

December 1, 2011

Vancouver, BC

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

**DOUGLAS LePARD:** Resumed

THE REGISTRAR: Order. The hearing is now resumed.

MR. ROBERTS: Mr. Commissioner, Darrell Roberts, counsel for First Nations interest. I want to address this morning the question of the admissibility even as an aid document of what I perhaps spoke --

THE REGISTRAR: I have a few preliminary comments to make before I hear you.

MR. ROBERTS: I beg your pardon.

THE COMMISSIONER: Okay. Before you resume this morning, I -- I want to make some comments. I'm very troubled by some of the allegations that were made yesterday, specifically the allegation that this witness, Deputy Police Chief LePard, was lying. I am troubled by those allegations and I'm taking the unusual step at this stage to say that I see no evidence of that, none. I see at most a strong difference of opinion between Mr. Roberts and the deputy chief. He has been consistent in what he has said. I am not prejudging anything. I am not prejudging the case. I am not making any findings of fact. But when allegations of that sort are

made, inflammatory in nature, they can reverberate and have consequences. And it must be kept in mind that we must treat witnesses with respect. We have here a deputy police chief, some 30 years experience, who has been on the witness box for an inordinate amount of time, some 10 days, and -- and I can appreciate the rigors that are involved and the challenges that he faces, as indeed all witnesses do when they testify in courtrooms. And I am just troubled by those allegations and, as I said a moment ago, there is no evidence here so far that he has lied, and I want to make that clear. Again, I preface my remarks by saying that I -- I'm not prejudging the case. At the end of the day I'll have to decide issues of credibility and I'll have to make some findings of fact, but I would ask the lawyers here to be careful in cross-examination. I recognize that passions are bound to be high because of the nature of what we're examining here, the serious allegations and the serious sum of the matter that's before this inquiry, but, as I said a moment ago, the most I see here is a difference of opinion between counsel and this witness, who, as I said again -- I said a moment ago, and I'll say it again, has

1           been consistent throughout in his position, in his  
2           honestly held opinion. And it may be that there  
3           are differences of opinion as to what ought to  
4           have been done at that particular time and, again,  
5           that will be for me to decide who is correct and  
6           who is not and what course of action ought to have  
7           taken place when this -- when these incidents took  
8           place. But I -- I would again ask the lawyers to  
9           be careful in the language that's used. So I  
10          don't think I have anything more to say on that.  
11          Now, Mr. Roberts, you had something else to say  
12          about Miss Tobias.

13       MR. ROBERTS: I do indeed, but I feel I am obliged to respond  
14                   because I'm the one who put the questions in  
15                   cross-examination that you, Mr. Commissioner, have  
16                   identified this morning in these preliminary  
17                   remarks. I have been before the courts of this  
18                   country since 1964, all courts, including those in  
19                   Alberta and the Supreme Court of Canada, and what  
20                   I did yesterday was done with deliberation on one  
21                   issue, which in my submission this commission  
22                   cannot ignore, is -- as the elephant in the room.  
23                   Perhaps it was not the right time to make that  
24                   cross-examination, but I was concerned that we  
25                   might not see Mr. LePard again in the witness

stand. The issue in the room -- in my respectful view, I call it the elephant in the room -- is the question of the legal jurisdiction of the Vancouver Police Department to investigate the crime of kidnapping by fraud. That was not raised by commission counsel. It was not raised during the cross-examination by Mr. Cam Ward. It hasn't been raised by anybody. I raised it and the issues surrounding that I will argue at the end of the day gave justification for what I did yesterday.

THE COMMISSIONER: Well, then you're free to argue that. My point here this morning is that from what I've heard this morning, there is absolutely -- thus far there is absolutely no evidence that -- that this witness has lied. And you may convince me at the end of the day that he did, but that's something that you're free to do as counsel. But at this stage what I see is two very strongly held opinions and I'm going to leave it at that. So I don't want to hear anything more on that, but let's get on with the business of the day.

MR. ROBERTS: All right. I'll leave it at that too, but I'm sure at some stage we'll come back to it.

THE COMMISSIONER: All right.

1 MR. ROBERTS: The matter that I want to address this morning is  
 2 the compilation document which was handed to -- I  
 3 believe to yourself, Mr. Commissioner, and to the  
 4 witness yesterday by counsel, Cheryl Tobias. I  
 5 initially agreed to its use. Having looked at it  
 6 over the course of the evening, it's my respectful  
 7 view and submission that it is -- raises confusion  
 8 of issues and for that reason it should not be  
 9 used. What I have in mind is if you look just at  
 10 the first page of the document under the heading  
 11 Menard, the source for some of the material is  
 12 February 11, 2002 statement, February 12th, 2002  
 13 statement underneath that. And then over on the  
 14 column for Hiscox, the source of the fact item  
 15 that will be put forward for purposes of this  
 16 assisting document is Shenher's interview with  
 17 LePard on November 12th, 2002.

18 In my submission, original documents such as  
 19 Constable Shenher's notes or Corporal Connor's  
 20 notes or log may well be admissible under the  
 21 business records exception to the hearsay rule,  
 22 but interviews like this are not admissible under  
 23 any exception to the hearsay rule that I can think  
 24 of and if they're put forward as a reliant,  
 25 reliable source raise a confusion of issues for

1           this commission of inquiry and we have enough  
2           issues that we don't need to have that on the  
3           table.

4           I want to hand up a little excerpt from the  
5           *Law of Evidence* by Sopinka and Lederman. It comes  
6           from the part of this second edition that begins  
7           "On the subject of judicial discretion and  
8           criminal cases," over on page 32 under the subject  
9           of probative value and prejudice in paragraph  
10          2.57:

11           A trial judge has a discretion to weigh  
12           considerations of probative value and  
13           prejudice and to exclude evidence, not only  
14           if its probative weight is "trifling" but  
15           whenever its prejudicial effect --

16   THE COMMISSIONER: Yes. I'm well aware of the law.

17   MR. ROBERTS: There's one last passage at the top of page 33  
18           which is particularly appropriate in my  
19           submission:

20           Where it involves an inordinate amount of  
21           time --

22          The last three lines at the top of the page:

23           Where it involves an inordinate amount of  
24           time which is not commensurate with its  
25           value, or, if it is misleading in the sense

1                   that its effect on the trier of fact,  
2                   particularly a jury, is out of proportion to  
3                   its reliability.

4                   This is not an original document. It appears to  
5                   be a computer-generated document, Mr.

6                   Commissioner. I take one example which has  
7                   troubled me, and that is on page -- page 10 under  
8                   Hiscox and down to the blue entry:

9                   Shenher concluded Hiscox was not reliable.  
10                  Where does that come from? The interview by Mr.  
11                  LePard. We have that interview. The only  
12                  reference in any of the material that I have seen  
13                  about the unreliability of Hiscox is his inability  
14                  to attend meetings regularly scheduled. That may  
15                  well be taken by others as an indication that his  
16                  evidence or his information was unreliable. I see  
17                  nothing that indicates that.

18       THE COMMISSIONER: All right.

19       MR. ROBERTS: So in my submission, this document doesn't meet  
20                  the test of relevance in the sense that its  
21                  prejudicial value relying on these interviews  
22                  overbears that relevance. In my submission, the  
23                  value of these interviews is for counsel to have  
24                  the statements available for cross-examination of  
25                  the witness who's been brought forward.

1 THE COMMISSIONER: All right. Thank you. I'm going to allow  
 2 the document to be entered into an exhibit. The  
 3 arguments that have been raised and the objections  
 4 that have been taken may well go to the weight of  
 5 the document, but, in any event, counsel for the  
 6 Department of Justice has put forth the document  
 7 as a document that will assist her in her position  
 8 and I'm going to allow it. It may well be at the  
 9 end of the day after cross-examination that it may  
 10 not be worthy of belief. It may lack the amount  
 11 of credibility that counsel says now that it lacks  
 12 and I'll deal with that at the end of the day, but  
 13 I have to take the position here that serious  
 14 allegations here have been made against the police  
 15 forces. This is an inquiry that needs to hear  
 16 both sides or more than both sides or the number  
 17 of different positions there are here and I'm not  
 18 going to prevent counsel from being assisted in  
 19 adopting your position or defence or their  
 20 respective relative positions in this case. I'm  
 21 going to allow it to go in. Yes. Go ahead.

22 MS. TOBIAS: Thank you, Mr. Commissioner. I understand that  
 23 Mr. Chandler wishes to address you in a  
 24 preliminary way on a couple of unrelated points  
 25 and if you're prepared to hear that now, that's



1 fine.

2 THE COMMISSIONER: Yes.

3 MR. CHANTLER: Mr. Commissioner, Neil Chantler on behalf of the  
4 families. I only wish to speak briefly to one  
5 matter this morning, and that is our concerns with  
6 respect to two sets of documents which have not  
7 yet been marked for identification. Specifically  
8 I'm referring to the appendices to the Williams  
9 report, and that's Exhibit 2 to these proceedings,  
10 and also the seven binders of material that were  
11 prepared by commission counsel for the examination  
12 in chief of Deputy Chief LePard.

13 THE COMMISSIONER: Yes.

14 MR. CHANTLER: Both those sets of materials have been referred  
15 to in the course of these proceedings. I am aware  
16 of and respect the protocol that's in place for  
17 the protection of sensitive information in those  
18 documents and I think it's in accordance with that  
19 protocol that those sets of documents be marked  
20 for identification at this time so that our  
21 friends at the Vancouver Police Department and  
22 RCMP have a chance to review them, but with a view  
23 to having them marked as exhibits hopefully by the  
24 new year. Perhaps we can have some directions  
25 from you about --

1 THE COMMISSIONER: Is there anything --

2 MR. VERTLIEB: I don't understand the comment. Williams and  
3 LePard's documents have been -- are being vetted  
4 and they're very close to being presented for  
5 marking with redactions that the police agencies  
6 have said that they're needed, so I'm not quite  
7 sure what Mr. Chandler's referring to.

8 THE COMMISSIONER: So you're telling me that they will be  
9 marked for identification and then as exhibits  
10 proper if they meet those tests, but so far  
11 they've -- the redactions haven't taken place?

12 MR. VERTLIEB: They've been working on it and we've been making  
13 copies at the commission office so that we can  
14 have them properly marked. I don't know whether  
15 Mr. Chantler's talking about something else that  
16 I'm missing.

17 MR. CHANTLER: Well, our confusion comes from the fact that our  
18 understanding of the protocol that's in place is  
19 that documents are marked for identification first  
20 while they still contain sensitive information.  
21 They are then reviewed until such time as they've  
22 been properly vetted and redacted and then be  
23 marked as exhibits. We don't understand why those  
24 two sets of documents are not currently on the  
25 list of letters A to J marked for identification.

1                   It seems that there's a risk that those documents  
2                   could fall through the cracks. There seems to be  
3                   no reason --

4   THE COMMISSIONER: What cracks?

5   MR. CHANTLER: Well, there just seems to be no reason at all  
6                   why they shouldn't be marked for identification.  
7                   The Williams appendices were referred to on the  
8                   first day of the hearing.

9   THE COMMISSIONER: Well, I agree with your point that the  
10                  documents shouldn't -- should not be in Never  
11                  Never Land out there. There should be some way of  
12                  identifying them. But if counsel can assure me  
13                  that the redaction process has taken place and  
14                  that the usual procedure and protocol will be  
15                  followed after that, I'm happy with that.

16   MS. TOBIAS: Mr. Commissioner, Cheryl Tobias for the Government  
17                  of Canada. I'm going to try and clarify rather  
18                  than muddy the waters further on this issue.  
19                  First of all, I myself had thought that the  
20                  Williams appendices were in as an exhibit for  
21                  identification because I certainly intend to refer  
22                  to some of them, but I think perhaps there is some  
23                  confusion between the idea of what is used by you  
24                  and by -- in these proceedings as an exhibit and  
25                  what of that exhibit is made available in the

1 public venue. What is now being prepared is that  
 2 exhibit to be put in a form in which the public  
 3 can access it, not the question of what is the  
 4 actual exhibit that you will look at, that counsel  
 5 will deal with, that the witnesses will deal with.  
 6 But what we have been discussing -- and I have  
 7 been involved in discussions with my learned  
 8 friends in the commission counsel office -- is  
 9 more or less a housekeeping system of how we deal  
 10 with those going forward. So I don't have any --  
 11 any issue at all with the suggestion that those  
 12 items in the form in which counsel currently have  
 13 them from concordance should be available as  
 14 exhibits.

15 MR. CHANTLER: And that's all I'm asking for.

16 THE COMMISSIONER: All right. You know, I'd appreciate it if  
 17 these housekeeping matters can take place outside  
 18 of normal sitting hours so that we don't take up a  
 19 lot of time talking about these things in a  
 20 courtroom. Thank you.

21 MR. CHANTLER: Thank you, commissioner.

22 MS. TOBIAS: Mr. Commissioner, I reviewed overnight what I have  
 23 yet to accomplish today, and I don't want to raise  
 24 unreasonable expectations. At this point I expect  
 25 to go into at least some part of the afternoon. I

1           said around a day. And I am cognizant of the fact  
2           that I took half a day. And so certainly if Miss  
3           Livingston when she comes back wants a few  
4           minutes, I'm happy to stand down because I know  
5           she's had some scheduling difficulties, but I'll  
6           proceed now with your leave.

7   THE COMMISSIONER: Thank you.

8                           **DOUGLAS LePARD:** Resumed

9   **CROSS-EXAMINATION BY MS. TOBIAS (Cont'd):**

10           Q   Deputy LePard, I want to just take you back, if I  
11                could, to the question of resourcing homicide  
12                files. You'll recall that you gave evidence  
13                yesterday on some of the factors that the VPD  
14                certainly taken into account in their  
15                prioritization of resources. Do you recall giving  
16                that evidence?

17           A   Yes.

18           Q   And some of what you said earlier in your evidence  
19                related to the effect of the belief of the senior  
20                management of the Vancouver Police Department that  
21                the women who were disappearing were not  
22                necessarily disappearing because of foul play on  
23                their resource decisions. Do I understand that  
24                correctly?

25           A   Yes.

1 Q And so do I understand correctly that what, in  
2 your view, happened was that because they did not  
3 regard the missing women file as a homicide case  
4 per se that they prioritized their resources to  
5 homicide cases and other cases that they thought,  
6 based on what they understood, were more serious?

7 A Yes. That's fair.

8 Q And if I can give a concrete example of that. I  
9 believe you've referred to it, but Detectives  
10 Lepine and Chernoff, who were participating in  
11 the -- in that review team and who had some  
12 activity in Coquitlam in that investigation, left  
13 to work on a double homicide if I recall. Is that  
14 your understanding?

15 A Yes. At some point they were pulled away to work  
16 on a homicide.

17 Q And so is that a reflection of the prioritization  
18 that I just asked you about?

19 A In what respect? In terms of comparing the work  
20 on the review team or their work in Coquitlam?

21 Q Either. That the work -- it was considered to be  
22 more important for them to work on the double  
23 homicide?

24 A Well, I agree that it was considered more  
25 important for them to work on the double homicide.

1           That once they had returned to the review team, I  
2           would not be agreeing that it was felt it was more  
3           important for them to do that than what they were  
4           doing when they were actively handling a call  
5           about the informant when they were working with  
6           the Coquitlam RCMP, but that working with the  
7           informant had already ended, is my recollection,  
8           before they were called away to work on the double  
9           homicide.

10          Q   Well, sir, it may not be necessary for you to look  
11               up this document, but it's my understanding that  
12               they were redeployed in the late summer of 1999.  
13               Is that about right?

14          A   That sounds about right.

15          Q   And, in fact, their last contact with the -- with  
16               Mr. Caldwell was in August of 1999?

17          A   Yes.

18          Q   So that was very soon. It's not as though they --  
19               Caldwell had been left aside for some time and  
20               then they left. Those were almost coincident?

21          A   No. My recollection is -- and I stand to be  
22               corrected -- is that the meetings about Caldwell's  
23               information had occurred. The members from  
24               Unsolved Homicide and E Division Serious Crime had  
25               come in. There was the dispute about the

1                   credibility of Caldwell and whether he could be  
2                   used as a witness or an agent; that Lepine and  
3                   Chernoff as a result of that, there wasn't  
4                   anything more for them to do, they felt, had  
5                   returned to the VPD and then shortly after that,  
6                   they were redeployed to the homicide, but they  
7                   were redeployed after having returned to the VPD  
8                   because it seemed that after the dispute about  
9                   Caldwell's credibility that they didn't have  
10                  anything more to do; that there had been a  
11                  decision made that advancing the investigation  
12                  with Caldwell, the work that had been done to use  
13                  him as an agent had been ended.

14       MS. TOBIAS:   Would you please -- Mr. Giles, I'm not sure if the  
15                       witness has it before him.   It's the second volume  
16                       of the Evans report, which --

17       THE REGISTRAR:   Yes, it is.

18       MS. TOBIAS:

19               Q     -- contains Appendix C.   It's the larger of the  
20                     two volumes.   The larger of the two volumes, sir.  
21                     Would you turn, please, to Appendix C, page 90?

22               A     Sorry.   Appendix?

23               Q     C, page 90.

24               A     C.

25       THE COMMISSIONER:   Did you say the Evans report?



1 MS. TOBIAS:

2 Q Yes, I did, Mr. Commissioner. I have it in two  
3 volumes, but you may have it in one. So page 90  
4 of that appendix, sir. Would you please look at  
5 the row in that table about halfway down dated  
6 25th of August, '99?

7 A I'm sorry. On what page are you?

8 Q Appendix C, page 90.

9 A 90.

10 Q And on the left-hand side of the page line 726?

11 A Yes.

12 Q You'll see August 25th, 1999?

13 A Yes.

14 Q

15 Source B (Caldwell) failed to show for the  
16 pre-arranged meeting. He did not return any  
17 pages or messages.

18 And you'll see the reference is to Detective  
19 Chernoff's log?

20 A Yes.

21 Q So I realize this is Deputy Evans reporting what  
22 she read from Chernoff's log book. For the sake  
23 of convenience, I'm putting that date to you and  
24 asking you is that not very close to the time that  
25 they were redeployed to the double homicide?

1           A    Yes.  I have agreed with you that it was close.

2   MS. TOBIAS:  Okay.  Now, I'd like you to refer, please, to Mr.

3                   Gratl's book, which I believe is Exhibit J.

4   THE REGISTRAR:  J for identification.

5   MS. TOBIAS:

6           Q    And before I take you to a specific page on that  
7                   exhibit, sir -- you have it now?

8           A    Yes.

9           Q    I want to take you back to what you said  
10                  previously in your evidence that if the senior  
11                  management of the Vancouver Police Department had  
12                  realized the truth, they would have found a way to  
13                  devote a lot more resources to the file review  
14                  investigation.  Do I have that correct?

15          A    Yes.  That if they had understood what it actually  
16                  was they were facing, they would have resourced  
17                  that and organized it differently.  I don't know  
18                  about your term a lot more because I'm not sure  
19                  how much resources was needed.  There was  
20                  certainly other things that could be done that  
21                  they could have leveraged other resources.  It  
22                  doesn't necessarily mean assigning them all to an  
23                  investigative team.

24          Q    Well, sir, I don't want to get into a semantic  
25                  argument with you.  I'll clarify.  Really all I

1 mean is that they would have found a  
2 significant -- they would have taken steps to  
3 devote a significant portion of resources to that  
4 file? Yes?

5 A If they had understood what it was they were  
6 dealing with, what I've said is that they would  
7 have assigned, organized resources differently and  
8 that could have included more resources,  
9 absolutely.

10 Q But you're not suggesting something pressing,  
11 surely?

12 A Well, if they had come to the conclusion that this  
13 was in fact -- that the most likely reason was a  
14 serial killer, then I've also given in evidence  
15 that it's not the nature of the crime necessarily  
16 that dictates the amount of resources. It is what  
17 the investigative challenges are and how many  
18 resources there are to properly meet those  
19 challenges.

20 Q Well, sir, I think -- I thought this was a well  
21 established point and I don't want to dance around  
22 it, but I clearly understood your evidence to be  
23 that if the VPD management had realized that sex  
24 trade workers were likely being murdered, they  
25 would have taken some serious steps to address

1           that. Is that not true?

2           A    Yes. I agree with you.

3           Q    Now, that being said, you will recall from your  
4                review of the documents, I'm sure, that there were  
5                many occasions on which Constable Shenher, in  
6                particular, wrote documents, and Sergeant Field as  
7                well, discussing what they felt the file required?

8           A    Yes.

9           Q    And those -- those requests, of course, were  
10               met -- that fell on deaf ears pretty much?

11          A    I agree.

12          Q    And would you please turn in Exhibit J to page  
13                226? So what you have before you is a document  
14                that you've looked at before in your evidence and  
15                it's a memorandum from Sergeant Field to Inspector  
16                Biddlecomb in May of 1999. Do you see that, sir?

17          A    Yes.

18          Q    And if you look at the bottom, actually, of page  
19                225, you see the reference where she says:

20                I am supportive of the need to refocus the  
21                investigation and conduct it as a suspect  
22                based one.

23          A    Yes.

24          Q

25                There are a number of possible targets that

1                   have previously been identified and are  
2                   currently under investigation. Some of these  
3                   suspects require more intense examination and  
4                   timeline comparisons to our missing women.

5           If I can just stop there for a moment. The  
6           reference to "timeline comparisons to the missing  
7           women", as I understand it, means looking at when  
8           the women likely went missing and looking to see  
9           where the potential suspects were at the time, if  
10          they were in a position to have been the  
11          offenders; is that right?

12       A    That's my understanding as well.

13       Q    And she continues:

14                   Re-examination of the sites of previously  
15                   located prostitute homicide victims and  
16                   analysis of existing homicide files needs to  
17                   be conducted. Many other tasks as identified  
18                   by Detective Constable Shenher need to be  
19                   addressed in a timely manner.

20          And then she talks about the inadequacy of the  
21          resources in the next paragraph. And the last  
22          sentence in that paragraph is:

23                   Delays in following up tips or investigating  
24                   possible suspects could result in lost  
25                   intelligence or possibly additional

1 disappearances.

2 A Yes.

3 Q So she's talking about shifting to a suspect-based  
4 investigation, as you've described it; is that  
5 correct?

6 A Yes.

7 Q And a suspect-based investigation amounts to  
8 looking for offenders who could be responsible for  
9 the disappearances of the women?

10 A Yes.

11 Q And, furthermore, the suspect-based investigation  
12 is premised on these -- the offender having  
13 injured or murdered those women?

14 A Yes.

15 Q So it's a reasonable conclusion, is it not, that  
16 if more resources had been freed up for this file,  
17 it would have been to support that suspect-based  
18 investigation?

19 A Yes.

20 Q It would have been a murder investigation?

21 A Yes.

22 Q And it would have been conducted by the Vancouver  
23 Police Department?

24 A The investigation of the women going missing from  
25 Vancouver in the absence of information that there

1           had been an offence in another jurisdiction, yes.

2           Q   And you'll agree with me that if we go back to the  
3           question of what was reasonable given what was  
4           known at the time, you'll agree that there was  
5           certainly a possibility that women were being  
6           murdered outside of Vancouver?

7           A   Yes. In fact, that had been the subject of some  
8           discussions.

9           Q   But, sir, really what you were dealing with here  
10          is a situation in which the best information was  
11          that women were being taken in cars outside of the  
12          Downtown Eastside?

13          A   Yes. That was certainly one good possibility.

14          Q   So when you were giving your evidence previously,  
15          you said that the VPD had no jurisdiction to  
16          investigate murders because they would be outside  
17          Vancouver. That was your evidence?

18          A   Well, Mr. Commissioner, what I think I said was  
19          that when there was information received about a  
20          specific murder, in this case that had occurred in  
21          Coquitlam, the VPD passed that information on to  
22          Coquitlam and supported that investigation and  
23          that the primary jurisdiction --

24          Q   Sir, I'm going to interrupt you there. I don't  
25          want to interrupt you, but you're either

1           misunderstanding my question or not quite  
2           answering it, all right? So I'll rephrase the  
3           question if I may. Your evidence previously, and  
4           I think what your report said, is that there was  
5           no evidence that the women were being murdered in  
6           Vancouver?

7           A   Well, I would like to spend a second clarifying  
8           that then because I have always been clear that  
9           when it was unknown what had happened to the  
10          women, of course, that was a realistic likelihood  
11          to be considered. And so the VPD had --

12       THE COMMISSIONER: That is that women were being murdered in  
13          Vancouver? That was something that you -- is that  
14          what you're saying?

15       THE WITNESS: Well, that was a possibility, of course, and so  
16          the VPD was responsible for that investigation.  
17          But what I've also said is that if the VPD had  
18          received information, for example, that there were  
19          women going on a bus to Prince George to a party  
20          place and were being killed there, they would pass  
21          that information on to the Prince George RCMP and  
22          try to support that investigation in every way  
23          that they could. So, of course, the VPD had  
24          responsibility -- and I've said that over and over  
25          again. Most of my report is about that -- for



1           doing an adequate investigation and the fact that  
2           women were going missing from the Downtown  
3           Eastside mostly of Vancouver and that it should  
4           have been a suspect-focused investigation earlier  
5           than it was and it should have been better  
6           resourced. But that when discrete information was  
7           received about a murder that was alleged to have  
8           occurred in Coquitlam, the appropriate way to deal  
9           with that was to pass the information on to  
10          Coquitlam, who would have the primary offence, and  
11          they fully took responsibility and leadership  
12          around that case. So if they had received  
13          information about a murder in Delta and they  
14          believed it was one of our missing women, they  
15          would have provided that information to Delta in  
16          the same way that it works the other way as well.  
17          That's the way that policing works in this  
18          patchwork that we have, is that the jurisdiction  
19          where the offence occurs will take the lead on the  
20          investigation.

21         Q   Well, I fully understand that, sir. You said it a  
22               number of times. But my question to you now is  
23               that in -- the date of this memo is May of 1999?

24         A   Yes.

25         Q   And as of that date the Hiscox information had

1                   come in and that was indicative of one possible  
2                   murder?

3           A    Yes.

4           Q    And -- but many women were going missing?

5           A    Many women had gone missing, yes.

6           Q    And is it your evidence that the Vancouver Police  
7                   Department did and should have conducted a murder  
8                   investigation in Vancouver as -- with respect to  
9                   all of those missing women despite the Coquitlam  
10                  investigation?

11          A    Are you asking me if there should have been a  
12                  parallel investigation?

13          Q    Well, I'm asking you -- and I think I'm asking you  
14                  to clarify your earlier evidence because you've  
15                  gone over the point a number of times and perhaps  
16                  you haven't been asked the question in quite the  
17                  way that I'm asking it, but I don't -- what I  
18                  understood you to be saying is that particularly  
19                  given Keith Davidson's work and the profiling,  
20                  that your position was that there was no  
21                  indication that a murder was taking place in  
22                  Vancouver because women's bodies likely would be  
23                  found in RCMP jurisdictions and so it was up to  
24                  the RCMP to deal with those murders?

25          A    No.

1           Q    But that's not what you meant?

2           A    No. And I don't believe that I've said that. If  
3                I have, then I've misspoken. What I have tried to  
4                say is that the analysis -- and I'm prepared to be  
5                wrong in it. It actually in my mind makes no  
6                difference if I'm wrong about where an offence  
7                occurred or started. I agree with your point that  
8                there should have -- and to some extent there was,  
9                but it was insufficient -- been a murder  
10               investigation in Vancouver because it was unknown  
11               where the women were going, where were the  
12               murders. Pickton was one good suspect, but  
13               certainly it couldn't be assumed that because  
14               there was one good suspect -- I don't think  
15               anybody believed that he was going to be  
16               responsible for all the missing women. So he was  
17               one suspect who needed to be dealt with, and I  
18               believe that the Coquitlam RCMP did diligently  
19               focus on that and the VPD supported it, but, of  
20               course, the VPD had a responsibility to continue  
21               and to be open-minded that there could be other  
22               suspects, that murders may have occurred  
23               elsewhere, including in Vancouver. They could  
24               have been found in a house in Vancouver like the  
25               case in Poughkeepsie, New York. So, yes, of

1 course, they should have been doing an  
2 investigation that considered the possibility that  
3 maybe the women never left Vancouver.

4 Q Now, I wanted to turn to the Coquitlam incident.  
5 And Mr. Roberts has taken you over this a number  
6 of times, but there's one thing that he hasn't  
7 asked you about. Your view of that incident, as  
8 you've expressed it, is that the information was  
9 that the murder was taking place outside of --  
10 outside of Vancouver, in Coquitlam, but were you  
11 aware -- well, first of all, I want to take you to  
12 the Anderson incident, which you're familiar with?

13 A Yes.

14 Q And you've written about in your report?

15 A Yes.

16 Q That particular incident involved a situation in  
17 which Miss Anderson got into Pickton's vehicle in  
18 the Downtown Eastside. You remember that?

19 A Yes.

20 Q And she ended up at his farm in Coquitlam. You  
21 remember that?

22 A Yes.

23 Q She agreed to go with him. You'll remember that?

24 A Yes.

25 Q Do you also remember that on the way there she

1                   wanted him to stop and let her out and he refused?

2           A    Yes.

3           Q    So, sir, how can you take the position that there  
4                was no offence, no indication of Pickton  
5                committing offences in Vancouver?

6           A    Well, I think that I've already given evidence  
7                about that and my understanding of the law and  
8                I've also said I'm quite prepared to be wrong  
9                about that, but you have sort of by bringing that  
10              incident up given my answer to the question, is  
11              that the most serious offence occurred in  
12              Coquitlam and it was investigated by the Coquitlam  
13              RCMP, who didn't call Vancouver and say, hey, we  
14              think that you should do some work here. They  
15              took total ownership of the case because the most  
16              serious offence clearly had occurred in Coquitlam.  
17              So that's the way that it works.

18          Q    Well, I understand that, sir, but you've observed  
19                that there are overlapping responsibilities here.  
20                So certainly Coquitlam's stepped up to the plate,  
21                but, on the other hand, is it your evidence that  
22                the woman was forcibly confined in Vancouver;  
23                because she was murdered in Coquitlam, that then  
24                the VPD can wash their hands of responsibility for  
25                that investigation and can you say that the VPD

1                   have no power or responsibility to do any  
2                   investigation?

3           A    On victim 1997?

4           Q    On situations like that?

5           A    No.  I'm not saying that.  I'm just saying that  
6                   there -- the way that policing works in the Lower  
7                   Mainland is that -- and I think probably most  
8                   places -- is that there's going to be a primary  
9                   agency and they're going to deal with --

10          Q    Sorry.  I'm sorry to interrupt you, but you've  
11               explained that and I do understand that there's  
12               going to be a primary agency and that's not my  
13               question.  These are not watertight compartments  
14               here, are they?

15          A    No.  I agree with you.

16          Q    And so what you've described is a system of  
17               overlapping responsibility and jurisdiction?

18          A    I agree that that is the effect sometimes, yes.

19          Q    And you will agree with me as well that a large  
20               part, arguably in terms of evidentiary success --  
21               a significant part of the incident occurred in  
22               Vancouver where the women were picked up in the  
23               first instance and lured away according to the  
24               information?

25          A    Well, I agree that that there are women that were

1 leaving from the Downtown Eastside of Vancouver.

2 Q All right. Take out the word lured now.

3 A Yes.

4 Q And say if you're going to prove what happened to  
5 those women, did you not have to put a substantial  
6 focus of your investigation on what happened on  
7 the Downtown Eastside of Vancouver?

8 A I agree that during the missing women  
9 investigation that that would be because that --

10 Q No, no, no, sir. The information that you've  
11 discussed in your report --

12 A Yes.

13 Q -- was information that a woman had gone from the  
14 Downtown Eastside out to Pickton's farm where she  
15 had -- where she'd been killed?

16 A Yes.

17 Q And so in terms of -- you say the missing women's  
18 investigation. Are you -- that implies that  
19 you're saying that all the VPD is responsible for  
20 is confirming, oh, yes, she left?

21 A No.

22 Q She's really gone. So what are you saying here?

23 A Mr. Commissioner --

24 THE COMMISSIONER: I don't know what he said, but it's  
25 cross-examination. You can put it to him. Go

1                   ahead and answer the question.

2       THE WITNESS: Well, Mr. Commissioner, I want to be really clear  
3                   is that I have already said many times and I've  
4                   written about the responsibility of the VPD in  
5                   this investigation, including how it relates to  
6                   the investigation of the Pickton information in  
7                   Coquitlam. But what I'm saying is what the duty  
8                   of the VPD in this case, when this information was  
9                   passed on that the most serious offence and the  
10                  one where, you know, there was a likelihood of  
11                  gathering evidence and so on was about a murder in  
12                  Coquitlam, and there was agreement that the  
13                  Coquitlam RCMP would lead that investigation and  
14                  the VPD support it any way they could. And if  
15                  there had been disagreement about that, for  
16                  example, Coquitlam could have said, but wouldn't  
17                  have because it would have been completely  
18                  unreasonable: "No. We think that you should lead  
19                  this and we'll provide you support." That was a  
20                  possibility too. That could have happened. There  
21                  were discussions, but that would be impracticable,  
22                  not how things would generally occur and that is  
23                  not what occurred.

24               Q    Sir, you will agree with me that regardless of  
25                  what did or did not happen in Coquitlam, the



1 Vancouver Police Department was hardly powerless  
2 to advance the investigation?

3 A Yes. And I've written that. That there was more  
4 that the VPD could have and should have done and  
5 if there had been better co-ordination and  
6 communication between the VPD and the RCMP, I  
7 think that the VPD could have done a lot to  
8 advance that investigation.

9 THE COMMISSIONER: When you say -- sorry to interrupt in your  
10 cross-examination. I apologize for that. When  
11 you say that there was an agreement, maybe you can  
12 elaborate on that.

13 THE WITNESS: Well, the agreement is -- it's right in Corporal  
14 Connor's notes from early on, is that O'Connor  
15 will be in charge of the investigation and he is  
16 assigning tasks to various people, including to  
17 Chernoff and Lepine, to handle the informant.  
18 This agent -- this agency will look into X and Y  
19 and Z as far as investigative strategies. So it's  
20 outlined in many places in Section A to Deputy  
21 Chief Evans' report where she talks about who was  
22 in charge of the case, that Corporal Connor was in  
23 charge of the case. She says that repeatedly.

24 MS. TOBIAS:

25 Q I think we need to separate out some concepts

1           here, okay, so we're not talking about three  
2           things at once. I think that will help all of us.  
3           You've mentioned different things. We've talked  
4           about duty, responsibility, power?

5           A    Yes.

6           Q    Those are different things in this context, I  
7           would suggest to you, and now specifically let's  
8           deal with them one at a time. As far as duty is  
9           concerned, the Vancouver Police Department has a  
10          statutory responsibility and I would suggest a  
11          moral duty to investigate crimes occurring within  
12          the city of Vancouver?

13          A    Yes.

14          Q    And whether that's partly occurring in Vancouver  
15          or elsewhere?

16          A    Yes.

17          Q    And the VPD chooses to discharge that  
18          responsibility in cases of overlap by a convention  
19          that is in place between various police  
20          departments. That is the one you described where  
21          conventionally the department that is  
22          investigating the most serious offence is going to  
23          be the leader and the other is going to be  
24          assisting?

25          A    Unless agreed otherwise, yes.

1 Q But that's a matter of agreement between -- and  
2 convention. It's not a matter of legality and  
3 it's not a matter of morality, is it?

4 A Well, I don't know anything about the morality of  
5 it, but in terms of legality, I agree that the VPD  
6 has jurisdiction to investigate offences that  
7 occur within its jurisdiction.

8 Q And, similarly, in terms of sheer practicality, as  
9 you've said, when it comes to figuring out what  
10 happened in downtown Vancouver, the VPD are in a  
11 far better position to ascertain that than the  
12 RCMP?

13 A Yes.

14 Q And you will agree as well that if, as the theory  
15 went, women were getting into cars with -- with a  
16 man or men who were taking them elsewhere and  
17 attacking them, that once they're in the car, it's  
18 much more difficult to save them?

19 A Yes.

20 Q And so the focus of attention is logically right  
21 down in the Downtown Eastside?

22 A Yes. Generally speaking, without talking about  
23 the information pointing at Pickton, I agree with  
24 you.

25 Q Well, sorry. Are you suggesting that somehow once

1 Mr. Pickton, if he did, got a victim in his car,  
2 because it was Mr. Pickton, that that situation  
3 changed; that it was not still easier to support  
4 the victim before that point, the potential  
5 victim?

6 A No. I'm not saying that. I'm saying surely there  
7 were things that -- when women were going missing,  
8 which had stopped by the time of the VPD's  
9 suspect-focused investigation, there were all  
10 kinds of things that they could have done had they  
11 come to the conclusion earlier to try to prevent,  
12 suppress, catch someone in the act, and so on.  
13 There are all kinds of things that they could have  
14 done. But what I have also said consistently, I  
15 believe, is that once there was this information  
16 about a discrete murder of a woman that occurred  
17 in Coquitlam and that information was passed on,  
18 there was always unanimity around Coquitlam RCMP  
19 will take the lead on investigating this  
20 information about a murder. The VPD would support  
21 it in every way that was asked, including  
22 assigning Chernoff and Lepine, loaning our strike  
23 force for surveillance, and so on. It's  
24 documented in Connor's notes about the assistance  
25 that the VPD was willing to provide to advance the

1 investigation.

2 MS. TOBIAS: Now, I'm going to refer you to a passage in Deputy  
3 Chief Evans' report that you've been taken to  
4 before. And you may not have to look it up, but  
5 I'll tell you the page number. It's page 8-45.  
6 And this -- in this passage Detective -- or Deputy  
7 Chief Evans concluded:

8 In my experience I believe the offence began  
9 in Vancouver.

10 THE COMMISSIONER: What page is it?

11 MS. TOBIAS:

12 Q Page 8-45 of Deputy Chief Evans' report,  
13 commissioner. So she precedes that sentence with  
14 another:

15 They --

16 Meaning the VPD.

17 -- believed it was the responsibility of the  
18 jurisdiction where the offence had occurred  
19 to ultimately -- that ultimately should have  
20 had carriage of the case.

21 So -- and she says:

22 I believe the offence began in Vancouver.  
23 She's right about that, isn't she?

24 A Well, I don't know which particular offence that  
25 she is talking about. There's no analysis there.

1           You have chosen to point me to that particular  
2           passage, but I also notice on multiple pages in  
3           that section, 8-19, 8-43, 8-111, where she talks  
4           specifically about the Coquitlam RCMP was in  
5           charge of this investigation, took responsibility  
6           for it. And she says on this page that the VDP  
7           did not pursue the missing women investigation in  
8           relation to Pickton to the degree they should have  
9           and she should have kept her chain of command,  
10          informed that Coquitlam RCMP had carriage of the  
11          file. She should have followed up with Coquitlam.  
12          And if it was not a priority, then she should have  
13          made it her priority personally through her chain  
14          of command, so I've written the same thing.

15         Q    Sir, I understand it's a statement made in context  
16               and so I'm simply asking you, in your opinion is  
17               that statement not correct?

18         A    Which statement?

19         Q    The one I read out to you, sir, the top paragraph  
20               on page 8-45. And please understand that I am  
21               asking you in the context in which it occurs, do  
22               you agree with the statement?

23         A    Well, what I said is that although it didn't make  
24               any difference in that the VPD did have a  
25               responsibility to investigate, I don't know if

1                   that is true or not.

2           Q    Okay. Thank you. Now, I want to switch gears  
3               here a little bit and consider some of the  
4               information of which you were aware that was  
5               available in Coquitlam. Can I ask you to do that?

6           A    Yes. Are you talking about the spreadsheet?

7           Q    I will in a moment.

8           A    Okay.

9           Q    Now, before I continue on that subject, I want to  
10               go back to something that you said earlier in your  
11               evidence. I believe the word that you used in  
12               reference to your report was that it was going to  
13               be VPD centric, and you used that, I believe, in  
14               reference to a statement you were making about why  
15               you didn't think that the RCMP members would have  
16               an interview with you. Now, I don't want to ask  
17               you about the RCMP members or the interview. I'm  
18               simply asking you whether you recall giving  
19               evidence that your report was going to be VPD  
20               centric?

21          A    Yes, because most of the report -- and, in fact,  
22               when I started, I thought the whole report was  
23               going to be focused on the VPD because I had  
24               misunderstandings about what had occurred in  
25               Coquitlam.

1 Q And the point of my question now is part of the  
2 way in which this report is VPD centric is that  
3 you relied largely on information that came from  
4 the VPD. And I'm just going to elaborate on what  
5 different kinds of information to confirm with you  
6 that that's what you used, all right?

7 A Yes.

8 Q You used the VPD records?

9 A Yes.

10 Q Including the records by, of course, Detectives  
11 Chernoff and Lepine?

12 A Yes.

13 Q You interviewed what you called were the key  
14 Vancouver Police Department personnel who were  
15 involved?

16 A Yes.

17 Q And I'll come back to Evenhanded later, but while  
18 I'm on the topic, I'll just ask you. I seem to  
19 recall that you testified that your main or  
20 perhaps only source of information about the  
21 Evenhanded investigation was that you read the  
22 RTCC that had been prepared?

23 A No. That wasn't my evidence.

24 Q Did you read the RTCC?

25 A I did read -- I'm sure I wasn't the only one, but



1 I did read the Crown brief that was prepared by  
2 Evenhanded.

3 Q And did you read much other material on  
4 Evenhanded?

5 A Mr. Commissioner, what I said was that I didn't --  
6 I wasn't focused on Evenhanded; that I only really  
7 had a superficial understanding of Evenhanded. I  
8 read the correspondence.

9 Q Sir, I asked you if you read much other material.

10 A Well, I did read other material because I was  
11 about to explain I read the correspondence between  
12 the VPD and the notes that were being made around  
13 the development of Evenhanded, the MOU, the  
14 mandate. So I described the evolution of the  
15 creation of Evenhanded, but I did not look into  
16 their investigation per se.

17 Q Okay. That -- that does clarify the situation.  
18 So your report contains a considerable amount of  
19 material with respect to what happened in  
20 Coquitlam, but your base of information was not  
21 complete in that you did not interview Mike  
22 Connor, for example, and you didn't have whatever  
23 supplementary documents he may have had beyond  
24 what was in the file itself?

25 A In which file?

1 Q In the Coquitlam '98 file, which I understood you  
2 had access to?

3 A Yes. I mean I had Corporal Connor's excellent  
4 notes. I read the entire Coquitlam file. I  
5 interviewed Constable Yurkiw, who took over after  
6 Corporal Connor. And, no, I did not interview the  
7 other RCMP members, but I did have the benefit of  
8 the 2002 Williams report in which all the key  
9 players that I might have wanted to interview had  
10 been interviewed before.

11 Q My point, sir, is that at the end of the day, even  
12 given the sources you went to, your base of  
13 information was not complete?

14 A Yes. And I wrote that in my report that -- I made  
15 that clear.

16 Q So your fairly lengthy analysis of what happened  
17 in Coquitlam in your report should be considered  
18 with that in mind?

19 A Yes. I agree. I've said that in my report, that  
20 there are -- there are gaps; that I didn't do  
21 those things; that it needed to be considered in  
22 that context. I tried to be as fair as I could  
23 be. However, there were some things that were  
24 very clear. And having read Deputy Evans'  
25 interviews, nothing that I believed has become --

1           it's become even more strengthened.

2           Q    Would you turn now, please, to the table?

3           A    Yes.

4           Q    And before we adjourned yesterday, you observed --  
5                and rightly so.  If we can look at the first page  
6                under the heading from Menard -- that the  
7                reference that Menard made to Ellingsen having  
8                told him words to the effect of that they, meaning  
9                Ellingsen and Pickton, were -- or did finish her  
10               off were not there.  I remember you saying that.  
11               Is that correct?

12          A    Yes.

13          Q    And were you aware as well, though, that in  
14                Menard's second interview he could not recall that  
15                statement?

16          A    I'm aware that he said that.

17          Q    Well, he said one thing and then the next time he  
18                said he could not recall that?

19          A    Yes.  That's extraordinary, isn't it, to say that  
20                someone told you I couldn't believe the way that  
21                we finished her off and then say I don't even  
22                recall saying that?

23          Q    But that happened and you're aware of that?

24          A    I'm aware of that.

25          Q    Okay.  With that in mind, sir, if you'll take up

1 the table. Now, again, as I said yesterday, this  
2 is a very high level overview, but my objective in  
3 putting it before you is to come to perhaps a  
4 better understanding of what -- of what basic  
5 points were more solid in the sense that they were  
6 more direct information and which were perhaps  
7 less solid in the sense that they were very -- it  
8 was very indirect information or perhaps had other  
9 frailties to it. Does that make sense?

10 A Yes. I appreciate the courtesy of letting me look  
11 at it overnight. I've reviewed it carefully and  
12 formed some views about it.

13 Q All right. So can you go to the first row, the  
14 issue that is described as Jane Doe?

15 A Yes.

16 Q The unknown woman hanging in the barn. And I  
17 think we have a common understanding of which  
18 incident that refers to. And that incident was  
19 described, as we can see in the table, both by Mr.  
20 Caldwell and by Miss best and with the reference  
21 that -- to Menard that we've just discussed?

22 A Yes.

23 Q And that's your recollection of how that  
24 information came out?

25 A Yes.

1 Q That was the source of information on that point?

2 A Yes.

3 Q And this is in purple because it's really multiple  
4 hearsay in the sense that Caldwell and Best tell  
5 the police officers that Ellingsen told them that  
6 this is what she saw?

7 A Yes. But more than -- more than that.

8 Q Well -- but on this point, sir. Let's do one  
9 thing at a time, okay? On this point --

10 A On this point, yes, they both provided this very  
11 consistent story.

12 Q But my point to you is that the quality of it is  
13 that, as I said, Ellingsen told them and they told  
14 the police?

15 A Yes.

16 Q Okay. And you'll agree with me that something  
17 like that that is hearsay is, when it's about  
18 something this serious, a matter of great concern,  
19 but on its own -- I appreciate -- we're going to  
20 get to the totality of the circumstances, all  
21 right? But statements like that, unsupported,  
22 certainly don't come anywhere near constituting  
23 reasonable grounds?

24 A Reasonable grounds to what?

25 Q To believe that that incident had occurred as

1 described?

2 A Well, if you're asking me if it met the test for  
3 reasonable grounds to, you know, obtain a search  
4 warrant --

5 Q Well, reasonable -- that the standard for a search  
6 warrant is reasonable grounds to believe that  
7 there was an offence, right?

8 A Yes.

9 Q So that would not constitute reasonable grounds to  
10 believe that there was an offence?

11 A Not based on that standard, no.

12 Q At best it creates a suspicion?

13 A If you're -- sorry.

14 MR. CROSSIN: If I may say -- I don't mean to interrupt, but  
15 I'm trying to --

16 THE REGISTRAR: Name, please.

17 MR. CROSSIN: Crossin. Are we discussing the legal framework  
18 of belief and reasonable grounds or are we talking  
19 simply about police officers coming to a view and  
20 they may or may not think in their own minds it's  
21 reasonable?

22 THE COMMISSIONER: Maybe I'll have counsel clarify that.

23 MS. TOBIAS:

24 Q Thank you, Mr. Crossin.

25 Yes. As a police officer, sir, you would not

1           consider that to establish reasonable grounds upon  
2           which you would expect the justice of the peace to  
3           give you an authorization to search?

4           A    I agree.

5           Q    And yet it is suspicious?

6           A    Even just the information itself is highly  
7           suspicious, yes.

8           Q    And you've mentioned the consistency between the  
9           different pieces of information and, of course,  
10          there is consistency, but, sir, I put it to you  
11          that there also are some differences that are  
12          significant. And let me point you to what I'll  
13          ask you. In the first instant Caldwell describes  
14          a situation in which Ellingsen has participated  
15          with Pickton in -- well, let me back off because I  
16          don't want to be that specific. Where Ellingsen  
17          and Pickton have come to the farm together with  
18          the victim. Ellingsen was in the trailer, et  
19          cetera and she made these observations?

20          A    Yes.

21          Q    Right? If Best's information, however, was that  
22          what Ellingsen told her was she's wandering around  
23          the farm and she happened to see --

24          A    Yes. I agree that the lead up to the story about  
25          the murder in the barn was different.

1 Q But that is -- that's a significant difference  
2 though; would you not agree?

3 A Well, Mr. Commissioner, what I thought was  
4 significant was that both of these witnesses, that  
5 my understanding were not in conversation with  
6 each other, were not colluding. Both told this  
7 very similar story, Best and Menard, that  
8 Ellingsen had told them about this murder in the  
9 barn. And there are other consistent pieces of  
10 information --

11 Q Well, sir, I did say we're going to -- I'm sorry.  
12 I don't mean to interrupt you.

13 A I'm not talking about outside the informants.

14 Q No, no, no. I'm talking about that one piece  
15 of -- we're going to take these pieces of  
16 information one at a time. And you'll have a  
17 chance to wrap up as you see fit, all right,  
18 because obviously you've said it's the totality of  
19 the circumstances that count, right?

20 A Right.

21 Q Okay.

22 A And I'm sure you're going to bring me there, but  
23 what I was talking about is the information just  
24 about that incident from those two informants  
25 without even looking outside at the totality.



1 Q Fair enough. But my point to you is that they are  
2 similar incidents, but there are significant  
3 differences, and you would agree with that?

4 A Well, I agree that the lead-up information is  
5 different. We might have to agree to disagree on  
6 the significance of that.

7 MS. TOBIAS: Okay. The next part is in relation to there  
8 being --

9 THE COMMISSIONER: I think I'll stop you there for the morning  
10 break.

11 MS. TOBIAS: Yes, Mr. Commissioner. Thank you.

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

13 **(PROCEEDINGS ADJOURNED AT 11:10 A.M.)**

14 **(PROCEEDINGS RESUMED AT 11:27 A.M.)**

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

16 MS. TOBIAS: Thank you, Mr. Commissioner. Cheryl Tobias for  
17 the Government of Canada.

18 Deputy LePard, before the morning adjournment  
19 you had in front of you the compilation and  
20 comparison table.

21 Incidentally, Mr. Giles, do we have an  
22 exhibit number for this yet?

23 THE REGISTRAR: Which document is that?

24 MS. TOBIAS: The table.

25 THE REGISTRAR: It has not been marked yet.

1 MS. TOBIAS: Because I understood Mr. Commissioner this morning  
2 to have decided that it was admissible and so I  
3 would ask that it be given an exhibit number.

4 THE REGISTRAR: It will be marked as Exhibit Number 40.

5 THE COMMISSIONER: All right.

6 (EXHIBIT 40: DOCUMENT ENTITLED "COMPILATION AND  
7 COMPARISON OF INFORMATION FROM VARIOUS SOURCES  
8 ABOUT PICKTON'S ACTIVITIES")

9 MS. TOBIAS:

10 Q Now, sir, would you please turn to page 3 of  
11 Exhibit Number 40? And there is an entry at the  
12 very bottom of that page. It's starting there  
13 dealing with the issue of body parts in the  
14 freezer. Do you see that?

15 A Yes.

16 Q And if you turn over the page, you'll see it  
17 actually goes to page 6 for that particular point.  
18 Do you see that, sir?

19 A Yes.

20 Q Now, that issue description is a short form for  
21 information that you detail in your report that  
22 two people, Menard and Best, gave information  
23 concerning there being human body parts in a  
24 freezer on Mr. Pickton's farm; is that correct?  
25 Generally put. We'll go into more details.

1 A Yes. I'm not sure what I recall about that  
2 particular issue, but I'm sure you're right.

3 Q Okay. Now, if I can direct you to on page 3 under  
4 the column of Best, first of all, because that's  
5 shorter. And you have Best's information with  
6 Ellingsen -- do you have that, sir?

7 A Yes.

8 Q Do you have the place?

9 A Yes.

10 Q Ellingsen said that her, meaning Ellingsen's  
11 boyfriend, checked the freezers and found women's  
12 legs in the freezers. And that, of course, is  
13 second, third and however you want to describe it?

14 A Yes.

15 Q Okay. And her boyfriend at the time, that's a  
16 reference to Mr. Menard, I think. Is that your  
17 understanding?

18 A Yes. Or it certainly was at some point during  
19 that time period.

20 Q Now, would you look at the Menard column, please,  
21 for the same issue? And Menard's information was  
22 that he was told by an Asian male named Pat, last  
23 name unknown, that he had told Ellingsen that he  
24 had seen body parts in the freezer, but he did not  
25 find any. Do you see that?

1 A Yes.

2 Q And there is various other bits of information  
3 about that, but the bottom line is that Menard  
4 also said that he looked in the freezer himself  
5 and he didn't see anything. He saw pig parts. Do  
6 you recall that, sir?

7 A I see that in your table, yes.

8 Q Okay. Do you recall that information in the  
9 documents and other material you reviewed?

10 A I'm not sure that I do because I think that that  
11 was -- correct me if I'm wrong -- that that was  
12 introduced -- done post arrest.

13 Q All right.

14 A So it wasn't part of the information that was  
15 being considered in the summer of 1999 unless I'm  
16 incorrect on that.

17 Q Okay. We'll go back to that and I'll give you a  
18 document in due course on that, but let's move on  
19 now. Would you go to the end column under  
20 Casanova?

21 A Yes.

22 Q And this was an individual that was interviewed by  
23 Sergeant Connor or Corporal Connor, as he was at  
24 the time, and that person gave information that he  
25 never saw any body parts in the freezer or other

1 suspicious activity despite being present during  
2 times when Pickton butchered pigs and being there  
3 a number of times. Do you see that?

4 A Yes.

5 Q And so here with this -- if you'll accept that  
6 this is correct for the moment -- and we'll follow  
7 up on that -- we have some information that is  
8 fairly significant, but there's some people say it  
9 happened; some people say it didn't?

10 A Well, I don't think that's quite right. It's some  
11 people say it happened and others say they didn't  
12 see that themselves. That's different.

13 Q All right. But let me put it to you a different  
14 way. That the information that there were body  
15 parts in the freezer came second, thirdhand?

16 A Yes.

17 Q And information from other people that they  
18 looked, they had access to the freezer and saw no  
19 body parts is firsthand?

20 A Yes.

21 Q Would you go to page 6, the bottom of page 6 and  
22 page 7? And one of the things -- this is the  
23 issue as described as Pickton having trouble  
24 picking up prostitutes, and the information came  
25 from Caldwell about this because this was

1           information as well that he was given by  
2           Ellingsen?

3           A    Yes.

4           Q    And Caldwell appears to be the only person who  
5           provided that information?

6           A    Yes.

7           Q    Does that accord with your recollection?

8           A    Yes.

9           Q    Okay. And the next point -- and, of course, that  
10          again was second -- secondhand?

11          A    Yes.

12          Q    And the next point is Ellingsen assisting Pickton  
13          in picking up sex trade workers?

14          A    Yes.

15          Q    And this information came both from Caldwell and  
16          Menard?

17          A    Correct.

18          Q    But, again, it's something that Ellingsen told  
19          them?

20          A    Yes.

21          Q    And the next point on the bottom -- beginning on  
22          the bottom of page 9: Ellingsen and Pickton were  
23          pulled over on the New West stroll. Now, we're  
24          going to get to the other information directly  
25          from the New West Police, but solely in terms of

1           what came out of the information from these  
2           people, that -- that again was secondhand. They  
3           were -- in other words, it was Caldwell saying  
4           what Menard -- or sorry -- what Ellingsen had told  
5           him or what he had gotten from other sources. He  
6           wasn't directly -- this was not direct knowledge  
7           coming from him?

8           A    Of Caldwell, yes.

9           Q    And then on page 11 the issue is that Pickton  
10           claimed to be able to dispose of bodies. And here  
11           it's in red. It's far more direct. This is  
12           Caldwell saying that Pickton mentioned to him and  
13           a friend that he could make people disappear and  
14           there's no trace of him and he's got a meat  
15           grinder and all kinds of stuff, and further kinds  
16           of points along the same lines. Caldwell says  
17           Pickton told me this himself?

18          A    Yes.

19          Q    And Hiscox also said that Pickton bragged about  
20           being able to dispose of bodies and grind them up?

21          A    Yes.

22          Q    So this is the first point that we come to coming  
23           from these individuals. In the issues that I've  
24           listed, that is in effect more direct information  
25           from them. This is something Pickton told them

1                   himself?

2           A     So the information that you have listed.

3           Q     Yes. All the information I've listed?

4           A     Yes.

5           Q     And you'll agree with me that -- I'm not  
6                   suggesting to you that this is not significant,  
7                   this is not a significant point, but it is not an  
8                   admission that he did in fact engage in such  
9                   activity, grinding up bodies, et cetera?

10          A     I agree that it's not an explicit admission that  
11               he's actually done that.

12          Q     And then if you go to page 15, the issue is  
13               women's ID. And Caldwell, of course, related  
14               information from Ellingsen that there was jewelry  
15               and credit cards and things like that on his  
16               premises?

17          A     Yes.

18          Q     And Hiscox says that Yelds had found women's ID?

19          A     Yes.

20          Q     Yes? And Best said that when Ellingsen was  
21               cleaning up Pickton's house, she would find sets  
22               of women's ID. And, again, this is all second or  
23               thirdhand information?

24          A     Yes.

25          Q     And then there are a couple more points that are



1           less -- well, let me go through them quickly. The  
2           bottom of page 17, Pickton's equipment and  
3           firearms. We have some more direct information  
4           from Caldwell because he was in a position to see  
5           some of these things when he was shown by  
6           Ellingsen?

7           A    Yes.

8           Q    Okay. So that's one more point. That is more  
9           direct information?

10          A    Yes.

11          Q    And on page 20 the Ellingsen extortion of Pickton.  
12                There was information that Ellingsen might have  
13                been extorting money from Pickton?

14          A    Yes.

15          Q    And the way Caldwell stated it, it sounded like  
16                something that he knew himself, so --

17          A    I'm sorry. I just had trouble hearing you.

18          Q    The way Caldwell relayed the information, it  
19                appeared that that was something he knew himself.  
20                Is that your understanding?

21          A    It seemed like it, yes.

22          Q    And likewise for Menard?

23          A    Yes.

24          Q    But there was also information that Pickton was  
25                cashing Ellingsen's welfare cheques for her. Are

1                   you aware of that?

2           A    I don't recall that. I might have been.

3           Q    Okay. And the last point is that Pickton told --  
4                   or some people commented on Pickton's enjoyment of  
5                   killing pigs and other animals. And here if we  
6                   look under the Caldwell column on page 24, we see  
7                   that he has some second, thirdhand information  
8                   from Ellingsen, but he has some direct  
9                   observations of Pickton's personality as well?

10          A    Yes.

11          Q    And Menard made a similar comment about simply  
12                   that Pickton kills pigs, but we knew that. Best  
13                   said that Pickton would get excited to kill pigs.  
14                   Yelds, on the other hand, said Pickton was gentle  
15                   and wouldn't be responsible for violence towards  
16                   prostitutes. And Casanova said Pickton is gentle  
17                   to kids and animals. Do you recall that  
18                   information?

19          A    Yes.

20          Q    And so that is a bit of a mixed bag. There is  
21                   some -- the information goes both ways on that  
22                   point to some extent?

23          A    Well, yes. I don't think that I can properly  
24                   answer that by just giving you a yes or no,  
25                   though, because you do have to look at what is the

1           quality of the information and where it is  
2           corroborated or consistent with other information.

3           Q   Of course, but -- so for the purposes of this  
4           table, it -- we get to a point where there is --  
5           the major points of the information about  
6           Pickton's activities are completely second or  
7           thirdhand and there are, you know, two or three  
8           other points where the information is more direct.  
9           Is that a fair summary?

10          A   When it comes to limiting it to the information  
11          from these informants.

12          Q   Yes. And on the points listed in this table?

13          A   Yes. I think that there's -- first I think that  
14          there's some information missing and there's also  
15          some information that is inaccurate, and then we  
16          have other comments.

17          Q   So I don't want you to worry about the missing  
18          information for the moment. You'll have an  
19          opportunity to go back. But there's other  
20          information I want to take you through, so it may  
21          be once we've done that that those issues are  
22          taken care of, okay?

23          A   Yes.

24          Q   You said that there was something that was  
25          inaccurate. Would you tell me what that is,

1                   please?

2                   A    Mr. Roberts actually already identified it.  May I  
3                   refer to my notes, Mr. Commissioner?

4   THE COMMISSIONER:  Yes.

5   THE WITNESS:  So I'm sure that it was inadvertent and just may  
6                   be the wrong choice of words, but when it gets to  
7                   page 10, it says:  "Shenher concluded that Hiscox  
8                   was not reliable."  Now, that's coded in blue, so  
9                   it says that that undermines the other  
10                  information.  In fact, Shenher never said that at  
11                  all, that his information was unreliable.  I did  
12                  as you suggested, look at the source documents.  I  
13                  wasn't sure which interview you were referring to  
14                  because I did three of them, but the words "not  
15                  reliable" or even the word "reliable" don't appear  
16                  that I could find in that statement, and what she  
17                  actually said is:  "He was a drug user, had  
18                  problems with missed meetings, typical informant."  
19                  Regarding his credibility, she said:  "In terms of  
20                  credibility, I felt he was solid."  So I don't  
21                  think that it was correct to put in blue that that  
22                  undermines it because he had a problem showing up  
23                  for meetings.  His reliability in terms of his  
24                  information she believed was quote, unquote  
25                  "solid".

1 MS. TOBIAS: Okay. Well, why don't I ask you to do this, sir.  
2 On the -- I don't know if your version is marked  
3 up, but I'm going to suggest -- and either you or  
4 perhaps Mr. Giles can do it -- is simply cross out  
5 that reference because I'm going to take you  
6 through some more detailed information later, but  
7 it's just as well to -- it's not important to me  
8 to argue over that, so let's just cross it out  
9 and --

10 THE REGISTRAR: I need to be clear on that reference.

11 MS. TOBIAS: Yes. It's on page 10, Mr. Giles, under the column  
12 Hiscox. Do you see that?

13 THE REGISTRAR: I do.

14 MS. TOBIAS: The words "Shenher concluded Hiscox is not  
15 reliable" and then in brackets "Shenher interview  
16 with LePard, page 8, paragraph 2". Would you  
17 score that out, please?

18 THE REGISTRAR: All four lines?

19 MS. TOBIAS: Yes, please.

20 THE REGISTRAR: Done.

21 MS. TOBIAS:

22 Q Sir, would you take up your report, please? Would  
23 you turn to page 301 in your report, please?  
24 Actually, can you make that 302, please? Now,  
25 sir, here in your report as part of your analysis

1 is where you have set out information coming from  
2 the sources that we've reviewed in the table,  
3 among others, so what I want to do is ask you some  
4 questions about -- beginning with the -- well, the  
5 Anderson incident, ask you questions about those  
6 in turn, all right?

7 A Yes.

8 Q Now, you've summarized what you consider to be the  
9 pertinent parts of the Anderson incident, as you  
10 describe it, but I want to ask you about some  
11 additional matters that pertain to the strength of  
12 this information or at least the conclusions that  
13 can be drawn from it, okay?

14 A Yes.

15 Q Now, first of all, it's -- we all know that that  
16 investigation did not result in a conviction?

17 A Correct.

18 Q And so they are very serious -- it's a very  
19 serious set of information, but certainly if you  
20 were going to put it in an information to obtain a  
21 search warrant, it would be the status of  
22 information, but would not have the strength that  
23 a conviction would have?

24 A It wouldn't have the strength that a conviction  
25 would have, I agree.

1           Q   And to the extent that there might have been an  
2               issue in that case, which, of course, we don't  
3               know about, it's an open question. I guess I'm  
4               just taking that a little further from it's not a  
5               conviction. You cannot assume absolutely that the  
6               events took place the way that they were  
7               described?

8           A   Described by?

9           Q   Described by, for example, Miss Anderson because  
10              Miss Anderson and Mr. Pickton in that case both  
11              gave statements, did they not?

12          A   Yes.

13          Q   And their statements weren't the same?

14          A   Yes. I just wanted to be clear whose description  
15               you're talking about because, of course, those  
16               statements were just part of the investigation  
17               that Corporal Connor and others did in describing  
18               the evidence and provided that to Crown counsel  
19               and Crown counsel felt it met its very high  
20               standard of substantial likelihood of conviction,  
21               so I infer certain things from that.

22          Q   Okay. And something else to note about that  
23               incident that pertains to the questions we've been  
24               discussing is that there -- the violence, if I can  
25               put it that way, started after Mr. Pickton

1                   handcuffed Miss Anderson?

2           A    Yes.

3           Q    And her reaction, quite understandably, was to  
4               pick up the closest weapon and use it?

5           A    Yes.

6           Q    But given that sequence of events, again, it's  
7               very suggestive, it's important information, but  
8               until that point it's not possible to conclude  
9               with certainty whether there was anything more  
10              than a forcible -- not that that's not very  
11              serious, but that there was not a forcible  
12              confinement developing as opposed to a murder?

13          A    Well, what I inferred from that information, there  
14               was this experienced investigator who made  
15               recommendations for serious charges that were  
16               approved, and what we do know is that despite the  
17               difference between their statements is that he did  
18               stab her very badly and give her life threatening  
19               injuries that I'm told she was likely to have  
20               survived.

21          Q    I understand all that, sir, and that makes perfect  
22               sense, but that's not my question. My question is  
23               that Mr. Pickton handcuffing the woman, she  
24               reacted as you would hope anyone would, but your  
25               interpretation of his intentions up to that point



1                   has to be -- you have to keep that in mind. You  
2                   have to keep in mind that the stabbing developed  
3                   after as a reaction, if I can put it that way?

4           A    Yes. It followed it.

5           Q    That's what I'm trying to point out to you.

6           A    That's all I agree with, is that it followed it.

7           Q    Okay. And when the police went, of course, they  
8                   searched the trailer and nothing was located at  
9                   that time that would indicate other victims. Do  
10                  you agree with that?

11          A    I'm not aware of them finding anything that would  
12                  indicate other victims at that time.

13          Q    But you are aware that they searched the trailer  
14                  quite thoroughly? They had a warrant and they  
15                  searched the trailer?

16          A    Yes. I'm aware that they searched the trailer.

17          Q    Your next entry is with respect to Hiscox?

18          A    Yes.

19          Q    And, sir, I'm wondering if you can tell Mr.  
20                  Commissioner what the basis is for your point --  
21                  the second point that Pickton told him directly  
22                  that he could dispose of a body?

23          A    The basis?

24          Q    Yes.

25          A    I believe that that is in one of the debriefs that

1           Shenher and/or Corporal Connor conducted with  
2           Hiscox.

3           Q    Would you please look at the commission binder?  
4                This is the one that Mr. Vertlieb introduced at  
5                the beginning of your evidence, the binder  
6                entitled "Police Informants", Hiscox at Tab 2.  Do  
7                you have that, sir?

8           A    Yes.

9           Q    May I just have a moment?  And would you turn to  
10               page 2 of that tab, please?

11          A    Yes.

12          Q    And at page 2 under the third paragraph, 980902.  
13                Do you see that?

14          A    980902?

15          Q    Yes.  That's the second entry with that label.

16          A    Yes.  On --

17          Q    Beginning "1900 hours"?

18          A    Yes.

19          Q    And this is Shenher's log?

20          A    Yes.

21          Q    And she says in the third line:

22                Know him as a "creepy guy" and how he has  
23                told them if they ever want to dispose of a  
24                body to come to him because he can do it by  
25                putting it through a grinder, et cetera.

1           A    Yes.

2           Q    So that -- if you look at the preceding line:

3                   He tells me of Pickton and how he and his  
4                   female friend Lisa Yelds know him as a creepy  
5                   guy and how he has told them.

6           A    Yes.

7           Q    And then can you take up -- oh, yes.  And then  
8                   would you turn over to page 5 of that document,  
9                   please?  And here in the third paragraph down, the  
10                  second sentence:

11                   Lisa Yelds has told source --

12          A    Yes.

13          Q    Do you see that?

14                   That Pickton has told her if she ever needs  
15                   to dispose of a body, he can put it through  
16                   the piggery and grind it up, et cetera.

17          A    Yes.

18          Q    So that seems to be an indication that that is  
19                   information he is receiving from -- that it's  
20                   coming through Lisa Yelds, is it not?

21          A    Well, my understanding, having read the various  
22                   debriefs, is that he had told them that  
23                   information, as in both of them, and that he'd  
24                   also told that to Lisa and that she had reported  
25                   that to him.

1 Q And if you look over the page at page 6, third  
2 paragraph from the bottom. Again, the -- do you  
3 have that, sir? The third paragraph from the  
4 bottom, the sentence -- well, it's all one  
5 sentence really.

6 A Yes.

7 Q  
8 Connor had source go through the course of  
9 events from the beginning and this  
10 information was completely consistent with  
11 the info source has been providing me with -  
12 no variation at all in any of the details of  
13 his contact with Pickton, and the details of  
14 his friend Lisa Yelds ... who has been in  
15 Pickton's trailer and seen womens' ID, et  
16 cetera, and has been told by Pickton that if  
17 she ever needed to dispose of a body, et  
18 cetera.

19 A Yes.

20 Q So the first reference I took you to is I would  
21 suggest ambiguous, but these other two references,  
22 particularly the last one, is much clearer, is it  
23 not?

24 A I think that those other references are clear, but  
25 the first one he clearly says he has told them.

1 Q Okay. Would you turn, please, to in that same  
2 binder page 3?

3 A Sorry. Which tab?

4 Q The same tab that you're in, please, Tab 2. This  
5 is Shenher's logs, as I said?

6 A Yes.

7 Q Page 5, please. Just something that I wish to  
8 clarify. Can you please look at the first new  
9 paragraph:

10 Source said Lisa Yelds --

11 A Yes.

12 Q  
13 -- has told him within the past week that  
14 Pickton has some "weird things around the  
15 house".

16 Weird things around the house are in quotation  
17 marks?

18 A Yes.

19 Q  
20 And this led to her to saying he has several  
21 women's purses, items of jewelry and bloody  
22 clothing in bags.

23 And this is what I want you to focus on:

24 And that her impression is he keeps them as  
25 trophies.

1 Do you see that, sir?

2 A Yes.

3 Q So I'm not sure in -- I'm not saying that it was  
4 your intention or anything, but it's perhaps an  
5 inference that has been drawn that trophies is a  
6 word that perhaps Pickton has used to Yelds, but  
7 here it's clear that this is her impression. The  
8 word trophies comes from her?

9 A Yes. I never understood it to be a word that he  
10 used.

11 Q And while we're talking about Mr. Hiscox, you are  
12 aware that he was experiencing some psychological  
13 problems in February of 1999?

14 A Yes. I understand that he was suffering from  
15 depression.

16 Q Okay. And you referred previously when we were  
17 talking about the table to the interview that you  
18 had with Lori Shenher and her reference to him as  
19 a drug user, his problems in missing meetings and  
20 in that sense he's unreliable?

21 A In that sense he's unreliable.

22 Q Okay. And I'm going to ask you to look back in  
23 the transcript of your interview with her, please.

24 A Sorry. Where do I find that now?

25 Q This is the witness brief introduced by Mr.

1 Vertlieb marked "Documents", Volume 3.

2 A Yes.

3 Q Would you turn to page 6, please?

4 A Tab 6 or --

5 Q I beg your pardon. Tab 18.

6 A Yes.

7 Q Page 6, please. Do you have that page, sir?

8 A Yes.

9 Q And in the middle of the page -- sorry. In the  
10 second half of the first paragraph, the sentence  
11 beginning "Eventually I had several meetings,"  
12 about two-thirds of the way through that  
13 paragraph?

14 A Yes.

15 Q  
16 Eventually I had several meetings with Hiscox  
17 but he'd gone to detox or jail or whatever.  
18 So that's an expansion of the situation you  
19 described previously?

20 A Yes.

21 Q Would you turn over to page 8, please, the middle  
22 paragraph?

23 From that point on --

24 And I think she's talking here about the summer of  
25 '99 because that's the previous -- what she

1 mentions in the previous paragraph. She says:

2 From that point on I sort of lost touch with  
3 Hiscox.

4 Do you see that?

5 A Yes.

6 Q

7 He was in a 12-step program and staying away  
8 from these people. I didn't feel confident  
9 enough in him to direct him to do anything.

10 Do you see that, sir?

11 A Yes. I see that.

12 Q And so that seems to be her saying that he was --  
13 he was difficult to manage --

14 A Yes.

15 Q -- and couldn't be directed, so that would  
16 certainly affect his value as a potential agent.  
17 You can't have an agent who you can't direct?

18 A Yes. I agree.

19 Q And that was her feeling at the time?

20 A Yes.

21 Q And she says he wasn't really seeing those people  
22 much anymore and so he'd kind of come to the end  
23 of his usefulness, I would suggest?

24 A Well, I don't know if that's true. If the  
25 decision had been made to, for example, have him



1           introduce an undercover operator to Yelds, which  
2           was one of the things discussed, then I think that  
3           there was still potential for that, but I agree  
4           that he had been described as someone that was  
5           difficult to manage, but willing to help.

6           Q   And his drug problems, his psychological problems  
7           are going to be -- or would rightfully have been a  
8           cause for concern in terms of, you know, would  
9           he -- what would he say to Pickton or to anyone  
10          else? In other words, he's unpredictable. He  
11          introduces an element of unpredictability that  
12          makes an agency difficult if not impossible?

13          A   I agree that it introduces an element of  
14          unpredictability, not necessarily that he was  
15          unpredictable.

16          Q   Now, I want to turn to Caldwell. And you  
17          discussed Caldwell at the top of page 302 of your  
18          report, sir. And -- now, with respect to  
19          Caldwell, we've already gone through the table and  
20          talked about certain parts of his information that  
21          were second, thirdhand and so forth, but you  
22          mention at about the fifth bullet down:

23               Caldwell was willing to be an agent or assist  
24               in the investigation in any other way that he  
25               could.

1 And here going back to the kinds of factors that  
2 go to a person's suitability as an agent, that is  
3 something that you've said has to be assessed very  
4 carefully?

5 A Yes.

6 Q And you -- going back to the fact that you did not  
7 have a complete basic information, you made that  
8 statement not knowing what else the RCMP in  
9 particular might have been aware of with respect  
10 to Mr. Caldwell?

11 A Sorry. What's your question?

12 Q Well, all I'm saying is that it was possible that  
13 the RCMP were aware of factors relating to Mr.  
14 Caldwell and his suitability for use as an agent  
15 or reliability that you were not necessarily aware  
16 of at that time?

17 A I was aware of it.

18 Q Oh, what were you aware of?

19 A I became aware of it at some point, concerns about  
20 his reliability from previous dealings. My  
21 recollection is that Corporal Nash had had some  
22 previous dealings with him. I'm not sure at what  
23 point I learned that.

24 Q But -- so you -- your statement that he was  
25 willing to be an agent and so forth suggests --

1           and I believe you suggest later in your report  
2           that that should have been considered, but all  
3           these other factors has to -- that has to be read  
4           in light of all of these other factors, not all of  
5           which you mention in your report?

6           A    Yes.  But I also say or in any other way he could.  
7           He could have, for example, continued to be an  
8           informant and not do things as directed by police,  
9           but keep his eyes open, so to speak.

10          Q    And I think it was until August of '99 he wasn't  
11          responding to phone calls and things being put to  
12          him by Chernoff and Lepine.  I took you to that  
13          earlier.  So --

14          A    Yes.  There was an element of, as Shenher  
15          describes it, typical informant; that there was an  
16          element of unreliability, not of his information,  
17          but he was dealing with his own issues.

18          Q    Would you please turn to Volume 3 of the documents  
19          introduced by the commission?  And it's entitled  
20          "Witness Brief Documents, Volume 3".  Do you have  
21          that, sir?

22          A    Yes.

23          Q    Would you turn, please, to Tab 16?  These are your  
24          notes of your interview with Ron Lepine?

25          A    Yes.

1 Q Would you turn, please, to page 9, at the bottom  
2 paragraph of page 9?

3 A Yes.

4 Q Third line:

5 We started dealing with Caldwell.

6 You see that?

7 A Yes.

8 Q And the we there is a reference to Chernoff, Mark?

9 A Yes.

10 Q

11 We started dealing with Caldwell. He's sort  
12 of a drug addict on methadone. When he  
13 started talking to us, everything he was  
14 saying was making sense. The fact that he  
15 was such a junkie and always stoned,  
16 credibility was an issue.

17 A Yes.

18 Q

19 He got arrested on an assault thing and his  
20 car was towed. We got his car out of hock  
21 and started working him. He was a hard guy  
22 to deal with, high maintenance, et cetera.

23 A Yes.

24 Q So he was problematical as either an informant or  
25 an agent, to say the least?

1           A    Yes.  There was some issues.  But you have  
2                   selected a particular piece of his interview and I  
3                   would say that the totality of the information is  
4                   that they thought his information was -- that he  
5                   believed it completely and that he was willing to  
6                   help and --

7           Q    Would you turn over the page, please, sir?

8           A    To?

9           Q    Page 10.

10          A    Yes.

11          Q    I think this might be what you're -- what you're  
12               speaking of.  He said:

13                   We would take him and feed him at the White  
14                   Spot on Scott Road to get his brain working.  
15                   Even stoned, his recall was pretty good.  We  
16                   got him a pager but he wouldn't always  
17                   answer.  We'd make an appointment and he'd  
18                   show up three days later.  He was a flake,  
19                   but in our mind was a credible flake because  
20                   his info was consistent with what we knew.  
21                   We started working Pickton 100 percent.

22               So is that what you were referring to?

23          A    Well, that's part of it, yes.

24          Q    Okay.  So I think my point to you was that there  
25               were -- that Detectives Chernoff and Lepine came

1 to one view, but there was certainly reason for  
2 others -- in other words, others could reasonably  
3 come to a somewhat different conclusion because  
4 there was a basis for wondering about his  
5 reliability either as an informant or an agent?

6 A I agree that others could come to a conclusion  
7 about whether he could be reliable enough to be an  
8 informant -- not an informant, but an agent  
9 because of the unpredictability. I do not agree  
10 that there was a basis for forming an opinion that  
11 his information wasn't credible because I believe  
12 that when there were those who did come to that  
13 conclusion, it was based on incomplete information  
14 and an analysis of the totality of the information  
15 that was available. And so there clearly was a  
16 dispute in Coquitlam between the investigators  
17 from the VPD and Corporal Connor and others from  
18 Coquitlam and the investigators that came from  
19 Unsolved Homicide and from E Division Serious  
20 Crime.

21 Q I want to ask you about some other aspect of Mr.  
22 Caldwell. Now, you agreed yesterday that criminal  
23 record and criminal -- and I would infer from that  
24 criminal behaviour can be relevant to a person's  
25 reliability as an informant and certainly as an

1 agent?

2 A Yes. It might make them more reliable and more  
3 credible because they're involved in the criminal  
4 mode view. You don't usually find angels who are  
5 going to be informants and agents. In serious  
6 cases they generally are criminals.

7 Q Quite so, but -- they often are criminals, but  
8 it's a matter that needs to be thrown into the  
9 mix?

10 A Definitely the nature of their character and their  
11 background needs to be considered, I agree.

12 Q And, sir, are you aware of -- well, let me just  
13 take you to the site because I think that will be  
14 faster. Would you take up, please, the commission  
15 binder entitled "Police Informants" and the  
16 section dealing with Caldwell, please? Tab 9 and  
17 page 2 of that tab. This is a document entitled  
18 "Follow Up Source Debrief" dated July 30th, 1999.  
19 And if you look at page 2 in the middle of the  
20 page:

21 Source described how he first met Willie --

22 A Yes.

23 Q

24 -- in March of 1999. Said that Lynn had  
25 contacted Ron Menard to locate the man who

1                   had stolen Willie's credit card. Menard in  
2                   turn contacted the source to assist in the  
3                   locating of male. The two were able to find  
4                   a person who had purchased the credit card  
5                   but not the male in question. Upon returning  
6                   to Willie's residence, the male coincidentally  
7                   arrived not knowing they were looking for  
8                   him. The source and Menard tuned the guy up  
9                   in the trailer. He eventually admitted to  
10                  taking the credit card.

11                 So would you infer from that account that Hiscox  
12                 and Menard between the two of them -- or sorry.  
13                 Caldwell and Menard between the two of them  
14                 assaulted this man in order to get Willie's credit  
15                 card back?

16                 A    Yes.

17                 Q    And that suggests a particular relationship with  
18                       Willie that you might want to consider in the  
19                       course of assessing Caldwell as either an agent or  
20                       as an informant?

21                 A    Yes. I would certainly want to consider that  
22                       along with the fact that Pickton seems to trust  
23                       him and owes him one.

24                 Q    Now, the next person you mention is Menard. And  
25                       Menard, of course, was involved in the same



1 incident we just spoke about, so that tells us  
2 something that you would take into account with  
3 respect to Menard as well?

4 A In considering him as an informant or witness  
5 or --

6 Q Yes.

7 A I'm sure I would want to consider it.

8 Q And let's go -- let's go back now to a point that  
9 we mentioned at the beginning of the day, which is  
10 in his first interview he said that he made a  
11 statement to the effect that Ellingsen talks about  
12 finishing the girl off?

13 A Yes.

14 Q And in his second interview he could not recall  
15 that?

16 A Yes. I understand that.

17 Q And that's very important, isn't it?

18 A Well, I had concerns about the quality of the  
19 interview and so yes, I agree with you. Now he  
20 is -- he's backing away from -- excuse me --  
21 information he originally provided, so that's a  
22 matter for concern, I agree. The original  
23 information is pretty striking in all the  
24 circumstances.

25 Q And just parenthetically what would you expect --

1           what kind of reaction would you expect from a  
2           justice of the peace if you put in your  
3           information to obtain he said this one day and the  
4           next week he said he couldn't recall it? What  
5           would be the net effect of that? What would you  
6           expect to be the net effect of that?

7           A   Well, I wouldn't expect it to go to an ITO to rely  
8           on that information because it -- it speaks to a  
9           lack of credibility, concerns about credibility.  
10          It wouldn't support it in itself, I agree. And  
11          I've never said that there was information  
12          sufficient to support an ITO. I've never asserted  
13          that.

14          Q   Sorry, Mr. Commissioner. If I may just have a  
15          moment. Now, again, in terms of assessing  
16          Menard's value as either an informant or as an  
17          agent, one -- would you agree that one piece of  
18          information that would have to be considered is  
19          that -- first of all, I'll give you a few  
20          propositions. Menard and Caldwell are apparently  
21          talking to each other, Menard -- principally  
22          Menard telling Caldwell what he's been doing with  
23          respect to the police and all of that?

24          A   Yes. There's some of that.

25          Q   And Menard at one point goes so far as to talk

1                   about perhaps turning Pickton in and claiming the  
2                   reward?

3           A    Yes.

4           Q    Yes?  And other -- he makes other statements that  
5                   would lead you to believe that he is considering  
6                   how he can profit financially?

7           A    Yes.  Menard.

8           Q    Yes.

9           A    Yes.

10          Q    And so that is important information going to  
11               credibility?

12          A    It is important to know what a person's motivation  
13               is, I agree.

14          Q    Okay.  And would you turn, please, to the  
15               inquiry -- I'm sorry.  This is Exhibit K at Volume  
16               1.

17          A    I'm not sure I have that one.

18          Q    It is the volume of documents that we brought  
19               in -- or one of the volumes we brought in  
20               yesterday.  It's a white binder.  It may be the  
21               one to your left.  Is that --

22          A    It says Volume 2.  Is that what you want?

23          Q    No.  I want the same kind of label as Volume 1.

24          A    Yes.  I have it now.

25          Q    Would you turn, please, to Tab G?

1           A    G?

2           Q    Yes.  It will be 3G.

3           A    Yes.

4           Q    And these -- this is what's been referred to as

5               Mike Connor's time line.  Will you turn to page

6               122 of that, please?

7           A    Sorry.  Did you say Tab G for golf?

8           Q    Yes.

9           A    That's not what I have in Tab G of my binder.

10          Q    I'll just take a look at that.

11          A    Thank you.

12          Q    Tab 3G, page 122, please.  Do you have that page,

13               sir?

14          A    Yes.

15          Q    In the middle of the page -- oh, first of all, I

16               should preface that by asking you to flip back to

17               page 120 where this entry begins.  And it's dated

18               August 19th, 1999 at 9:20 a.m.?

19          A    Yes.

20          Q    And it's referring to an interview by Pollock and

21               Connor of Menard?

22          A    Yes.

23          Q    Okay.  So then if you turn off -- if you turn

24               around to page 122 again, please.  In the middle

25               of the page you see:

1 Menard asked if the police were able to  
2 search Pickton's property what the likelihood  
3 of finding DNA would be. Menard also denied  
4 being at the Pickton residence since last  
5 speaking with Corporal Connor. It should be  
6 noted at this time that although a report has  
7 not been received from Detectives Chernoff  
8 and Lepine in a telephone conversation with  
9 them on the 17th day of August, 1999 they  
10 stated that in speaking with Caldwell he  
11 informed them that after Connor's  
12 conversation with Menard the week before,  
13 Menard has since been on the Pickton  
14 property, advising him the police were asking  
15 him questions about a murder there. That  
16 Pickton was concerned about DNA being found  
17 there after Menard brought up the suggestion  
18 that DNA could be found.

19 See that?

20 A Yes. I'm aware of that information.

21 Q And so that appears -- well, let me back up. A  
22 reasonable inference from that information could  
23 be that Menard wanted to find out information from  
24 the police that he might possibly then take back  
25 to Pickton?

1 A Yes. That's one reasonable inference.

2 Q And so again this is very important information  
3 when you're considering his credibility and his  
4 reliability as an informant or agent?

5 A Well, if that's what was being considered, to use  
6 him in that way. That's different than assessing  
7 the credibility of the information that he's  
8 providing and how that might direct an  
9 investigation or how that might provide compelling  
10 information when considered with all the other  
11 information about how the investigation ought to  
12 proceed.

13 Q Okay.

14 A Using him as an agent or an informant is just one  
15 possibility.

16 Q I want to turn to your next reference on your page  
17 302 as to Best. And I ask you to look as well at  
18 your page 125. Do you have that, sir?

19 A Page 125, yes.

20 Q And so we've talked about some of the other  
21 information that's provided when we went through  
22 the table and you've outlined some of it here?

23 A Yes.

24 Q And on one particular point we can see that the --  
25 the secondhand information is becoming thirdhand

1                   or maybe fourthhand. Towards the end: "Ellingsen  
2                   also told Best." You see that? It's about an  
3                   inch and a half from the bottom?

4                   A    Yes.

5                   Q

6                               Ellingsen also told Best that Ellingsen's  
7                               boyfriend said that he had looked into a  
8                               freezer on the property and had seen women's  
9                               legs, and so forth.

10                   And we've talked about the fact that that was  
11                   denied?

12                   A    Yes.

13                   Q    Okay. So if you go back to your page 302 --  
14                               actually, 303. This is the heading that you've  
15                               got for Ellingsen's denial -- or 303. I beg your  
16                               pardon.

17                   A    Yes.

18                   Q    Okay. Now, you say -- well, first of all, let me  
19                               ask you. If you were to draft an information to  
20                               obtain and you set out all the information from  
21                               Caldwell and the others that Ellingsen -- from  
22                               Ellingsen's statements to them and then you added,  
23                               as you would have to, that when confronted with  
24                               those statements Ellingsen completely denied them,  
25                               what would you expect would be the effect of that

1 information on the JP?

2 A Well, it depends what other information was in  
3 there, but if it was only that information, I  
4 wouldn't be proposing to put it in an ITO in the  
5 first place because I don't think they were there  
6 and I've never suggested that they were there.

7 Q Sorry, sir. I'm not quite following you when you  
8 say "They were there". What do you mean?

9 A Well, I don't believe that the investigators were  
10 at the place where they could submit an ITO.

11 Q That's not my question, sir. It's really simpler  
12 than that, okay? Let's assume we have an ITO with  
13 a lot of other -- with an ITO and part of the ITO  
14 says Caldwell, Menard, et cetera say Ellingsen  
15 said this happened.

16 A Yes.

17 Q Ellingsen was interviewed. She denied it. What  
18 would you expect the net -- the net effect of that  
19 set of information to be?

20 A Well, what I would expect was that that would not  
21 be helpful and it would demand further explanation  
22 to show why the investigators believed that her  
23 denial was not credible and that the information  
24 that the multiple informants had provided about  
25 what she said was credible.



1 Q Okay. But you're still in a position of whether  
2 she -- and you mentioned this earlier in your  
3 evidence. The argument then is over what she said  
4 if she in fact made those statements?

5 A Yes. There would be an argument over that. And  
6 what I said is that there would have to be some  
7 analysis of that.

8 Q Okay. But that -- so, first of all, it raises  
9 into question whether she actually made those  
10 statements and that's a different point than  
11 whether or not that information was true if she  
12 did make those statements. Those are two steps  
13 there that you've mentioned earlier in these  
14 proceedings, right?

15 A Yes. I agree with you that they are two separate  
16 issues, and to the first what I've said is that my  
17 analysis is clearly she did make the statements.  
18 So then the question is were they true and if they  
19 were not true, why she wouldn't have simply said  
20 that yes, I told that, but it wasn't true.

21 Q Okay. Let's stick with step one for a minute,  
22 okay?

23 A Yes.

24 THE COMMISSIONER: I think maybe we'll stop there.

25 THE REGISTRAR: The hearing is now adjourned until two o'clock.

1 (PROCEEDINGS ADJOURNED AT 12:30 P.M.)

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

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

4 THE COMMISSIONER: Yes.

5 MS. TOBIAS:

6 Q Thank you, Mr. Commissioner. Cheryl Tobias for  
7 the Government of Canada.

8 Deputy LePard, when we adjourned for the  
9 lunchtime break, you were looking at page 303 of  
10 your report. Would you go back to it, please?

11 A Yes.

12 Q And the subject under discussion at that point was  
13 assessments of the credibility of Miss Ellingsen's  
14 statements that -- essentially denying making the  
15 statements that others had reported?

16 A Yes.

17 Q And you had said, once again, that you had no  
18 difficulty concluding that her denials lacked  
19 credibility despite the fact that -- of the people  
20 who were involved in the investigation at the  
21 time. Some of them took the same view as you did  
22 and some of them took a different view?

23 A I think that I agree. I think the views that the  
24 people that took a different view did not know the  
25 totality of the information that was involved.

1 Q And, sir, you also said that you did not have the  
2 totality of the information that was involved at  
3 your disposal and that you had not yet interviewed  
4 all of the police -- of the RCMP officers and you  
5 did not have all of their paper?

6 A Well, I said what I had, Mr. Commissioner, which  
7 was I had the entire Coquitlam file. I had  
8 Corporal Connor's extensive notes. I had the  
9 notes of those that were handling Caldwell. So I  
10 know that it's post facto; that nothing that I  
11 have learned after having seen the benefit of all  
12 the information has changed my mind at all.

13 Q Well, sir, that's -- that's all very well, but I  
14 seem to recall documents that were put in evidence  
15 and referred to indicating that when you began  
16 your project, you were not content to rely on the  
17 file materials for the Vancouver Police  
18 Department's activities, but, in fact, there was a  
19 call out made to every single sworn and civilian  
20 member to accumulate any shred of paper that might  
21 be relevant to your task; is that not so?

22 A Accumulate and what? Sorry.

23 Q Any piece of paper or other record that could be  
24 relevant to your task; is that not so?

25 A Yes.

1 Q And the precise reason for that is that the file  
2 does not tell the whole story?

3 A Are you saying the Coquitlam file?

4 Q No. I'm saying with respect to the Vancouver  
5 Police Department's file, the reason that this  
6 extra, very thorough search was made was because  
7 the file was not considered to be exhaustive?

8 A That's not -- that's not actually correct.

9 Q Well, then why was it important to do that?

10 A Well, because there had been consultations with  
11 legal counsel about the importance of preserving  
12 all information and certainly it might be useful,  
13 I agree. Better to have more information than  
14 less information.

15 Q So I think you've made the point. It's important  
16 to preserve all information and the very point of  
17 going beyond the file was that there might well be  
18 relevant information beyond the file?

19 A Yes.

20 Q And, similarly, you made sure that you interviewed  
21 Vancouver Police Department witnesses in detail  
22 because the file and the paper doesn't tell the  
23 whole story?

24 A I agree.

25 Q And to take the point one further, that's exactly

1           why Crown counsel always interview the police  
2           members before they take the stand despite having  
3           notes and reports and everything else; isn't that  
4           right, sir?

5           A   Well, I won't agree that they always do. I would  
6           say that they generally do.

7           Q   Go back to page 303 of your report, please. The  
8           second column on the right-hand side you state:

9                   When Ellingsen subsequently refused to take a  
10                   polygraph test regarding her denial of the  
11                   barn incident, that left her credibility  
12                   unresolved.

13          Do you see that?

14          A   Yes.

15          Q   So really I put it to you that that's a much more  
16           realistic assessment of the situation with respect  
17           to her credibility. It was unresolved?

18          A   Yes. That what was unresolved was that this story  
19           that she had told multiple witnesses and then  
20           denied, so the credibility of that information was  
21           left unresolved. I think that all the  
22           circumstances demanded that it be pursued.

23          Q   Sir, at the time you wrote your report, were you  
24           aware that Lynn Ellingsen had spent some time in  
25           psych wards at Surrey Memorial?

1 A I don't know whether I knew that at that time.

2 Q And if I were to suggest to you that there is  
3 indications of that, would you agree that that  
4 again is something to consider in deciding upon  
5 her credibility one way or the other?

6 A I agree that that is a factor to consider.

7 Q Now, you have, I believe, in your testimony before  
8 Mr. Commissioner said that the question of getting  
9 Ellingsen to co-operate should have been pursued.  
10 Do I have that correct?

11 A I believe that to be true.

12 Q Now, would you please take up the commission  
13 documents binder labelled "Informants" and  
14 "Ellingsen"? Now, before I ask you to look at  
15 particular pages here, were you aware from the  
16 file materials and what you learned in doing your  
17 report that Ellingsen was a difficult person to  
18 interrogate and difficult to deal with? She had a  
19 few different interviews and a number of different  
20 members -- both Vancouver Police Department and  
21 RCMP members attempted to interview her without  
22 securing much in the way of co-operation?

23 A Yes. I was aware of that.

24 Q And so that would suggest to you that getting her  
25 to co-operate was going to be difficult and

1                   perhaps not possible; is that not so?

2           A   Well, no.  It didn't suggest to me that it was  
3                   going to be not possible.  Definitely she was  
4                   difficult.

5           Q   And now that we have the benefit of hindsight, we  
6                   know, I would suggest to you -- and I can take you  
7                   to the extracts if you wish -- that she expressed  
8                   finally relief that it was safe to talk because  
9                   Pickton was in jail?

10          A   Yes.  I understand that.

11          Q   And so that would seem to make, combined with what  
12                   the officers could see at the time, it very, very  
13                   unlikely that they were going to get very far?

14          A   Well, I don't agree with you there because we  
15                   don't know what would have happened if they had  
16                   pursued, for example -- understood that it might  
17                   have been because she was afraid of being  
18                   implicated, because that was the informant  
19                   information, and what if they had pursued what was  
20                   eventually successful, which was, I understand, an  
21                   immunity deal.  So we can't know what would have  
22                   been successful when it wasn't attempted and we  
23                   can't know what might have happened when one of  
24                   the investigative strategies that was  
25                   contemplated -- which was an undercover operation

1 with Ellingsen -- what would have happened had  
2 that proceeded since she seemed to be quite freely  
3 telling a number of different informants of what  
4 she'd seen in the barn.

5 Q Assuming she'd actually made those statements?

6 A Pardon me?

7 Q Assuming she had actually made those statements,  
8 going back, putting ourselves back in 1999?

9 A And I think that the information as I have written  
10 and have to be accountable for was very compelling  
11 that she had made those statements because you had  
12 multiple informants who were apparently not  
13 colluding.

14 Q You've explained that before, sir, and I do  
15 understand that point, but what I want to put to  
16 you now is you've said precisely that it's  
17 impossible to predict with any degree of  
18 certainty -- I realize I'm paraphrasing, but it's  
19 impossible where we sit now and predict with any  
20 degree of certainty what would or what would not  
21 have worked back in 1997 to 2002; is that fair?

22 A Right. But --

23 Q And if I can continue my question. What you have  
24 put forward is your opinion of certain ideas that  
25 may have been pursued?



1           A    Right.  And I haven't said or suggested that they  
2                would have been successful.  It's not about  
3                guaranteeing success.  It's about how serious was  
4                the information about the nature of the crimes,  
5                how compelling was the information and so how  
6                important was it to try to pursue the  
7                investigation, not to be successful.  That's  
8                hopefully the outcome.  But was there sufficient  
9                information?  Was it sufficiently serious or about  
10              a sufficiently serious matter that it demanded  
11              further efforts, some of which could have been  
12              done with very little effort, some of which were  
13              identified.

14          Q    I think you have answered the question.  I'd like  
15                you to look back at pages 302 and 303 of your  
16                report.

17          A    Yes.

18          Q    And this is where you set out the various pieces  
19                of information.  And we've gone through those and  
20                your assessment of -- sorry -- pages 302 and  
21                303 -- your views of Ellingsen's denial?

22          A    Yes.

23          Q    Now, when you set out the information from the  
24                various informants, you set out, if I can put it  
25                this way, the pros.  This is what they said.  This

1           was the compelling part. But you didn't set out  
2           the cons?

3           A   Well, I did set out -- and this is a summary and  
4           in the debriefs that I put throughout the report,  
5           I think that they're fairly extensive, so --

6           Q   But I think it's fair to say that you haven't  
7           covered everything you've talked about today?

8           A   No. And I would have some views about the way  
9           that you have laid out the information too in  
10          equating this as a simple mathematical thing  
11          without one --

12          Q   Well, sir, with respect, I don't think I ever said  
13          to you that this was a simple mathematical  
14          exercise and I'm simply putting to you that in  
15          part of the totality of the circumstances that  
16          must be considered are the cons as well as the  
17          pros, and we've discussed some of each; is that  
18          correct?

19          A   Yes.

20          Q   And I know you've expressed what your view of the  
21          bottom line is, but what -- but what I am saying  
22          to you and asking you is you agreed previously  
23          that the totality of the information, the good  
24          parts, the compelling parts, the parts that  
25          detract all together make up a picture, and that

1           if you were going to get information to obtain a  
2           search warrant, you would have to put a fair  
3           picture of the whole before the justice of the  
4           peace. Is that a fair summary?

5           A   Well, I'm going to answer properly, Mr.  
6           Commissioner, and what I'd say is that's not the  
7           question. The question isn't whether there is  
8           information to put before a justice of the peace.

9   MS. TOBIAS: Well, sir, it's my question right now.

10   THE COMMISSIONER: I think -- I think what he said, in  
11           fairness, when he said that's not the question,  
12           it's the question in his mind. I appreciate what  
13           you're saying. You're doing the questioning.  
14           He's supposed to do the answering. I recognize  
15           that. But in fairness to him, what he's saying is  
16           that's not the question he had in his mind when he  
17           addressed the issue. Is that what you're saying?

18   THE WITNESS: I mean that wasn't the purpose of the analysis,  
19           to say whether there was enough for an ITO.

20   THE COMMISSIONER: I think it's the unfortunate --

21   MS. TOBIAS:

22           Q   I understand that, Mr. Commissioner, and I'm  
23           trying to take this one step at a time so as not  
24           to muddle things. You have never said that this  
25           information put together was enough to provide

1           reasonable grounds for a search warrant of  
2           Pickton's property?

3           A    That's correct.

4           Q    And your view is that it's not, I take it?

5           A    Well, I'm not convinced that it is. I trust in  
6           that -- based on the information I know and the  
7           experience of Corporal Connor and seeing in his  
8           notes the steps that he took, I inferred that it  
9           was not enough.

10          Q    I'm going to come back to this point in a moment,  
11          but now I want to go to the next step. Now, you  
12          said that the information taken together in your  
13          view called for a more aggressive investigation.  
14          That was your view and is your view, I take it?  
15          Yes?

16          A    It called for a continued investigation.

17          Q    Aggressive too?

18          A    Yes.

19          Q    Okay. Let's just stop there for a moment, okay?  
20          But, again, the nature of the investigation that's  
21          called for is proportional to how compelling the  
22          information is -- this is in steps, so we want to  
23          go one step at a time. It's proportional to how  
24          compelling the information is for one thing? Yes?

25          A    Yes.

1 Q And it's also proportional to that case in  
2 relation to other cases depending on their  
3 seriousness, depending on how compelling the  
4 information is in relation to other cases?

5 A Well, the way I looked at it, Mr. Commissioner, is  
6 that it was not only about how compelling the  
7 information was, how serious it was, the offence  
8 that was alleged to have occurred, the murder in  
9 the barn, and the context of that information,  
10 which was that there were 27 women missing, many  
11 of them from the Downtown Eastside of Vancouver,  
12 and so that was certainly informing the  
13 investigators as to the seriousness of the  
14 information around how compelling it was and how  
15 important it was to follow up.

16 Q But I want you to move to the next step, because  
17 this case considered by itself -- we'll start with  
18 those propositions that you put forward.

19 A Yes.

20 Q But nothing exists in isolation?

21 A Correct.

22 Q And so when you measure the response, you have to  
23 measure that against what was competing for  
24 attention and apply the same kinds of criteria to  
25 the other things?

1           A    Well, I would agree with that in part and also  
2                say, Mr. Commissioner, that what it needed to be  
3                weighed against was if there are more resources  
4                that are necessary to pursue this, then what  
5                options are there to pursue more resources. And  
6                so I know you want to limit me to sticking to  
7                confined questions, but there is a context here  
8                and there is information and views that people  
9                came to like Corporal Connor and Corporal  
10               McCartney and others about what was necessary and  
11               then the question becomes -- because you correctly  
12               state that it needs to be weighed against other  
13               priorities and how many resources you have, is was  
14               that understood by management at the time and were  
15               options considered around resources.

16          Q    Right. But we're not quite there yet, okay? So  
17                another thing that you need to compare, I would  
18                suggest to you, when you consider the case as it  
19                existed or the state of the information as it  
20                existed with respect to an individual like Mr.  
21                Pickton, you have to consider the state of the  
22                information as it might exist with respect to  
23                other individuals who are potential suspects as  
24                well. That's what tunnel vision's all about, is  
25                it not -- or that's what avoiding tunnel vision is

1 all about, I should say. You don't just simply  
2 focus in on one pet theory, but you have to leave  
3 yourself open to looking at all the other  
4 possibilities and weighing the information that is  
5 associated with the other possibilities first  
6 before you decide on an investigative strategy?

7 A Well, Mr. Commissioner, I agree with you  
8 generally. I understand well the issue of tunnel  
9 vision. But this wasn't a case of a murder had  
10 been reported and there were a variety of suspects  
11 in it and it's important not to focus too early on  
12 one suspect to the exclusion of others and that  
13 sort of thing. This was specific information  
14 about one suspect.

15 Q Well, sir, I'm not arguing with you about whether  
16 this was information that needed to be  
17 investigated. Let me be clear. I would not  
18 suggest for a split second that this was not a  
19 serious case; that this wasn't serious -- that  
20 needed -- about a very, very serious crime on very  
21 vulnerable people that needed to be followed up.  
22 So we're on the same wavelength there, I trust?

23 A I'm not sure, but --

24 Q However, my -- my point to you is that you have to  
25 take a focus that is broad enough that's

1 appropriate to the situation and that it's  
2 important not to focus in too narrowly on one  
3 potential to the exclusion of others and,  
4 similarly, it's important when you realize that  
5 some people who are in the situation who are  
6 experienced investigators have one take on it and  
7 others have a different take, that just because  
8 hindsight proves one side was correct doesn't make  
9 the other side unreasonable. In other words -- so  
10 that was a long question. I realize that.

11 A That was more than one question.

12 Q That was more than one question. I'll reduce it  
13 to one. You had -- you often referred to Mike  
14 Connor and others who took one view of the  
15 information as the ones who are right and what I'm  
16 putting to you is that the others who took a  
17 different view, who did not view the information  
18 as being as compelling as Mike Connor did and the  
19 situation in which they found themselves were not  
20 necessarily unreasonable?

21 A And what I would say, Mr. Commissioner -- first of  
22 all, I'll answer one of your previous questions  
23 around the importance of having a broad  
24 perspective. Yes. That was very important for  
25 the missing women investigation generally and the



1 VPD investigators. They couldn't put all their  
2 eggs in one basket. The information about Pickton  
3 was discrete information that demanded a  
4 follow-up. With respect to is it fair to choose  
5 the views of Connor and others in Coquitlam versus  
6 other investigators who came in, Connor and others  
7 in Coquitlam were in charge of the investigation  
8 and had the best understanding of all the  
9 information rather than investigators that came in  
10 for a short portion of the investigation and  
11 played a role in doing some interviews and so on,  
12 but clearly, in my view and the views of others  
13 like Deputy Evans, did not understand the totality  
14 of the information. So I don't think that it's  
15 fair to put them on an equal footing and saying,  
16 well, you know, they had a view and it might be  
17 reasonable and Connor and his people had a view  
18 because Connor's view and the review -- the view  
19 of, for example, Corporal McCartney, who did a  
20 file review in February of 2000 and so I assume  
21 reviewed the entire file. It wasn't that large --  
22 they were the ones that were in the best position  
23 to have a view of whether the information was  
24 compelling or not and they thought that it was  
25 and they described the case as high priority.

1           Q    So what you're saying is that only Mike Connor and  
2                   others equally directly involved should be  
3                   considered in this?

4           A    No.  I'm not saying that they -- only them should  
5                   be considered, but as the investigators from  
6                   Unsolved Homicide pointed out, it was Coquitlam's  
7                   file.  It was their decision.  They were there to  
8                   assist.  It was their decision what to do, how to  
9                   continue the file.  They were in possession of the  
10                  best understanding of the facts.  They carried on  
11                  with the file.  They -- Coquitlam conducted the  
12                  interview in January of 2000 of Pickton subsequent  
13                  to the involvement of the investigators from E  
14                  Division.

15          Q    So your underlying assumption is that all of those  
16                   who were deeply involved in the investigation  
17                   shared the same view?

18          A    In Coquitlam?

19          Q    Yes.

20          A    Yes.  I think that they -- the -- they shared  
21                  fairly similar views, is that the information is  
22                  compelling and demanded continued follow-up,  
23                  otherwise why in April of 2001 would that group of  
24                  investigators have still said this is a high  
25                  priority file?  Why would there have been several

1 times that they made to do lists of the  
2 investigative steps they thought should be carried  
3 out?

4 Q I'm going to ask you one more question and then I  
5 think we're going to move on to a different area.  
6 But it seems to me that you're mixing up two  
7 different -- slightly different concepts and I  
8 want to make sure that you separate them, please.  
9 One is whether the information was of such a  
10 nature that it required follow-up and that is  
11 different, though, than -- I would suggest to you  
12 than saying that that's necessarily equivalent to  
13 believing that Ellingsen saw what was described  
14 and that her denials were false. In other words,  
15 what was important, I put to you, was to pursue as  
16 far as possible to find out if those denials were  
17 false or true, which is a somewhat different  
18 question than whether they believed her?

19 A And so the question is?

20 Q You have said that everyone believed -- or  
21 everyone in Coquitlam familiar with the file  
22 believed that this was important information that  
23 should be followed up and so far we have no  
24 disagreement?

25 A Yes.

1           Q   What I'm putting to you is that taking the view  
2                   that the information is important and should be  
3                   followed up is not the same as saying you believed  
4                   it?

5           A   And I agree with you, and what I would say was  
6                   both, is that the investigators believed strongly  
7                   that it needed to be followed up. That's clear in  
8                   the statements of Yurkiw, Connor, Zalys, others  
9                   involved and, secondly, that they believed that  
10                  the information which had purportedly come from  
11                  Ellingsen was true and they pointed out things in  
12                  support of that.

13          Q   Some of the people. Now -- and you say that --  
14                   and, again, clearly this is information that  
15                   should have been followed up, but what you're  
16                   saying is that the RCMP was delinquent in failing  
17                   to do so at the same time, but your agency was not  
18                   admitting that women were being murdered at all?

19          A   Well, I think that you're linking --

20          Q   I'm not linking the two of them. I'm just saying  
21                   that that happened at the same time?

22          A   Yes. And what I've said -- I'll agree with you to  
23                   this point -- is that in both agencies -- I  
24                   already said the VPD -- the investigators had a  
25                   good understanding and had internalized that the

1           most likely reason for the missing women was that  
2           they were being killed, that it was foul play, and  
3           here was this very compelling information about  
4           Coquitlam, Pickton in Coquitlam. And then the  
5           RCMP, I thought that it was roughly similar in  
6           that you had investigators who strongly believed  
7           in the importance of following up this information  
8           and how compelling it was. And at the management  
9           level you had a -- not managers that weren't  
10          saying that it wasn't compelling, but you had a  
11          management view that we've done everything that we  
12          can do. What would we do if we had more  
13          resources.

14          Q   And, again, these are people that you haven't  
15               actually spoken to, but Mr. Commissioner will  
16               hopefully hear from them?

17          A   Well, I have read the interviews with those  
18               people.

19          Q   Precisely. Now, I want to talk to you about -- to  
20               go back to the reasonable grounds point. Let's  
21               define in this situation what reasonable grounds  
22               for a search -- where the difficulty is in  
23               establishing reasonable grounds for a search  
24               warrant, okay?

25          A   Yes.

1 Q You need reasonable grounds and probable grounds  
2 to believe that an offence has occurred?

3 A Yes.

4 Q And that there would be evidence at the place  
5 where you wished to search or information at that  
6 place?

7 A Yes.

8 Q And so in this circumstance, the sticking point is  
9 whether you have reasonable and probable grounds  
10 to believe that Pickton was murdering or had  
11 murdered a woman, had in fact murdered someone at  
12 his premises?

13 A Well, that would be part of the threshold to me to  
14 get the warrant, yes.

15 Q Right. But in terms of the problem, if I can put  
16 it that way, is that there was likely insufficient  
17 evidence to form a reasonable belief that he was  
18 committing murder because primarily of the  
19 secondhand nature of the information?

20 A Well, I think that that is debatable.

21 Q Well, where else is the difficulty? What other --  
22 are you saying that you think the secondhand  
23 information might have constituted reasonable and  
24 probable grounds to believe that he had -- in the  
25 totality of the circumstances? Is that you what

1           you're saying?

2           A   In the totality of the circumstances, I think that  
3           it would be an interesting question to explore  
4           whether there were reasonable grounds -- for  
5           example, as I've written, whether there was  
6           sufficient grounds to make an arrest on reasonable  
7           grounds as an investigative strategy to try to  
8           develop more evidence.

9           Q   But you have -- if you thought that there were  
10          reasonable grounds, I presume you would have said  
11          so in your report and suggested that surely they  
12          should try to apply for a search warrant?

13          A   No. I don't think that I would have said that  
14          because I don't know the answer to the question.  
15          I think that it was worthy of exploration and so  
16          was the question of whether as an investigative  
17          strategy on reasonable grounds he could have been  
18          arrested. Whether the totality of the  
19          circumstances provided that, I didn't come to a  
20          conclusion of whether it did because what I was  
21          focused on was was there sufficient information to  
22          justify a continuing investigation as had occurred  
23          until the end of August of 1999. And then there  
24          was more information by January of 2000 when you  
25          have an interview of Pickton in which these

1 experienced investigators said he was lying. So  
2 now we have even more information. And so I'm not  
3 saying that that's the only investigative  
4 strategy, but there were investigative strategies  
5 that those circumstances lent themselves to that  
6 were not resource intensive. We're not expecting  
7 perfection.

8 Q Well, I understand you there, but my question --  
9 what I simply now want to confirm with you is that  
10 you -- you're of the view that there was at least  
11 a question about whether there were reasonable and  
12 probable grounds to believe that Pickton was  
13 murdering -- had murdered a woman at -- on his  
14 premises? Yes?

15 A I think that it was a -- as I said, I think that  
16 it was an issue worthy of exploration and some --

17 Q No, no, no, sir. I said that my question was --  
18 to you is was it at the very least questionable  
19 whether the information rose to the level of  
20 reasonable and probable grounds to believe that  
21 Mr. Pickton had committed murder on his property  
22 as described?

23 A I do not know the answer of whether it rose to  
24 that level.

25 Q I'm asking you for your view.



1           A    I don't know.

2           Q    Exactly.  So -- and you have, however, suggested  
3                quite strongly in your report that one of the  
4                things that the team could and should have done  
5                was arrested Mr. Pickton and interrogated him,  
6                because, as you pointed out, the threshold of  
7                reasonable grounds is lower than the threshold for  
8                charge approval?

9           A    Yes.  But I do not think that you have quoted it  
10               adequately from my report in saying that they  
11               could have and should have arrested him.  I  
12               believe that I said that they should have  
13               considered that as a strategy.

14          Q    I see.  So if I am to understand you, you're not  
15               saying -- you're not looking at this situation and  
16               saying, well, yes.  They had grounds.  They should  
17               have done this.  You're saying they should have  
18               considered whether they had reasonable grounds?

19          A    Yes.  In the same way, for example, that the RCMP  
20               arrested Hugo Ludwig and didn't charge him, but  
21               did arrest him as an investigative strategy.

22          Q    But, sir, I would suggest to you that the file and  
23               the information is replete with references to  
24               investigators trying to pursue information to  
25               obtain reasonable grounds.  Surely you're not

1 suggesting they never turned their minds to  
2 whether or not they had reasonable grounds to  
3 believe that Pickton had committed this offence?

4 A No. I'm not saying that.

5 Q Thank you. Another aspect that I want to ask you  
6 about is you do make reference to a potential  
7 consent search, and I understand that to be based  
8 on Mr. Pickton in the statement he gave on January  
9 19th, 2000 making a reference to being prepared to  
10 consent to a search; is that right?

11 A Several times he did.

12 Q And if I can take you to that particular  
13 statement, ask you to refer to -- think back in  
14 your mind to what you've written about that  
15 statement. You interviewed then Constable Yurkiw  
16 in connection with that statement, did you not?

17 A Yes.

18 Q Among other things?

19 A Yes.

20 Q She was the only RCMP member aside -- well, she  
21 was the only RCMP member you said that you had an  
22 actual formal interview with?

23 A Yes.

24 Q You said you spoke to Don Adam, but that was far  
25 more casual?

1           A    It was less formal, yes.

2           Q    And -- but you also said that you didn't

3                interview -- you didn't ask to interview RCMP

4                witnesses because you thought -- you assumed that

5                permission to do so would be refused?

6           A    That was one of the reasons, yes.

7           Q    Did you ask Gary Bass about interviewing Ruth

8                Yurkiw?

9           A    Ruth Yurkiw was retired.

10          Q    That was the threshold? Did you try to interview

11               other retired members?

12          A    No, I didn't. It came to me in -- her

13               availability came to me in unusual circumstances.

14               I wasn't looking for her.

15          Q    While we're talking about the subject of what you

16               were given permission to do, you were given free

17               access to all the documentation you asked for from

18               the RCMP, weren't you?

19          A    By that time, Mr. Commissioner, we were in a JFO

20               and it was in writing that the VPD was entitled to

21               review any information that was in the file.

22          Q    Well, you reviewed the Coquitlam '97 file and so

23               forth, but you received full co-operation from the

24               RCMP in that respect, did you not?

25          A    Eventually.

1 Q And you received co-operation even to the point  
2 where you were given a report made for the  
3 purposes of litigation by Superintendent Williams  
4 that was otherwise privileged?

5 A Yes. That's true.

6 Q And you were told, were you not, that it was being  
7 given to you against legal advice in the interests  
8 of interforce co-operation?

9 A No. I don't recall that at all. I do recall the  
10 discussion and I thought it was very gracious of  
11 Assistant Commissioner Bass to do that, and I also  
12 told him at the time that I would not be able to  
13 reciprocate with our report and he decided to do  
14 that.

15 Q So that was very generous, indeed?

16 A I thought it was very gracious of Assistant  
17 Commissioner Bass to do that, and I subsequently  
18 had other discussions with him then and over the  
19 years about related issues.

20 Q You contacted Constable -- well, retired Constable  
21 Yurkiw for a interview?

22 A I did.

23 Q And did you tell her she didn't have to talk to  
24 you?

25 A Yes.

1 Q And did you tell her that you were not  
2 interviewing other RCMP officers?

3 A I told Constable Yurkiw exactly what I was doing.  
4 I think it's --

5 Q What was that, sir?

6 A Well, I think it's important to know how I came to  
7 speak to Constable Yurkiw, is that just through a  
8 fluke she knew somebody that I knew that I  
9 happened to be speaking to who told me that she  
10 knew of Constable Yurkiw and Constable Yurkiw was  
11 upset about what had occurred, was upset with her  
12 employer during that time and might be interested  
13 to speak to me. So I phoned her at her workplace.  
14 I explained that I was doing a review for the VPD.  
15 I said, "I understand that you were upset about  
16 what went on," and she said, "Not with the VPD.  
17 With the RCMP." I said, "Well, would you like to  
18 talk to me about it?" And when she came in, I  
19 explained to her exactly what I was doing, what  
20 the purpose of my report was and she very  
21 willingly and frankly gave me a statement about  
22 what her experiences were. There was no -- she  
23 was very frank in telling me her story.

24 Q And -- but I asked you if you told her that she  
25 was the only RCMP officer being interviewed. Did

1           you? I suggest to you you didn't?

2           A   No. I probably did not. I certainly did not tell  
3           her and it was clear that who was I? She was a  
4           retired RCMP member. I was a VPD member doing a  
5           review and asked if she would like to speak to me.  
6           She could have hung up the phone and said no. She  
7           said, "No. I would like to" and was at my office,  
8           I think, the next day.

9           Q   And when she came in, you were there with your  
10          lawyer?

11          A   Yes.

12          Q   Let me go back to the interview, sir. I think --  
13          I don't think. As you've noted, Constable Yurkiw  
14          did not claim that she had done a stellar job of  
15          the interview. She acknowledged that there were  
16          difficulties; is that correct?

17          A   Yes. I thought that she was very frank and honest  
18          and self critical.

19          Q   And let's cast our minds back now to what  
20          practices were like at that time, which was in  
21          2000. There have been some developments and  
22          techniques and so on and so forth for  
23          interrogations over the years, the ensuing years?

24          A   Yes. There's always -- I've said before that  
25          police investigative techniques are always

1           evolving, but I would say that police  
2           interrogation by that time was well evolved and  
3           most police officers trained in interrogation were  
4           trained in the Reid Method of Interrogation. That  
5           was pretty standard at that time. And I had been  
6           trained many years before that, so that training  
7           was being delivered on quite a standard basis for  
8           a considerable time before then and that training  
9           continued and essentially in the same way right up  
10          until relatively a few years ago when there's been  
11          a move to this model called the Peace Model of  
12          Interrogation.

13         Q   But at that time it's my understanding that it was  
14             not invariably the practice to have long  
15             preparation and notes and so forth, a formal plan  
16             of interrogation?

17         A   No. I completely disagree with you. I've done  
18             many, many interrogations and been a party to  
19             investigations and it's -- it was quite standard  
20             to have a planned interview, to have mocked up  
21             interview rooms with props ready to go. These  
22             were very standard interviewing techniques that I  
23             have personally been involved in and exposed to  
24             and no doubt, Mr. Commissioner, you've heard them  
25             in cases that you heard long before 2000.

1 Q Well, sir, are you saying that it was expected of  
2 every member of your force to have a formal  
3 detailed plan before interrogating a person?

4 A Before interrogating a murder suspect? Yes.

5 Q But not before doing something like interviewing  
6 Ellingsen, for example?

7 A Well, I think that every interview requires some  
8 degree of planning, an understanding about what it  
9 is that is intended to be achieved.

10 Q And if I suggested to you that other officers  
11 might take a different view of the practice at  
12 that time, would you say they're wrong?

13 A Well, I don't know what the practice was in the  
14 area that -- where you're talking about, but I  
15 can, I'm sure, go to cases from across Canada,  
16 examples of where there had been a structured  
17 planned interrogation.

18 Q Sir, I don't want you to mistake me. I'm not  
19 asking if those occurred or never occurred. I'm  
20 suggesting to you that they did not invariably  
21 occur and nor was it -- nor was it regarded as  
22 necessary that they invariably occurred at that  
23 time?

24 A Well, if you're asking about a murder  
25 investigation, interviewing a murder suspect, then



1 I would have to respectfully strongly disagree. I  
2 would say it was absolutely standard practice to  
3 plan your interview. And most police officers  
4 that are going to do an interview like that have  
5 received training about it or they shouldn't do  
6 it. They should ask someone else to do the  
7 interview who has had the proper training, which  
8 existed both in the RCMP and the VPD during that  
9 time.

10 Q And I'm assuming as well, moving to a slightly  
11 different subject, that there is a different  
12 approach to an in-custody questioning than there  
13 is to somebody who is not in custody?

14 A Well, there certainly might be.

15 Q And in this particular instance, one of the things  
16 that was, to say the least, less than ideal was  
17 that Gina Houston was with Robert Pickton in the  
18 interview?

19 A Yes. That's true.

20 Q But you are aware that he despite efforts to get  
21 an interview with him on that occasion refused to  
22 be interviewed without her?

23 A I understood that that was a challenge, that he  
24 wanted her there. Whether or not he would have if  
25 further encouraged -- Constable Yurkiw told me we

1           should have done more to try and get him in there  
2           without her.

3           Q   And if in a situation when one has to make a  
4           decision one way or the other, the choice is an  
5           interview with Gina Houston or no interview at  
6           all, I'd suggest to you it was not unreasonable to  
7           proceed as she did?

8           A   Yes. I agree.

9           Q   And it was during that interview that the question  
10          of a consent search came up?

11          A   Yes.

12          Q   And you are aware, of course, that Constable  
13          Yurkiw elected not to take him up on that  
14          suggestion? Yes?

15          A   Well, I know that it did not occur.

16          Q   It did not occur. And are you aware that in  
17          November of 1999 Constable Lori Greig had been in  
18          Pickton's trailer in the course of an unrelated  
19          investigation and had inspected it as best she  
20          could for items of interest?

21          A   I don't know if I was aware of that. I don't  
22          think so.

23          Q   All right. And you are, of course, aware that  
24          there had been a search earlier in 1997 and  
25          nothing of interest to this investigation was

1 found at that time?

2 A There had been a search of the trailer in 1997.

3 Q I believe that's what I said. The trailer.

4 Sorry. There had been a search of the trailer in  
5 1997?

6 A Yes.

7 Q Okay. So -- and in terms of a consent search,  
8 it's important and it's legally necessary for the  
9 police to make the subject of the search aware of  
10 the ambit of the search they intend to conduct?

11 A Yes. That it's not enough just that he says sure,  
12 go ahead; that there are some steps to satisfy  
13 before it is going to be a truly informed consent  
14 search.

15 Q And, of course, the subject knows when you're  
16 going to arrive. In other words, this is not  
17 going to be a surprise search, as is often  
18 conducted in the interests of ensuring that  
19 evidence is not destroyed beforehand?

20 A Well, it could occur in different ways. There's  
21 nothing to say that there couldn't have been a  
22 surprise and the efforts to make sure that it's a  
23 properly informed search occur right then as  
24 opposed to a week before or a day before.

25 Q Well -- and then you have the waiver issues. So

1           all of these things are matters to be taken into  
2           consideration?

3           A    Yes.  I agree.

4           Q    And, in addition, a search that would have needed  
5           to be a very, very detailed search, not simply a  
6           cursory look around, because given the nature of  
7           the information you'd be looking for  
8           identification.  You'd be looking for other kinds  
9           of effects.  You'd possibly be looking for DNA  
10          samples.  You'd be looking in freezers.  You're  
11          talking about something that's quite intense, are  
12          you not?

13          A    I don't know if quite intense is the right word,  
14          but I agree.  It's not just going and looking  
15          through his desk drawers or something like that.

16          Q    And that all factors into the decision about  
17          whether to undertake such a step are all those  
18          kinds of factors that we discussed, that as a  
19          police investigator you would be looking at -- at  
20          all of those factors in deciding whether or not a  
21          consent search was a good idea?

22          A    Well, Mr. Commissioner, if I were investigating a  
23          murder and I had all this other information, this  
24          constellation of information pointing in this  
25          particular direction and then I conducted an

1 interview with the suspect in which he was  
2 evasive, which was my evaluation in which Corporal  
3 Connor, a very experienced police officer and  
4 there's others --

5 Q I'm sorry to interrupt you and I'll give you a  
6 chance, but my question was the things that I  
7 mentioned are things that go -- that are  
8 appropriate to be considered? That was the  
9 question.

10 A But you're asking me to answer it without  
11 considering all the factors involved.

12 Q No. No. I asked you if these specific matters  
13 were appropriate for consideration. That's the  
14 only question I asked you.

15 A Yes. In the context of all the information, I  
16 agree that the factors to consider -- that is the  
17 question, so I'm going to consider all that and in  
18 the circumstances --

19 MS. TOBIAS: I didn't ask you if you would have made the same  
20 decisions where you've written your report. I  
21 asked you the question I asked you.

22 MR. HERN: I think these interruptions are unfair to the  
23 witness. If my friend is putting a hypothetical,  
24 that's fine and if she's asking for the  
25 hypothetical to be certain information in

1 isolation, that's fine, but she needs to make it  
2 clear because, as the witness has indicated, if  
3 you're talking about the actual facts --

4 THE COMMISSIONER: Well, I agree that she should give an  
5 opportunity to fully answer it, but her questions  
6 are fairly confined here and she's entitled to get  
7 a responsive answer to that, but if there is more  
8 that he wants to say, you can -- I hate to say  
9 this. You can redirect.

10 MS. TOBIAS:

11 Q Thank you, Mr. Commissioner. Now, I want to move  
12 on to another subject. You have said at various  
13 times in your evidence, and I believe in your  
14 report, that -- or expressed the view that the  
15 Evenhanded team should have focused sooner than it  
16 did on Pickton as a suspect. And I'll tell you  
17 what I mean by that. That what I understand your  
18 opinion to be is that they should have targeted  
19 him specifically sooner than they did rather than  
20 focus only on the file. I know you said the file  
21 review was important, but you said that they  
22 should have focused on him specifically as well;  
23 is that right?

24 A No. I don't think that you're right.

25 Q Then can you tell me what your view is, please?

1           A    My view was that had Evenhanded been provided all  
2                   the information pointing to Pickton, and I mean  
3                   all of the information, that their decision might  
4                   have been different. Had they been provided the  
5                   information package that was agreed on in April of  
6                   2001 by the Coquitlam Serious Crime Unit, that  
7                   they should provide a package to Evenhanded, and  
8                   if Evenhanded was fully apprised of all the  
9                   information pointing to Pickton -- I'm obviously  
10                  speculating, but I think that they might have  
11                  wanted -- they might have come to the conclusion  
12                  we better get up resourced a bit here so that we  
13                  can focus on such a compelling suspect. I don't  
14                  know that.

15          Q    I see.

16          A    But I do not believe I said they should have.

17          Q    Okay. Well, thank you for that clarification.  
18                  That's important. Now, I want to go back one more  
19                  time. You said that you had -- you reviewed a  
20                  limited amount of the Evenhanded material. You  
21                  said the RTCC?

22          A    Yes. I wasn't reviewing their investigation.

23          Q    And if I can focus on the report to Crown counsel  
24                  for a moment. A report to Crown counsel is going  
25                  to contain all the evidence pertaining to the

1 person who is finally recommended for charges.  
2 It's not going to contain all the information  
3 about everybody else that was looked at on the  
4 way, especially in a matter like this?

5 A The brief itself. I agree.

6 Q Yes. So would it be correct to say that you were  
7 not intimately familiar with the other suspects  
8 that Evenhanded considered to be priority one  
9 suspects along with Pickton?

10 A I probably do know who some of them are, but no.  
11 I'm not -- I don't have any familiarity with who  
12 the other 30 or so -- 29 to 31 is my understanding  
13 that were listed as priority one suspects.

14 Q And did you realize that there had been -- that in  
15 the course of the file review one of the  
16 Evenhanded team members had in fact reviewed the  
17 Coquitlam file?

18 A Yes. I am aware that they did have some of the  
19 information on the Coquitlam file, but I -- I  
20 never came to the conclusion that they were fully  
21 informed about all the information in the Pickton  
22 file.

23 Q But you don't know how much information they had?

24 A No. I don't know how much information they had.  
25 I knew that they had the information -- or my



1           understanding is that they had the information  
2           that was included in the VPD's files because that  
3           was one of -- tip 30 was the Pickton information  
4           that was contained in the Missing Women Review  
5           Team's files, but, of course, it didn't contain  
6           everything that was included in the local  
7           Coquitlam file.

8           Q   And, again, you don't know that -- I would suggest  
9           to you that someone did go in and review the local  
10          Coquitlam file?

11          A   My understanding is that that is not true.

12          Q   All right. Now -- but you have agreed with me  
13          that you were not intimately familiar, as they  
14          were, with the nature of the other potential  
15          suspects, the other persons of interest?

16          A   That I'm not as --

17          Q   That the other priority one?

18          A   No. I agree.

19          Q   And would you agree with me that if there were  
20          other -- quite a number of other suspects that the  
21          Evenhanded team regarded as equally compelling to  
22          Pickton, that pursuing that number of suspects all  
23          at once to the degree required would have required  
24          an enormous amount of resources that they didn't  
25          have?

1           A    I really want to provide -- limit my answers, but  
2                this is one where I have read the notes of the  
3                assessment of the Coquitlam information. I spoke  
4                myself to Inspector Adam. I have not criticized  
5                the Evenhanded investigation, as Deputy Evans did,  
6                because I was not looking at that file and so my  
7                belief is that they were not fully apprised of the  
8                information pointing to Pickton; that there had  
9                been some review of some information and there was  
10              also an understanding that in short it was a bunch  
11              of hearsay and nothing came of it, so --

12          Q    Again, I'm sorry to interrupt you, but I think  
13                you're sort of straying from the question that I  
14                asked you, so let me put it again because it's  
15                really very specific, okay? You know that the  
16                Evenhanded team had 30 or so priority one  
17                suspects?

18          A    Yes.

19          Q    And I'm asking you to assume that they all  
20                regarded -- that that team regarded those suspects  
21                as being roughly equal in terms of how compelling  
22                they were?

23          A    I understand that.

24          Q    Okay. All I'm saying is to put a proper intense  
25                investigation on each target -- on one target is a

1           very labour intensive, concentrated task; is that  
2           correct?

3           A    Yes.  Okay.  I'll agree with you.

4           Q    And so if you multiply that 20 times, let's say,  
5           that is an enormous endeavour?

6           A    Clearly, Mr. Commissioner, there would have to be  
7           screening.  So you've got these 30 -- 29 to 31  
8           suspects and that would be a lot to focus, like,  
9           real investigations on, so you'd have to look at  
10          how do we screen these to focus on the highest  
11          priority suspects.  So, for example, who of them  
12          were out of prison during the time that it appears  
13          that the women went missing, so '95 to -- to date.  
14          So that would be one way that maybe we would  
15          screen some out.  Now -- and this is my  
16          understanding -- we've got these 30 or so  
17          suspects -- and, again, I want to make clear in  
18          the context that I haven't -- and I'm not  
19          criticizing Evenhanded now because my belief was  
20          that they were not fully apprised of the  
21          information pointing towards Pickton.  So how many  
22          of those priority suspects had multiple informants  
23          pointing a finger directly at that suspect and  
24          saying I believe that he is good for the missing  
25          women, that there's this specific information?

1           How many of them had a rural property and the  
2           capacity to get rid of bodies? How many of them  
3           had information from an informant that he is  
4           disposing of the bodies by putting them through  
5           this chipper and he can take them in barrels to  
6           West Coast Reduction in Vancouver? How many of  
7           those cases had informants that were saying  
8           Pickton has told me I can get rid of a body? How  
9           many of them have witness information reported to  
10          multiple informants saying I witnessed a murder in  
11          the barn? How many of these suspects had actually  
12          been interviewed and in the investigator's opinion  
13          was lying?

14        Q   Sir, I realize that you -- you were focusing on  
15            this one case, but I think that you essentially  
16            answered my question. And, Mr. Commissioner, if I  
17            may ask a last question before the afternoon  
18            break. You've outlined the parts of the  
19            information that were very compelling in relation  
20            to Pickton, but when we are comparing Pickton with  
21            the other suspects, you're not suggesting that  
22            you're looking for information that's compelling  
23            for the same reason. For example, you're not  
24            saying that the other suspects can't be equally  
25            compelling unless they have all these people

1           saying this about them. They could be compelling,  
2           for example, because they've been stopped with a  
3           body in their trunk?

4           A    Yes. I'm aware --

5           Q    So that -- you don't mean to say that we're  
6           looking for the same constellation of information,  
7           correct?

8           A    No. What I'm saying is that my understanding --  
9           and I've read Inspector Adam's evidence at trial,  
10          for example -- is that Pickton didn't look any  
11          better or worse than our other priority suspects  
12          because these were all very bad, violent guys,  
13          but, of course, there was this other constellation  
14          of information that Inspector Adam --

15          Q    You don't think they had?

16          A    Pardon me?

17          Q    That you don't think they had?

18          A    Well, Inspector Adam himself told me that, look,  
19          there was some hearsay information that didn't pan  
20          out, so it was my conclusion that he was not fully  
21          apprised of the information pointing at Pickton.  
22          And he said the same thing in his testimony under  
23          oath, is that they'd done some work on him. It  
24          didn't pan out. He didn't look any better than  
25          any other suspect.

1 MS. TOBIAS: Thank you, sir. Mr. Commissioner, I estimate that  
2 I have about 15 minutes.

3 THE COMMISSIONER: All right. Do you want some time now to  
4 prepare -- you want the break now?

5 MS. TOBIAS: So I would suggest, if we may, that we take the  
6 break. And I must apologize to Miss Livingston  
7 because I had promised her I would do my best to  
8 give her more time this afternoon.

9 THE COMMISSIONER: All right. Well, we'll finish it. Thank  
10 you.

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

12 (PROCEEDINGS ADJOURNED AT 3:06 P.M.)

13 (PROCEEDINGS RESUMED AT 3:23 P.M.)

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

15 THE COMMISSIONER: Yes.

16 MS. TOBIAS:

17 Q Thank you, Mr. Commissioner.

18 Deputy LePard, there are a couple of things  
19 that I put to you earlier that I must correct --  
20 and I apologize for that -- just to keep the  
21 record straight. You will recall that I mentioned  
22 to you a search by Lori Greig in November of 1999  
23 on examination of Mr. Pickton's trailer. Do you  
24 remember that?

25 A I remember you mentioning it.

1           Q   And I am informed that that search actually took  
2                   place in November of 1998.  Is that something that  
3                   you were aware of, that Lori Greig was  
4                   investigating the theft of a compressor, a  
5                   complaint by Mr. Pickton, and she went to his  
6                   trailer in the course of that investigation and  
7                   had a look around?

8           A   I don't recall being aware of that.

9           Q   And with respect to the -- what was reviewed by  
10                  the Evenhanded team with respect to the Coquitlam  
11                  '98 file, which was the investigation we were  
12                  speaking of, I'm advised was the file as it sat in  
13                  Project Amelia, which was the VPD's files that was  
14                  brought over to Evenhanded.  Is that your  
15                  understanding?

16          A   That was my understanding, which was limited only  
17                  to the information the VPD had, not the entire  
18                  information that Coquitlam filed.

19          Q   Just a couple of other details.  We were speaking  
20                  about Evenhanded's priority one suspects as being  
21                  30 or thereabouts in number.  Just to be precise,  
22                  you were aware that there was a very large  
23                  number -- hundreds of priority two or three  
24                  suspects as well; is that right?

25          A   Yes.  I'm aware of that.

1           Q   And one last clean-up detail.  When we were -- you  
2               were giving evidence about the possibility of  
3               doing a consent search of Pickton's property, of  
4               course, the other property owners would have to  
5               consent as well, as you understand it; is that not  
6               correct?  So Pickton wasn't the only owner of the  
7               property.  The police would have sought consent  
8               from the other owners as well?

9           A   Well, my understanding is that everybody with a  
10              privacy interest in the property would have to  
11              consent, or certainly that's an issue that would  
12              have to be resolved.  It sounds like something to  
13              get some legal advice on.

14          Q   Now, I want to take you to a statement that you  
15              made on page 233 of your report.  If I may have a  
16              moment.  In your analysis beginning at this point,  
17              I believe one of the points that you make is that  
18              in your view the RCMP were late jumping onto the  
19              bandwagon in terms of starting a JFO.  Is that a  
20              fair way of putting it?

21          A   Yes.  Without meaning that in a necessarily  
22              pejorative way because I think that there was  
23              fault on both sides in terms of the process  
24              followed despite being well intentioned to get a  
25              JFO underway.



1 Q Now, the Missing Women's File Review Team, can I  
2 refer to that as Project Amelia?

3 A Yes.

4 Q Project Amelia was in some ways running out of  
5 steam and being downsized a little bit and  
6 eventually there was talk of the RCMP doing a file  
7 review?

8 A All of that is true and parallel to those things  
9 occurring, there was also a number of different  
10 meetings and conversations about creating an  
11 investigative JFO. So there was talk of the file  
12 review and also a JFO investigative --

13 Q Again, can we take this one question at a time?

14 A Sure.

15 Q Okay? So there was these conversations about file  
16 reviews starting -- and it's a common practice in  
17 the police, I am advised, that having another  
18 force or another detachment or someone else take a  
19 fresh look at a file is something of value and  
20 that's what was being sought in this case?

21 A I would say that it's probably somewhat uncommon  
22 to have another force have a look at it, but a  
23 good idea to have someone bring fresh eyes to it,  
24 for sure.

25 Q And if the JFO was going to be successful, the

1 first step would be to ascertain what had already  
2 been done to figure out where the ground lay?

3 A I agree.

4 Q And so a file review is a necessary first step?

5 A I agree.

6 Q And the Vancouver Police Department was having a  
7 great deal of difficulty because of the  
8 difficulties with SIUSS and so forth in getting  
9 those materials together in a form in which the  
10 file could be reviewed?

11 A Yes. I agree.

12 Q So that when Project Evenhanded started, that that  
13 was the logical starting point?

14 A The review?

15 Q To assess where things were and what had been  
16 done?

17 A Yes.

18 Q And when approached -- first of all, before the  
19 JFO, but when approached with the idea of doing a  
20 file review, the RCMP readily agreed that they  
21 were prepared to do that?

22 A The conversations evolved and I agree that once  
23 formal representation was made to do that, the  
24 RCMP did agree, but I wouldn't --

25 Q Did agree to the file review?

1 A Yes. But I wouldn't like to ignore the number of  
2 conversations that occurred leading up to that  
3 agreement that had started even in 1999.

4 Q Are you saying that there were requests made of  
5 the RCMP and that they expressed reluctance at any  
6 time to do a file review?

7 A Well, if you confine me to talking about a file  
8 review --

9 Q That is what I'm asking about.

10 A Then I will -- then I'll agree with you that they  
11 were not reluctant to do that.

12 Q And I think you said this before, but the first  
13 request that was made by VPD management to the  
14 RCMP management to undertake a JFO -- that was in  
15 2000 -- the RCMP agreed?

16 A If you're limiting me to talking about VPD  
17 management --

18 Q Yes, I am.

19 A -- making the request, then yes.

20 Q I want to talk -- ask you some questions about  
21 some of the other meetings and things that were  
22 taking place between the two forces with respect  
23 to furthering these investigations. Now, you made  
24 reference at some point that the VPD  
25 investigators -- I think it was Constable Shenher

1           was having trouble getting copies of the file  
2           dealing with the valley murder investigation,  
3           those three murders in Agassiz and so forth?

4           A    There were actually several other murder  
5           investigations that were grouped in with that, but  
6           that was the main part of that request.  There  
7           were a couple of others too.

8           Q    Now, I think what you've said is that there was  
9           trouble getting a copy of the file.  Do I have  
10          that right?

11          A    Well, whether it was a copy of the file, access to  
12          the information to learn about what was in the  
13          file, however that was going to occur, there was  
14          trouble accessing it.  And --

15          Q    Now, it's -- for an ongoing investigation of that  
16          nature, sir, let's just deal with providing  
17          copies.  It's not unreasonable for a police agency  
18          not to want a lot of material going out of their  
19          hands because of the concern about hold back  
20          information and so forth; do you agree with that?

21          A    I agree with the general proposition that the  
22          police have to be careful about maintaining  
23          control of information so as not to compromise an  
24          investigation.

25          Q    My apologies, Mr. Commissioner.  I just can't put

1 my hands on the precise passage I wanted to take  
2 the witness to and I'll let it go for the moment.  
3 Now, speaking -- I'm speaking in the sort of 1999  
4 to 2000 period of time, so if you would address  
5 yourself to that, please. As the Missing Women's  
6 File Review Team went about their work starting to  
7 look at potential suspects and so forth, is it not  
8 true that they developed a thought, a theory that  
9 the murders in the valley might be -- the  
10 offenders there might be responsible for at least  
11 some of the disappearances of the women that they  
12 were investigating?

13 A Yes.

14 Q And that they met and spent quite a bit of time  
15 with Officer McCarl of the RCMP, who was in charge  
16 of that file in the valley?

17 A I know that they did meet with him, yes.

18 Q And that they -- there was quite a lot of sharing  
19 and exchange of information in that respect?

20 A Yes.

21 Q And that that was a full on investigation that the  
22 RCMP were conducting into the murders of women who  
23 had come -- who were sex trade workers who would  
24 come from the Downtown Eastside?

25 A Yes. That's true.

1           Q   And that when Davidson did his profiling work, one  
2               of the things that he put forth as a theory was  
3               that -- precisely that; that that was one possible  
4               and one of the more likely scenarios; that whoever  
5               murdered the women who were found in the valley  
6               was responsible for at least some of the women's  
7               disappearances?

8           A   That he might be, yes.

9           Q   And that as the two teams worked together to  
10              pursue this theory, that it was in that connection  
11              that what came out of that was the thought that  
12              there would be a presentation made to  
13              Superintendent Bass to -- to further that -- to  
14              further the investigation with that theory in  
15              mind?

16          A   That that was one of the theories. I don't  
17               believe that it was limited to that theory. That  
18               was certainly something reasonable.

19          Q   And that the reaction of Superintendent Bass was  
20               that the -- the valley team would be supportive  
21               and more resources would be added as and when they  
22               became available?

23          A   Yes. I have seen that in the -- in the  
24               documentation.

25          Q   And so there -- it's certainly true to say that

1 the RCMP were very fully involved in pursuing that  
2 line of inquiry, not least because Davidson  
3 himself was spending quite a bit of time on it?

4 A I agree that there was support for pursuing  
5 assisting the valley investigation; that there was  
6 less support for pursuing all of what Staff  
7 Sergeant Davidson was proposing, is that was only  
8 one theory, was that solve that case and maybe  
9 you'll solve some others.

10 Q And that, what you have just described, of course,  
11 has to be put side by side with what was then  
12 still the attitude in Vancouver; that these really  
13 ought -- it was not necessary to undertake murder  
14 investigations. These were still missing persons  
15 investigations?

16 A I agree with you in terms of the management view,  
17 not of the people that they were dealing with  
18 directly. It was mostly Sergeant Field and  
19 Detective Constable Shenher, yes.

20 Q Now, I want to ask you a couple questions about  
21 your -- some of your conclusions. I'm not going  
22 to ask you to look it up because I think you're  
23 very familiar with it. But on page 44 of your  
24 report, you say:

25 Ironically, even had the VPD's MWRT been a

1 model for investigative excellence, it would  
2 likely have made no difference in the absence  
3 of a proper investigation of Pickton by the  
4 RCMP in Coquitlam.

5 And then you say at the end:

6 The investigation failed because it was  
7 mismanaged by the RCMP. The VPD's mistake in  
8 the investigation was not to demand more  
9 forcefully at a senior level that the RCMP  
10 could do more.

11 And that is what you say at page 44. And at page  
12 205 you're talking about Detective Inspector  
13 Rossmo's report and you say:

14 The failure to give appropriate weight to  
15 that report certainly contributed to the  
16 failings in the missing women investigation  
17 generally, but it would be difficult to  
18 attribute in any way the deaths of the  
19 missing women after he provided his analysis;  
20 those deaths can be attributed to the  
21 failings in the Pickton investigation, which  
22 are described in Chapter 7 of this analysis.

23 Sir, are you saying that despite the mistakes, if  
24 I can describe them as such, that the Vancouver  
25 Police Department made and the steps not taken



1           that should have been taken that it is your  
2           opinion that at the end of the day all of the  
3           deaths in 1999 and 2001 should be laid at the feet  
4           of the RCMP?

5           A    No.

6           Q    Can you -- can you tell us what your position is  
7           then, please?

8           A    Well, as you have described, there was overlapping  
9           responsibility and, first of all, the VPD had a  
10          duty to -- to a competent, properly resourced  
11          investigation, and I've already described what the  
12          problems were in that. But the VPD, as I write in  
13          my report, is not blameless in this regard because  
14          they could have done more to offer support to the  
15          investigation that the RCMP was the primary agency  
16          for, but they had a stake in it, so they could  
17          have done more, should have done more, could have,  
18          for example, been more effective in ensuring that  
19          there was proper communication and co-ordination,  
20          could have offered resources to that; that there  
21          was not a bright line between them. So while the  
22          RCMP were in charge of the investigation into  
23          Pickton, the VPD had a role as well.

24          Q    And specifically the VPD could and should have  
25          investigated in the Downtown Eastside as to what

1           was happening to the women who were leaving that  
2           area, never to be seen again?

3           A    Yes.  And I wouldn't like to -- it to be inferred  
4           that that wasn't going on because people like  
5           Shenher and Field, they were doing a lot of work  
6           down there.  Was it sufficient?  No.  I don't  
7           think that it was, and I've written that.  And who  
8           knows what might have been the outcome had it been  
9           better.

10          Q    All right.  Could you please turn up your --  
11          Volume 1 of the commission's documents, the  
12          background volume?

13          A    Sorry.  Is that this one?

14          Q    No.  It should be labelled Background Document.  
15          I'm sorry.  My copy is marked Documents Volume 1,  
16          but I'm not sure -- it should be the very, very  
17          first volume that Mr. Vertlieb handed up.  It's  
18          the volume with your CV at the first tab.  Thank  
19          you.  Have you got it now?

20          A    Yes.  I think so.

21          Q    Okay.  Would you turn to Tab 3, please?

22          A    Yes.

23          Q    And this is the September 9th, 2002 memorandum  
24          from you to Chief Constable Graham --

25          A    Yes.

1           Q    -- that you've looked at before in your evidence  
2                   at this hearing. And you describe the purpose of  
3                   the review and, as you said, focusing on systemic  
4                   factors. And then if you turn over on page 2, you  
5                   say:

6                   It should be noted that it may be difficult  
7                   to avoid discussion of the conduct of  
8                   individuals in the review and the quality of  
9                   decisions made. As a result, consideration  
10                  must be given to the legal implications of  
11                  any negative comments; for example,  
12                  information suggesting individual failings  
13                  could have serious repercussions in terms of  
14                  civil liability or accountability under the  
15                  *Police Act*.

16                So you say that there. And then you refer in the  
17                   next paragraph to the necessity or the  
18                   advisability of consultation with, among others,  
19                   the City Legal lawyer preparing for civil  
20                   litigation or inquiry. That's correct?

21                A   Yes.

22                Q   And then over the page under the heading  
23                   Consultation, you say:

24                   It is important that nothing be done that  
25                   might compromise not only the current

1 investigation, but also City Legal's ongoing  
2 preparations for expected civil action.

3 So I'm assuming that sentence is a reference to  
4 how you go about preparing your report?

5 A Well, it was at that time, but clearly my mandate  
6 in terms of reference evolved over time because if  
7 it was the purpose not to compromise City Legal's  
8 ability to defend us, for example, I don't think  
9 that my report would look the way that it does.  
10 So I didn't know what I didn't know at that time.  
11 I didn't know what I was going to find. I knew  
12 very little about the file. This was my  
13 suggestions when Chief Constable Graham said, "I  
14 want you to do this. I want you to find out what  
15 went wrong, if anything, and I want you to tell us  
16 what we need to do to fix it. Why don't you write  
17 me what you think you should look into?"

18 Q Is there another document that evidences your  
19 change in mandate?

20 A No. That was the evolution in my -- as a result  
21 of discussions with the chief constable and  
22 discussions with our legal counsel.

23 MS. TOBIAS: And if I can direct you to another document. That  
24 is from Mr. Ward's index. I'm not sure what  
25 exhibit number this is.

1 THE REGISTRAR: Mr. Ward's document, I think he put in -- was  
2 it J?

3 MS. TOBIAS: No. That's Mr. Gratl's documents, so it would be  
4 a couple of exhibits before then, I think.

5 THE REGISTRAR: Exhibits or for identification?

6 MS. TOBIAS: Exhibits for identification.

7 THE REGISTRAR: I'm not sure which one you're referring to.

8 MR. CHANTLER: It might be the document marked for  
9 identification letter H.

10 THE REGISTRAR: H?

11 MS. TOBIAS: Thank you, Mr. Chantler. That's Mr. Roberts' one.  
12 Before that.

13 THE REGISTRAR: G.

14 MS. TOBIAS: I apologize, Mr. Commissioner, for not having the  
15 proper --

16 THE REGISTRAR: That's it?

17 MS. TOBIAS:

18 Q Sir, would you turn up Tab 1 in that volume?

19 A Yes.

20 Q And so this is the memorandum or the letter that  
21 went out to the members of the VPD asking them to  
22 collect all their documents, and I would ask you  
23 to direct your attention to the second-last  
24 paragraph. You say:

25 I have asked Inspector Doug LePard to manage

1                   the collection of this material and to work  
2                   with Mr. McIntosh on other aspects related to  
3                   the preparation for the civil suit.

4                   Do you see that?

5                   A    Yes.

6                   Q    So as it was conceived, this report was partly in  
7                   preparation to defend civil action anticipated?

8                   A    Yes.  That is the way that it started.

9   MS. TOBIAS:  And is that why there was legal counsel with you  
10                   when you interviewed the witnesses?

11   MR. HERN:  I'm just going to ask the witness to be cautious  
12                   here not to enter into matters of privilege.  
13                   These are two -- Mr. Commissioner, these are two  
14                   events that arose simultaneously, the civil  
15                   litigation and the management review.

16   THE COMMISSIONER:  Maybe I should ask what the purpose of the  
17                   question is.

18   MR. HERN:  And I just want it to be clear there's no -- I have  
19                   no instructions to waive privilege over the civil  
20                   litigation matters, but I don't want to create an  
21                   artificial thing.  These things arose and I  
22                   don't -- I'm not trying to create artificial  
23                   boundaries, so I just ask the witness to be  
24                   cautious of not waiving privilege.

25   MS. TOBIAS:  To answer your question, Mr. Commissioner, the

1           purpose of my questions is that this mandate in  
2           creating his report and coming to his opinion was  
3           expressed to be related as well to the prospect of  
4           civil litigation and I wish to ascertain from him  
5           the extent to which the anticipation of having to  
6           defend civil litigation affected his opinion as  
7           expressed in his report.

8   THE COMMISSIONER: Oh, I see.

9   MR. HERN: If that's her question, that's fine.

10   THE COMMISSIONER: There's nothing wrong with that question.

11   MS. TOBIAS: That's where I'm heading.

12   THE COMMISSIONER: Go ahead.

13   MS. TOBIAS:

14           Q   So my question to you, sir, is whether your  
15               assertion or your conclusions in your report are  
16               related in the slightest to putting the Vancouver  
17               Police Department in a better position to defend a  
18               civil suit?

19           A   No. I was not constrained in any way by  
20               considerations of the defence of any civil suit.

21           Q   And you're saying that those particular  
22               considerations that were expressed in the  
23               documents at the beginning of your mandate were  
24               changed?

25           A   Yes. As it evolved -- without waiving any

1 privileged discussions, I'll say that my view,  
2 supported by the chief constable, was that the  
3 best thing for us to do was to be full and frank  
4 and transparent and basically throw ourselves on  
5 the sword for any mistakes that we had made and  
6 learn from it and fix it. And when I started my  
7 review, because I had some myths, I didn't know  
8 what I was going to find, but I actually, like  
9 most people when I heard about the search warrant  
10 on February 5th of 2002, what I thought was great.  
11 Good for them that they -- they managed to be  
12 successful in that investigation. I did not know  
13 that it was a serendipitous search warrant. But  
14 the answer is no. I wasn't constrained in any way  
15 and there wasn't my concern around defence of any  
16 civil suits.

17 Q And I take it it is not your suggestion that as a  
18 result of -- I'll withdraw that question. I do  
19 want to take you, finally, to one last point, and  
20 that is on the question of whether the Evenhanded  
21 investigation was, if I can put it this way, at  
22 the end of the day instrumental in finding out  
23 that Mr. Pickton was involved in these offences  
24 and in these cold murders. And what I mean by  
25 that is that I can't remember how you put it, but



1 I think that perhaps the impression is left that  
2 your view is that the RCMP -- or Evenhanded,  
3 because that wasn't just the RCMP, of course,  
4 basically tripped over Mr. Pickton. Is that fair?  
5 Is that your view?

6 A Well, I don't think that they tripped over him. I  
7 think that young Constable Nathan Wells with his  
8 search warrant for firearms created the break for  
9 Evenhanded, who I believe did exceptional work  
10 after that search warrant of Constable Wells. And  
11 I suppose that the contribution that Evenhanded  
12 made was that they were well positioned to be able  
13 to take over and that they were this fully  
14 functioning task force that was ready to go rather  
15 than having to create something very quickly for  
16 an investigation of this magnitude, but if the  
17 question is did they contribute to solving the  
18 case, I have no information to suggest that. I  
19 mean it broke because of Constable Nathan Wells'  
20 firearms search warrant.

21 Q Well, let me suggest to you one thing, sir. You  
22 are aware that the trigger that occurred during  
23 Constable Wells' search was the location of things  
24 like an inhaler that belonged to one of the  
25 victims --

1 A Yes. I know that.

2 Q -- during that search? You're aware of that? And  
3 you're also aware that there were members of  
4 Evenhanded standing by?

5 A Yes. I'm aware of the circumstances of that and  
6 I've read their evidence, and so on.

7 Q All right. And I would suggest to you that had it  
8 not been for their work and for their being in the  
9 right place at the right time as a result of that  
10 work, the significance of finding an inhaler would  
11 have gone likely unnoticed. What do you say to  
12 that? How would you know who the victims -- that  
13 there was such -- how would Nathan Wells have  
14 known to look for the name of a particular victim  
15 or known the significance of what he was looking  
16 for -- or what he found, rather?

17 A I'm trying to remember his and his Coquitlam  
18 teammates' evidence about that, but I believe that  
19 it was they that reported to the Evenhanded  
20 investigators standing by what they had found and  
21 alerted them to it as opposed to the other way  
22 around.

23 Q Okay. Well, I suppose that one could argue about  
24 that, but if I were to put it to you that Nathan  
25 Wells located an inhaler and radio to the waiting

1           officers and said, "Hey, this is what's on here"  
2           and the officer said, "Oh, yes. That's one of  
3           ours", does that sound familiar to you?

4           A    Yes. But you have phrased it in that he wouldn't  
5           have had any idea and I just can't remember,  
6           having read the evidence, well enough, but I think  
7           that there were Coquitlam investigators that were  
8           pursuing the firearms search warrant that twigged  
9           to that, but I could be wrong about that. And  
10          yes. It was clearly -- it was a good thing that  
11          Nathan Wells had thought to notify Evenhanded and  
12          asked them if they would like to come along on the  
13          search warrant, and eventually it was decided that  
14          a couple of investigators would come by and stand  
15          by, but weren't involved in the investigation,  
16          weren't involved in assisting with the search  
17          warrant. They weren't -- according to Detective  
18          Little, weren't even sure what the search warrant  
19          was for or thinking that there was any particular  
20          urgency about this or that it was a break in the  
21          case or anything like that.

22        MS. TOBIAS: Sir, could you please turn up the documents that  
23           were introduced by Mr. Hern which are in -- and I  
24           promise this will be the last time I don't give  
25           you the numbers. Mr. Hern's documents?

1 THE REGISTRAR: I'm afraid you're giving very vague --

2 THE COMMISSIONER: I don't know that that helps us much.

3 MS. TOBIAS: It was the first document introduced after the  
4 commission's -- the first documents by Mr.  
5 Vertlieb and it's marked for identification still,  
6 I do believe.

7 THE REGISTRAR: That would be A book of documents?

8 MR. HERN: It might be F.

9 THE REGISTRAR: Let me see if we've got the right one here.

10 MS. TOBIAS:

11 Q Yes. That's it. Would you turn to Tab 15,  
12 please? And this is a document that Mr. Hern took  
13 you to in your evidence?

14 A Yes.

15 Q And it's entitled -- it's *The Gazette*?

16 A Yes.

17 Q And he took you to some of the quotes from that.  
18 I'd like to ask you to look at page 9, please.  
19 And there is a quote from Don Adam -- a direct  
20 quote from Don Adam there, and I would suggest to  
21 you that this is a -- the most reasonable way of  
22 looking at what happened on February the 5th,  
23 2002. He says:

24 The fact that Nathan Wells, a young member  
25 obtaining his second search warrant, got us

1                   on the farm, that was one. The fact that we  
2                   were there on the farm in the first place,  
3                   that's good policing. We positioned  
4                   ourselves to win.

5                   And so there is two sides and I suggest to you  
6                   that's a completely reasonable view?

7                   A Well, I think that that is a generous view in that  
8                   they were there because Constable Nathan Wells  
9                   called them because Pickton was flagged on CPIC,  
10                  so if we can infer from that that they created  
11                  their own luck, I'm happy for you to have that.

12                MS. TOBIAS: Thank you, sir. Those are my questions.

13                **EXAMINATION BY THE COMMISSIONER:**

14                Q Thank you. I have a question. We've heard --  
15                  we've heard a lot of evidence about the role of  
16                  the Vancouver Police Department and what they did  
17                  and what they could have done, and you've been --  
18                  you've detailed what the Vancouver Police did and  
19                  what you thought were the failings of the  
20                  Vancouver Police in the missing women's  
21                  investigation and the Pickton case, and you've  
22                  also talked about the role of the RCMP and where  
23                  you thought your jurisdiction or your obligation  
24                  ended and where theirs started. I take it from  
25                  all of that that you're of the view that if there

1           had been one police agency or one police  
2           department that these problems would have been  
3           avoided?

4           A   Well, I wouldn't like to claim that it would have  
5           been a panacea, but certainly all the lack of  
6           communication and co-ordination and  
7           prioritization, more difficulty marshalling  
8           sufficient resources, all of those things that  
9           were -- exchange of information, delays in getting  
10          files that might have been helpful like the valley  
11          murder files -- then there was the Lidguerre file  
12          and some others as well. All of those things that  
13          were barriers to a successful investigation or  
14          delayed it, even with the best of will and  
15          co-operation, they all created delays and barriers  
16          and one set of priorities, one set of policies,  
17          one leadership team, in my view, all of those  
18          things could have contributed to a better, more  
19          successful, quicker investigation.

20          Q   So are you prepared to say from that that some  
21          lives would have been saved had there been a more  
22          co-ordinated effort with one police agency?

23          A   Well, I think that that is quite possible.

24    THE COMMISSIONER:   Okay. All right. I ask you those questions  
25               because you may know that one of our terms of

1 reference relates to multiple policing agencies  
2 and multiple homicides. Thank you. Miss  
3 Livingston, did you have questions?

4 MS. LIVINGSTON: Yes.

5 THE COMMISSIONER: All right.

6 MS. LIVINGSTON: It's the end of the day. So Ann Livingston,  
7 VANDU.

8 THE COMMISSIONER: Yes.

9 **CROSS-EXAMINATION BY MS. LIVINGSTON:**

10 Q I'm here to ensure that the way that addiction to  
11 illegal drugs influences the failure of the police  
12 to protect the women that is mentioned. And I was  
13 going to not speak but find now that I must  
14 because the evidence that Mr. LePard gave about  
15 the changes made by the VPD that will prevent harm  
16 coming to women who use illegal drugs, who  
17 sometimes sell sex in Vancouver, and especially  
18 the women in the Downtown Eastside of Vancouver.  
19 And so that was at the end of your testimony with  
20 Mr. Hern, I believe. And then I was -- do you  
21 have a working knowledge of the Downtown Eastside  
22 situation, like how many people live there, how  
23 many are drug users, how many have AIDS?

24 A I know some of that.

25 MS. LIVINGSTON: And then so -- anyway, okay.

1 THE COMMISSIONER: I don't want to interrupt you, but there  
2 will be lots of other officers, I presume, who  
3 will be called who are perhaps more familiar with  
4 the -- with the policing in the Downtown Eastside.  
5 I expect Constable Dickson might be in a better  
6 position to answer that question. I don't know.

7 MS. LIVINGSTON: The problem with -- the only reason I stood  
8 up -- I mean really. To go through that report  
9 and do a bunch of head banging and tell you all to  
10 turn to whatever page and read some lines, I'm not  
11 going to do that, but because there was a mention  
12 and a boasting in a sense, you know, why not?  
13 That sister watch is in place, that women aren't  
14 at risk, that this has been handled, and I was  
15 surprised that that evidence was given and I feel  
16 very strongly, because Mr. LePard will know that I  
17 talk to him quite frequently and constantly bring  
18 up issues such as reducing the number of warrants  
19 against vulnerable women and that the issue of  
20 warrants and that the bias that the police have  
21 engaged in persistently for -- I don't know how  
22 many years I've been dedicated to doing this.  
23 I've been going to more police board meetings than  
24 most people.

25 THE COMMISSIONER: You might want to ask him a question based



1 on that.

2 MS. LIVINGSTON: Yes. So what I was going to do was bring a  
3 paper that Mr. Gill Puder had written, who is a  
4 constable, I believe -- I don't know his rank -- a  
5 number of years ago. And I have copies.

6 Constable -- it starts on the first page that:

7 Constable Puder is under threat of discipline  
8 from his Vancouver Police Chief for  
9 participating in the Fraser Institute Forum.  
10 It's called *Recovering Our Honour. Why Policing*  
11 *Must Reject the "War on Drugs"*. And it was a  
12 presentation made in April 21st of 1998. And the  
13 allegations that he points out here I think are  
14 really important. So did you know -- you know, I  
15 was going to ask if you knew Gill Puder and was he  
16 a respected member of the Vancouver Police  
17 Department?

18 THE COMMISSIONER: I think the work of Constable Gill Puder was  
19 fairly well known for those people who are  
20 familiar with policing. I expect you know what  
21 Gill Puder was saying.

22 THE WITNESS: Yes. I knew Gill and knew what he was saying.

23 MS. LIVINGSTON:

24 Q So it's fairly damning of the then current police  
25 from the nineties and the practice of arresting

1 many, many people who are addicted to drugs, for  
2 possession for the purpose of trafficking and  
3 trafficking, and he states that on page 1 that  
4 rewards -- it's on page 2. Sorry. That  
5 "entrenched police culture that rewards  
6 traditional performance measures, such as arrests"  
7 at the second paragraph. And he goes on to say  
8 that drug arrests are very easy and usually  
9 involve very poor, ill, addicted people that are  
10 charged.

11 Drug-related arrests can be easy, with  
12 hundreds of available, identifiable targets  
13 on city streets.

14 And then further down in the same paragraph:

15 Arrests usually involve poor, hungry people  
16 on street corners or in rooming houses and  
17 filth-strewn alleyways.

18 And points out that very rarely does anyone arrest  
19 sort of classic drug kingpins you see on TV. He  
20 goes on to say that:

21 Commendations and promotions are often the  
22 result of high arrest statistics. Finally,  
23 court cases can earn officers large amounts  
24 of publicly funded overtime pay, the lesson  
25 being quickly learned that maximizing arrests

1                   maximizes earning power.

2           Then on page 3 he goes on to say that:

3                   Labelling drug users conveniently removes any  
4                   need for introspection about using government  
5                   power to remove a person's rights and  
6                   freedoms. Marginalized people simply require  
7                   less respect. At the end of every shift, one  
8                   hears officers extolling the virtues of  
9                   apprehending a "hype", "junkie" or "druggie".  
10                  Since these tools for financial benefit,  
11                  career advancement and peer status are no  
12                  longer valued as people, officers need not  
13                  trouble themselves with ethical questions.

14           And I bring this paper to the attention of this  
15           commission because there is no reason to believe  
16           that Sergeant -- or Constable Puder would lie  
17           about this because he would in fact not benefit in  
18           any way because he was actually under threat of  
19           discipline for doing it. And that the culture of  
20           the VPD -- I mean this will be a question, I  
21           guess -- that the culture of the VPD was very  
22           biased against drug users and that, even worse,  
23           those who are in high rank may have partially  
24           achieved their rank using this exploitation of  
25           drug users. Do you think that's possible or true?

1           A    Then or now?

2           Q    Now.  I mean people that are in high rank are  
3                still in high rank.  I assume there's quite a bit  
4                of opportunity for promotion and expanding police  
5                forces with high retirement rates and during drug  
6                arrests.  I don't know if there's a dispute about  
7                the drug arrests?

8           A    So there was a lot in there, but maybe I can just  
9                start with saying that I think Constable Puder was  
10               a man a bit ahead of his time at the time when he  
11               talked about the arrests of addicted drug addicts  
12               and that sort of thing.  And I think that you  
13               know, Miss Livingston, that we have certainly  
14               evolved since then and when we started our beat  
15               initiative in April of 2003 and we made a focus on  
16               not charging people with simple possession, to  
17               treat it more as a -- as a health issue than a  
18               crime problem, that we focus on not charging  
19               especially addicted drug dealers and even addicted  
20               traffickers; that we have focused more on  
21               visibility and we focus more on creating safety  
22               and we have focused, as you said, you know,  
23               about -- mentioning about kingpins.  I think that  
24               I mentioned Project Rescue.  If I didn't, it's  
25               again our sister watch report about doing exactly

1           what you're saying that we should do, which is  
2           focus on the predatorial drug dealers and those  
3           engaging in violence against women in the Downtown  
4           Eastside. And we really appreciate the  
5           relationships that we have with the women of the  
6           Women's Memorial March Committee in doing that.  
7           So we -- we have certainly come to the conclusion  
8           years ago that we were not going to arrest our way  
9           out of the problems in the Downtown Eastside  
10          regarding addicts. We agree that it is primarily  
11          a health issue. As I have said, I think it was  
12          yesterday that we were at the table with the  
13          supervised injection site working with them to  
14          help get these successful. You asked --

15          Q   Yes. I have more stuff on the injection site  
16               later. This is a photograph that was taken in  
17               2007 and I put to you that this is typically an  
18               interaction between an addicted drug using woman  
19               in the Downtown Eastside and the Vancouver Police  
20               Department?

21          A   Well, I have no idea what that photograph is of.

22   MS. LIVINGSTON: Well, we could look at the photograph. The  
23                    woman has got two police officers -- I don't know  
24                    if people have got copies. That there's two  
25                    officers and I assume this is a classic takedown.

1 I don't know what --

2 THE COMMISSIONER: So what you're producing here is a  
3 photograph of two officers who appear to be  
4 handcuffing a person who has her face down.

5 MS. LIVINGSTON: That's a woman. It's a female.

6 THE COMMISSIONER: I know. But are you -- do you want to  
7 introduce this as --

8 MS. LIVINGSTON: Yes. I guess so. I mean I'm not a lawyer, so  
9 I'm really at a disadvantage.

10 THE COMMISSIONER: Okay. I know that. I'm trying to help you  
11 out.

12 MS. LIVINGSTON: Sorry.

13 THE COMMISSIONER: So do you -- the deputy chief has said, but  
14 do you recognize the photo?

15 THE WITNESS: No, I don't.

16 MS. LIVINGSTON: So I don't expect him to recognize it. I'm  
17 just saying that this is a typical interaction  
18 between a vulnerable, drug-addicted woman in the  
19 Downtown Eastside, so we know what we're talking  
20 about, and the Vancouver Police Department.

21 THE COMMISSIONER: You'll have an opportunity to testify later  
22 on if you wish, but you might want to ask him is  
23 this a typical arrest in the Downtown Eastside of  
24 Vancouver.

25 MS. LIVINGSTON: I did, and I asked him to look and see if he

1                    notices that this is a pretty strenuous takedown  
2                    and --

3       THE COMMISSIONER: I know. I'm just trying to help you out  
4                    here.

5       MS. LIVINGSTON: Okay. Sure.

6       THE COMMISSIONER: So you might want to ask him if this is  
7                    typical of what takes place in the Downtown  
8                    Eastside.

9       MS. LIVINGSTON:

10                Q    Is this typical of what takes place in the  
11                    Downtown Eastside?

12                A    Well, when I look at this picture, all I see is  
13                    the -- what looks like the end of an arrest and  
14                    that they're engaged in control tactics to control  
15                    her and put handcuffs on her. I have no idea of  
16                    what the circumstances leading up to the arrest.  
17                    I don't agree that that's the typical interaction  
18                    with people in the Downtown Eastside, not to say  
19                    that there aren't lots of arrests in the Downtown  
20                    Eastside because there are. There's a lot of  
21                    violence and crime in the Downtown Eastside. But  
22                    to characterize that as the typical interaction, I  
23                    don't agree.

24                Q    So the -- in the picture the woman has her head  
25                    shaved, which have you heard of this?

1 A Yes.

2 Q That she owes a drug debt and she had her head  
3 shaved?

4 A Yes. I understand that.

5 Q I would think she was a drug using woman. Would  
6 you think that?

7 A I wouldn't disagree with you. I just don't know  
8 what the arrest was for.

9 Q Yes. The -- I just think it's really important,  
10 as we've gone from page to page, that the reality  
11 of the Downtown Eastside be brought into here in a  
12 graphic way, and it's not untypical, in my  
13 experience, and, as you said, there's many arrests  
14 that take place in the Downtown Eastside?

15 A Yes.

16 Q So you stated many times that the women were so  
17 addicted that they would do anything, including  
18 putting themselves in obvious danger to get  
19 illegal drugs that they were addicted to; is that  
20 correct?

21 A Yes.

22 Q And you also implied that the life of marginalized  
23 women has improved and named a number of  
24 initiatives to better improve their lives?

25 A Well, earlier you'd said that I said everything's



1 fixed now and what I really said was that, you  
2 know, we've made some strides. We know that we've  
3 got a long way to go and that it will be an  
4 ever -- the problem will always exist. We will  
5 always need to work hard on our relationships with  
6 marginalized people in the Downtown Eastside and  
7 improve communications, and so on, and I think  
8 that we've made some great strides and it's, you  
9 know, small steps.

10 Q So there's a binder and I don't know the name of  
11 it, but it's called "Documents Introduced by the  
12 VPD Through DCC LePard, Changes in the VPD Since  
13 February 2nd", and then it's got the Project  
14 Lockstep. And on page 51 is the appendix. And  
15 I'm just so -- I don't know if everyone's got this  
16 binder. I don't know how important it is. It has  
17 a matrix of some of the existing strategies and  
18 then it says: "Police, city, health, justice,  
19 other, federal, private, non-profit, crime, mental  
20 illness, alcohol and addiction, street disorder,  
21 homelessness and survival sex trade." And then  
22 you can see that the police are involved in all of  
23 the -- the police were involved in crime. They're  
24 involved in mental illness. They're involved in  
25 street disorder, homelessness and survival sex

1           trade and they're not involved in alcohol and drug  
2           addiction. Do you know why that is, that that  
3           square is left blank? And that's been also my  
4           observation. Do you disagree that I have observed  
5           wrongly?

6   THE COMMISSIONER: When you say the police involved in alcohol  
7           and drug addiction, what do you mean by that?

8   MS. LIVINGSTON: So what's named next to it, the way the City  
9           is involved is the four pillar approach, the drug  
10          policy program, preventing harm from psychoactive  
11          substance abuse. No police at the table.  
12          Assertive community treatment program. No police  
13          at the table. Prism Alcohol and Drug Therapy,  
14          building on strength strategy. There was a  
15          severity addicted mentally ill meeting that had  
16          everyone from the head of psychiatry at UBC to  
17          outreach to --

18   THE COMMISSIONER: Okay. So --

19   MS. LIVINGSTON: And no police.

20   THE COMMISSIONER: Just a minute. Wait.

21   MS. LIVINGSTON: So I'm just saying is there a reason that the  
22           police aren't involved in alcohol and drug  
23           strategies in Vancouver and in the Downtown  
24           Eastside specifically?

25   THE COMMISSIONER: Are you able to answer that?

1 THE WITNESS: Well, I don't have that in front of me, but I  
2 would just say generally is that I think it was --  
3 that chart, if I recall it, is focused on, you  
4 know, who is -- who has responsibility or  
5 sometimes there's overlapping responsibility. So  
6 we're at the table with anybody that would like to  
7 be at the table with us, but, of course, we're not  
8 experts in addiction or alcoholism and so those  
9 are left to health authorities. Where our roles  
10 intersect, we're certainly at the table, like I  
11 described, with the supervised injection site  
12 because we want to ensure that their concern  
13 around, well, are people going to be arrested as  
14 they walk in the front door of the site because  
15 obviously they're there with drugs, so we develop  
16 policy around that to ensure that that would work  
17 smoothly.

18 MS. LIVINGSTON:

19 Q Can I just interject? That, in fact, police  
20 officers do a tremendous amount of drug education  
21 work and are paid to do it; is that not true?

22 A We do do some education. I think that you're  
23 probably talking about the Odd Squad, who is --  
24 they're doing it as a non-profit society and so  
25 they're doing that as the Odd Squad, not

1 necessarily as the Vancouver Police Department.

2 Q For at least a few years the Odd Squad, in my  
3 understanding, was fully paid by the Vancouver  
4 Police Department and fully engaged in the Odd  
5 Squad Productions as paid. I mean it's at a board  
6 meeting I happened to be at that I saw them pass  
7 that motion. They're fully supported with  
8 taxpayer dollars to be -- I mean I don't want to  
9 get into a -- do you know if that's true?

10 A I'm sorry? Your question is?

11 Q That the Odd Squad participants in the earliest  
12 years were fully paid police officers on salary  
13 doing fully 100 percent Odd Squad?

14 A No. The Odd Squad police officers, because  
15 they're not all Vancouver Police officers, but the  
16 members of the Odd Squad, most of them are police  
17 officers who do have or now work in the Downtown  
18 Eastside, but their job wasn't to be Odd Squad  
19 members. I'm sure that you know Toby Hinton and  
20 his full-time job is a lead sergeant.

21 Q It is now. I'm just saying in 1998 there was a  
22 motion made by the Vancouver Police Board allowing  
23 them to be fully doing the work of the Odd Squad  
24 Productions and paid fully by the VPD. I don't  
25 need to get into it. Whatever. I don't want to

1           argue. I can get you the documents, but I'm just  
2           me and I'm not getting documents. I can assure  
3           you of that. Do you know about that then? You  
4           don't know about that in 1998, that in the first  
5           two years that --

6           A Well, I can tell you my understanding, Mr.  
7           Commissioner, is that the police officers in the  
8           Odd Squad has always had full-time assignments in  
9           wherever they are assigned. Mostly it was in the  
10          Downtown Eastside. That's certainly where they  
11          started. And the department did support them and  
12          offer support to them in doing their work, and  
13          that might have been in endorsing them, providing  
14          in kind support and so on, but these are officers  
15          who always have had full-time jobs in the police  
16          department.

17          Q So I don't know if it's important for me to bring  
18          that to you and I don't want to. So you did  
19          not -- so the chart shows that there's involvement  
20          with sex work and that you guys are involved with  
21          WISH, for instance, as an example of --

22          A Yes.

23          Q So you know that?

24          A Yes.

25          Q So do you know that there's a Severely Addicted

1           Mentally Ill Task Force and many conferences that  
2           are put on in the Vancouver area to deal with  
3           people who are both severely addicted and mentally  
4           ill?

5           A   Well, I don't know if I know the specific  
6           conference that you're referring to, but I can  
7           tell you that we're in partnership with Vancouver  
8           Coastal Health specifically around the issue of  
9           mentally ill people.

10          Q   Yes. But not with the drug part of it; is that  
11          correct?

12          A   Well, we also -- you know, we -- Inspector Scott  
13          Thompson, I'm sure you know, who was in charge --  
14          still is in charge of our drug policy portfolio  
15          and meets again with many different groups and  
16          bodies, whether it's the Centre for Excellence or  
17          whoever we might meet with that we can contribute  
18          to better response to the issues that you've  
19          raised.

20          Q   Okay. So do you support Insite?

21          A   The official position of the Vancouver Police  
22          Department is that this is a health issue and that  
23          if -- if it is legal and when it had its legal  
24          exemption that it was legal is that it's a health  
25          issue; that our interest is in public safety and

1           so if it's legal, then we have no problem with it.  
2           We have no issue with it. We help support it  
3           being successful. And now that the litigation is  
4           finished and it can operate in the way it can, to  
5           us it's just another legal agency that exists to  
6           serve a particular group, in this case people who  
7           are addicted.

8           Q   Who are legal. So the Vancouver -- from an  
9                article in July of 2009 there's a -- you know, I  
10              don't know if there's a -- on the second page --  
11              do you know why Insite -- oh, yes. You said it's  
12              a health issue. That's good. So it's to reduce  
13              HIV. The police department supports Insite, which  
14              you said. And so on the second page of this, it  
15              says that Chief Chu takes a neutral stance and  
16              that the medical practitioners think this is an  
17              important aspect to improving community health and  
18              the police aren't going to comment, which it  
19              doesn't -- you know, do you think that's support,  
20              not commenting?

21           A   Well, what I said, Mr. Commissioner, is that we're  
22                not experts in public health initiatives; that our  
23                expertise is in public safety. So we look at --  
24                when an initiative like this comes to our  
25                attention, we look at do we have concerns about

1           the impact on public safety. If we did, then we  
2           might comment. In this case, it is a health  
3           initiative. We've always agreed with that. And  
4           so there are many, many things that we just take a  
5           neutral position on. We don't need to say it's  
6           good. We don't need to say it's bad. That's not  
7           our expertise.

8           Q   Are you aware that the police union is against  
9           Insite persistently since it opened? And I have a  
10          document, "Insite No Hit With Beat Cops" from  
11          November -- oops. Sorry. From October, 2009.  
12          Are you aware of the --

13          A   Yes. I'm aware of that.

14          Q   -- persistent --

15          A   I'm aware that the president, Mr. Tom Stamatakis,  
16          who speaks for the VPU, does not support Insite,  
17          but he doesn't speak for the Vancouver Police  
18          Department.

19   MS. LIVINGSTON: So I think you should look at this. It says:  
20                  A survey of patrol officers in the Downtown  
21                  Eastside district has found heavy opposition  
22                  to Insite, the controversial site on Hastings  
23                  Street. More than 59 percent responding to  
24                  the detailed survey were strongly opposed to  
25                  Insite. Another 18 percent were somewhat



1                   opposed.

2                   Do you have that or do you need it?

3   THE COMMISSIONER: Well, he's agreed with it.

4   MS. LIVINGSTON: Oh, okay.

5   THE COMMISSIONER: He's agreed that the union doesn't --

6   MS. LIVINGSTON:

7           Q    So my question is the union is, of course, all the  
8               rank and file police officers. Do you know how  
9               many union members there would be in the Vancouver  
10              Police Union?

11          A    Well, it's everybody from staff sergeant down,  
12               so -- I could figure it out if you give me --

13          Q    Is it at 900?

14          A    That sounds about right. It may even be more than  
15               that. There are 1327 sworn positions. There are  
16               about 35 of them in inspector and above, maybe a  
17               few more, maybe 40. So everybody else is in the  
18               Vancouver Police Union.

19          Q    So --

20          A    So about a thousand.

21          Q    -- if a large majority of those members are  
22               against Insite, it would be fair to say, then,  
23               many or most of the police are against Insite?

24          A    Well, our police officers can hold whatever  
25               opinions they want to have. I think probably we

1           might find as high a percentage of police  
2           officers, you know, might have certain views on  
3           sentencing or any one of a number of issues,  
4           but -- so they can think what they want. What  
5           matters to us is their actions, and we have  
6           policies and we, as the employer, are entitled to  
7           take positions on issues and our position on  
8           Insite is that it's a health issue and not a  
9           public safety issue. And so it is legal for them  
10          to operate and we have developed policies around  
11          helping them operate safely.

12   MS. LIVINGSTON: Yes. And I think that's -- so is it fair to  
13          say, then, that the VPD is supportive of  
14          initiatives that prevent disease and death at the  
15          level of the management, but is against it as the  
16          rank and file?

17   THE COMMISSIONER: Well, I think he's answered that.

18   MS. LIVINGSTON: Okay. Good. Then we'll go on. If the  
19          Vancouver Police Department uncovered racism,  
20          wouldn't there be mandatory workshops and  
21          sensitivity training put in place? Wouldn't it be  
22          alarming to think that most of the Vancouver  
23          Police Department is against an initiative that  
24          keeps a certain group of people that one could say  
25          are very discriminated against healthy? Wouldn't

1           that stimulate some kind of action amongst the  
2           board or the brass to remedy or educate the rank  
3           and file officers who are vehemently against the  
4           injection site and perhaps don't understand what  
5           it's for?

6   THE COMMISSIONER: Well, you know, I don't -- I want to help  
7           you out, but --

8   MS. LIVINGSTON: I said too much.

9   THE COMMISSIONER: No. Just listen to me for a minute. What  
10           the -- what the officer has said is that many  
11           people have views on it and they may be  
12           individually opposed to the Insite. However, he  
13           said the position of the Vancouver Police is  
14           because of the law the way it is, they -- they  
15           support it because it's legal. That's what he  
16           said. So his position is that it doesn't really  
17           matter what the individual officers may think.  
18           They may have different -- they may have varied  
19           views on it because there are over a thousand  
20           members who are -- who are members of the  
21           Vancouver Police Union. That's what he's saying.

22   MS. LIVINGSTON: And if it was uncovered that most of the  
23           members of the union were against women on the  
24           force or were racist, wouldn't -- this is what I'm  
25           trying to ask the question. Wouldn't there be an

1           effort made to have them more clearly understand  
2           what is the point of --

3   THE COMMISSIONER:  I don't -- I don't want to discourage you  
4           from asking questions, but you're asking a real  
5           hypothetical question.  If -- if there were  
6           members who were racist, what would the rest of  
7           the police department do?  And really that isn't  
8           the case here and so, again, I don't want to  
9           discourage you in any way and I commend you for  
10          your participation.  However, you know, you have  
11          to ask a question that's really relevant.  Do you  
12          want to --

13  MS. LIVINGSTON:  Well, it's one of the things that I'm assuming  
14          is -- I don't know -- part C or whatever of the  
15          commission, is to make recommendations.

16  THE COMMISSIONER:  Yes.

17  MS. LIVINGSTON:  And --

18  MR. VERTLIEB:  Mr. Commissioner, maybe I can help.  I think  
19          Miss Livingston has a lot of knowledge that would  
20          be very helpful.  It may be important for her to  
21          know that we are just now scheduling the  
22          commencement of your policy forum starting May 1  
23          and that's where she would be a very helpful  
24          participant.

25  THE COMMISSIONER:  That's a very good point.  When these

1           hearings are done, we are going to have what's  
2           called study sessions where your views will be  
3           important because you're familiar with what's  
4           going on in the Downtown Eastside.

5   MS. LIVINGSTON:   Okay.

6   THE COMMISSIONER:   And we'd be grateful if you could appear at  
7           that time.   You see, the questions that you are  
8           asking now, in fairness, are really unfair of this  
9           officer.   He's told you what the Vancouver Police  
10          official position is and what their policy is, and  
11          you have other views on this and you're quite free  
12          to come to the study commission and give your  
13          views.

14   MS. LIVINGSTON:

15           Q   Okay.   And so I will take it that you don't think  
16           training is appropriate for the police.   And I  
17           will go to the next question.   And it is I heard  
18           you say that prostitution charges are no longer  
19           laid by the Vancouver Police Department and the  
20           statement coupled with your research to the  
21           commissioner that the VPD has remedied many  
22           contributing factors.   And isn't it true that  
23           prostitution charges are still laid in Vancouver?

24           A   What I said, Mr. Commissioner, is that a  
25           prostitution charge, communicating for the

1 purposes of prostitution in a public place against  
2 a sex trade worker is very rare. We still lay  
3 charges against johns for communicating in a  
4 public place and we do on occasion lay other  
5 prostitution-related charges like keeping a common  
6 bawdy house. Those are relatively rare, but we do  
7 lay those. I think maybe one of the problems is  
8 that the published statistics about Section 213  
9 charges does not break them down into whether they  
10 are a john or a sex worker because the charge is  
11 the same. But I can tell you, because I have  
12 looked into that, that it is a very rare thing and  
13 I don't think that we've laid a single charge in  
14 the last two years against a sex worker for  
15 Section 213.

16 Q So what's just not working for me about that is  
17 that the constat that I managed to accidentally  
18 get shows that there are many charges?

19 A Yes.

20 Q And --

21 A But I explained that those are charges against  
22 johns, not sex workers.

23 Q So you're telling me that in 2008 there were 2,777  
24 charges laid against johns?

25 A No. That sounds --

1 Q I know. Well, that's what's in front of --

2 A I would have to see that.

3 Q I'm sorry. 732. And that in 2010 there was 608.

4 And that would just be from January to October.

5 So the incongruity is continuing on and I have a

6 lot of difficulty understanding that, and it would

7 be really very reassuring if you actually could

8 bring those. Can you actually bring statistics

9 that are accurate rather than -- if the constat's

10 not accurate? And the statistics I had to ask for

11 took me eight months to get from you and the

12 police board. If these are not accurate, because

13 these are listing charges as well, what would be

14 accurate?

15 A So I know that that information that our planning

16 and research produced to you, which they did the

17 very best to be responsive to all your different

18 requests -- and I'm not sure what your question is

19 about the incongruity in that I have looked into

20 the issue in detail of Section 213 charges against

21 sex workers and I can tell you, and I have, that

22 they are a very rare thing and that we just simply

23 don't lay them; that the charges for Section 213,

24 we still do john stings and so we do lay those

25 charges still and other prostitution-related

1 charges.

2 Q So I happened to stumble on a blog of the VPD last  
3 night from October 14th by an Officer Addison.

4 A Yes.

5 Q And -- I don't know if anyone's interested in  
6 reading it. He goes to the last -- the third page  
7 of it. He says:

8 It turned out that the young lady we were  
9 checking had a warrant for prostitution --  
10 And this is October 14th.

11 -- in the alley behind Insite.

12 A Yes.

13 Q So I don't understand. Is there something I'm not  
14 understanding? If there are no charges for  
15 prostitution, why are the beat team officers  
16 handcuffing them and taking them away and saying  
17 in a blog that they they checked and she had a  
18 warrant for prostitution? It's not adding up to  
19 me.

20 A My problem is I have no idea what the warrant was  
21 for or where it was issued, whether it was a  
22 communicating charge or it might have been some  
23 other charge, like related to being in a bawdy  
24 house, whether it was laid in another jurisdiction  
25 like Surrey or Burnaby or something like that. I



1           just don't know without having any information.

2           Q    So we cannot assume, then, that women in Vancouver  
3                are not -- okay. It used to be natives. Women in  
4                Vancouver are being picked up for warrants for  
5                prostitution?

6           A    If there is a warrant for someone's arrest, Mr.  
7                Commissioner, then it really is irrelevant to us  
8                what the warrant is for, is that we would execute  
9                the warrant. And I have looked into that issue.  
10              Miss Livingston's brought it up before about, you  
11              know, whether it would improve relationships if we  
12              did not execute warrants and that might reduce  
13              barriers, and so we have researched that issue and  
14              the way that the law stands now, it is our view  
15              that we do not have that option not to execute a  
16              warrant the judge issued.

17          Q    So I've been bringing the issue of warrants to you  
18                for -- and the chief and the Vancouver Police  
19                Department for many years; is that accurate?

20          A    Yes. I think that's accurate.

21          Q    So is there any dispute that a woman with a  
22                warrant is in more danger and more vulnerable  
23                because she will avoid police?

24          A    I think that it would be fair to say that if  
25                there's a woman with a warrant for her, she might

1           be less likely to want to interact with the police  
2           or to report something to the police, so I agree  
3           with you there.

4           Q    So do you agree that the Downtown Eastside has the  
5           highest number of drug arrests?

6           A    I wouldn't doubt that.

7           Q    And many of the people being arrested are addicted  
8           and using drugs and arrested and are women?

9           A    Well, I wouldn't -- I would want to look further  
10          about that because, as I've said, we -- generally  
11          as a matter of policy, we have a policy on  
12          enforcement of the drug laws. It's on our  
13          website. And we're generally not interested in  
14          pursuing charges for simple possession or even  
15          trafficking charges against addicted people. We  
16          certainly pursue trafficking charges against  
17          predatory drug dealers. You can look at the  
18          results of our Project Rescue, for example, which  
19          was about predatory drug dealers engaged in  
20          violence against women, the head shavings, for  
21          example, that you talked about and making a lot of  
22          money. We certainly have targeted people like  
23          that.

24          Q    So my question is the woman with the head shaved  
25          would be likely to have a warrant; is that not

1 true?

2 A From this picture?

3 MS. LIVINGSTON: Any woman -- so the number of warrants in  
4 Vancouver that are initiated per week, is it 10,  
5 100, 1,000, 10,000? This is information I'm not  
6 able to get and I've been to the police board for  
7 years and tried to FOI. I'm having a lot of  
8 trouble understanding because, as I put to you,  
9 Mr. Commissioner, it's very important that we  
10 understand the relationship between someone who's  
11 avoiding arrest because of a warrant, and I put to  
12 you there may be thousands of women in this  
13 position.

14 THE COMMISSIONER: Okay.

15 MS. LIVINGSTON: And these are the very woman who are -- so I  
16 keep asking him questions and I don't think it's  
17 taken me that much further, so I want to --

18 THE COMMISSIONER: I think it might be more useful if you told  
19 commission counsel what you really need. And  
20 there are a number of other witnesses who will be  
21 called in this part of the commission's hearings  
22 and then, as you've been told, there's the study  
23 commission as well at some stage. It might be  
24 more useful if there can be someone here who's  
25 more familiar with what's going on in the streets.

1 MS. LIVINGSTON:

2 Q So that other thing I wanted to bring up is that  
3 often a person might -- a woman might end up with  
4 a warrant for something quite petty with a beat  
5 team enforcing spitting, and they do enforce these  
6 things. It's part of their mandate to do a lot of  
7 checks.

8 A There's not going to be a warrant for spitting,  
9 no.

10 Q Okay. We'll go back, then, because I think there  
11 will be. If you don't pay the fine, there will  
12 eventually be a warrant and you will be picked up.  
13 So --

14 A Well --

15 Q Nonetheless --

16 A -- I don't believe that to be the facts.

17 MS. LIVINGSTON: We'll go on to -- I just wanted to ask you if  
18 you think it's fair to initiate a lot of warrants  
19 for people not showing up in court and then they  
20 get jail time for not showing up in court, which  
21 is a jailable offence, but the original thing they  
22 were charged with isn't a jailable offence and  
23 that they actually do their time in remand before  
24 the case. Do you think that's fair, Mr. LePard?

25 THE COMMISSIONER: Well, you know, again, that's really unfair

1                   for you to ask. You're talking here about --  
2                   you're speaking of warrants that may be issued for  
3                   various offences. Maybe it's for failing to  
4                   appear in court.

5   MS. LIVINGSTON: That's correct. Thousands of those, I  
6                   believe.

7   THE COMMISSIONER: Right. So if a judge issues a warrant for  
8                   someone who fails to appear in court after that  
9                   person has been granted bail, then the judge might  
10                  think that that person should have -- has wilfully  
11                  disobeyed the order.

12   MS. LIVINGSTON: Yes.

13   THE COMMISSIONER: And so I don't know if the officer can  
14                   really comment on that and maybe that's something  
15                   that other parts of the system may know. And I'm  
16                   not trying to deflect what you're saying, but I  
17                   just want to be fair to the officer, that you're  
18                   asking questions that he's able to answer, because  
19                   warrants are -- bail is granted to people who will  
20                   appear in court. It's one of the grounds.

21   MS. LIVINGSTON: Yes.

22   THE COMMISSIONER: And if someone doesn't appear in court, then  
23                   they're disobeying the court order and  
24                   disappearing the trust of the Court.

25   MS. LIVINGSTON: Yes. I understand. It' a serious charge.

1 THE COMMISSIONER: Right. So that is serious, not failing to  
2 appear, and maybe that's why those people are  
3 going to jail. I don't know. But that might be  
4 an answer. In any event, I think that some steps  
5 ought to be taken so that you're satisfied with  
6 what you're asking and you get some of the answers  
7 that you want later on in this commission period.

8 MR. VERTLIEB: Mr. Commissioner, I was just speaking with Mr.  
9 Hern and he's comfortable, if we have questions,  
10 that we invite Miss Livingston and she can send  
11 questions to us and we'll send them to Mr. Hearn  
12 and I'm confident we'll have -- we'll make a bona  
13 fide attempt -- I just know that that's something  
14 that Mr. Hern will co-operate with as best he can.  
15 Some of the information he won't have, some of  
16 this warrant conversation with Criminal Justice.

17 MS. LIVINGSTON:

18 Q The reason I was asking you was that it's a  
19 deliberate policy of the beat team to check as  
20 many people as possible for warrants. There could  
21 be three checks per block per person per hour or  
22 whatever. They've got it all laid out in their  
23 plan. It's all online. Anyone can read it. And  
24 I was pointing it out as an inconsistency with  
25 keeping vulnerable women safe when they have more

1 warrants than ever because of the action of a  
2 police team that may be also viewed as keeping  
3 them safe. So I'm trying to ask you do you think  
4 they're more safe if there's more warrants against  
5 them? And that's why I asked the question.  
6 There's a stated goal of the VPD. It's in the  
7 plan. You can read it on the beat team site and  
8 you can read the blogs and, you know, it's very  
9 open and -- anyway. The other thing I wanted to  
10 bring up because it's in your thing, is about  
11 sister watch. So a friend of mine just happened  
12 to have called sister watch over the summer and --  
13 because his friend Sophie Perron died and she was  
14 in a room that she was -- she was found in a room  
15 of a man that she was very frightened of and he  
16 was very concerned and when he called, he did  
17 speak to a person. It was not a recording. We've  
18 had that experience before. You guys remedied  
19 that. He's never been called back. And I was  
20 just asking so how does the Vancouver Police  
21 Department know that sister watch is working?

22 A About that issue generally or --

23 Q Well, in any way. I mean this was a huge problem  
24 with Sandy Cameron, who I personally called at  
25 least eight times over a period of eight years,

1           and I don't think I should digress about that,  
2           but, nonetheless, very similar idea. When people  
3           call a number, how do you guys know that your  
4           system works?

5           A    So we meet regularly, Mr. Commissioner, to talk  
6           about that. We meet with people who are advocates  
7           in the Downtown Eastside from the Aboriginal Front  
8           Door Society, for example. We test it, they test  
9           it just to make sure that the calls are being  
10          answered, that the information is provided. If  
11          someone brings to our attention that someone  
12          called this line, which, of course, like all our  
13          lines, is recorded and so we can check back and  
14          find out exactly what was said. If there's been a  
15          problem, we will follow up on it. So if you  
16          provide me information of someone who called the  
17          sister watch line, which is intended to be for  
18          women who are experiencing violence or for other  
19          people to get information about women who are  
20          experiencing violence, and it was not dealt with,  
21          then I'm happy to look into it for you.

22          Q    Just the same problem we had before. We just  
23          don't know how many people have called, do we?

24          A    Well, we do know. We track the exact numbers of  
25          how many calls we receive.



1 Q So do you think that -- okay. I'll check into it.  
2 I'm just saying I don't understand how you know if  
3 it works, but I'm glad to hear that there's at  
4 least a track that you know the number of calls  
5 that are coming in. What -- currently there's a  
6 28-year-old woman missing. Her name is Angeline  
7 Pete?

8 A Yes. She's missing from North Vancouver.

9 Q Yes. Are you aware that she has a warrant for her  
10 arrest?

11 A I think I might have known that. I do remember  
12 hearing about the case because our Missing Persons  
13 Unit assisted the North Vancouver RCMP in some  
14 small way with that case.

15 Q And since there hasn't been -- I mean I just --  
16 I'll do it with the study commission. Do you  
17 think the police could do a better job of  
18 protecting women than they're even doing now,  
19 making sure that the warrant issue is resolved?

20 A Well, two questions there. To the first one, of  
21 course, we should always be striving to do a  
22 better job and we will never be done. Regarding  
23 the warrant issue, I really think that that's not  
24 an issue for the police to resolve; that that is a  
25 criminal justice system issue. And if a warrant

1 is issued by a judge of one of our courts in  
2 British Columbia, currently we're duty bound to  
3 execute that warrant if we find someone that is  
4 wanted on that warrant. So I understand your  
5 concern and that it could be a barrier, for  
6 example, to women reporting crimes against them  
7 and talking to the police, but that's a bigger  
8 issue than the police department itself can  
9 address.

10 Q Do you think that it's possible for a police  
11 officer to judge by the way someone looks, their  
12 dress, whether they're clean or not, whether  
13 they're really looking like they haven't slept and  
14 their behaviour and arrest those people knowing  
15 full well that they will either breach their  
16 undertaking or fail to appear on their court date?

17 A Well, when police officers make an arrest for an  
18 offence -- let's just say assault hypothetically.  
19 Is that what we're talking about?

20 Q No. I'm not talking about assault. I'm talking  
21 about drugs, similar to the blog that I referred  
22 to from Addision where they found she had a  
23 warrant to pick her up and asked her for her crack  
24 pipe and then they found a \$10 piece of cocaine.

25 A And did they charge her with that?

1 MS. LIVINGSTON: No. They decided not to charge her with that,  
2 but they did take her away on the warrant, which  
3 is what I'm saying. Is it possible to -- for an  
4 officer, even a rogue officer, for instance, to  
5 size people up and know full well that if they  
6 just watch them long enough, they'll have drugs,  
7 because they're obviously drug addicted, and then  
8 arrest them, write up a condition of bail that  
9 they're clearly going to violate and then be able  
10 to get them on a more serious charge? Is that  
11 possible?

12 THE COMMISSIONER: Well, the officer has said that -- and it's  
13 accurate for him to say this -- that when a  
14 warrant is issued, it's not issued by the police.  
15 It's issued by a judge. And once a warrant is  
16 issued by a judge for nonappearance or whatever  
17 else, the police have no jurisdiction but to  
18 arrest that person. They have to arrest that  
19 person once a judge has issued a warrant. The  
20 warrant is an order of a judge to arrest someone,  
21 so the police have to do it. They have no  
22 discretion once a judge has issued a warrant.

23 MS. LIVINGSTON: The question I asked him, though, was is it  
24 possible for police officers to size someone up  
25 and know that they're going to initiate a warrant

1                   because they are virtually homeless and don't have  
2                   a way --

3       THE COMMISSIONER: Well, I've just tried to answer that.

4       MS. LIVINGSTON: I know, but I'm just saying -- I'm just  
5                   talking from --

6       THE COMMISSIONER: They have to execute the warrant and arrest  
7                   someone.

8       MS. LIVINGSTON:

9               Q    No, no. I mean before that. This is a police  
10                   officer walking up to a marginalized person  
11                   knowing full well they have drugs on them,  
12                   deciding to do the charge and knowing full well  
13                   that they're going to breach their undertaking for  
14                   bail conditions or to fail to appear in court.  
15                   And that's my question. Is that possible for  
16                   police officers to do that, whether they're rogue  
17                   or whether they're just -- whether it's policy?

18              A    Well, I will just say, first of all, again, that  
19                   we generally do not arrest people for simple  
20                   possession of narcotics, just like the example  
21                   that you described in which they did find they're  
22                   in possession of narcotics but did not -- your  
23                   information is did not recommend charges against  
24                   her. They simply arrested her for the outstanding  
25                   warrant, and that is generally our policy, is not

1 to arrest for simple possession of narcotics  
2 because we agree that it is primarily a health  
3 problem and so we focus on predatorial drug  
4 dealers. So does that answer your question?

5 Q Yes. To some extent. It's just that my  
6 experience has been -- and I don't know what your  
7 experience is. You have this experience as well.  
8 That there are certain officers that are more, I  
9 guess, rogue or cowboy. I don't know the term.  
10 In my 18 years in the Downtown Eastside, we would  
11 get these spates of arrests and I would get all  
12 outraged and call people and I would find out that  
13 it's entirely up to that police officer. Is that  
14 not true?

15 A Well, police officers do have a certain amount of  
16 discretion, but it is not unfettered. We in  
17 management are entitled to make policies around  
18 how officers will do their job. They have  
19 discretion within those policies and priorities.  
20 And our policy on enforcement of the drug laws is  
21 right on our website and it talks about how we  
22 will not enforce simple possession charges  
23 generally except in certain circumstances like in  
24 a schoolyard or other areas; that we think that  
25 that is a priority because the public safety

1 interest of children not being exposed to drug  
2 paraphernalia and crack pipes and so on outweighs  
3 the interest in not arresting addicted drug  
4 addicts. So police officers are bound by the law.  
5 They cannot arrest someone without having the  
6 grounds to do so. Those grounds will be tested in  
7 court when they go give testimony under oath.

8 Q I'd just be so interested in having proof of that.  
9 I mean all of the data that I see shows very, very  
10 high arrest rates for drugs in the Downtown  
11 Eastside, and is that not the same data you see?  
12 Have you looked at the arrest statistics?

13 A Well, I do look at the numbers from time to time  
14 and I can just tell you that generally -- in fact,  
15 if I see -- when I look at our overnight reports  
16 and I see an arrest for simple possession, it  
17 immediately catches my eye because it's relatively  
18 rare and because it is not the norm. That's not  
19 what we want our officers doing, is to make -- be  
20 tying themselves up making arrests for simple  
21 possession against addicts in the Downtown  
22 Eastside; that we want them focused on other  
23 things that are more -- that lend themselves to  
24 providing public safety.

25 Q So I know thousands of addicts who have been

1 charged with possession for the purpose of  
2 trafficking and they're clearly -- they don't own  
3 the drugs and they don't own the money and they  
4 may have as few as six rocks. Do you agree that  
5 possession for the purpose of trafficking charges  
6 are high in the Downtown Eastside?

7 A Well, I don't know what high means.

8 Q Higher than the rest of the city?

9 A Oh, yes.

10 MS. LIVINGSTON: Thank you. Sorry it took so long.

11 MR. VERTLIEB: I think that brings us to the end of the day.

12 THE COMMISSIONER: Sorry. Oh, all right.

13 MR. VERTLIEB: We wanted to give Miss Livingston a chance to  
14 conclude because she's been more than patient. We  
15 are in a position, and we don't need to take up  
16 time on the record, but we could mark the LePard  
17 binders. And Mr. Giles has kindly agreed that he  
18 can mark those after we conclude and will do them  
19 in sequential turn. We're in a position to mark  
20 the Williams binders except -- and the Williams  
21 report and appendices except for H. We thought we  
22 had H ready to go and we just were informed this  
23 afternoon it's not ready. So if Mr. Giles can do  
24 that during the break. When we come back on the  
25 14th, we'll need to sit those three days. Deputy

LePard, I regret that I think your lawyer's told you that we need you on the 15th in the morning so that Mr. Woodall can conduct his cross-examine, which he says will be no more than two hours, Mr. Woodall representing Constables Fell and Wolthers. And I'll have some re-exam. But in those three days it will be helpful because Mr. Ward can do his document motion and we can sort out the witness list problems. We are sending out a list of the witness time estimates from commission. We're going to ask every lawyer to fill in their estimates and then we'll calculate all those estimates and we'll see how many hours the counsel are saying and then I expect at some point you're going to need to intervene and make this a bit more efficient, as it were.

THE COMMISSIONER: All right.

MR. VERTLIEB: And that's all I think we need to accomplish today, so if we go to the 14th at 10:00 a.m.

MS. TOBIAS: Mr. Commissioner, I apologize. Cheryl Tobias for the Government of Canada. I just wanted to double check because I'm not sure if both of the binders that we handed up have been marked for identification. I know the first one has been marked as K and perhaps Mr. Giles can advise.



1           There were two binders. Is Volume 2 part of K or  
2           does it need to be marked separately?

3   THE REGISTRAR: We can probably mark that separately when you  
4           come back. You have the one document marked now.  
5           Volume 2 has not yet been marked.

6   MS. TOBIAS: Can Volume 2 be marked as L for the next -- as the  
7           next exhibit for identification, please?

8   THE REGISTRAR: The last document was K, was it?

9   MS. TOBIAS: Yes.

10   THE REGISTRAR: Okay. That can be marked as for identification  
11           L.

12   MS. TOBIAS: Yes. Thank you.

13           **(EXHIBIT L FOR IDENTIFICATION: BOOK OF DOCUMENTS,**  
14           **VOLUME 2)**

15   MR. Gratl: And we also have the documents represented by Miss  
16           Livingston to be marked as exhibits as well, I  
17           believe.

18   THE COMMISSIONER: All right. Anybody have any objections to  
19           that? All right. Thank you.

20   THE REGISTRAR: Those will all be marked off the record and I  
21           will send out an exhibit list. Okay. The hearing  
22           is now adjourned for the day and will resume on  
23           Wednesday, December 14th at 10:00 a.m.

24           **(PROCEEDINGS ADJOURNED AT 5:00 P.M.)**

25

1 I hereby certify the foregoing to be  
2 a true and accurate transcript of the  
3 proceedings transcribed herein to the  
4 best of my skill and ability.

5 Kathie Tanaka, Official Reporter

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