do need some time to reflect on
 17 this.

18 THE COMMISSIONER: I appreciate that.

19 MR. BAYNHAM: What -- I just raise one concern. There's
 20 mention of ongoing investigation, and that -- with
 21 no definition of what an ongoing investigation is,
 22 and my concern is that an ongoing investigation is
 23 any investigation that may not be solved and we
 24 would be precluded from embarking on an inquiry
 25 about failed investigations just because the

1 police in their wisdom thought they didn't have to
2 disclose a botched investigation, and I'm
3 concerned that that would leave a very wide ambit
4 for preventing the public knowing and seeing the
5 things that clearly went wrong.

6 THE COMMISSIONER: All right. Well, obviously we're going to
7 have to set some time aside to fully argue this
8 point -- or these points. So what do you suggest
9 we do?

10 MR. VERTLIEB: Well, my concern, Mr. Commissioner, is it's
11 really important that the families, who are
12 scheduled to start on Monday morning, have a
13 chance to deal with their evidence. I'm sure it's
14 very stressful for them.

15 THE COMMISSIONER: Yes. I agree.

16 MR. VERTLIEB: I know you would share that view. I think we
17 all do. So I think we've accomplished what we
18 needed to do on the discussion. I think we should
19 do everything we can to accommodate the family
20 evidence and then bring this back when it's
21 appropriate.

22 THE COMMISSIONER: All right. So what are we doing on Monday
23 morning?

24 MR. VERTLIEB: Monday morning Mr. Ward and Mr. Chantler will
25 start with their clients. I haven't been given a

1 list of the order that they're going to be called
 2 in by them, so maybe they could give that out over
 3 the weekend just so everyone will have some sense
 4 of the order of the witnesses. But we'll start at
 5 10:00 a.m. with the family members. I've been
 6 told, and more than once, that Mr. Ward feels very
 7 strongly that the family members should all give
 8 evidence at the same time, and so I think it will
 9 be one family member after another. And I
 10 understand -- the last I knew, the list was
 11 approximately 10 family representatives would
 12 speak to you. That may be more now. Because I
 13 don't have a sense of what they're going to say, I
 14 can't tell you how many days it will take for that
 15 evidence to unfold.

16 THE COMMISSIONER: Okay. Are you able to tell me that, Mr.
 17 Chantler?

18 MR. CHANTLER: Mr. Commissioner, Neil Chantler for the
 19 families. I concur with what Mr. Vertlieb said.
 20 His number is correct. There's currently 10
 21 family members scheduled to speak. I think
 22 probably the first three days of the week could be
 23 dedicated to the family's evidence and that might
 24 be sufficient.

25 THE COMMISSIONER: Okay. Thank you. Anything else? We'll

1 adjourn.

2 THE REGISTRAR: The hearing is now adjourned until 10:00 a.m.
3 on Monday morning.

4 **(PROCEEDINGS ADJOURNED AT 4:02 P.M.)**

5
6 I hereby certify the foregoing to be
7 a true and accurate transcript of the
8 proceedings transcribed herein to the
9 best of my skill and ability.

10 Kathie Tanaka, Official Reporter
11 UNITED REPORTING SERVICE LTD.

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