

Vancouver, BC

June 05, 2012

(PROCEEDINGS RECONVENED AT 9:35 A.M.)

THE REGISTRAR: Order. This hearing is now resumed.

THE COMMISSIONER: Mr. Hern.

MR. HERN: Thank you, Mr. Commissioner. Sean Hern and Tim
Dickson for the Vancouver Police Department and
the Board. We will, we propose to divide our
submissions between us so --

THE COMMISSIONER: I understand.

MR. ROBERTS: I beg your pardon, Mr. Hern and Mr. Commissioner.
I rise on a point of honour, if you will, or a
point of order from the *Robert's Rules of Order*.
But seriously, I wish to address, address a matter
that is in my learned friends, Mr. Hern's and Mr.
Dickson's submission, and I want to address it at
the outset of their submission.

THE COMMISSIONER: Yes.

MR. ROBERTS: And it's at page, of their prepared text, 172.

THE COMMISSIONER: Okay.

MR. ROBERTS: I feel it important to address it before they get
underway.

THE COMMISSIONER: 172?

MR. ROBERTS: I beg your pardon, that's not a number. It's 72.

THE COMMISSIONER: Oh, 72. All right.

1 MR. ROBERTS: Paragraph 172.

2 THE COMMISSIONER: Okay, I see. All right.

3 MR. ROBERTS: The paragraph reads as follows.

4 MR. HERN: Excuse me, Mr. Commissioner, I can advise, we are
5 not speaking to that particular issue, if that
6 assists Mr. Roberts. We are not going into that
7 in oral submissions at all.

8 MR. ROBERTS: I want it withdrawn from the report, with
9 respect. I would like to proceed with my point of
10 honor.

11 THE COMMISSIONER: Okay. All right.

12 MR. ROBERTS: The paragraph is there before the public. It's
13 filed before this public inquiry. It reads:

14 A last issue that needs to be raised in
15 respect of Mr. Roberts' cross-examinations
16 and his submissions in these hearings. In
17 the VPD's respectful view, Mr. Roberts' tone
18 at times has been vitriolic --

19 That means caustic and hostile, as I look at the
20 dictionary.

21 -- and disrespectful.

22 I want those words withdrawn.

23 THE COMMISSIONER: Okay.

24 MR. ROBERTS: He went so far as to suggest that Deputy
25 Chief LePard wrote his report on the false

1 premise that only the RCMP could investigate
2 the missing women --

3 Which is completely incorrect. That is not
4 their premise. The premise was that the LePard
5 report was written on the premise that there are
6 no crimes in Vancouver for Vancouver to
7 investigate. That's the way it was put to him.

8 -- and that such was deliberately done by Mr.
9 LePard to mislead. Those outrageous
10 statements by Mr. Roberts properly prompted
11 the commission to intervene the next day.
12 Unfortunately, Mr. Roberts continues in this
13 tone in his written submissions labeling Mr.
14 LePard as being argumentative at one point
15 and as incompetent at another. Nothing could
16 be further from the truth.

17 Now, the words that trouble me are
18 "vitriolic" and "disrespectful" and the word
19 "outrageous".

20 THE COMMISSIONER: Okay.

21 MR. ROBERTS: Mr. Commissioner, when that cross-examination
22 commenced in November of last year, this
23 commission faced the issue in the evidence of Mr.
24 LePard, in his report and in his testimony in
25 chief, that there were no crimes in Vancouver for

1 Vancouver to investigate. Perhaps little crimes,
2 but the major crimes were in New Westminster.

3 The issue of kidnapping, whether by fraud or
4 force, was raised by me in cross-examination, with
5 some difficulty. At that time, I did not know,
6 nor did this commission have it in evidence, that
7 Mr. LePard had appeared before the Vancouver
8 Police Board three times to renew the reward of
9 \$100,000 to investigate Vancouver's crimes for
10 unlawful confinement, kidnapping and murder.

11 Had that material been before the commission,
12 had it been even in the evidence brought before
13 this commission in chief -- let me back up for a
14 moment. The way this inquiry has proceeded,
15 generally speaking, is that commission counsel
16 calls evidence in chief, and then the Vancouver
17 Police counsel, and on behalf of the Vancouver
18 Police Board, can call evidence supplementing it,
19 evidence in chief.

20 That was the opportunity to put before this
21 commission the information that is in these Police
22 Board minutes about Vancouver's crimes. Had that
23 been before this commission, before I stood up to
24 cross-examine, my cross-examination would have
25 been a whole lot different and a whole lot easier.

1 Actually, and I am on solid ground in
2 asserting this position, if this were a court of
3 law, with the issue on the table, what are the
4 crimes of Vancouver that have to be inquired into,
5 then counsel acting for the Police Board would be
6 duty bound to put that in evidence. We all, as
7 counsel, have a duty to not mislead the Court on
8 the facts.

9 Now, I am not saying that there was any
10 misleading going on here. This is a public
11 inquiry. Perhaps the Vancouver Police Board and
12 their counsel could leave it up to Mr. Vertlieb as
13 to what evidence he puts in chief. But had it
14 been a court of law, then I would be on solid
15 ground in saying there is a problem here and that
16 problem is over there with my friends.

17 I am requested on this inquiry to do a reply
18 in writing. I am happy to do that. But I'm not
19 willing to do that to have to defend my own
20 credibility at the same time.

21 In my submission, this language is completely
22 uncalled for and I ask it to be expunged from the
23 record and I ask for an apology from counsel for
24 the Vancouver Police Board and the Vancouver
25 Police Department, whose duty it was to put in

1 evidence what is in Exhibit 113 and not wait until
2 February for me to do so, which is what happened.

3 THE COMMISSIONER: All right.

4 MR. ROBERTS: And I ask for a direction that --

5 THE COMMISSIONER: Okay, let me hear from Mr. Hern.

6 MR. ROBERTS: -- that these words be expunged from the record.

7 THE COMMISSIONER: All right. Mr. Hern?

8 MR. HERN: Sean Hern for the Department. Mr. Roberts'

9 cross-examination of Mr. LePard was extraordinary
10 in that on the basis of no, well, on no
11 foundation, in my respectful submission, he ended
12 up calling Mr. LePard essentially a liar and
13 suggested that he was -- his report was intended
14 deliberately to mislead the public and mislead the
15 commission. I found, and I still consider, those
16 statements to be outrageous. And you, sir, made
17 comment about them. That exchange was
18 unfortunate, it was uncalled for, and it
19 compromised the integrity of both Deputy Chief
20 LePard and the Department and the Board as a
21 whole.

22 Now, had Mr. Roberts chosen in his final
23 submissions to leave that alone, I would have been
24 happy to leave it alone myself as an incident that
25 sometimes happens among counsel who are passionate

1 about their arguments. These things happen. But
2 Mr. Roberts in his submissions sought to revisit
3 that cross-examination and defend it in its
4 entirety, suggesting that Mr. LePard's response to
5 his accusations should be entirely disregarded and
6 that his initial responses to Mr. Roberts'
7 questions, when he didn't even know what the mock
8 search warrant was that Mr. Roberts was putting to
9 him, Mr. Roberts suggested in his argument that
10 that should be accepted, and he went on to defend
11 that cross-examination.

12 THE COMMISSIONER: All right.

13 MR. HERN: And so revisiting that in the final submissions was
14 of great concern and Mr. Roberts has maintained
15 the accusations against Mr. LePard as being now --

16 THE COMMISSIONER: All right.

17 MR. HERN: -- incompetent and argumentative.

18 THE COMMISSIONER: Okay.

19 MR. HERN: So, there is a legitimate issue between the parties,
20 the participants on this subject. I will consider
21 Mr. Roberts', Mr. Roberts' request to withdraw
22 those words, but in my submission, that is the
23 reason they're in there, because Mr. Roberts chose
24 to go after this issue again.

25 THE COMMISSIONER: All right. When you say you will consider

1 that request, what are you telling me?

2 MR. HERN: Well, I will consider it and I will advise later.

3 But at this point, I do not see the basis for
4 that. I have considered that they -- that it was
5 an unfortunate event and --

6 THE COMMISSIONER: All right, let me hear from --

7 MR. HERN: -- if that can be addressed.

8 THE COMMISSIONER: Let me hear from the commission. Mr.
9 Vertlieb.

10 MR. VERTLIEB: What I would like to do is just reflect on the
11 record and see the comments and how it unfolded
12 and have another read of the arguments and perhaps
13 speak with my learned friends before I advise you
14 on the request of Mr. Roberts. So, I am happy to
15 see if, if there's some understanding we can all
16 come to and allow us to proceed with the argument
17 now, but I will involve myself, as it were, in
18 seeing if there's some language issue that we can
19 work through.

20 THE COMMISSIONER: I am going, I am going to leave it with you.

21 MR. VERTLIEB: Thank you.

22 THE COMMISSIONER: I am not going to make any order. I am not
23 going to order Mr. Hern at this stage to apologize
24 or to withdraw that. I am hoping that cooler
25 heads can prevail. You are all experienced

1 lawyers and I know that, at times, emotions have
2 got into the fray here and I am hoping that
3 something can be accommodated and I will deal with
4 it if I have to. All right? Thank you.

5 MR. ROBERTS: May I make one last observation, Mr.
6 Commissioner?

7 THE COMMISSIONER: Yes.

8 MR. ROBERTS: I don't want it overlooked that the nub of the
9 matter that I have put my finger on this morning
10 is that it's the duty of counsel to make sure that
11 courts of law, including commissioners of inquiry,
12 are not misled.

13 THE COMMISSIONER: Yes.

14 MR. ROBERTS: It was their duty to see that those Police Board
15 minutes, which identified the crimes of unlawful
16 confinement and kidnapping, were put before this
17 commission and that Mr. LePard was involved in
18 renewing them. That would have made a huge
19 difference in my initial cross-examination --

20 THE COMMISSIONER: Okay. Yes, I have it.

21 MR. ROBERTS: -- and, excuse me, and I would not have got into
22 the difficulty that arose.

23 THE COMMISSIONER: I have your point, and if that's --

24 MR. ROBERTS: And lastly, I have been before this, these courts
25 for almost 50 years. I have a wide reputation

1 before the Supreme Court of Canada and all the
2 courts. I have been a professor of evidence for
3 over 30 years at the University of British
4 Columbia. Many of the students are judges on
5 these courts. I take my reputation, even though I
6 am in my senior years, I take it very highly and I
7 value it, and, and I believe something has to be
8 done about this. Those words must not stand.

9 THE COMMISSIONER: Okay. Well, before going any further, I can
10 tell you that, while words may have been said or
11 words may have been put in writing, the fact is
12 that I don't think any lawyer here disagrees with
13 your concern about your reputation. I want you to
14 know that. It's not -- I certainly don't draw any
15 adverse inference, as far as your reputation at
16 the bar is concerned, even having looked at these,
17 these words.

18 But let's get on with what we're here for.

19 MR. HERN: So, again, Mr. Commissioner, we will divide our
20 submissions. I am going to make some introductory
21 remarks and Mr. Dickson will then speak following
22 that, and I will conclude our submissions. We
23 expect we should be under the hour, which I note
24 is starting a bit late now.

25 So, the Vancouver Police Department and the

1 Vancouver Police Board called for this inquiry
2 beginning as early as 2006 and they have done
3 their best to support this commission throughout
4 the process.

5 As you know, in 2002, the VPD appointed
6 Inspector LePard, as he then was, to conduct an
7 internal review and he produced a report, Exhibit
8 1 to these proceedings. That, as an internal
9 review, is remarkable for the depth and the
10 breadth of its self-examination and criticism.

11 As this commission has heard, in the hearings
12 and in the study commission, the VPD has since
13 made a great many changes in response to that
14 report and other self-examinations that it has
15 conducted.

16 The VPD understood, however, that an internal
17 review would not satisfy the public's right to
18 know what went wrong in the investigation nor
19 could an internal review exhaustively explore all
20 the possibilities for progressive change. That is
21 why the VPD called for this inquiry, because the
22 public deserves to know what the police -- why the
23 police investigations did not catch Pickton
24 sooner, and what further changes may be made so
25 that this tragedy never happens again. That is

1 the task for this commission, to give fair,
2 balanced and realistic answers to the questions of
3 what went wrong and what further changes should be
4 made.

5 Now, this commission has withstood extensive
6 criticism itself and many obstacles from within
7 and without. Much of that criticism has stemmed
8 from those who were disappointed that the terms of
9 reference focused primarily on the police
10 investigations and did not encompass a larger
11 examination of the reasons the murdered women
12 ended up addicted to drugs and selling sex on the
13 streets. Their desire to see those issues studied
14 is understandable, particularly in view of the
15 sometimes tragic personal and family histories,
16 especially the aboriginal histories that we heard
17 in testimony here. Our submissions regarding the
18 terms of reference are not intended to discount or
19 ignore those histories. They are valid and
20 important and they acknowledge and respect the
21 courage of the witnesses in coming forward and
22 sharing them.

23 Nevertheless, the criticism about the
24 narrowness of the terms of reference was misguided
25 when directed at the commission because it, of

1 course, had no control over their scope. Within
2 the inquiry proceedings, a number of serious, but
3 unsubstantiated accusations, were levelled at the
4 commission. And I pause here to categorically
5 reject Mr. Ward's suggestions that documents were
6 withheld or were improperly redacted as he said to
7 you yesterday. Those statements are unfounded and
8 you, sir, considered and dealt with those matters
9 during the inquiry as they were raised.

10 The commission has nevertheless persevered
11 despite the criticism, and for that, it should be
12 commended. Its work is important, and while the
13 various participants present themselves as the
14 voices of the public, there are still other voices
15 and other members of the communities in and around
16 Vancouver whose voices are not so loud, but no
17 doubt look forward to and will benefit from the
18 completion of this commission's work.

19 The VPD respectfully submits that regardless
20 of all of the criticism that has been directed at
21 it, this commission must stay true to its terms of
22 reference and consider the issues fairly and
23 judicially. The public will not be served by
24 sensationalized accounts of the failings of the
25 police investigations or by superficial and

1 unrealistic suggestions for future change.
2 Rather, this commission will only contribute to
3 real and lasting change if its report is firmly
4 rooted in the evidence it has heard and is
5 sensitive to the complex challenges of policing in
6 the Downtown Eastside of Vancouver.

7 Now, the VPD and Board have provided
8 submissions to the study commission, addressing
9 the changes that have been made since 2002, and we
10 have made recommendations, or suggested
11 recommendations for further change, and we are not
12 going to repeat those here. The submissions we
13 make today are directed to the hearing commission
14 and are limited to the term of reference
15 concerning the conduct of the police
16 investigations from 1997 to 2002.

17 The commission has heard from dozens of
18 current and former VPD officers and civilians, and
19 thousands of pages of VPD documents have been
20 introduced into evidence. The VPD witnesses have
21 provided their evidence and opinions about the
22 case freely and have been cross-examined at
23 length. As the commission has advised from the
24 outset, the VPD has not sought to present a
25 unified perspective as to what happened in the

1 investigation of the missing women. The views and
2 perspectives of the members and former members of
3 the Department diverged as to whether certain
4 aspects of the police investigation were
5 deficient. The witnesses have shown that the VPD
6 is a diverse group of officers with a variety of
7 skill sets and perspectives and some officers may
8 be concerned when the VPD speaks in the LePard
9 report and in its submissions here about failures
10 and mistakes in the investigation.

11 But this is not a trial. It is an inquiry,
12 and as an institution, a public institution, the
13 VPD wants to hold itself to a standard of
14 excellence and best practices. As you have said
15 many times, this inquiry is about making sure that
16 this tragedy never happens again.

17 And as you know, Mr. Dickson and I speak for
18 the Department as a whole, as a public
19 institution. We say no individual officer
20 involved in this case acted in anything other than
21 good faith. It did what they thought was right at
22 the time in challenging circumstances. None of
23 them committed misconduct or improprieties and
24 certainly none of them were responsible for the
25 failure of the investigation.

1 But as a department, where dozens of murders
2 took place while the killer was a person of
3 interest, the VPD cannot and does not look upon
4 its investigation and say everything was fine. As
5 I said, the VPD's goal is to be excellent and
6 acknowledging when performance is not excellent is
7 the first step to achieving that goal. Hindsight
8 is essential to keep in mind when looking at past
9 conduct but, of course, we also need 20/20 vision,
10 not to judge, but to learn from past events.

11 In the written submissions the VPD has
12 tendered, it has not surveyed the evidence of
13 every officer or taken a position as to how the
14 commission ought to receive or approach their
15 evidence. Rather, our submissions address matters
16 where the evidence or issues extended beyond the
17 matters examined and criticized in the LePard
18 report, and in our oral remarks today, we are
19 going to touch on only three of the subjects
20 covered in our written argument. We will speak
21 about the Coquitlam investigation, what the proper
22 solutions were to the problems in the Coquitlam
23 investigation, and the question of whether
24 systemic bias, racism or sexism was present in the
25 VPD and affected the missing women investigation.

1 Mr. Dickson is going to address those first
2 two issues and then I will address the third.

3 THE COMMISSIONER: All right, thank you.

4 MR. DICKSON: Yes, Mr. Commissioner, Tim Dickson for the
5 Department and the Board.

6 The first topic I am going to address,
7 Mr. Commissioner, is the Coquitlam RCMP's
8 investigation into Pickton. You will recall that
9 Deputy Chief LePard examined the Pickton
10 investigation at some length in his report, and it
11 is this issue I am going to address now.

12 Deputy Chief LePard's findings on the
13 investigation included the following: first, that
14 the Coquitlam RCMP had jurisdiction over the
15 Pickton investigation beginning in 1998; second,
16 that the evidence, particularly once Caldwell came
17 forward in the summer of 1999, was so compelling
18 and the allegations were so serious, that an
19 aggressive, sustained investigation was required
20 to either corroborate the allegations or disprove
21 them; and third, that the investigation faltered
22 after the Provincial Unsolved Homicide Unit
23 discounted the credibility of the Caldwell
24 information, and the interview of Pickton was
25 conducted poorly and too few steps were taken in

1 the investigation after that interview; and last,
2 the last major point that Deputy Chief LePard
3 found on the Pickton investigation was that many
4 investigative opportunities were missed in that
5 investigation and, indeed, far too little
6 investigation of Pickton was conducted after 1999.

7 Now, Mr. Commissioner, Deputy Chief LePard
8 concluded ultimately that those in positions of
9 authority in the Coquitlam RCMP and Provincial
10 Unsolved Homicide must bear primary responsibility
11 for the failures of the Pickton investigation,
12 although VPD management should have applied
13 pressure to the Coquitlam RCMP to reinvigorate
14 their investigation after it appeared to falter in
15 late 1999. Now, Mr. Commissioner, the evidence
16 heard in this inquiry, in our submission, entirely
17 supports those conclusions, as I am going to
18 address briefly.

19 The first point I want to address is that the
20 RCMP had jurisdiction over the Pickton
21 investigation. This is perfectly clear, of
22 course, with respect to the 1997 investigation of
23 Pickton's attack on Ms. Anderson. That was, of
24 course, entirely conducted by the Coquitlam RCMP.
25 There was no suggestion that the VPD had

1 jurisdiction, even though it was known that
2 Pickton had picked up Ms. Anderson in Vancouver.

3 It should also be clear that the Coquitlam
4 RCMP had jurisdiction of the Pickton investigation
5 as of at least the summer of 1999. At that point,
6 the Coquitlam RCMP was leading an active
7 investigation into Pickton with Corporal Connor as
8 the lead investigator, and with assistance by
9 Unsolved Homicide and the VPD. Specifically, the
10 VPD was handling the source, Caldwell.

11 I should say it should be clear that the
12 Coquitlam RCMP took jurisdiction. I say "should"
13 because the RCMP apparently will not acknowledge
14 that. In the DoJ's executive summary of their
15 submissions, they say this on page 5:

16 The responsibility to conduct this
17 investigation was shared between the RCMP and
18 the VPD because, on the one hand, the
19 information suggested that a homicide may
20 have been committed in Coquitlam, and on the
21 other, it suggested a link between the
22 potential homicide and the VPD's
23 investigation into the missing women.

24 And we say, respectfully, that that statement
25 reveals refusal on the part of the RCMP to take

1 full responsibility for the investigation, because
2 it is plain and obvious that the RCMP very much
3 has primary jurisdiction over the Pickton
4 investigation. Information, after all, was about
5 murders in their jurisdiction, and by police
6 convention and practice, the police force in that
7 geographical area has jurisdiction.

8 But also, the DoJ's statement overlooks the
9 reality that the Coquitlam RCMP actually took
10 jurisdiction over the investigation. It led the
11 investigation with Corporal Connor as the lead
12 investigator. When he was transferred, the
13 investigation was "left in the hands of Coquitlam
14 Major Crime." That's what he wrote in his
15 timeline. And the Coquitlam RCMP took
16 investigative steps, such as interviewing Pickton
17 without communicating with the VPD at all.

18 In the summer of 1999, the VPD was supporting
19 Coquitlam's investigation into Pickton, and when
20 that investigation languished in the fall of 1999
21 and after, the VPD should have done more to press
22 the Coquitlam RCMP to put more resources into that
23 investigation. We accept that the VPD should have
24 done more in that regard.

25 But the RCMP appears unwilling to own up to

1 matters within its responsibility, and that, in
2 our view, is troubling, and it's a theme that runs
3 through their submissions because they appear to
4 say essentially that their investigation into
5 Pickton was adequate given the standards of the
6 day. And that, Mr. Commissioner, is troubling
7 because, as I am sure you recognize and as I am
8 going to speak to further, far too little was done
9 on the Pickton investigation.

10 I should say briefly that the Coquitlam RCMP,
11 in fact, had jurisdiction of the Pickton
12 investigation beginning in the summer of 1998 when
13 Corporal Connor became involved based on Hiscox
14 information, and we discussed that in our
15 submissions at paragraphs 102 to 108. But I am
16 going to leave that jurisdictional point now
17 because of time and I just will say this with
18 respect to the investigation in 1998.

19 One of Mr. Roberts' theses is that this case
20 should have been solved then, in 1998, because he
21 says that the police should have obtained a search
22 warrant at that time. And he set out this, this
23 thesis at some length yesterday, and we address
24 that issue at paragraphs 109 to 111 of our
25 submissions. And, in short, we say that it is

1 very clear from the testimony in the inquiry that
2 there was not enough evidence to obtain a search
3 warrant in order to investigate Pickton for any
4 kind of homicide, not in 1998, not even in 1999.
5 Indeed, there was never enough until after
6 February 5th, 2002. Deputy Chief LePard testified
7 extensively on this point and Sergeant Connor was
8 very firm in his testimony that there was not
9 enough.

10 None of this is to say that, without a
11 warrant, there was nothing else to do. No, what
12 was required was an aggressive, sustained
13 investigation of Pickton, especially beginning in
14 the summer of 1999, and that's what was not done
15 and that's probably the central failing in this
16 case, and I will turn to that now.

17 So, it's in the summer of 1999, Mr.
18 Commissioner, that of course Caldwell comes
19 forward with, among other things, the statement
20 from Ellingsen about having seen Pickton murder a
21 sex worker in his barn, and at that point, the
22 investigation heats up and Coquitlam RCMP is
23 leading it and they're being assisted by Unsolved
24 Homicide Unit and the VPD.

25 The focus of the investigation was on what

1 might be called "the Ellingsen information", her
2 information, her statement to Caldwell and others,
3 that she had seen Pickton murder a sex worker in
4 the barn. That was the focus, but it's important
5 to understand that the context of the
6 investigation was very much that Pickton was
7 suspected of killing many sex workers, and that
8 is, while the most specific and pressing
9 information was regarding the murder of one woman,
10 it was understood that this was very much a serial
11 murder investigation.

12 Corporal Connor testified that that was his
13 belief, and there was good reason for that belief.
14 There was the '97 attack on Anderson. There was
15 the '98 Hiscox information, which included
16 information about Pickton having women's IDs and
17 bloody clothing that he was keeping as trophies.
18 Then there was the '99 Ellingsen information. And
19 all of that together suggested that Pickton was
20 murdering multiple women. So, the Pickton
21 investigation in the summer of '99 and after needs
22 to be understood and assessed as a serial murder
23 investigation.

24 Many witnesses have come before you and
25 testified about the weight of the evidence

1 pointing to Pickton in the summer of 1999, and you
2 may recall that Corporal Connor especially was
3 questioned at length about that information. And
4 it is clear, I submit, that the information was
5 very compelling. It was not just the Ellingsen
6 information, but it was the totality of a number
7 of independent lines of information that all
8 pointed to Pickton. And again, those independent
9 lines included the 1997 information coming out of
10 the attack on Ms. Anderson, and then the 1998
11 Hiscox information, and then the Ellingsen
12 information.

13 And that Ellingsen information, of course,
14 included some unique aspects that bolstered its
15 credibility, the most important of which was
16 Ellingsen's remark that she hadn't realized that
17 human fat is yellow, which it is. And the
18 importance of that observation, of course, is that
19 very few people would know that, unless they had
20 seen it, and it suggested that Ellingsen did, in
21 fact, see the event and was not making it up.

22 And another piece of information was that
23 Ellingsen relayed essentially the same story to
24 each of Menard and Best, independently of
25 Caldwell. So, it wasn't as if Caldwell was making

1 this up, nor probably was Ellingsen just making up
2 some story, because there she is telling it to
3 three people independently.

4 And then another piece of information was
5 that Pickton told both Hiscox and Caldwell
6 independently that he was able to dispose of
7 bodies. And another piece was that Pickton had
8 been seen on the New Westminster prostitution
9 strolls with Ellingsen.

10 And so the totality of these multiple pieces
11 of information pointing to Pickton was compelling
12 and it required a serious, sustained, aggressive
13 investigation to either corroborate or discredit
14 the allegations, and I submit that that point is
15 clear beyond any doubt.

16 On August, on August 10th, 1999, however,
17 Unsolved Homicide investigators interviewed
18 Ellingsen and they put the allegations to her and
19 she denied them. And as you have heard, this
20 causes serious division in the investigative team.
21 The Unsolved Homicide investigators believed
22 Ellingsen's denial, meaning that they did not
23 think the information Caldwell had passed on was
24 credible.

25 THE COMMISSIONER: But LePard said that that denial was not

1 credible.

2 MR. DICKSON: True. Exactly.

3 THE COMMISSIONER: Right. So they still could have proceeded
4 notwithstanding that Ellingsen resiled from her
5 initial comments.

6 MR. DICKSON: That's exactly right. That's exactly right, Mr.
7 Commissioner. So, we have on the one side the
8 Unsolved Homicide --

9 THE COMMISSIONER: At least that's, that's the suggestion
10 that's made by Deputy Chief LePard.

11 MR. DICKSON: And I think that's very well backed up in the
12 evidence and by common sense. And, and I will
13 just lay out some of the reasons why Ellingsen's
14 denial should not have been believed, and the most
15 important of them, Mr. Commissioner, is that she
16 denied making the statement at all, when, in fact,
17 we know she made it to three different people
18 independently. And so she clearly lied in the
19 interview when she denied having told anyone --

20 THE COMMISSIONER: Well, no, let's turn that around a bit then.
21 Aren't the, aren't the RCMP or other police then
22 entitled to look at that askance, to look at the
23 inconsistency there? Are they not entitled to
24 look at it in that fashion?

25 MR. DICKSON: Yes. Yes, they should look at the inconsistency

1 and they should look at her denial and they should
2 not take that denial --

3 THE COMMISSIONER: And one of the issues they have to consider
4 is how credible was she --

5 MR. DICKSON: Well --

6 THE COMMISSIONER: -- if, if she says one thing at one time and
7 another, something else at another occasion.

8 MR. DICKSON: That's, that's quite right. It does have to be
9 looked at, and it had to be looked at and
10 investigated and pursued aggressively. It wasn't
11 enough, Mr. Commissioner, to have her denial in
12 the interview and then just to say, "Well, we
13 don't know. There was too much information
14 pointing to Pickton."

15 And there was a great deal of information,
16 independent of Ellingsen, going back to '97 with
17 Anderson, and then '98 with Hiscox, and then other
18 information that was surrounding the 1999 Caldwell
19 information. The allegations were just too
20 serious and the information was too compelling.
21 There was too much of it. Even if you didn't know
22 what to make of the Ellingsen statement, it needed
23 to be investigated seriously.

24 So, let me go on, Mr. Commissioner, and, and
25 set out some more reasons why Ellingsen's denial

1 should not have been accepted, it should have been
2 discounted, which is that her denial did not
3 account at all for the fact that she knew the
4 correct colour of human fat. That was just left
5 unexplained by her denial.

6 Further, there were very good reasons to
7 expect Ellingsen to deny this story, to deny
8 having seen this incident. One is that she was
9 antipolice. The investigators knew that. Another
10 is that she would be afraid of being implicated in
11 the murders, because part of the information was
12 that she was going with Pickton and picking up
13 women.

14 Another reason is that she was extorting
15 Pickton for money, that was known, and so
16 obviously it could be thought that she may have
17 wished to protect that source of income.

18 And another reason is that she would likely
19 be afraid of Pickton in any event, and so she
20 could have been expected to deny having seen this
21 incident.

22 And then there are other reasons to discount
23 her denial as well. It was suggested that
24 Ellingsen may have hallucinated the event, or may
25 have confused a woman for a pig -- or a pig for a

1 woman I should say. But further investigation
2 undermined those theories. Cocaine does not have
3 hallucinatory effects. She was on cocaine, was
4 the information. And, and, and when Ellingsen was
5 reported, Ellingsen reported having seen the woman
6 in the barn hanging by her neck, well, if she saw
7 that and she looked at the neck, then she would
8 have seen the head as well, and she would not have
9 confused that with a pig. But anyway, Pickton
10 butchered pigs by hanging them upside down, which
11 was the common practice, and that was confirmed in
12 relation to Pickton specifically by Pat Casanova.
13 And so that confusion hypothesis was undermined.

14 And then the last reason that Ellingsen's
15 denial should not have just been accepted by some
16 of the investigators is that further information
17 pointing to Pickton came to light following the
18 interview of Ellingsen.

19 Casanova reported that Pickton told him the
20 police had been talking to his friends and asking
21 questions about the missing women and Casanova
22 said that Pickton was "very worried".

23 Menard reported to Corporal Connor that when
24 Menard mentioned to Pickton that DNA might be
25 found on his property, Pickton was concerned and

1 he said that he was in over his head and he talked
2 about leaving the area.

3 So, with all of those points, it was wrong
4 and it is one of the great tragedies of this case
5 that Ellingsen's denial in her interview was
6 allowed to slow down the investigation, to derail
7 the investigation.

8 Now, Corporal Connor was of course promoted
9 and transferred off the file in late August 1999.
10 He wanted to remain on the case but he wasn't
11 allowed to and that is another error in the
12 management of the police investigation. Anyway,
13 Corporal Connor was replaced by Corporal Yurkiw as
14 lead investigator.

15 Mr. Commissioner, you have heard several
16 times in this inquiry the chronology of the
17 Coquitlam RCMP's investigation after the summer of
18 1999. It is easy to chronicle that investigation
19 because, sadly, very few investigative steps were
20 taken. Periods of months often went by with no
21 activity at all on this serial murder
22 investigation, and I will flesh out a bit what I
23 mean by that.

24 The investigators tried to interview Pickton
25 in early September of 1999, but Dave Pickton

1 interceded and he was able to put off the
2 interview until the rainy season. And ultimately,
3 Pickton was only interviewed more than four months
4 later, on January 20th, 2000.

5 On February 9th, 2000, the Major Crime
6 Section of Coquitlam RCMP met to discuss the
7 direction of the Pickton investigation and to
8 identify the investigative steps they could take,
9 and they did identify a number of steps.
10 Incidentally, only one of those steps, taking
11 further aerial photos of the farm, was ever
12 completed in this investigation. And indeed,
13 there were numerous other steps that were
14 available beyond those that were identified at
15 those time -- at that time, and, and none of those
16 steps were taken.

17 Then on April the 18th, 2000, Constable
18 Yurkiw reported to Staff Sergeant Zalys that she
19 wasn't able to do anything on the file because of
20 a recent homicide case, and Staff Sergeant Zalys
21 reported Inspector Moulton as having said that:

22 There would be no additional resources to
23 assist and a unit would have to investigate
24 when time permitted and do the best we can
25 when we can.

1 And the reality, Mr. Commissioner, is that
2 the Coquitlam RCMP weren't able to investigate
3 very much at all, because the next activity on the
4 file in the serial murder investigation occurs
5 seven months later on November 21st, 2000, when
6 Pickton's DNA was forwarded for analysis in the
7 Valley murder investigation. And then the next
8 activity after that is five months later, on April
9 11th, 2001, when Coquitlam Major Crime met to
10 review its files.

11 At that point, Sergeant Connor was back in
12 Coquitlam Major Crime as the sergeant in charge
13 and in this, this meeting, there was no
14 investigative step taken on this date. It was
15 just a meeting to review files. And in that
16 meeting, the Pickton file was classified as a high
17 priority, and action items were identified for the
18 file, including more surveillance on Pickton and
19 an undercover operation on Ellingsen. As we know,
20 despite the priority given the file, those steps
21 were never completed.

22 And then the next activity on the file,
23 Mr. Commissioner, is seven months after that.
24 November 6th, 2001, Constable Sherstone located
25 Ellingsen and tried to interview her, but she was

1 unable to.

2 And then the last thing that happened on the
3 file was on January 15th, 2002, when Coquitlam
4 Major Crime reviewed assignments in the section
5 and confirmed that Constable Sherstone had conduct
6 of the Pickton investigation. That's it. That's
7 essentially all that happened in the Coquitlam
8 RCMP's investigation into Pickton since the summer
9 of 1999, and I suggest it's a chronicle of
10 inaction.

11 And we have set out an exchange with Sergeant
12 Connor in his testimony when he was here, on page
13 56 of our submission, that fairly summarizes, I
14 think, the investigation. But I am going to leave
15 it with you in writing because of time.

16 But the real failing here in the Pickton
17 investigation is that chronicle of inaction. It
18 is that the Coquitlam RCMP simply did not conduct
19 a sustained investigation into Pickton. The
20 information pointing to Pickton was compelling,
21 the allegations were obviously extremely serious,
22 but the investigation was allowed to languish.
23 And the great shame of this is that this was the
24 police, the police force's best chance to stop the
25 killings by catching the killer. The Coquitlam

1 RCMP's failure to pursue the Pickton investigation
2 with a vigor and the resources that were required
3 is really the heart of the police force's failings
4 in relation to the tragedy of the missing women.

5 I have read the Department of Justice's
6 submission and it appears that they take the
7 position that the Coquitlam RCMP's Pickton
8 investigation was adequate given the standards of
9 the day, and I submit to you that the reality is,
10 is not that, and the RCMP should be held to
11 account for that, just as the VPD holds itself to
12 account for its own shortcomings.

13 Now, just a final word on this Coquitlam
14 investigation. Many of the Coquitlam RCMP
15 witnesses sought to explain the failings of their
16 investigation by pointing to a shortage of
17 resources, and I just say that that is no
18 justification at all, because the Coquitlam RCMP
19 did not seek to get additional resources after the
20 summer of 1999. They could have asked "E"
21 Division. They could have asked Unsolved
22 Homicide. They could have asked the VPD. They
23 did that in the summer of 1999, but they did not
24 do that at any time thereafter, and obviously that
25 is not good enough.

1 I want to move quickly, Mr. Commissioner, to
2 another topic, which is, what should have been
3 done in the face of the Coquitlam RCMP's
4 languishing investigation. And I say that the VPD
5 accepts that rather than assuming that the
6 Coquitlam RCMP was actively working the Pickton
7 investigation, the VPD should have requested
8 regular updates from the Coquitlam RCMP to see if
9 they were moving the Pickton investigation along.
10 And if the VPD had found that that was not
11 happening, then there were some solutions
12 available to the VPD, and they were as follows.

13 First, an officer of inspector rank or higher
14 in the VPD should have communicated with their
15 equivalent in the Coquitlam RCMP to urge that they
16 prioritize and properly resource the Pickton
17 investigation, and in that conversation, the VPD
18 could have offered resources to assist or offered
19 to form a JFO with Coquitlam.

20 Second, the VPD could have advocated at a
21 very senior level with "E" Division management and
22 asked that the RCMP's Provincial Serious Crime
23 Unit or the Provincial Unsolved Homicide Unit get
24 involved in the case and perhaps take it over.

25 And third, if there was still difficulties in

1 the way the RCMP was prioritizing the case, then
2 the Police Services Division of the Ministry of
3 the Solicitor General could have been asked to
4 assist with resolving the matter.

5 So, the solution available to VPD senior
6 management, had it recognized the problem, was to
7 communicate its unhappiness with the state of the
8 investigation in Coquitlam. This kind of a
9 communication occurs regularly in the province,
10 and the VPD accepts that it should have taken
11 steps to try to motivate the Coquitlam RCMP into
12 advancing the investigation after August of 1999.
13 Deputy Chief LePard stated as much in his
14 testimony and in his report.

15 But what was not a proper solution,
16 Mr. Commissioner, is that which has been proposed
17 by Mr. Roberts, that the VPD should have gone out
18 to Coquitlam and conducted a parallel
19 investigation on a hypothetical charge against
20 Pickton for kidnapping by fraud. And we set out
21 our position on Mr. Roberts' kidnapping-by-fraud
22 thesis at some length in our submissions from
23 pages 64 to 73, but I'll, I'll try to distill that
24 down just to a few points here.

25 The first point is that, in a large sense,

1 Mr. Roberts' thesis is a straw man, because the
2 VPD has always accepted that it had the
3 jurisdiction and the responsibility to investigate
4 crimes that may have been committed against the
5 missing women in Vancouver, including kidnapping
6 and forceable confinement and murder. It was
7 incumbent upon the VPD to investigate the
8 possibility of foul play in relation to the
9 disappearances, and that foul play certainly could
10 have included kidnapping and even kidnapping by
11 fraud. The VPD has always accepted that, and
12 that's reflected in deputy chief's testimony,
13 Deputy Chief LePard's testimony. And the VPD were
14 investigating the possibility of kidnapping, just
15 as they were investigating murder.

16 The investigation did shift into an
17 investigation of foul play, but it was never known
18 exactly what the foul play was until after
19 February 5th, 2002. The investigators assumed
20 that the women were murdered, which turned out to
21 be correct, but it was not known that they really
22 were until after Evenhanded got onto the farm
23 because there was no tangible forensic evidence
24 showing the nature of the foul play.

25 And that absence of evidence is the second

1 point I'll raise in relation to the kidnapping
2 thesis. The reality is that, while it was always
3 a possibility that the women had been kidnapped,
4 there was never any specific evidence of that on
5 which the VPD or the Coquitlam RCMP could build an
6 investigation. And Mr. Commissioner, every
7 witness who has come here to this inquiry and
8 testified on whether there was any evidence of
9 kidnapping, has testified that there was not. And
10 Deputy Chief Evans testified very clearly and
11 firmly that her opinion is that focusing on
12 kidnapping would not have helped advance the
13 investigation at all, and that really is the
14 truth.

15 And I think you can see the absence of
16 evidence of kidnapping best through two examples.
17 One is Evenhanded, the largest, most extensive
18 criminal investigation in Canadian history, which
19 looked deep into how the women got out to the farm
20 and which never found any evidence of kidnapping
21 on which charges could be laid. There simply
22 wasn't any good evidence of kidnapping to be
23 found.

24 And the second example is the 1997 charges in
25 relation to Ms. Anderson, and that of course was

1 the best case on which to base kidnapping charges,
2 because you had Ms. Anderson's statement about the
3 circumstances in which she was picked up and the
4 circumstances of the attack, and yet neither
5 Corporal Connor, who recommended the charges, nor
6 Mr. Romano who laid the charges, nor Ms. Randi
7 Connor who reviewed the charges, none of them felt
8 that the kidnapping charge was appropriate,
9 because it wasn't, and the reason it wasn't is
10 because they would have to prove the intention to
11 kidnap and that's what was always lacking. Even
12 with respect to Ms. Anderson, there was no clear
13 evidence that Pickton intended to kidnap her when
14 he picked her up in Vancouver.

15 In the *Metcalf* case, which Mr. Roberts
16 referred to many times in this inquiry, the Court
17 was able to find on the evidence in that case:

18 The principal intent from the very outset
19 was to kidnap him and hold him for ransom.

20 But that's what couldn't be done in the
21 Pickton investigation, even in relation to Ms.
22 Anderson, which was by far the best evidence. It
23 could not be said that Pickton intended to kidnap
24 her from the beginning as opposed to deciding
25 later on in his trailer that he would confine her

1 and try and kill her.

2 And just while we are on the Anderson case,
3 Mr. Commissioner, you should be clear that it was
4 always open to the Coquitlam RCMP to investigate
5 Pickton for kidnapping in that case, and for the
6 Port Coquitlam Crown to lay that charge if it
7 thought it were appropriate. And we've set out
8 testimony from Corporal Connor on it that makes
9 that point very clear, in our submission, and I
10 will leave it with you.

11 The last point on this issue I wish to make
12 here, Mr. Commissioner, is that the Coquitlam RCMP
13 did take jurisdiction of the Pickton investigation
14 and that always needs to be remembered. Mr.
15 Roberts suggests that the VPD should have run a
16 parallel investigation against Pickton on
17 kidnapping, and that just wasn't on, because there
18 was no evidence of kidnapping, as I have spoken
19 to. But it also needs to be understood that
20 parallel investigations like that is just not how
21 policing is done across jurisdictions, and for a
22 very good reason, because, because doing so could
23 jeopardize an investigation and it could put
24 officers at risk. Policing in a multi-
25 jurisdictional region requires cooperation and

1 communication across police agencies, not parallel
2 investigations.

3 So, if there was any good evidence of
4 kidnapping, then the Coquitlam RCMP could have
5 investigated that, along with the murder
6 allegations, and they could have asked for
7 assistance from the VPD if they thought they
8 needed it.

9 So, Mr. Commissioner, what the VPD should
10 have done, when the Coquitlam RCMP's Pickton
11 investigation began to languish, is to have urged
12 the Coquitlam RCMP to reinvigorate it and to offer
13 assistance, and the VPD accepts that it should
14 have done that, and it bears the responsibility
15 for failing to do that, and it accepts that.

16 Mr. Hern will now address the issue of
17 systemic bias.

18 MR. HERN: Yes. So, this is the third point, Mr. Commissioner,
19 that we want to address. Some participants in
20 this inquiry have suggested that systemic bias,
21 racism or sexism was present within the VPD during
22 the relevant time period and that that, or that
23 these contributed to the VPD's inadequate response
24 to the missing women.

25 The VPD submits that there were a number of

1 systemic issues within the VPD that precluded an
2 adequate response to the missing women, but these
3 systemic issues did not include bias, sexism or
4 racism. To the contrary, generally, the
5 investigators on the case demonstrated exemplary
6 dedication and professionalism, and some showed
7 great compassion as well.

8 The term "systemic" has been used repeatedly
9 in the inquiry in association with the problems in
10 the police investigations, and the term has
11 largely reflected the view that no single
12 individual was responsible for the inadequacies in
13 the investigation or caused its failure, and we
14 submit this is correct. Instead, there was a
15 combination of factors that contributed to the
16 problems, many of which were linked to the
17 practice and the structure of policing in place at
18 the time in the VPD and within the RCMP, and with
19 the structure in place in the Metro Vancouver area
20 generally.

21 And policing issues, which can be described
22 as systemic, I say include the following: the
23 lack of major case management or equivalent
24 structure being put in place for the missing women
25 investigation in the Pickton homicide

1 investigation in Coquitlam and Vancouver's
2 investigation generally; second, the lack of
3 appreciation for how social science research and
4 analytical work on criminality, such as was done
5 by Mr. Rossmo, can assist in the investigation.

6 The absence of mandatory internal reviews of
7 investigations that are unsuccessful for a certain
8 period of time wasn't in place. That's a systemic
9 issue.

10 The lack of a policy that managers of Major
11 Crime Sections have significant investigative
12 experience is another.

13 Another is the absence of a media strategy
14 with respect to the missing women investigation,
15 and the severity of the rank structure at the
16 time, which can allow one weak link in the chain
17 of command to stymie information flow and hamper
18 decision making. That's also a systemic issue.

19 Another is the patchwork of policing in the
20 Metro Vancouver area, which can inhibit
21 communication regarding important investigative
22 priorities and prevent the appropriate setting of
23 those priorities.

24 Another is the absence of a structural
25 trigger for joint forces operations, as Mr.

1 Davidson discussed with you in his evidence.

2 Another is the lack of formal communication
3 forums to discuss investigations that bear upon
4 multiple jurisdictions and regional priorities.

5 A structural problem within the VPD during
6 the time period relevant to the terms of reference
7 was that the Missing Persons office structure was
8 inadequate. And finally, a lack of coordination
9 in respect of missing persons investigations
10 provincially would be a systemic policing issue.

11 And so all of these, we submit, and as Deputy
12 Chief LePard testified to, many of those, and
13 others came out from other witnesses, all of those
14 are systemic policing issues which were important
15 contributing factors to the problems in this
16 investigation.

17 Resource shortages and personality conflicts
18 may have aggravated the influence of some of
19 those, one or more of them I suppose, but these
20 systemic problems prevented the system from
21 overcoming challenges that are always presented
22 when personalities do not meld perfectly or
23 resources are insufficient.

24 Now, to contrast those systemic policing
25 issues with the allegations about systemic bias,

1 racism and sexism is essential. In the latter,
2 the notion of systemic bias, racism and sexism,
3 the word "systemic" is used to describe prejudices
4 that are entrenched in an institution, either by
5 their prevalence in institutional culture, or
6 where structural aspects of the institution give
7 rise to bias, racism and sexism.

8 Now, for these issues to be relevant to the
9 commission's work here, there has to be evidence
10 that systemic racism, sexism or bias affected the
11 conduct of the missing women investigations in
12 some way. This, of course, isn't a broader
13 examination into those issues within police
14 departments. That is beyond your mandate. So, we
15 have to see some link, linkage to the missing
16 women investigations, and I say that there has
17 been no reliable or compelling body of evidence of
18 that nature. I say that, in fact, the reliable
19 evidence has been almost entirely to the contrary.

20 And I note first that there is -- excuse me.
21 I note that there was no methodology employed by
22 any other participant to study these issues.
23 Indeed, the only methodology in evidence was that
24 of Deputy Chief LePard in Part 2, Chapter 3 of his
25 report, where he examined other sex assault

1 investigations and homicides of sex workers from
2 that time period to see if they showed signs of
3 being under-resourced or pursued with less vigor.
4 That evidence was not challenged. And his
5 examination of those other cases was that they did
6 not show signs of being under-resourced or pursued
7 with less vigor. In fact, what they showed was
8 that when the VPD understood what it was dealing
9 with, in respect of an assault or a homicide
10 against a sex worker, it investigated them, those
11 issues vigorously and comprehensively and had a
12 very high solve rate.

13 So, Deputy Chief LePard's methodology, or one
14 of them, was that if there had been a systemic
15 bias against sex workers in the Department, he
16 would not have seen vigorous investigations into
17 those other sex assault or homicide cases against
18 sex workers.

19 Apart from that evidence, in the absence of
20 an identifiable methodology, all that this
21 commission has been left with are anecdotes and
22 impressions from a few witnesses, and I say that
23 anecdotes and impressions are not sufficiently
24 comprehensive or reliable to address these broad
25 allegations. And this is particularly the case

1 here, because the anecdotes and impressions were
2 often extremely vague and comprised of
3 unattributed hearsay and double hearsay. Rarely
4 have witnesses been able to identify the dates,
5 sometimes even the years, when events occurred,
6 and often they could not specify locations or
7 details which could allow the VPD to identify,
8 verify and respond to the allegations.

9 And as discussed in our written submissions,
10 at some length, wherever the VPD has been provided
11 with sufficient information from a witness here to
12 identify an event that has been the subject of the
13 testimony, whether it was from Ms. Rae-Lynne Dicks
14 or Constable Dave Dickson, or from Elaine Allan,
15 or others, in each case where systemic bias was
16 alleged, the VPD showed that those witnesses'
17 memories or accounts of those accounts were
18 inconsistent with objective facts and records.

19 And as one example, take the incident Mr.
20 Ward made reference to yesterday in his oral
21 submissions. He referred to a call taken by
22 communications operator, Rae-Lynne Dicks, as being
23 from a 14-year-old sex worker who was a rape
24 victim calling from a 7-Eleven, he said, and Mr.
25 Ward said the VPD did not respond to that call for

1 three hours. In fact, as you heard evidence on
2 May 18, the victim, who was actually 16 and
3 calling from a gas station, ended her 911 call
4 with the VPD because the ambulance had arrived.
5 And the VPD was aware that she had been
6 transported to the hospital where she was attended
7 by doctors. The VPD cancelled their initial
8 dispatch of officers because it knew that the
9 initial medical care process at the hospital for a
10 sex assault victim would take several hours.

11 And so, instead, a fresh team was sent to the
12 hospital when they came on shift at 5 a.m., and
13 when the medical care for the girl was completed,
14 the officers, one man and one woman, were there,
15 waiting for her at the hospital, waiting to speak
16 with her. And those officers you heard proceeded
17 to conduct a highly professional investigation,
18 apprehended the offender, charged him, he was
19 convicted and the girl turned her life around and
20 got off the streets. This is the case that Mr.
21 Ward called in his submissions to you yesterday as
22 "unspeakable". It was, in fact, another example
23 of the seriousness and dedication with which the
24 VPD handled investigations of harm against sex
25 workers when it knew what crime it was facing and

1 dealing with.

2 And that is the distinction and one of the
3 great problems with the VPD's investigation of the
4 missing women. It was uncertain as to what they
5 were dealing with and, as a result, because of the
6 uncertainty that many of the senior management had
7 about the case and whether there was, in fact,
8 murders committed or not, the proper resources
9 were not dedicated to the case, as we look back at
10 it now.

11 Now, even if anecdotes and impressions were
12 sufficiently reliable to make findings of fact of
13 systemic bias, sexism and racism, I say the
14 evidence at this inquiry overwhelmingly
15 contradicted those suggestions.

16 And again, contrary to what Mr. Ward said to
17 you yesterday, Detective Constable Shenher, even
18 when writing in her most bitter, difficult period
19 following the arrest of Pickton, did not associate
20 systemic bias, sexism or racism as the cause of
21 the problems in the investigation. The issue was
22 put to her many times in cross-examination by Mr.
23 Ward, and by others, and while she was critical of
24 the rigidities of the chain of command in the VPD
25 and she was critical of management, she was clear

1 that, to the extent that sexism and racism or bias
2 existed in the VPD, it was no more or no less
3 present than in society generally and in all other
4 institutions in society. And on every occasion
5 where specifics were requested or suggested to
6 her, Detective Constable Shenher clarified that
7 they were, in her view, isolated incidents and not
8 indicative of broader or systemic problems within
9 the Department.

10 Aside from Detective Constable Shenher, other
11 VPD witnesses, men and women alike, officers and
12 civilians, and I won't list them all here, but you
13 heard them and there were many, rejected the
14 allegations that there was systemic or pervasive
15 sexism or racism in the VPD or bias against sex
16 workers. This isn't to suggest that it isn't an
17 issue for police agencies to always be mindful of,
18 but it wasn't present here, and there were many
19 problems with the missing women investigation, but
20 systemic bias, sexism and racism were not among
21 then.

22 THE COMMISSIONER: All right. How much longer are you going to
23 be?

24 MR. HERN: Let me just -- two minutes.

25 THE COMMISSIONER: All right.

1 MR. HERN: So, I want to make a few closing remarks on behalf
2 of the VPD and the Board. As an institution, the
3 VPD is deeply sorry for the failures of its
4 investigation, as it expressed when the LePard
5 report was released, as I stated at the outset of
6 this inquiry, and as it has expressed to each of
7 the family witnesses who have taken the stand.
8 The VPD deeply regrets that it did not understand
9 earlier the terrible gravity of the situation of
10 the missing women presented and that its response
11 was inadequate as a result.

12 The VPD has made many changes to date in
13 response to the shortcomings of the investigation.
14 It has committed to providing excellence in
15 policing, and it understands that doing so
16 requires openness to criticism and self-
17 examination. Police agencies ought to conduct
18 reviews of unsuccessful investigations and learn
19 from their mistakes in order to become better
20 policing institutions. Police agencies must be
21 learning institutions. They must be accessible
22 and accountable to the public and that's what the
23 VPD strives for.

24 Since the period in review, the VPD has
25 demonstrated that it is a proactive learning

1 institution. The Schouten audit and the LePard
2 report are two examples of the VPD's willingness
3 to frankly and critically investigate its own
4 performance and make improvements. It
5 demonstrates that it is a police force that is
6 committed to best practices and the public good.

7 The VPD has made serious and sustained
8 efforts since 2002 to learn from its mistakes and
9 it looks forward to receiving this commission's
10 report so that it can further improve policing in
11 the region, particularly with respect to
12 vulnerable populations in aboriginal communities.

13 And so, Mr. Commissioner, the VPD and the
14 Board wish to thank you, for your staff and to all
15 the participants in seeing this difficult process
16 through to completion. We seriously hope that the
17 commission's report will provide answers for the
18 families, the communities and for the police
19 forces involved, and that it will offer a real
20 contribution to the process of healing and
21 rebuilding trust.

22 THE COMMISSIONER: Thank you, Mr. Hern. Thank you. Ms.

23 Tobias? Yes.

24 MS. TOBIAS: Mr. Commissioner, Cheryl Tobias appearing for the
25 Government of Canada in this inquiry.

1 I want to begin my submissions to you this
2 morning by emphasizing that the Government of
3 Canada has supported the work of this inquiry,
4 your work, from its earliest days, and to
5 emphasize that, in the case of the Government of
6 Canada, that support of course has been voluntary.

7 We know, of course, that it is
8 constitutionally impermissible for a provincial
9 inquiry to investigate the administration or
10 management of a federal institution such as the
11 RCMP, but nevertheless, on November the 30th,
12 2010, the Government of Canada applied for
13 participant status which of course you granted.
14 And since that point, Canada has assisted your
15 work in this inquiry in very many ways. Of
16 course, very significantly, Canada has provided
17 extensive documentation, which you needed, and has
18 done so in cooperation with your counsel.

19 Again, Mr. Ward, in his suggestion that the
20 police agencies are conducting themselves in such
21 a way as to cover up what really happened, is
22 completely incorrect. Nothing could be further
23 from the truth. And specifically, I have to say,
24 that we, at no point, agreed that there were 20
25 million doc -- or 2 million, excuse me, documents

1 that you needed to complete this inquiry. The
2 investigational file has 2 million pages in it and
3 the Evenhanded file, and from that, Canada's team
4 had to select what was relevant for your purposes.
5 And in your ruling on March the 2nd, 2012, you
6 said specifically that you were satisfied that the
7 RCMP has been and continues to make best efforts
8 to disclose all relevant documents. And that,
9 Mr. Commissioner, has not changed, and to date,
10 over 110,000 pages of documents have been
11 disclosed.

12 I want to speak briefly about the redactions
13 as well because Mr. Ward has brought that issue up
14 once again. The redactions were necessary. The
15 protocol, which was agreed to by your counsel, was
16 based on protecting privileged information, on
17 protecting ongoing investigations, on protecting
18 third party interests. There were numerous times
19 through the course of this inquiry when parties
20 requested that we revisit specific redactions and,
21 of course, we did so.

22 Aside from the provision of, of the
23 documentary evidence, Canada identified many
24 relevant witnesses and made current and retired
25 RCMP members available as witnesses to this

1 inquiry. And I will say that Canada made
2 witnesses available significantly beyond the
3 witnesses that were actually called. We would
4 have suggested further witnesses but, of course,
5 we recognize that the pressure of time requires
6 priorities to be determined.

7 The third important contribution that Canada
8 has made to your inquiry is its wholehearted
9 participation in the forums which have been held.
10 Canada has prepared extensive materials for the
11 information of the commission, and senior RCMP
12 officials appeared at and participated in all of
13 the forums, and they included the Assistant
14 Commissioner Wayne Rideout, who was the Criminal
15 Operations for the province, Chief Superintendent
16 Janice Armstrong, former Deputy Commissioner Peter
17 German participated in one of the forums. So,
18 Canada has done its best to make the work of this
19 inquiry as effective as it could be.

20 I want to speak briefly only about one aspect
21 of your mandate, Mr. Commissioner, and that is
22 your mandate to consider the stay of proceedings
23 of the 1997 charges against Robert Pickton. That
24 stay of proceedings, as the evidence has
25 demonstrated, was entirely related to the Crown's

1 assessment of Ms. Anderson's viability as a
2 witness. It had nothing to do with any
3 deficiencies in the investigation and, indeed, the
4 evidence was that that investigation took place in
5 a proper and in a professional manner. The
6 evidence also was that the reason for the stay,
7 that being Ms. Anderson's condition, subsisted
8 throughout the terms of reference. So, on that
9 subject, I will say no more this morning.

10 I want to move now to the question that
11 remains with respect to the conduct of the
12 investigation of women who went missing from the
13 Downtown Eastside, and that is, what is the
14 standard of conduct? What are the legitimate
15 expectations of those who conducted the
16 investigations?

17 And on the authorities, Mr. Commissioner, we
18 say that the question is this. What would
19 reasonable officers, reasonable police officers
20 have done in comparable circumstances? Then we
21 get to the question of, what were the comparable
22 circumstances? They were, of course, the
23 circumstances that existed between 1997 and 2002.
24 And the breadth of the relevant circumstances in
25 that time is defined by your mandate on that

1 point, which is, as I said, the conduct of
2 investigations between 1997 and 2002, respecting
3 women reported missing from the Downtown Eastside.

4 It's not about, it's not solely about, I
5 should say, what the police knew specifically
6 about Robert Pickton. It is about all the
7 information that they had at the time that related
8 to the missing women and what might have happened
9 to them, because that is the information that they
10 were working from and that they had to decide what
11 to use when and how to go about using it.

12 Your mandate, Mr. Commissioner, is not simply
13 to answer the question, why didn't the police
14 arrest Pickton sooner. To interpret your mandate,
15 as some have, as being simply in those terms is,
16 in and of itself, to bring to wit a hindsight
17 bias. It makes the fact that Pickton was
18 responsible for the murders of six women, and
19 connected by DNA evidence to the murders of so
20 many more, appear so much more predictable than it
21 really was. And why? Because it oversimplifies
22 the situation as it existed during the terms of
23 reference. It takes the Pickton, the
24 investigation into Pickton, that part of the
25 investigation, out of its context. It was -- in

1 fact, the investigation of Robert Pickton before
2 2002 was, in fact, part of a much broader
3 investigation into the fate of a large number of
4 women that disappeared from the Downtown Eastside.

5 As I know you appreciate, hindsight is the
6 wrong lens to use to evaluate past conduct. It
7 should not be used to judge the efforts of those
8 who did not have the advantage of knowing how
9 things ultimately turned out. But we must agree
10 with counsel for the Vancouver Police Department
11 when he said that that knowledge must instead be
12 used to -- prospectively, to determine how things
13 could be improved in future and that is its
14 benefit.

15 So, how do you take the standard, what was,
16 what would reasonable officers have done in
17 comparable circumstances, and translate it in
18 concrete terms into these investigations? In
19 concrete terms, what could we legitimately expect
20 the police to have done? Well, Mr. Commissioner,
21 that, in my submission, is defined by the policies
22 and the practices of the time. It's also informed
23 by the learning of the report by Mr. Justice
24 Campbell when he looked into the Bernardo
25 investigations.

1 So, I'm going to summarize that very briefly
2 from beginning to end, because it's the
3 touchstone, in my submission. In the first place,
4 missing women, or sorry, missing persons reports
5 ought to be taken promptly and thoroughly
6 investigated. There must be a prompt assessment
7 as to whether foul play must -- or may have been
8 involved. That is a critical assessment, and you
9 have seen that in the evidence before you. Where
10 foul play is suspected, what was necessary was a
11 thorough investigation of the scope and -- of the
12 scope and detail comparable to a homicide
13 investigation. And that, that phrase I take
14 almost verbatim from the report of Mr. Schouten in
15 2004.

16 And that investigation should be launched at
17 the earliest opportunity so that evidence is not
18 lost with the passage of time. And once there are
19 linkages that become apparent between different
20 suspicious disappearances, such that a serial
21 predator is suggested, then, of course, the
22 investigations of the various disappearances
23 should be coordinated accordingly. And where a
24 serial predator was suspected to be active, to be
25 operating in more than one policing jurisdiction,

1 the police agency who commenced the investigation
2 had the responsibility to communicate with other
3 implicated jurisdictions at an appropriately
4 senior level so that resources that are required
5 for an investigation of that detail and that scope
6 could be appropriately deployed.

7 Now that you have heard all the evidence, in
8 my submission, there are three important facts
9 that are apparent. First, it is apparent that the
10 RCMP members who were involved in these
11 investigations were dedicated to their task. They
12 did not discount these investigations because the
13 victims were sex trade workers and certainly not
14 because many of those victims were aboriginal. To
15 the contrary, as you heard, Mr. Commissioner, they
16 were deeply affected on a very personal level by
17 their experiences in trying to find the offenders
18 responsible for these terrible tragedies.

19 The second fact that is apparent is that the
20 investigative problem, as it presented itself
21 between 1997 and 2002, was complicated and there
22 were no simple solutions. There are various
23 aspects of the problem that I want to highlight at
24 this point.

25 First, some, but certainly not all of the

1 disappearances of sex trade workers from the
2 Downtown Eastside over a period of time were
3 turning out to be suspicious. So, some, but not
4 all.

5 Second, there were various disparate clues
6 about their fate. There were many persons of
7 interest. Each of these women dealt with so many
8 different strangers that links between their
9 disappearances were difficult to discern. Robert
10 Pickton was not the obvious answer to that
11 problem. In fact, we are well-aware that he was
12 not the only one that was preying on sex trade
13 workers during that period.

14 The third fact that isn't apparent is that
15 through these various investigations, police
16 agencies worked with each other. There was a
17 delay in forming a formal joint forces operation
18 of the kind that was necessary to deal with the
19 complex and extensive investigation. But the
20 evidence has showed that the delay was mostly, if
21 not entirely, due to the delay that occurred in
22 the management of the Vancouver Police Department
23 coming to realize that a serial offender likely
24 was involved. I am going to speak more about that
25 later.

1 So, where are we now? I see you looking at
2 the clock. Would you like to take a break?

3 THE COMMISSIONER: No, I'm -- I don't want to interrupt you, so
4 I --

5 MS. TOBIAS: Well, I think it's a reasonable point to do so, so
6 I am happy to do that.

7 THE COMMISSIONER: All right. We'll take the break now.

8 THE REGISTRAR: The hearing will now recess for 10 minutes. We
9 are going to take a shorter break this morning.

10 **(PROCEEDINGS ADJOURNED AT 10:58 A.M.)**

11 **(PROCEEDINGS RESUMED AT 11:16 A.M.)**

12 THE REGISTRAR: Order. This hearing is now resumed.

13 THE COMMISSIONER: Yes.

14 MR. CROSSIN: Yes, sir, Crossin appearing for the Vancouver
15 Police Union. I am scheduled for an hour to
16 follow Ms. Tobias.

17 THE COMMISSIONER: Yes.

18 MR. CROSSIN: And Mr. Hern has covered a lot of my territory --

19 THE COMMISSIONER: Yes.

20 MR. CROSSIN: -- and so I thought I would let you know that I
21 will probably be five to 10 minutes now. I am
22 going to change course a little bit, in case that
23 assists you in any way.

24 THE COMMISSIONER: All right.

25 MR. CROSSIN: Thank you.

1 THE COMMISSIONER: Thank you for telling me that. I am sure it
2 helps the other lawyers in the room. Yes, Ms.
3 Tobias.

4 I recommend that approach actually, shorter
5 arguments. Yes.

6 MS. TOBIAS: Mr. Commissioner, regretfully, I have rather more
7 ground to cover than Mr. Crossing, so I won't make
8 a similar offer.

9 THE COMMISSIONER: All right.

10 MS. TOBIAS: So, where are we now, now that you've heard the
11 evidence? And in Canada's submission, Mr.
12 Commissioner, when you consider the efforts of
13 individual investigators, not only do you need to
14 consider what they knew at the time, but you need
15 to consider the framework with which they --
16 within which they must operate. They operate
17 within a system that is, for good reason,
18 hierarchical. They operate within resource
19 limitations that cannot accommodate all the
20 requirements of all the cases for which the
21 institution is responsible. They operate within
22 the framework of the policies and the practices of
23 the time. And all of those things define what the
24 individuals could or should have done in pursuing
25 these investigative objectives that I set out for

1 you earlier in my submissions.

2 At one point during my examination of the
3 Coquitlam panel, you asked me why I was leading
4 evidence of such things as, you know, the
5 particular parameters for, for approving
6 undercover operations and so on, and so this is
7 one of the reasons. You need to know that
8 information to evaluate the investigation and, and
9 the, and what was done and what was not done by
10 the individuals at the time.

11 And you have quite properly, in my
12 submission, expressed your interest in systemic
13 factors and systemic objectives, and so these
14 kinds of things are very relevant for you to
15 understand in considering the systemic factors
16 that were at play and how you might recommend
17 change.

18 So, speaking of the individuals, in my
19 submission, it's plain that they acted reasonably
20 at the time within the framework within which they
21 worked. I am going to stop there parenthetically
22 for a moment to refer to a submission that Ms.
23 Narbonne made yesterday about some of the evidence
24 given by Ms. Frey and Ms. Beaudoin simply to say
25 that the incidents to which she referred have, as

1 most stories do, two sides, and that we have
2 covered the other side of the story in the
3 evidence given by members Dammann and Vanoverbeek.

4 I am going to turn back now to the question
5 of what is the evaluation on an institutional
6 level. And in my submission, it is also plain
7 that the RCMP participation in the investigations
8 that you are reviewing was reasonable with one
9 qualification, and that is, that the RCMP's
10 participation in the investigation of Mr. Pickton,
11 the aspect that took place in Coquitlam, could
12 have been more comprehensive and more timely. In
13 other words, as I was, as I will amplify in a few
14 minutes, that investigation should have continued
15 on in a more concentrated way, particularly in
16 2000. You will recall that in January of this
17 year, Deputy Commissioner Craig Callens said that
18 the RCMP could have done more and expressed its
19 regret that that had not happened.

20 And as you look, going forward, at the
21 question of how things ought to be improved, it is
22 important for you to note that the RCMP, along
23 with other police agencies, has recognized, from
24 the experience of this case and others, that
25 change is necessary. And many of the changes that

1 have taken place in the last 10 years have been
2 detailed for you in the presentations, both
3 written and oral, at the various forums that have
4 taken place, and I am going to highlight some of
5 the most relevant ones later in my submissions
6 today.

7 Now, that being by way of overview what the
8 bottom line should be in my submission, I am going
9 to turn to the facts of what happened, and the
10 story that I'm going to refer to, or I should say,
11 that I'm going to begin at the beginning of this
12 story. You need that context to understand the
13 RCMP participation in the investigations and it is
14 particularly important because events at the
15 beginning of the investigation had profound
16 effects on the various investigations all the way
17 through to the end of the terms of reference, and
18 indeed, beyond.

19 So, there were two sources of difficulty at
20 the beginning of the investigation that had those
21 profound consequences. You will recall that I
22 said a few minutes ago that the assessment of risk
23 associated with the disappearance must be made as
24 soon as possible. That -- and I will add, that
25 the investigation that takes place at that point

1 is, indeed, the foundation of the later
2 investigation. You heard a great deal of evidence
3 on the importance of capturing evidence and doing
4 an investigation when the matter is at its
5 freshest. That was why the Coquitlam Serious
6 Crime Unit was repeatedly diverted from the
7 investigation into Mr. Pickton's activities as it
8 wore on.

9 You will recall, or you may recall as well,
10 then Inspector Moulton's evidence about the fact
11 that he changed the missing persons policies in
12 Coquitlam soon after he arrived there, so that
13 there was more attention paid to those reports at
14 the time a report was filed, and that there was
15 supervisory follow-up to ensure, as he put it,
16 that information or evidence that might be
17 somewhat ephemeral was captured at the earliest
18 possible moment.

19 So, the first difficulty that haunted the
20 investigations that were to come, was the
21 inadequate resourcing of the Vancouver Police
22 Department's Missing Persons Unit. It's been
23 conceded, it's not controversial and you have
24 heard a lot about it. But again, when the initial
25 investigation isn't as thorough or as prompt as it

1 should be, and the risk assessment is delayed, the
2 in-depth investigation of those disappearances
3 that were suspicious were delayed and evidence
4 potentially lost.

5 The second difficulty was that, as you have
6 also heard in great detail, the managers, that
7 those at the management level in the Vancouver
8 Police Department did not realize that these cases
9 were suspicious.

10 And you have also heard that there was a
11 difference in, in the, at the investigative level,
12 that the investigative level came to that
13 realization much sooner. But the point of the
14 matter is that the managers, who are in a position
15 to devote the necessary resources that were
16 commensurate with that level of risk, did not do
17 so because they didn't -- at the time, because it
18 took them a long time to come to the realization
19 that, indeed, these cases were suspicious and the
20 missing women were likely the victims of foul
21 play, and until they came to that conclusion, they
22 did not approach the RCMP to combine efforts to
23 find the answer.

24 So, what were the consequences of those two
25 difficulties? As I said before, that the

1 investigation took a long time to become what
2 Inspector Schouten described as one having the
3 scope and detail comparable to that expected in a
4 homicide. That did not happen until the Project
5 Evenhanded investigation began.

6 Secondly, the delays in the initial
7 investigation and assessment of the disappearances
8 as suspicious and likely the result of foul play,
9 gave rise to the mistaken belief that the
10 disappearances had stopped in 1999. That was a
11 belief that was held by Sergeant Field, that was
12 communicated to her superiors numerous times. And
13 these difficulties persisted throughout the
14 investigation because, of course, women continued
15 to go missing until and, in fact, during the
16 Evenhanded investigation.

17 So, going to the progression of the
18 investigations. Of course, they began with the
19 Missing Persons Unit in the Vancouver Police
20 Department and Lori Shenher's assignment to that,
21 to that work. She was later joined by other
22 members of the Missing Women Review Team looking
23 for the answer to the disappearances. That was
24 their task.

25 In the course of their investigations, they

1 collected information, according to them, about
2 hundreds of persons of interest. They created
3 various lists highlighting various groups of them,
4 and you have seen some of those lists in the
5 evidence. It's important to remember that
6 Sergeant Field, in her evidence, testified that
7 they never systematically ranked or prioritized
8 those persons of interest. And I will remark
9 parenthetically that that was one of the, the
10 items mentioned by Mr. Justice Campbell as being
11 very important, that persons of interest be
12 systematically reviewed and ranked.

13 The Missing Women's Review Team were only
14 able to investigate a very few of those persons of
15 interest to any significant degree, and it is
16 within that context that the information about
17 Robert Pickton emerged as a lead in answering the
18 question of what had happened to the missing
19 women.

20 First, there was Bill Hiscox, of course, and
21 then Ross Caldwell and then the others. And
22 Hiscox and Caldwell were both VPD informants and
23 the VPD handled them. Their investigation into
24 Pickton's activities, conducted in conjunction
25 with the RCMP, was recorded in the Missing Women's

1 Review Team file as Tip 30, quite a bulky tip it
2 was.

3 And that brings me to the question of, the
4 jurisdictional question that has been raised so
5 many times. It has never been disputed that
6 Coquitlam RCMP had a responsibility in the matter
7 and it is not disputed today. The point, however,
8 is that the matter is not one -- we are not
9 talking about a situation of mutually exclusive
10 silos of responsibility. It is a situation of
11 interlocking responsibilities because the
12 information provided by those people, by Caldwell
13 and by Hiscox, bore on areas of responsibility
14 that each police agency had.

15 The Vancouver Police Department -- and I
16 should say, it's not just a question of
17 responsibility, but also a question of capability.
18 The Vancouver Police Department had the picture of
19 the missing women who disappeared, under what
20 circumstances. They had the ongoing
21 responsibility to police the Downtown Eastside
22 and, therefore, they had the contacts, the
23 expertise about that particular community. They
24 had the eyes on the street. They had the
25 continuing policing presence there.

1 I will note that the responsibility of the
2 Vancouver Police Department as a municipal force,
3 and their ability to carry out investigations, is
4 not limited to the jurisdiction of Vancouver, as
5 the *Police Act*, specifically section 38, gives
6 municipal police officers the jurisdiction to
7 exercise their powers as, as peace officers and
8 constables throughout the Province of British
9 Columbia. So, that was their picture. That was
10 their responsibility.

11 Coquitlam's responsibility, the Coquitlam
12 RCMP's responsibility arose, of course, because by
13 the very nature of the information. The woman
14 described as having been murdered was murdered on
15 the farm in Coquitlam. And that is an undeniably
16 serious matter and required a serious response.

17 Again, my learned friend, Mr. Hern, has
18 described this as undoubtedly a serial murder
19 investigation. With respect, in 1998 and 1999, it
20 was not a serial murder investigation. It is only
21 now that we know that Robert Pickton was, in fact,
22 responsible for multiple murders. We can see
23 that. But at the time, it was information about
24 one particular murder and, of course, given the
25 previous incident with Ms. Anderson, of course,

1 given knowledge that other women had gone missing,
2 any reasonable person would advert to the
3 possibility that there were other links. But that
4 was not the specific information at the time. Of
5 course that possibility adds to the seriousness of
6 the matter and the necessity to investigate it.

7 Now, what did the police do in response?
8 They made extensive efforts to verify the
9 information. The police treated it immediately as
10 a serious matter, as one requiring significant and
11 urgent effort. They did that when the Hiscox
12 information came in and they did it again when the
13 Caldwell information came in.

14 Mike Connor reached out to the other
15 detachments and agencies that might be affected or
16 be able to assist, and very significant resources
17 were immediately devoted by both the RCMP and the
18 Vancouver Police Department.

19 You will recall the evidence of the reaction
20 to the Hiscox information. There was surveillance
21 for several days. Uhm, there was surveillance
22 photographs taken. There were canvasses of the
23 various strolls. There was a canvass of the
24 Downtown Eastside by the VPD. And one other item
25 of information was that, of course, Lori Greig,

1 who was able to be on the farm in the course of an
2 unrelated investigation, had an opportunity to
3 look around Pickton's trailer.

4 When the Caldwell information came, there was
5 a joint investigative team formed almost
6 immediately. You will recall the evidence of the
7 meeting on August 3rd of 1999 attended by several
8 Coquitlam members, and including the manage --
9 some of the managers from both Coquitlam and VPD.

10 There were devoted to the investigation, as I
11 said, members from the Coquitlam RCMP, members
12 from Special "O", and you will recall as well the
13 evidence that surveillance is a very labour-
14 intensive process, two investigators from the
15 Unsolved Homicide Unit, two investigators from
16 Major Crimes, as well as VPD officers Chernoff and
17 Lepine and their Strike Force, which was involved.

18 In terms of the interest of the supervisors,
19 you will recall that Inspector Moulton, who was
20 several levels of supervision up from Mike Connor,
21 was involved in many of the strategic discussions
22 and was involved in the ongoing investigation to
23 the point where, even in January of 2000, he
24 personally had a meeting with Constable Yurkiw to
25 discuss progress of the investigation and steps

1 that could and should be taken.

2 There was the intense surveillance, the
3 multiple interviews and so on. And with respect
4 to the interviews of Ellingsen, I would ask you to
5 remember that there were great efforts made to get
6 her polygraphed and that was not successful.

7 I would also ask you to recall the evidence
8 of Mike Connor. The investigation that was taking
9 place at that point was a probe into the
10 information. Was it reliable or not? It was not,
11 as Ms. Narbonne put it, a case where the
12 investigation was short and sweet and the
13 investigators decided it was going to be short and
14 sweet. To the contrary, Mike Connor began
15 preparing a draft affidavit for -- in anticipation
16 that he would get grounds for warrants. He began
17 lining up people from -- and the infrastructure
18 through the RCMP Special "I" unit, for possible
19 wiretaps and other kinds of technical
20 surveillance.

21 However, the information never rose beyond
22 the level of suspicious. It never gave rise to
23 the reasonable grounds needed to obtain the kinds
24 of judicial authorization that was necessary at
25 that point to advance the investigation. Yes, the

1 information that was obtained was graphic, it was
2 detailed and it was compelling, but it also had
3 many frailties. We know it was secondhand. And
4 it's not with -- it's quite significant that, in
5 both cases, I am speaking of the Hiscox
6 information and then the information from
7 Caldwell, both of those women did not confirm the
8 information. When we went to the source, they
9 didn't get anywhere.

10 So, much has been said about the debates over
11 the -- in the, in police circles over the
12 reliability of Caldwell, over the reliability of
13 Hiscox. But as Corporal Henley testified, whether
14 they believed those people or not, the
15 investigation had to go further because the real
16 question is whether Lynn Ellingsen was telling the
17 truth. The real question was whether Lisa Yelds
18 was telling the truth, assuming they really did
19 make those statements to Hiscox, Caldwell and
20 others. And similarly, whether or not the
21 investigators believed that Ellingsen's denial was
22 the truth or not. Given that it happened, it
23 undermined their efforts to establish reasonable
24 and probable grounds in any application for a
25 search warrant. They had to find other means to

1 corroborate that information, as I am sure you do
2 appreciate.

3 One aspect which has not received a lot of
4 attention in the evidence, but which is
5 significant, is the fact that the information was
6 dated. They received this information at the end
7 of the summer in 1999. And Caldwell, in his
8 statements, said that the incident that he was
9 describing had taken place sometime before or
10 between approximately January, but before April of
11 1999.

12 Significant details of the information was
13 not corroborated. The statement about, the
14 statements about body parts being in the freezer,
15 neither Menard or Casanova, who had an opportunity
16 to look in the freezer, saw anything but pig
17 parts. Whether or not Pickton was picking up sex
18 trade workers from the Downtown Eastside, that was
19 not confirmed. We know now that Fell and Wolthers
20 found such confirmation in April of 2000, but of
21 course that was not relayed, certainly not to the
22 Coquitlam investigators. And Mr. Menard, I
23 believe it was, there was a suggestion that
24 perhaps the reason that Pickton was giving
25 Ellingsen money was because he was receiving her

1 Welfare cheques and passing on the money. And of
2 course, Crown counsel's advice in early August of
3 1999 was that there was insufficient information
4 for a warrant.

5 So, where did they -- where did that leave
6 the unit? Again, police resources are not
7 infinite and prioritization of every investigation
8 is necessary. The practice at the time, and it
9 was not restricted to the RCMP, both Deputy Chief
10 Evans and LePard testified that, that this was a
11 practice of which they were well aware, is to
12 ensure that new matters, when the evidence is
13 fresh, are given priority, and historical, more
14 historical in the sense of matters that were being
15 worked on but which did not have those fresh
16 leads, take a back seat. Matters that where there
17 are an immediate public safety concern take a
18 front -- take front and centre.

19 Another aspect in deciding priorities is the
20 likelihood that any given investigative step is
21 going to be productive. Those are all matters
22 that police agencies generally take into account
23 in deciding priorities.

24 So, that -- but the question has been asked,
25 why did the matter take a back seat? That's why

1 the matter took a back seat. That is the system,
2 that was the practice that was in place at the
3 time, and that's why you will recall the police
4 went to a great deal of trouble to outline for you
5 and to put together the package in detail that
6 described the kinds of investigative issues that
7 Coquitlam RCMP was involved in through the period
8 in question. That was the systemic issue.

9 But those who say that more needed to be done
10 are right. The RCMP at the time recognized that
11 more needed to be done. There were, there were
12 steps that were listed on the various to-do lists
13 that were not exhausted. Despite the individuals
14 in place having done their best in the
15 circumstances, there needed to be a team in place
16 that could have continued on the investigation in
17 a more concentrated manner than what happened, and
18 that team should have included members of both the
19 RCMP and the Vancouver Police Department.

20 The kind of situation that the police faced
21 at this point is one of those kinds of
22 circumstances that resulted in the Unsolved
23 Homicide Team being formed in the first place,
24 because there were homicide investigations that
25 had taken a back seat to new matters in various

1 units throughout the province. There were cases
2 where there were investigative avenues that were
3 available to be pursued but which could not be
4 because of the pressure of new work coming in.
5 That's a common situation and it happened here.
6 More was required to be done, unquestionably.

7 I'll mention as well that when the Unsolved
8 Homicide Unit took over, Corporal Henley testified
9 that one of the advantages that that unit had,
10 that the various serious crime units didn't have,
11 was the ability to take a case and work it to its
12 logical conclusion. And so, as you can see, this
13 is a practice and, and, and a system that was
14 widespread and that does create difficulty.

15 So, what though should the police have done
16 exactly? Well, that's not such an easy question.
17 It's not nearly as easy to answer as some have
18 argued. Some of the techniques that have been
19 suggested to you were not feasible or even legal.
20 Arresting either Ellingsen or Pickton to
21 interrogate them and interview them more
22 effectively, as Deputy Chief LePard suggested,
23 would have been illegal in the absence of
24 reasonable and probable grounds to believe that
25 either had committed an offence.

1 A consent search would have been difficult
2 and not feasible. The element of surprise
3 recognized by the Supreme Court of Canada in the
4 case of *Nova Scotia vs. MacIntyre* so many years
5 ago recognized the crucial aspect, that the
6 crucial aspect of a search warrant is the element
7 of surprise if the police expected to find any
8 real evidence at the premise when they got there.
9 And it defies, in my submission, it defies logic
10 to expect that a man who was so, reputedly so
11 adept at disposing of his victims' remains, was
12 going to invite the police to his premises and
13 then leave evidence around to convict him, or to
14 implicate himself.

15 And you must also remember that the RCMP
16 policy at the time specifically forbade consent
17 searches except in special circumstances such as
18 remoteness or urgency precluded the ability to
19 obtain a search warrant.

20 Of the other avenues that were left, there
21 were problems, there were pros and cons, and
22 you've heard a lot about that. Things like
23 problems with the undercover operations. So, I'm
24 not standing here saying there were -- there's
25 this list of things that should have been done. I

1 am submitting to you today that what was needed
2 was an experienced team of Vancouver Police and
3 RCMP members to decide how best to proceed,
4 because of course police work is a matter of
5 judgement. It's not a formula. And it's
6 impossible to predict, even in hindsight, if they
7 had taken certain steps, what the outcome might
8 have been, and of course the outcome of every step
9 defines what the next step should be.

10 Speaking of the VPD though, it's clear that,
11 that, as I've said to you, part of the place where
12 the investigation had to take place was, was a
13 place where that was their home turf. As
14 Constable Shenher conceded, as Detectives Lepine
15 and Chernoff conceded, they were in the best place
16 to, to see what was happening on the Downtown
17 Eastside. If Pickton was going to the Downtown
18 Eastside, that was their place. If Ellingsen was
19 helping him there, that was their place. If women
20 were disappearing from there, that was their
21 place. Who might that woman in the barn have
22 been? That was their investigation. They were
23 needed and they were responsible.

24 One of the recommendations that Keith
25 Davidson made in the Project Orion document was

1 continual contact with women working in the
2 Downtown Eastside regarding customers or potential
3 customers with the appropriate criteria. And, in
4 fact, in the report that Sergeant Field wrote in
5 October of 1999 as to the state of the
6 investigation, she said, and I quote:

7 The majority of our efforts have so far
8 concentrated on Pickton who was being looked
9 at for a possible homicide in Port Coquitlam.
10 Coquitlam RCMP have utilized the services of
11 our Strike Force Unit, liaised with the
12 Provincial Unsolved Homicide Unit, and are
13 currently working in conjunction with
14 Detectives Lepine and Chernoff to develop
15 further plans for targeting Pickton.

16 Of course, we know that they had gone. Their
17 services had been diverted to a double homicide
18 and other work. But the representations made to
19 senior management in October of 1999 was that they
20 were, in fact, working with the Coquitlam RCMP.

21 So, the JFO, to address the broader issue of
22 the missing women from the Downtown Eastside, as
23 Detective, or as retired Deputy Commissioner Bass
24 testified, there is no magic in the term "JFO".
25 But when it gets to the point when substantial

1 resources have to be devoted, that's when the, the
2 pitch, as it were, has to be made at a senior
3 level of the organization, senior enough so that
4 the person involved can assess the capacity of the
5 organization and make the appropriate
6 prioritization of this newest demand with the
7 various other important demands.

8 So, you have heard evidence that various
9 investigators on the ground thought that there
10 might have been a serial offender at work and
11 communicated that, that opinion to other
12 investigators in the RCMP, but that is not an
13 appropriate trigger for the kind of investigation,
14 the major investigation that eventually took
15 place.

16 There are two aspects here of note. First,
17 it's that well before the Evenhanded team was put
18 together, the VPD management missed several
19 opportunities for creating a JFO. Likely, that
20 was because they hadn't yet reached the point of
21 concluding that this was probably a serial murder
22 situation; and secondly, that the RCMP
23 consistently responded to overtures from the VPD
24 to work together.

25 The first missed opportunity was in the fall

1 of 1998 when the multi-jurisdictional Missing
2 Women Working Group was formed, and it was formed
3 to determine the nature of the problem, including
4 whether a serial murderer is preying upon members
5 of that community.

6 The RCMP were invited to participate and Gary
7 Bass assigned Paul McCarl, who was involved in the
8 Valley investigation, to do so. And that could
9 have been a vehicle to engage supervisory levels
10 of both forces.

11 The second opportunity was the April of '99,
12 the meeting that occurred with the Attorney
13 General in April of 1999. Staff Sergeant
14 Henderson offered to do a file review. Now, of
15 course, a file review needs to be understood not
16 as an administrative matter, but an evaluation of
17 an investigation of a recommendation as to how it
18 could be advanced. And that was not pursued.

19 In June of 1999, Inspector Biddlecombe asked
20 Staff Sergeant Field to prepare an assessment for
21 a need -- of the need for a JFO to be sent to the
22 chief constable for consideration, and that didn't
23 happen.

24 In my submission, the RCMP was appropriately
25 proactive on the subject when the matter came

1 before them. Sergeant Henderson's offer of a file
2 review to help the investigation was a logical
3 starting point.

4 When Inspector Bass, as I believe that was
5 his, or perhaps it was Superintendent Bass at
6 time, when he was at Major Crime, was approached
7 by Keith Davidson in March of 2000, he agreed to
8 advance the investigation, put the available
9 resources to work on a lead which was common to
10 both investigations. And in his evidence, Keith
11 Davidson agreed that the Valley investigation was,
12 as he said, a good to even very good investigative
13 angle to pursue among others. He said, "I was
14 recommending it as a very good option." And
15 there's nothing unique or special about that
16 recommendation. It was shared by lots of people.
17 And indeed, that was the recommendation of the
18 criminal profiler symposium in November of 2000.
19 Their recommendation was that the Valley cases
20 were all, were, in all probability, linked to the
21 missing women.

22 And when Inspector Adam came, or Staff
23 Sergeant Adam as he then was, came on the job at
24 the end of 2000, and in 2001, he said that the
25 Valley investigation was presented to him as the

1 centerpiece of the investigation, as it occurred
2 that point.

3 So, what is plain is that, when they were
4 approached, the RCMP responded without hesitation
5 to provide assistance, and when it was approached
6 about a joint forces operation by the Vancouver
7 Police Department, it did so immediately.

8 I'm going to turn to the Evenhanded
9 investigation, and the investigative strategy that
10 was chosen. There are two important points to
11 note about this strategy. The first is that the
12 strategy that was adopted in the operational plan
13 was sound, was a sound plan and was appropriate to
14 the circumstances as they were understood at the
15 time; and secondly, that this strategy was not
16 controversial between the forces. This was not a
17 situation in which the Vancouver Police Department
18 investigators said, "Oh, no, no, no, you should
19 not be casting your net wide. You should be going
20 after Pickton." This was a strategy that was
21 recommended to, both to the supervisors of both
22 forces, that was approved by them and adopted by
23 them, that was resourced by both forces
24 accordingly.

25 What were the relevant circumstances as they

1 stood at that time? The disappearances appeared
2 to be the work of one or more serial killers.
3 However, since the disappearances had stopped in
4 1999, that was the understanding, the killer was
5 not active at that point. There were no crime
6 scenes available, aside from the Valley crime
7 scene and possibly the one in North Vancouver.
8 However, Keith Davidson, the profiler's advice,
9 was that a serial killer who had become so adept
10 at concealing remains had nevertheless likely
11 committed lead-up crimes and perhaps crimes short
12 of murder at which DNA evidence had been left.

13 And in 2001, DNA technology had advanced so
14 significantly that there were a lot of profiling,
15 there was a lot of profiling that could be done on
16 samples that could not earlier have been profiled.

17 So that the investigative strategy
18 recommended was, first of all, to gather up the
19 pool of persons of interest that would include the
20 offender, or the offenders, decide which in that
21 pool were the most likely suspects, and then focus
22 on those suspects. They had to do that, because
23 they couldn't, they couldn't focus on multiple
24 suspects at the time. Those kinds of
25 investigations are far too resource intensive.

1 And in the absence of crime scenes that they could
2 work on directly, they had to go to the next best
3 thing, the pool of previous crime scenes.

4 And so the point of the file review then is,
5 is revealed by, by those steps, and in the
6 circumstances, it was an essential first step.
7 Deputy Chief Evans wrote in her report that the
8 point of the file review was to identify the
9 Valley killer, but that was, that was an important
10 mistake on her part, because the objective of the
11 file review was far broader than that. She also
12 dismissed the strategy as a historical
13 investigation rather than an active, implying that
14 it wasn't an active and concerted search for a
15 serial killer. It certainly was an active and
16 concerted search for a serial killer.

17 The other part of the investigative strategy
18 was to gather biological samples for the missing
19 women from their families and from sources such as
20 the Canadian Cancer Agency to obtain those DNA
21 profiles so that if, during the investigation, any
22 crime scenes were discovered, those profiles could
23 be used to attempt to identify the victims. And
24 as we've seen, that was a very important step in
25 being able to obtain charge approval for Pickton

1 promptly upon finding some of the evidence in the
2 initial searches in February of 2002.

3 Now, as I said earlier, looking only at
4 Pickton and what the police knew about him makes
5 it impossible to avoid hindsight bias in
6 evaluating the investigations. For Evenhanded to
7 have targeted Pickton from the outset would have
8 been a classic case of tunnel vision. Yes, the
9 information was graphic and it turned out to be
10 correct, but there weren't those markers in 2000
11 and 2001 that would have made him the obvious
12 suspect. Just because information is dramatic,
13 just because it's shocking, is no assurance of its
14 veracity.

15 Deputy Chief Evans and Deputy Chief LePard
16 both fell into serious error in their analyses in
17 this respect because they never gave the other
18 persons of interest concerted attention. The fact
19 of the matter is that he was not head and
20 shoulders the best or most obvious suspect over
21 the others. There were other persons of interest
22 who surfaced during the work done by the Missing
23 Women's Review Team, who were extremely
24 compelling.

25 Now, my colleague has handed up a few pages

1 from our argument, but rather than make you turn
2 to it, I would ask that you have a look at page
3 34, which begins at page 34, and this is
4 summarizing some of the information gathered, and
5 I would ask you to turn to page 35. I am going to
6 give you just a couple of examples. You will see
7 the subparagraph (b) on page 35?

8 THE COMMISSIONER: Yes.

9 MS. TOBIAS: Yes.

10 1996, POI 4347 was charged and convicted in
11 the beating and sexual assault of a Downtown
12 Eastside sex trade worker. Subsequently, an
13 informant recounted to an investigator how he
14 heard this man bragging about cutting a
15 girl's throat and burying someone. This
16 informant believed -- the informant believed
17 that this person of interest was responsible
18 for the disappearance of the missing women.

19 I'll pause parenthically to say, doesn't that
20 sound like Hiscox?

21 In April of 1999, this person of interest's
22 former girlfriend told police that he
23 frequently used sex trade workers because he
24 had a sex addiction, that he shared mass
25 murder fantasies with her, that he told his

1 girlfriend he would like to do these things
2 but wondered if he had the guts, and he was
3 also an associate of one of the missing
4 women

5 Let's look at subparagraph (d).

6 In January 1997, Surrey RCMP attended the
7 residence of this person of interest after
8 neighbours witnessed an unknown woman
9 screaming for help and struggling with him.
10 They found him attempting to leave in his
11 vehicle which they searched and discovered a
12 woman's body in the trunk, her head wrapped
13 entirely in duct tape. She was a sex trade
14 worker from the Surrey King George Highway
15 stroll. A search of his residence uncovered
16 a good deal of very compelling evidence. He
17 was previously unknown to the police.

18 The Evenhanded team, and including the lead
19 investigator, McKnight, who was from the Vancouver
20 Police Department, developed and applied a set of
21 criteria to rank those persons of interest. And
22 it's important that you know what the criteria
23 were. If you turn to the last page in that
24 handout I gave you, it sets out paragraph 385 from
25 our argument, that these were the criteria:

1 A Priority 1 POI was a person who:

2 (a) had a history of murder, attempted
3 murder, serious assault or sex
4 assault of a sex trade worker from
5 the Downtown Eastside;

6 (b) frequented the Downtown Eastside,
7 had been associated with sex trade
8 workers, and had a similar criminal
9 history;

10 (c) forcibly confined or attempted to
11 transport a sex trade worker to the
12 Fraser Valley;

13 (d) was associated with a disappearance
14 of a woman on the list; or

15 (e) was of interest in relation to a
16 series of homicides.

17 Those are very rigorous criteria. And as of
18 the day before Robert Pickton's arrest, Detective
19 McKnight told the team there were 39 Priority 1
20 suspects, 39 members, or 39 men who fit that
21 description in that pool alone.

22 And I would add that the whole question of
23 whether or not the, even what they did, even what
24 the police did, whether they were nevertheless
25 engaging in tunnel vision, was vigorously argued

1 by the defence at Pickton's trial. This was not,
2 on their part, illusory concern.

3 There were serious problems with the
4 investigation, as I said, but again, this was a
5 legacy of the earlier problem. It was a false
6 premise that those suspicious disappearances had
7 stopped. Was it Evenhanded's fault that they
8 didn't realize that? No.

9 And the mandate that they were given did not
10 include investigating new disappearances. The
11 Vancouver Police Department Missing Persons Unit
12 and the other agencies of jurisdiction were to
13 continue doing so and to advise Evenhanded if
14 there were any, any more victims that fit their
15 profile.

16 As of August of 2001, those inquiries were
17 still going on. It was the CPIC search that was,
18 that Evenhanded decided to, to undertake that
19 revealed, ultimately, so many more women, and it
20 was at that point that they adapted their
21 investigative strategy, went back, got the
22 operational plan changed, and took advantage of
23 further resources in order to investigate those
24 disappearances from the ground.

25 The second problem that they inherited was an

1 information problem. Information management is a
2 very dull subject, but the devil is in the
3 details. The investigation had not been
4 systematically documented or organized, so they
5 had to start the investigation without a thorough
6 understanding of what had gone before. That is
7 one of the requirements that they did not have in
8 place.

9 Mr. Justice Campbell emphasized the need for
10 proper electronic management systems that, so that
11 the police can understand and relate information
12 coming in to what's already there, to, to develop
13 these, these relevant linkages.

14 And I will give you an example that was very
15 important in this particular file that illustrates
16 the kind of problem that happens when you don't
17 have a proper information management system. In
18 October of 2001, Sergeant Ted Vanoverbeek was
19 investigating the Andrea Joesbury missing person
20 file. That was one of the files that had surfaced
21 as a result of the CPIC search. And as it
22 happened, that she had been reported missing in
23 June of 2001, and the basic checks as of October
24 2001 had not been completed by the Vancouver
25 Missing Persons Unit. So, Sergeant Vanoverbeek

1 took that on. And when he did so, he, he, he
2 interviewed many of these, or some of the
3 associates of Andrea Joesbury who had not been
4 interviewed before and discovered that she was
5 last seen with a woman named Dinah Taylor and they
6 were on their way to visit a trick in Coquitlam.
7 Now, as it happened, Pickton had been checked with
8 Dinah Taylor. He had been checked in January of
9 2001. The CPIC piece of paper with the check was
10 sitting there waiting to be put into the
11 information management system, SIUSS. How long
12 was it going to take make that connection?

13 As it happened, the police found out very
14 shortly after February 5th that Dinah Taylor was
15 an associate of Pickton, but that is a very --
16 that's exactly the kind of detail that proper
17 information systems are necessary to develop.

18 As the investigation progressed, how did they
19 handle the investigation? It was conducted in a
20 thorough manner, in a systematic manner, in a
21 professional manner following case management
22 principles. And when information came in, as they
23 were going about the strategy that had been set
24 out in the operational plan, the team focused on
25 it immediately, when information came in that

1 required an immediate response. Information into
2 a man named "Sergeant" who sexually assaulted a
3 sex trade worker and who threatened to take her to
4 a pre-dug grave site in the mountains. Gary
5 Ridgway, when he was arrested and there was
6 information that he was implicated. A killer who
7 became called in some ways "the Alley killer" in
8 December of 2001, when DNA evidence connected the
9 crime scenes, two women or more, I have forgotten
10 the exact number, I think it was two, whose bodies
11 were found in alleyways in Vancouver, they, they
12 made the connection, did the investigation and
13 discovered the man who was likely responsible, who
14 was not charged because he died during the
15 investigation.

16 So, as of February the 5th, 2002, what had
17 Project Evenhanded accomplished? Well, through
18 the file review process, they found, as I said,
19 the serial killer of two, the likely serial killer
20 of two sex trade workers linked to the Downtown
21 Eastside. They developed crime scene DNA profiles
22 in about 246 cases, and 20 percent of these would
23 further the investigation of unsolved homicides,
24 assaults on sex trade workers and other serious
25 cases. The suspect DNA will continue to be

1 available. Through the investigation of
2 unidentified human remains, and ultimately, and
3 the final identification was, was done after 2002,
4 but identified Ms. Williams being one of the women
5 on the original poster. They found her. They
6 identified that second group of missing women and
7 they found six of those additional women alive.
8 They built the important infrastructure necessary
9 for an effective investigation of the primary
10 targets when they were to be identified, and this
11 was in place at the time of the firearms search.

12 They obtained DNA profiles for the missing
13 women, and in order to do so, that was no small
14 feat. They needed to overcome structural
15 obstacles to be able to get appropriate samples
16 and to have them profiled.

17 The work of Evenhanded, in fact, continues to
18 this day. Over 250 women have been investigated
19 by Evenhanded and approximately 100 located, but
20 the investigation of dozens more continues.

21 Before I conclude on that subject, I want to
22 say another word or two about the analysis done by
23 Deputy Chief Evans and LePard. Her analysis, in
24 my submission, was incomplete, and that seriously
25 limits its value to you and undermines her

1 conclusions. She and LePard were no more expert
2 in homicide or serial murder investigations than
3 many of the witnesses you heard from who were
4 involved in those investigations. In fact, they
5 were not as, as experienced as some: Inspector
6 Don Adam, Sergeant Mike Connor, Deputy
7 Commissioner Gary Bass, Sergeant Vanoverbeek.

8 The analysis does not take into account the
9 full circumstances of the investigation with which
10 this inquiry is concerned, so it simply wasn't
11 fully informed. Deputy Chief LePard didn't
12 interview RCMP witnesses, he did not review the
13 Evenhanded file and particularly not the
14 information on other persons of interest.

15 So, I have briefly outlined the basis for the
16 conclusion that the police members acted
17 reasonably, that the investigations were concluded
18 in a reasonable manner, but more could have been
19 done in Coquitlam.

20 I must express the disappointment of the
21 Government of Canada in the choice by the
22 Vancouver Police Department to focus on such
23 aggressive criticisms of the RCMP and others. As
24 our submissions have demonstrated, the facts don't
25 bear them out. More to the point, that kind of

1 approach is antithetical to the kind of healing
2 and reconciliation that this inquiry is supposed
3 to engender.

4 And in particular, the Government of Canada
5 urges you, Mr. Commissioner, to view the
6 criticisms that the Vancouver Police Department
7 has made of the RCMP with considerable caution,
8 especially given their apparent desire to, as
9 expressed during the forums, to replace the RCMP
10 as the policing agency for the Vancouver suburbs.
11 That is an issue on which Canada takes no position
12 during this inquiry.

13 I want to take a moment, and I realize that I
14 have gone past my time, but I am going to ask you
15 for the indulgence of a few more minutes, that the
16 police -- many changes in policing have taken
17 place in the last 10 years, and that was partly a
18 result of the experiences gleaned from these
19 investigations. Those changes are important to
20 your inquiry for two reasons: first, simply to
21 make the point, the police have recognized that
22 changes should be made; and secondly, because the
23 appropriate platform for your recommendations is
24 not just policing as it existed 10 years ago, but
25 policing as it takes place today.

1 The police have provided you with very
2 extensive materials on the policies that were
3 applicable to the issues that have arisen during
4 the course of the hearing, both as they existed
5 between 1997 and 2002, that's included in the
6 materials in the hearing, and the materials for
7 the policy forum which provide you with the
8 extensive background for those same policies and
9 practices as they exist today.

10 I want to briefly touch, very briefly touch
11 on seven of those areas that are particularly
12 relevant. The first is improvements that have
13 taken place in missing persons report intake and
14 risk assessment. I have already referred to the
15 changes that Inspector Moulton made at Coquitlam
16 shortly after he arrived. But the national
17 policy, as it now exists, requires members to
18 receive and act on missing persons reports.
19 Refusal on the basis that not enough time has
20 passed is not acceptable. It's not permitted.
21 It's also not permitted to refuse a report on the
22 basis that the case belongs in another policing
23 jurisdiction. And particular attention must be
24 paid to high-risk missing persons, such as sex
25 trade workers.

1 Major case management, a second highlight.
2 Where foul play is suspected in a missing persons
3 case, policy requires that the matter be
4 investigated in accordance with major case
5 management principles. So, that brings to it the
6 advantage of the protocol for managing serious and
7 complex investigations with its formal command
8 structure that operates to ensure accountability,
9 proper resource allocation and proper oversight,
10 and the use of proper data management systems to
11 manage those large amounts of information.

12 Third, strengthen oversight of missing
13 persons investigations, that the new missing
14 persons policy requires very close monitoring by
15 supervisors, and, and very rigorous demands of
16 commanders as well to ensure that missing persons
17 complaints are properly handled. And in fact, the
18 "E" Division policy specifies that it is to be
19 presumed that foul play is involved in a missing
20 person's case unless and until the facts
21 demonstrate otherwise. And as I have said, where
22 foul play is suspected, major case management
23 rules kick in.

24 Four, there are now specialized areas of
25 expertise specifically for missing persons

1 investigations. One with which I know you will,
2 in which I know you will be interested, is the
3 British Columbia Police Missing Persons Centre,
4 and that was created in 2004 at the recommendation
5 of the BC Association of Chiefs of Police and is
6 available to all police units in BC, and it
7 consists of a nine-member team, plus a civilian
8 analyst and support to guide and support police
9 members who conduct missing persons
10 investigations, to keep track of those
11 investigations, to do file reviews where that
12 would be helpful, and to decide issues of police
13 jurisdiction in those rare instances where they
14 arise. It also liaises with police throughout
15 Canada to collect information that could be
16 connected to coroner's cases.

17 Also of importance is the National Centre For
18 Missing Persons and Unidentified Remains. This is
19 very new. It was established with federal funding
20 provided in 2010 as, as part of Canada's response
21 to the issue of missing and murdered aboriginal
22 women because this new centre is to focus on
23 aboriginal persons.

24 Fifth, advances in investigative techniques.
25 As you are aware, DNA analysis has come a long

1 way. There is now, or it has been since the year
2 2000, a national DNA databank that makes it
3 possible to compare DNA profiles obtained in
4 relation to particular designated offences from
5 all public forensic labs, and as I said, to
6 compare those profiles with each other and with
7 profiles of people who are convicted of those
8 designated offences. And, of course, as time goes
9 on, the kind -- the size of the biological sample
10 needed to develop a profile gets smaller and
11 smaller.

12 There are improvements in surveillance
13 technologies. And it is now much easier to track
14 suspects now that everybody uses cell phones and
15 there is such widespread use of GPS technology,
16 Internet and social media. There were various
17 units formed, such as the Behavioural Sciences
18 Group originally formed in 2003, the Integrated
19 Child Exploitation Unit, the Integrated Sexual
20 Predator Observation Team.

21 There is better information sharing. That's
22 number six. CPIC, one of the, one of the
23 improvements have been improvements to CPIC. CPIC
24 is of long standing, as you know, but there have
25 been improvements in it to permit more information

1 to be included for missing persons cases, and
2 there are further enhancements planned. ViCLAS,
3 likewise, not new, but improved.

4 Seven, and by no means the least significant,
5 there is much greater integration in certain areas
6 between police agencies. You have heard about
7 UHU. The Integrated Homicide Investigation Team,
8 IHIT, is a team composed of RCMP Abbotsford and
9 New West Police Service members. There are 82
10 investigators in that unit, plus civilian members
11 and support staff. And the function of that unit
12 includes establishing priorities across the region
13 and to maximize the resources, intelligence
14 sharing and opportunities to solve homicides. So,
15 you see, that kind of integration, that kind of
16 initiative goes directly at the systemic problem
17 that I, that I made submissions about earlier,
18 that dealing with the fresh cases as they came, as
19 they come in while still continuing on avenues of
20 investigation that have to be pursued. That
21 initiative speaks to and helps to address that
22 kind of issue.

23 THE COMMISSIONER: All right. How much longer are you going to
24 be now?

25 MS. TOBIAS: About one minute.

1 THE COMMISSIONER: All right.

2 MS. TOBIAS: You have been very kind, Mr. Commissioner. I do
3 appreciate it.

4 As I said, Canada recognizes that one of the
5 options before you, Mr. Commissioner, is to
6 consider whether to recommend a regional police
7 force for the Lower Mainland, and Canada takes no
8 position on this, on the desirability of this
9 option. We say only that, in considering this
10 recommendation, it's important that you realize
11 that there is a significant degree of integration
12 that is already in place. And one of the options
13 you have as well is to address the potential for
14 further integration, further cooperation between
15 agencies.

16 So, I have outlined but a few of the changes
17 but that does not mean that there isn't more to be
18 done. There is more to be done. Policing is
19 constantly evolving and your guidance as to how
20 those, how improvements can be made in those
21 endeavors is anticipated and the Government of
22 Canada certainly looks forward to those
23 recommendations.

24 I can't, however, end without speaking about
25 the reason that the terms of reference for your

1 inquiry could end in February 2002. That reason
2 is, because since then, Robert Pickton has been
3 behind bars, not because of Nathan Wells' firearm
4 search warrant, but because the Project Evenhanded
5 investigation that had begun in 2001 put into
6 place the infrastructure and DNA evidence needed
7 to charge him virtually immediately, and because
8 the phase of Project Evenhanded that ensued was
9 not -- no other investigation that had gone before
10 it. Thank you.

11 THE COMMISSIONER: Thank you, Ms. Tobias.

12 Mr. Crossin, do you want to start now or --

13 MR. CROSSIN: I can probably finish.

14 THE COMMISSIONER: All right, thank you.

15 MR. CROSSIN: Yes, sir, I'm appearing for the Vancouver Police
16 Union, my name is Crossin, and with me is
17 Elizabeth France.

18 As I indicated a moment ago, counsel on
19 behalf of the Vancouver Police Department covered
20 a lot of my territory. I adopt the submissions of
21 the Vancouver Police Department. And so what I
22 thought I would do is just take a few minutes to
23 cover a couple of points that I would like to talk
24 about.

25 Firstly, you have, of course, my written

1 submissions on behalf of the Union, and I just
2 want to go over the theme of those submissions.
3 We brought a certain focus to those submissions
4 and I want to just tell you why we chose the focus
5 we did.

6 And you will see in our written submissions,
7 essentially, we focus on two individuals:
8 Detective Constable Lori Shenher and Sergeant
9 Geramy Field, now known as Powell. And we focused
10 on these two individuals in our written
11 submissions because they were central figures, in
12 our view, in the investigation that is now under
13 scrutiny. We also focused, if I may say, during
14 the inquiry, in terms of our representation of the
15 Union, on these two individuals because I thought
16 it was important that you hear and see these two
17 individuals in order to appreciate and understand,
18 really, the heart of this investigation. From the
19 Union perspective, these two individuals best
20 capture what the VPD investigators brought to the
21 task that you are investigating.

22 In addition to that, it struck me, if I may
23 say, throughout the inquiry, that there were many
24 aspects of this misery that Pickton inflicted in
25 our city brought before you over the course of the

1 inquiry, and there were many faces brought before
2 you, the faces of the posters that, frankly, haunt
3 this city, and rightly so. They were the faces of
4 the families and the, frankly, the faces of the
5 women that survived and remain in the Downtown
6 Eastside.

7 I thought it was important to bring before
8 you the faces of the investigation that is under
9 attack basically. It was important for you to see
10 those faces as well. And so it was important that
11 Shenher and Powell be here, that you heard them,
12 rather than a characterization of them that began
13 at the beginning of this inquiry and continued
14 throughout the inquiry, often in the form of
15 hyperbole, often, in my view, in the form of
16 reckless hyperbole that was forthcoming from some
17 of the speakers at this inquiry.

18 It is critical to your assessment that the
19 commitment and the dignity these two officers
20 brought to the investigation was available to you
21 through their presence and through their evidence.
22 And when you hear, as you have heard, that they
23 couldn't have cared less about the murdered women,
24 please remember the commitment and the dignity
25 that Constables Shenher and Sergeant Powell

1 brought to this inquiry. So, this is why we tried
2 to tell their story in our written submissions,
3 and it is, in our view, really the story of the
4 men and women on the ground from the VPD
5 perspective and we are leaving those submissions
6 with you.

7 I just want to take a couple of minutes to,
8 if I may, to address a topic that isn't squarely
9 within your framework, and it is not in the
10 submissions, but it has struck me as I have
11 listened to the submissions. I would like to
12 briefly address the issue of the Downtown Eastside
13 in this city. Your primary focus is the justice
14 system at work and the police investigation
15 relevant to these matters. I think there's a
16 subtext and that is the Downtown Eastside.

17 There's no shortage of controversy on a host
18 of matters dealt with at this inquiry, but from
19 the perspective of the Union, there surely is
20 common ground that fundamental change to the
21 Downtown Eastside is a moral imperative for this
22 city and this province.

23 THE COMMISSIONER: I think you are, I think you are on square-
24 on, Mr. Crossin, and we would be remiss in this
25 inquiry if we didn't make a reference to what's

1 happening in the Downtown Eastside, because these
2 poor women, who were the victims of violence here,
3 were products in some way of the Downtown
4 Eastside. So, it's important --

5 MR. CROSSIN: Well, that's exactly right, and that's just a
6 brief point I want to make. There's been
7 submissions to you that -- as to whether the
8 police would have investigated differently had
9 these events occurred on the West Side of the
10 city, and I leave those hypotheticals to you and
11 with you.

12 But, really, can there be any doubt that
13 Pickton could only have occurred in the Downtown
14 Eastside, the horror that was required, and his
15 horror required a certain degree of hopelessness
16 and of helplessness and of vulnerability that only
17 exists in the Downtown Eastside of this city. And
18 I would urge you to include in your report a blunt
19 assessment of that. The Downtown Eastside exists
20 in this city because of addiction, and unless you
21 have been addicted, or unless you have a loved one
22 that has been addicted, it is not possible to know
23 its overarching importance to one's existence. It
24 is a singular pursuit and it trumps everything,
25 including their own lives.

1 The fact is, the Downtown Eastside in this
2 city is a catastrophic health issue. It's defined
3 by addiction, poverty and mental disease. It is a
4 natural home and breeding ground for predators.
5 Frankly, the police shouldn't have to be there.
6 It ought not to be a place to be policed. It's a
7 place that can only be healed by an innovative
8 health strategy, not the criminal justice system.
9 It needs a new strategic vision of health care.

10 It's not just about money. You just can't
11 pour money into it and just do the same thing and
12 expect different results. Some people call that
13 insanity. You need a new approach. Money is
14 scarce, but we have an annual health budget of
15 over \$16 billion.

16 THE COMMISSIONER: Forty-four percent of the provincial budget.

17 MR. CROSSIN: And I say, as part of your report, and we've
18 talked a lot about the police investigation and I
19 addressed that in my submissions to you in a full
20 way in my defence of Detective Shenher and
21 Sergeant Field. But this subtext is critical and
22 you have a -- and I invite you to lend your voice
23 to this crisis as part of your report.

24 THE COMMISSIONER: All right.

25 MR. CROSSIN: Thank you.

1 THE COMMISSIONER: Thank you, Mr. Crossin. We'll adjourn for
2 the break.

3 THE REGISTRAR: This hearing is now adjourned until 1:30.

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

5 (PROCEEDINGS RESUMED AT 1:40 P.M.)

6 THE REGISTRAR: Order. This hearing is now resumed.

7 THE COMMISSIONER: Yes, Mr. Doust.

8 MR. DOUST: Yes, Mr. Commissioner, my name is Doust and I
9 appear for the Criminal Justice Branch. The
10 involvement of the Branch in this commission is
11 limited to paragraph 4(b) of the --

12 THE REGISTRAR: We need to turn your microphone --

13 THE COMMISSIONER: You have to put your microphone on.

14 MR. DOUST: Doust appearing for the Criminal Justice Branch.

15 The Branch's involvement is limited to
16 paragraph 4(b) of the terms of reference which, in
17 my submission, is aimed exclusively at examining
18 the facts that relate to the decision of the
19 Branch to enter the stay of proceedings in January
20 of 1998.

21 I will rely on my written submissions in
22 support of our position, and I know you are very
23 familiar with the law in this area, that is, that
24 the commission must comply with the proposition
25 set out in *Krieger* and *Davies*.

1 My position is that the terms of reference
2 preclude you from making recommendations in
3 respect to term of reference 4(b) and the argument
4 on that point is in my written submission, Mr.
5 Commissioner.

6 I do, however, wish to point out that, while
7 the Branch has had properly, quite properly relied
8 on the constitutionally-enshrined principle of
9 prosecutorial independence to avoid second-
10 guessing or criticism of the exercise of
11 discretion by the prosecutors, the public, in my
12 view, with respect, should be made aware of the
13 fact that that principle is founded on sound
14 policy reasons. This isn't just the Crown trying
15 to duck and hide. And those policy reasons were
16 referred to by Supreme Court of Canada in its
17 judgement in *Krieger vs. The Law Society of*
18 *Alberta*. They determined that this kind of
19 protection is essential to the proper functioning
20 of our system of criminal justice.

21 And I just want to quickly advert to some of
22 the policy reasons that were listed by Justices
23 Iacobucci and Major in the *Krieger* judgement, and
24 I quote paragraph 29 of the judgement:

25 The gravity of the power to bring, manage and

1 terminate prosecutions, which lies at the
2 heart of the Attorney General's role, has
3 given rise to an expectation that he or she
4 will be, in this respect, fully independent
5 from the political pressures of the
6 government.

7 Paragraph 30:

8 It is a constitutional principle in this
9 country that the Attorney General must act
10 independently of partisan concerns when
11 supervising prosecutorial decisions.

12 Paragraph 31:

13 The Attorney General's independence finds
14 further form in the principle that the courts
15 will not interfere with his exercise of
16 executive authority as reflected in the
17 prosecutorial decision-making process.

18 And finally, paragraph 32:

19 The Court's acknowledgement of the Attorney
20 General's independence from judicial review
21 in the sphere of prosecutorial discretion has
22 its strongest source in the fundamental
23 principle of the rule of law under our
24 constitution. The independence of the
25 Attorney General in deciding fairly who

1 should be prosecuted is a hallmark of a free
2 society. Just as the independence of the bar
3 within its proper sphere must be respected,
4 so must the independence of the Attorney
5 General. The quasi-judicial function of the
6 Attorney General cannot be subjected to
7 interference from parties who are not as
8 competent to consider the various factors
9 involved in making a decision to prosecute.
10 To subject such decisions to political
11 interference or to judicial supervision could
12 erode the integrity of our system of
13 prosecution. Clearly-drawn constitutional
14 lines are necessary in areas subject to such
15 grave potential conflict.

16 Now, of course, we relied, the Branch relied
17 on that judgement in this matter for the reasons
18 set out in the judgement and support the policy
19 basis for the principle of prosecutorial
20 independence.

21 I submit, Mr. Commissioner, that the public
22 should also be made aware of the fact, because we
23 are a public institution, that although protected
24 by prosecutorial independence, the policies and
25 the practices of the Branch are under constant

1 review at the highest levels so that adjustments
2 may be made to accommodate changes in the law
3 brought about by Parliament or by judicial
4 authority and changes in circumstances and sound
5 practices.

6 The Branch takes very seriously the need to
7 make such changes from time to time to accommodate
8 the law and to improve the efficacy and the
9 efficiency of its role. Its policies and
10 procedures are not without constructive criticism
11 and high-level discussion in that regard.
12 Although Crown counsel are protected by this
13 constitutional principle, the Branch is not
14 static. They do consistent self-evaluation.

15 Now, just before I move to the topics at hand
16 that I propose to discuss, Mr. Commissioner, I
17 would like, first of all, to adopt the remarks
18 made latterly by Mr. Crossin, and I would like to
19 emphasize one of the propositions that he made and
20 that is that, unfortunately, a significant portion
21 of the public simply don't understand that drug
22 addiction problems are a medical problem. A lot
23 of people think, well, all you have to do is stop
24 taking drugs, or all you have to do is stop
25 drinking and so on. This is an opportunity, in my

1 submission, with respect, that you ought to seize,
2 to make it abundantly clear that the drug problems
3 that are at the heart of, not only the Downtown
4 Eastside, but throughout our whole province,
5 they're endemic, are indeed medical problems and
6 need to be dealt with in that way.

7 Anecdotally, I should say that about a year
8 and-a-half ago, I spent a couple of months
9 travelling all over this province inquiring as to
10 the status of legal aid as a commissioner, and I
11 have to tell you, that one single fact was
12 patently obvious and repeated over and over and
13 over in every community that I went to, and it is
14 that drug addiction problems are at the root of
15 almost all of the problems of significance in
16 those communities.

17 And again I say, we try to address them as a
18 society with the criminal justice system, but it's
19 obvious that it's going to fail from time to time,
20 and some would say with regularity, in terms of
21 curtailing the consistent problems that arise with
22 drug abuse in the Downtown Eastside and elsewhere.

23 So, I suggest, with great respect, Mr.
24 Commissioner, that you highlight and emphasize the
25 proposition that drug problems are at the heart of

1 many, many of the criminal problems in this
2 province, and that drug problems are, indeed, a
3 medical issue and they need to be addressed in
4 that manner. We've been addressing them through
5 the criminal justice system for almost the 50
6 years that you have been in practice, and you know
7 as well as I do, it hasn't worked. So, I leave
8 with you that thought, that you seize the
9 opportunity to make that point.

10 I propose to go over some of the evidence
11 with you this afternoon and to cover three topics:
12 first of all, to review the evidence about Ms.
13 Connor's background and experience; secondly, to
14 address the evidence before the commission on how
15 Ms. Connor prepared for trial; and thirdly, to go
16 over the evidence that relates to the reasons
17 underlying the decision to enter the stay of
18 proceedings on January the 26th. But beyond that,
19 I think my written argument captures whatever else
20 I have to say on behalf of the Branch before you.

21 At the outset, I wish to remind you, Mr.
22 Commissioner, that Ms. Connor had to prepare for
23 and give her evidence without any benefit from the
24 notes that she had made at the time. This was a
25 14-year gap. She had absolutely no access to the

1 notes that were made. Of course, that would have
2 included the Crown file in its entirety and we
3 know now that it was destroyed.

4 I will not get into the details of the file
5 destruction issue before you now. They're
6 addressed in my written submission. But I wish to
7 note simply that Ms. Connor had absolutely no
8 involvement in the destruction of the 1997 Crown
9 Pickton file. In fact, she noted during her
10 evidence specifically that she felt she was at "a
11 horrible disadvantage" to be testifying at this
12 inquiry without the benefit of her notes. As I
13 said, these events occurred over 14 years ago.

14 The first topic, Ms. Connor's background.
15 This is important, in my submission, because you
16 need to put the whole package into the proper
17 context. This was not some new prosecutor who
18 hadn't had any experience. To the contrary. At
19 the time that the 1997 Pickton file was assigned
20 to her, she was already a very experienced
21 prosecutor with approximately 15 years of
22 experience. She was called to the bar in 1980.
23 She began working as Crown counsel in '82. His
24 Honour, Judge Romano, described her as the most
25 senior Crown in the Port Coquitlam office when she

1 was assigned the file. We heard evidence about
2 her that she was regarded as competent, diligent,
3 meticulous, with sound judgement and good
4 decision-making skills. His Honour, Judge Romano,
5 testified that Ms. Connor was known as an
6 aggressive and hard-nosed prosecutor who would not
7 easily or readily back away from a case unless she
8 had a good reason for doing so.

9 Now, that's a reputation that one earns, good
10 or bad. We know in this profession, Mr.
11 Commissioner, that we all have varying reputations
12 and, by and large, they're usually earned. And
13 that's a reputation that Ms. Connor earned, and
14 that's meaningful, in my submission, because one
15 can't say about all prosecutors that they are
16 aggressive and hard-nosed and that they will not
17 easily or readily back away from a case unless
18 they have a good reason for doing so. And that is
19 the reputation that Ms. Connor has, and that bears
20 significantly, in my submission, on the issue
21 before you.

22 She had had experience working with people
23 without fixed addresses or telephone numbers. She
24 gave evidence that she had met and frequently
25 dealt with persons addicted to heroin, cocaine and

1 other drugs in the course of her work as a Crown
2 prosecutor. This role involved dealing with child
3 victims of sexual abuse. She was a special
4 prosecutor dealing with those types of cases. She
5 explained to you that these are witnesses who were
6 often intimidated and afraid and had difficulty
7 communicating. She also entered many stays of
8 proceedings during her career and she'd undertaken
9 very serious trials in the past at both the
10 Provincial Court level and before the superior
11 courts of this province.

12 I turn to topic number 2, the conduct of the
13 prosecution, what I call the facts in that regard.
14 The facts here, in my submission, Mr.
15 Commissioner, are what she did, not whether one
16 judges it to be adequate or not. Its adequacy is
17 not a fact. It's an opinion based on the facts.
18 And it's a -- it can be, if it's determined that
19 she was in some way inadequate, it's a clearly
20 backhanded criticism of her decision with respect
21 to the exercise of her discretion and that's a
22 prohibited matter. It's a judgement about the
23 charge-approval decision. It would convey the
24 obvious inference, based on such an opinion, that
25 the stay decision was made in error. A clear

1 second-guessing game or criticism of her decision.

2 In my submission, one cannot do through the
3 back door what one cannot do through the front
4 door. Her judgement is protected and it's
5 protected for the sound policy reasons spelled out
6 in *Krieger*.

7 Now, having said that, in case you should
8 disagree with me on that, Mr. Commissioner, I will
9 deal with some of the facts as to Ms. Connor's
10 readiness for trial.

11 The evidence shows that, from the very
12 beginning, she recognized the seriousness of the
13 case. She called it a very serious and a very
14 disturbing case and said that she recognized
15 immediately that the complainant was a vulnerable
16 person. She also testified that she cared about
17 the case and that she cared about what happened to
18 the complainant. Judge Romano, who was the
19 Regional Crown, or at least the administrative
20 Crown at the time, also recognized that the case
21 was very serious.

22 As I set out above, the RCMP initially
23 proposed three charges for approval in the report:
24 first of all, attempted murder; then assault with
25 a weapon; and forceable confinement. And on April

1 the 1st of '97, Judge Romano approved those
2 charges and added an additional charge of
3 aggravated assault.

4 After the charge-approval process had been
5 completed, the file made its way through the
6 disclosure court and various pre-trial conferences
7 and hearings before it was assigned to Ms. Connor.
8 These hearings were conducted by various Crown
9 counsel in a more or less routine manner.

10 Judge Romano later assigned the case to Ms.
11 Connor because, as he put it, he was "very
12 confident in her decision-making ability and her
13 judgement." She was the senior Crown in the Port
14 Coquitlam office and he considered her to be a
15 perfect fit to prosecute the case.

16 We do not know precisely when the file was
17 assigned to her. The evidence simply isn't there.
18 The documentary evidence does suggest that the
19 file was assigned probably sometime after October
20 the 22nd of 1997. However, on the evidence, it
21 wasn't possible for any of the witnesses to
22 determine with any precision when it was assigned.

23 We do know that, by the time she was assigned
24 the file, the trial had been set down for a five-
25 day hearing due to begin on the 2nd of February of

1 1998. She testified that she was ready to go.
2 She recognized it was a difficult file but she was
3 enthusiastic about it and she intended to see it
4 through.

5 She had previously taken on many difficult
6 files and testified that:

7 The fact that a file was a challenge or was
8 difficult wouldn't have prevented me from
9 wanting to proceed with it. I was aware of
10 the difficulties with the file, but my
11 intention was to proceed.

12 One of her first steps in the case was to
13 review the Report to Crown Counsel, which had been
14 prepared by Corporal Connor of the RCMP. She
15 testified that a few things stood out to her when
16 she first reviewed the report. She said that it
17 was apparent to her, on the face of the report,
18 that Ms. Anderson was addicted to drugs, including
19 heroin, and that her drug problem had been long
20 standing. However, the report did not indicate
21 that there would be any trouble locating her. Ms.
22 Connor knew that she was addicted to drugs, but it
23 wasn't until much later during her interview with
24 Ms. Anderson that Ms. Connor really understood the
25 severity of her condition.

1 Both the complainant and the accused had
2 provided statements to the police detailing their
3 accounts of the incident. In most respects, the
4 evidence of both parties dovetailed except with
5 respect to how the incident started. Pickton gave
6 a version of events that Ms. Connor considered
7 could possibly have been true. His evidence was
8 that he had handcuffed her in order to control
9 her, following a dangerous outburst after the
10 altercation. Ms. Anderson, on the other hand,
11 testified that she grabbed a knife and cut his
12 throat to defend herself after he placed the
13 handcuff on her in an act of aggression. It was
14 clear that there had been an altercation, a
15 serious altercation.

16 In its bail assessment, the RCMP declined to
17 propose the usual no-firearms or no-weapons
18 conditions. Ms. Connor interpreted this omission
19 as an indication that the RCMP considered that the
20 risk factors were not sufficiently severe to
21 preclude bail.

22 The RCMP took the additional step in this
23 case of including the complainant's criminal
24 record with the report. The report indicated that
25 Pickton did not have a criminal record, and it did

1 not include any CPIC searches in relation to Mr.
2 Pickton. The report witness list did not indicate
3 a phone number or an address for Ms. Anderson,
4 rather, it indicated that the complainant could be
5 contacted through Corporal Connor.

6 Ms. Connor's first priority on the file was
7 to deal with her key witness, Ms. Anderson. As
8 you have heard, due to the nature of the case, Ms.
9 Connor considered Ms. Anderson to be the case.
10 Her evidence, from Ms. Connor's point of view, was
11 absolutely critical.

12 The evidence suggests that, upon reviewing
13 the Report to Crown Counsel, Ms. Connor contacted
14 Corporal Mike Connor to obtain Ms. Anderson's
15 contact information and Corporal Connor provided
16 her with Ms. Anderson's mother's telephone number
17 as the only means of contacting Ms. Anderson, that
18 despite the fact that we now know that Ms.
19 Anderson did have a cellular telephone, but she
20 had specifically instructed her mother not to give
21 the number to anyone, including Ms. Connor.

22 We have seen evidence of a telephone log kept
23 by Ms. Anderson's mother recording calls received
24 at her place of business. This document appears
25 to have recorded contact of some sort with Ms.

1 Connor beginning in early January of 1998. That
2 evidence was very helpful. However, as helpful as
3 it is, it's still impossible to conclude on the
4 evidence that Ms. Connor did not begin attempting
5 to contact Ms. Anderson before January the 9th,
6 for example, in November or December of '97. The
7 absence of her notes and other records deprived
8 her of the ability to refresh her memory on this
9 question. She couldn't recall.

10 She had testified that she could recall
11 having set up a meeting with Ms. Anderson before
12 January the 23rd at 222 Main Street, which she
13 described as being in Ms. Anderson's general
14 location, but that Ms. Anderson did not attend the
15 meeting. She was uncertain as to precisely when
16 that proposed meeting was to take place.

17 The evidence of unanswered telephone calls in
18 the Victim Services log also suggests that, had
19 Ms. Connor attempted to contact Ms. Anderson
20 through her mother in November or December, she
21 would not probably have been able to do so because
22 Victim Services had been unable to do so from
23 early August of 1997 until the end of December of
24 1997. They couldn't communicate with Ms.
25 Anderson, nor could they communicate with the

1 mother during that whole period of time.

2 What is clear is that Ms. Anderson ultimately
3 came to the Crown counsel offices in Port
4 Coquitlam for an interview with Ms. Connor on
5 Friday, January the 23rd, or Monday, January the
6 26th. She likely arrived by way of a taxicab,
7 which had been sent to pick her up in the Downtown
8 Eastside. Transportation arrangements would have
9 been made and paid for by the Crown.

10 Ms. Connor and the Victim Services worker,
11 Roxana Smith, and Ms. Anderson were present for
12 the meeting. It's noteworthy, Mr. Commissioner,
13 that Roxana Smith could recall little or nothing
14 of that meeting after 14 years and she, of course,
15 had no notes.

16 Ms. Anderson was nodding off or falling
17 asleep during the interview. She was incoherent
18 and unable to communicate. In Ms. Connor's
19 assessment, Ms. Anderson was very much under the
20 influence of drugs during the meeting. Now, this
21 is Ms. Connor's professional assessment based and
22 founded on the experience that she had. She was a
23 very experienced prosecutor, Mr. Commissioner, and
24 she had dealt with people who had been involved
25 with drugs before. She explained to the

1 commission that Ms. Anderson was unable to
2 communicate her evidence.

3 It's likely that the interview lasted
4 somewhere between one hour and maybe several
5 hours. Apparently, Ms. Anderson said in her
6 statement that it was dark when it concluded and
7 it did start in the relatively early afternoon.
8 So, it's somewhere between one to several hours.

9 When she was asked to specify what she meant
10 when she said that Ms. Anderson had been
11 incoherent, Ms. Connor elaborated as follows, and
12 I quote:

13 She was saying some words but not, not, not
14 communicating the evidence. I wasn't able to
15 sit down and do a proper interview with her
16 in the normal fashion. She wasn't
17 responsive. She was nodding off. I believe
18 she said in her statement she was falling
19 asleep at times and I was asking her if she
20 was okay. So, in terms of her saying
21 nothing, I mean, obviously she would have
22 said a few things, but not in any -- I
23 couldn't get from her a clear, coherent
24 interview.

25 Ms. Connor did not consider it appropriate to

1 attempt to refer her to rehabilitation services.
2 She had made the point that the Crown is not in a
3 position to get drugs for people or to force
4 people into rehabilitation centres. She knew that
5 the RCMP and Crown Victim Services were involved
6 with the file from the outset, and that they would
7 have advised Ms. Anderson about options for
8 counselling and other services. The RCMP Victim
9 Services file shows that, from the outset, that
10 is, from mid-April of 1997, Ms. Anderson
11 consistently refused any counselling referral, and
12 of course, neither could they compel her to take
13 counselling for her drug problem.

14 Ms. Connor would have been aware of this as a
15 result of liaising with the Victim Services. She
16 testified that she did not consider it possible to
17 justify seeking an adjournment in the
18 circumstances. She explained that she was not in
19 a position to appear in front of a judge and offer
20 any assurances at all that Ms. Anderson would be
21 able to testify on any particular date in the
22 future, if at all, and that she was left with
23 nothing that she could properly put before a judge
24 in order to seek the adjournment.

25 Ms. Connor -- let me just -- I just want to

1 address the condition of Ms. Anderson, because you
2 heard some evidence that there were other
3 occasions when she met with people and she seemed
4 to be able to converse and communicate. Her later
5 conditions I will call them.

6 She gave a statement on March the 27th. This
7 was after she had been in the hospital for four
8 days. She gave her statement to the police. But
9 she had obviously been there without any drugs and
10 she had four days to dry out. She had been in the
11 hospital and she was obviously no longer under the
12 influence of heroin and nor did she have access to
13 drugs. Quite a different thing than when she was
14 on the street. This was not by her choice,
15 abstaining from drugs and getting herself in good
16 shape so she could communicate.

17 Officer Shenher said she found her to be
18 credible in August of 1998. This is over six
19 months after the stay was entered, and indeed,
20 it's very shortly after she had been released from
21 custody. She had been in jail, and so she dried
22 out in jail. So, it's not the same situation.
23 It's not, it's not apples and apples. This is
24 apples and oranges comparing her state at these
25 later times.

1 And then one of the counsel made the point
2 that, while she gave her evidence at the
3 preliminary inquiry, and she was able to
4 communicate at that time. Well, that's true. But
5 in terms of the timing around the preliminary
6 inquiry, I, I have put to her in my examination, I
7 put to Ms. Connor what Ms. Anderson had to say to,
8 to Detective Fielding and Detective Crook at
9 around the time of the preliminary hearing when
10 they were speaking.

11 And I said in the transcript, I'm at the
12 transcript at page 223, I think this is around
13 April the 12th, and I read to her:

14 And so Detective Fielding says to her:

15 Do you think that had something to do
16 with the charge not going ahead?
17 And that was a reference to her drug use.

18 Ms. Anderson says:

19 What's that?

20 And Detective Fielding says:

21 Your drug use.

22 Miss Anderson says:

23 Well, yeah because I wasn't stable
24 enough to testify because I was an
25 addict, but I think myself they didn't

1 have enough evidence, but there was lots
2 of even, like, blood was all over his
3 house.

4 And then Detective Fielding says:

5 What about today? How's your -- are you
6 still using today?

7 And Ms. Anderson says:

8 Yeah.

9 And Detective Fielding says:

10 About the same as you were back then?

11 Being at the time of the stay. And Ms.

12 Anderson says:

13 No.

14 Detective Fielding says:

15 More or less?

16 Ms. Anderson says:

17 Ah, less. A lot less.

18 So, you can see that, you know, she was
19 encountered from time to time after the point at
20 which the stay was entered, and she was in varying
21 conditions as a result of her drug abuse. Four
22 days in the hospital, she could communicate. Four
23 days not by choice. Thereafter, into the jail,
24 out of the jail, speak to Officer Shenher. Able
25 to communicate. And ultimately we go right around

1 to, I guess it's '92 to the time of the
2 preliminary inquiry, she is still using drugs,
3 still using heroin, but by her own account, she's
4 using a lot less than she was using at the time of
5 the stay.

6 So, I say, with respect, those are not
7 helpful comparisons in terms of her ability to
8 communicate. They were different times and
9 different circumstances prevailing at those times,
10 Mr. Commissioner.

11 I will turn for a moment to trial
12 preparation. As I say, I invite you to make
13 findings of fact with respect to what was done in
14 that regard based on her evidence, but I suggest
15 also, with great respect, that you ought not to
16 opine on the propriety or the quality of what she
17 did, because if you find that she was in default,
18 for example, in connection with her preparation,
19 is virtually to attack her decision with respect
20 to entering a stay of proceedings.

21 She gave uncontradicted evidence during her
22 testimony that she was absolutely prepared for
23 trial. Unfortunately, without the benefit of the
24 file, it's impossible to know for sure what steps
25 she had or had not taken to prepare for trial

1 before the stay was entered.

2 She was testified that, from her perspective,
3 the case was straightforward from an evidentiary
4 point of view, that the real critical and
5 contentious evidence would have been Ms.
6 Anderson's testimony. The evidence from the
7 medical professionals of high standards and the
8 police was not of significance in her assessment
9 to the prosecution of the case.

10 For example, she doesn't believe that she
11 interviewed the bystanders who brought her to
12 safety before her interview with Ms. Anderson
13 because their evidence didn't raise any particular
14 concerns in her mind. Although the bystanders'
15 evidence would have been good evidence to call and
16 she certainly would have called it because, as we
17 know, Ms. Anderson lied to those people and the
18 defence would want that evidence in before the
19 trier of fact because it would bear on Ms.
20 Anderson's credibility. That was the critical
21 issue in the case.

22 Although it would be good evidence to call,
23 it didn't help the key issue in the case, which,
24 in her assessment, needed to be anchored -- in Ms.
25 Connor's assessment, needed to be anchored by Ms.

1 Anderson's evidence.

2 Ms. Connor did not foresee any difficulties
3 with admitting medical evidence because it didn't
4 appear to be contentious. She was dealing with
5 Peter Ritchie, who she knew to be senior and as a
6 no-nonsense counsel who would make reasonable
7 admissions and who would take reasonable
8 positions. It certainly wasn't going to be Mr.
9 Ritchie's defence, one wouldn't think, that there
10 was no serious injury to the complainant. All she
11 needed, in terms of medical evidence, was the
12 doctor there who had seen her to indicate that she
13 had suffered a serious, and indeed, perhaps a
14 life-threatening injury.

15 She had a period of a week that she had yet
16 to prepare and which was pretty much going to be
17 devoted exclusively to the preparation for this
18 case. She testified that if the matter proceeded
19 to trial, it would have been her intention to
20 interview all of the necessary witnesses,
21 including the police witnesses and the bystanders.
22 She said she would never put a witness on the
23 stand without first interviewing them at all.

24 But that's not unusual, to interview less
25 important witnesses while the trial is going on

1 depending on the circumstances, or at the latter
2 stage of your preparation just before the trial
3 starts. For example, some witnesses, depending
4 upon the importance or the complexity of their
5 evidence, can be interviewed quickly before court
6 or in the evening after court.

7 I suggest, with respect, to Mr. Commissioner,
8 that you know well, from having prosecuted many I
9 am sure very serious cases, murder cases, assaults
10 and rapes and so on before the assize courts, that
11 very often the victim is the most important
12 witness. Experienced counsel usually get to the
13 real issue, and if not admitted, often the police
14 and the less important civilian witnesses are
15 interviewed either just prior to the trial or
16 sometimes even during the trial, the morning
17 before they're to give the evidence or in the
18 evening before they're to give their evidence.
19 That's done with regularity, in my submission,
20 when it's not evidence that's complicated and it's
21 not evidence that's in serious contention. There
22 is nothing wrong with that.

23 And I ask you to draw on your own experience
24 as, as an assize court prosecutor in that regard.
25 In those days, when you were doing that kind of

1 work, you were extremely busy. You were doing one
2 case right after another. It wasn't as if you had
3 a week to prepare a trial in the middle of an
4 assize. And very frequently, and certainly I've
5 worked with many senior and experienced counsel,
6 those kinds of witnesses were interviewed in the
7 Crown counsel office the morning of which they
8 were going to give their evidence or in the
9 evening of which they were going to give their
10 evidence, because it usually was evidence that was
11 not contentious. It had to be there, but there
12 was no contest about it and it wasn't complicated.

13 We know that Mr. Romano had designated the
14 file as a red file to indicate that it required
15 advance preparation. Now, I want to pause here to
16 say, we are talking about a line prosecutor here,
17 Mr. Commissioner. This is not a special
18 prosecution, for example, where Mr. Peck or I or
19 Mr. Crossin are appointed as a prosecutor in a
20 very difficult case. I can give you as an example
21 anecdotally, the Prince George judge who was
22 involved.

23 Those kinds of cases are made exceptional in
24 that a special prosecutor is appointed. The
25 special prosecutor has virtually no limit on the

1 amount of time available to be spent on the file.
2 Everything that has to be done, should be done,
3 and there's no corner cutting. There is no quick
4 preparation. The file comes in long before
5 there's any kind of a trial. You are not in court
6 every day for weeks in advance of the trial, like
7 you are if you're a line prosecutor doing two and
8 three impaired driving and other cases a day.

9 And that's what they mean when they say that
10 this was a red file in Coquitlam. This was a file
11 that a line prosecutor couldn't just walk in the
12 morning of the trial, meet with the police
13 officers involved, and do the trial. This was a
14 serious charge. It required advance preparation.
15 And she was well aware of that. She knew that.
16 And she had made her efforts to communicate with
17 Ms. Anderson, as I say. We don't even know if she
18 tried in November and December, but we know she
19 tried in January. In early January, we know she
20 structured a meeting. We know that that meeting
21 wasn't attended by Ms. Anderson. And then she
22 structured another meeting and had her in.

23 So, she was doing what she needed to do by
24 way of preparation, in my submission, and she had
25 something close to a week to deal with any of the

1 other issues. One of my friends said to her:

2 Well, had you prepared a brief on the law?
3 I wonder how many times you, Mr. Commissioner,
4 prepared a brief on the law when you were doing
5 assize prosecutions. What you did is you
6 recognized what the legal issues were, and if
7 there were contentious issues, yes, you looked at
8 them. But Ms. Connor said that what she had in
9 her office, was she had a library of cases and
10 files relating to the legal issues that she
11 expected to arise and the cases that she expected.
12 So, she, she was mindful of her responsibilities
13 and prepared to discharge them.

14 Mr. Romano gave evidence that the Crown would
15 have been given preparation time and that the red
16 files required some advance preparation, but that
17 it's ultimately up to each individual prosecutor
18 to make the decisions about how to approach both
19 the prosecution and the preparation for the
20 prosecution.

21 Ms. Connor said that she intended to prepare
22 admissions for trial, but she didn't consider the
23 admissions to be a particular problem as there was
24 no indication from Mr. Ritchie or on the facts
25 that there was going to be any difficulty

1 obtaining what she required. In spite of that
2 though, in some cases, her practice was to draft
3 admissions even during the course of the trial.
4 And how many times have you seen that done both as
5 a, as a prosecutor and as a trial judge?
6 Admissions are, are discussed, sometimes
7 finalized, reduced to writing, signed and filed in
8 the middle of a trial. It isn't essential that
9 they all be done in advance, and sometimes they
10 can't be because the parties haven't agreed on
11 everything. But she was mindful of her
12 responsibility in that regard and prepared to
13 discharge her responsibility.

14 In some cases, her practice was to draft them
15 during the course of the trial, just to ensure
16 that they were filed of course before the close of
17 the Crown's case. Again, on the evidence before
18 the commission, it's impossible to determine
19 whether or not she had started preparing the
20 admissions by the time she interviewed Ms.
21 Anderson. That's not possible due to the absence
22 of the Crown file.

23 The same goes for any preparation that she
24 may have done in terms of the legal arguments.
25 She said she may not have begun preparing the

1 legal arguments and briefs and that she had access
2 to a number of precedents. In the absence of the
3 file, we simply don't know. But I say sufficient
4 even if she had not commenced to prepare for that,
5 she would recognize what the issues were, and
6 prepare for the legal issues, if any.

7 I turn to topic 3, the reasons for the stay.
8 It's important to note that, in all material
9 respects, Ms. Connor's evidence is without
10 contradiction on the record in my submission. She
11 gave evidence that the following reasons were
12 relevant to her decision to enter the stay, some
13 more important than others. She said there was
14 the nature of the case and the corresponding
15 standard of proof. Given the injuries suffered by
16 both parties, it would be necessary to rely on
17 credible witness evidence. Second, there were
18 many similarities between the evidence or versions
19 of the story given to the police by Ms. Anderson
20 and Mr. Pickton. She said both versions
21 dovetailed in most respects except in relation to
22 how it started and Pickton gave a version of
23 events that could possibly be true.

24 And you know of course, from your experience,
25 that this, this is proof beyond a reasonable

1 doubt. This is of proof to the extent that, even
2 if the trial judge didn't believe Mr. Pickton, his
3 evidence could still raise a reasonable doubt.
4 That's what she had to overcome. She had to have
5 a sound complainant.

6 And, obviously, she had never had the
7 opportunity to interview or got the benefit of any
8 kind of interview by the police or any opportunity
9 to observe Mr. Pickton. In other words, this was
10 a he said/she said case. Ms. Anderson was the
11 key, and as Ms. Connor put it, Ms. Anderson was
12 the case.

13 Ms. Anderson's evidence was of central
14 importance, but she was apparently unable to
15 communicate that evidence. Ms. Connor testified
16 that she did not believe that Ms. Anderson would
17 be able to effectively communicate that evidence
18 to a judge in light of her condition in the weeks
19 leading up to the trial, and she would have been
20 aware that Ms. Anderson had been offered and had
21 refused counselling.

22 There was, in Ms. Connor's assessment, no
23 substantial likelihood of conviction in light of
24 Ms. Anderson's inability to testify. This was, of
25 course, the most important factor that she

1 identified in terms of entering a stay. As we've
2 seen, the Crown policy requires, firstly, a
3 substantial likelihood of conviction to commence
4 or continue a prosecution. There has been some
5 confusion during the hearings about the mechanics
6 of the Crown policy on the substantial likelihood
7 of conviction. The wording of the policy makes it
8 clear there is effectively to be no consideration
9 of the public interest unless the standard for a
10 substantial likelihood of conviction has first
11 been met.

12 In the circumstances of the case, Ms. Connor
13 testified that, although there may have been a
14 public interest in the prosecution, she "couldn't
15 get beyond the fact that there was no case, there
16 was no substantial likelihood of conviction, so
17 the public interest, while it was certainly there,
18 couldn't be considered."

19 The policy also makes it clear that the
20 prosecutor has a duty throughout the prosecution
21 of the case to monitor the case, and that follows
22 like the night and day. If there has to be a
23 substantial likelihood of conviction to commence
24 the prosecution, then surely it has to pertain
25 through the duration. If at one point, suddenly

1 there was no longer any substantial likelihood of
2 conviction, the policy dictates that you ought not
3 to continue with the case, and that's precisely
4 the enforcement of the policy which she adopted.
5 If, at any time, a prosecutor determines that
6 there is no longer a substantial likelihood of
7 conviction, the case should not proceed.

8 From a practical and a procedural standpoint,
9 the stay was considered to be the best option in
10 the circumstances. Because there was no longer a
11 substantial likelihood of conviction, she had
12 three procedural options: first of all, to
13 proceed to trial and call no evidence, which would
14 result in a dismissal of the charge and would
15 provide a defence of *res judicata* or *autrefois*
16 *acquitt*; secondly, seek an adjournment, and she
17 felt she couldn't justify appearing before the
18 court without being able to make a representation
19 to the effect that there would be a time when the
20 complainant could give her evidence properly; and
21 thirdly, entering a stay of proceedings.

22 Of the three options, the stay of proceedings
23 she decided would be the most appropriate course
24 of action. She did not consider it possible to
25 seek the adjournment. Unlike the option of

1 calling no evidence, a stay of proceedings was
2 considered to be desirable because, as she put it,
3 the door would be left open. The case could be
4 reopened within the year if there was additional
5 evidence that emerged or if the complainant's
6 condition improved.

7 Ms. Connor testified that, although she
8 didn't consider it her role to monitor a case
9 following a stay of proceedings, she would have
10 been open to reconsidering whether or not to
11 proceed had the police come back to her with an
12 indication that there had been a change in the
13 complainant's condition.

14 Now, we heard the evidence, that it's very
15 seldom that once a case is stayed, a prosecution
16 is recommenced. That's partly, Mr. Commissioner,
17 because, as you know all too well, in British
18 Columbia, we have adopted the practice when we
19 choose not to proceed with a case from the
20 prosecution's perspective, of entering a stay.
21 Very, very seldom do we walk into a courtroom and
22 hear the Crown call no evidence and have the
23 charge dismissed. We rather stay them all when
24 it's appropriate not to proceed. That's the
25 practice in British Columbia. It isn't, for

1 example, in Ontario. In Ontario, they more
2 frequently call -- elect to call no evidence and
3 have the charges dismissed.

4 But a stay is entered because it's
5 convenient, because it can be done outside of the
6 courtroom, you don't appear have to appear in
7 front of a judge, and finally, you don't have to
8 have permission to withdraw. You don't need the
9 Court's permission to withdraw a charge. It's a
10 unilateral act that the Crown has the right to
11 engage in at any time. And it can be nothing more
12 than an administrative act of walking into the
13 registry on the morning of the trial, or anytime
14 before that, or even during the trial, and of
15 Crown counsel noting on the record that a stay of
16 proceedings is entered.

17 So, you know, sure, there's hundreds of
18 stays, and not too many of them are re-prosecuted.
19 But this was a very serious case, which, and I
20 think it's fair to say, had they come back to any
21 prosecutor in a case like this and said, "You know
22 what, she's gone through rehab, she's cleaned up,
23 she's quite capable of giving her evidence, let's
24 proceed with the case," it's extremely likely, I
25 am going to suggest, with respect, that in those

1 circumstances, this would have been one of them.
2 At least that door was left open, of the three
3 options.

4 Her evidence is clear, Mr. Commissioner, that
5 Ms. Anderson's profession, her drug addiction and
6 her criminal record were not, in and of
7 themselves, reasons for the stay. While they
8 impacted to some degree her credibility, these
9 were secondary factors. The principal reason for
10 the stay was the issue of her inability to testify
11 coherently and the resulting lack of a substantial
12 likelihood of a conviction.

13 There was, what was no evidence before you,
14 nor I submit any basis to infer that there was any
15 bias in this matter, although it's been suggested.
16 What there was, was, in my submission, a realistic
17 assessment of these factors, as there would be
18 with any witness in that position, regardless of
19 their circumstances.

20 Ms. Anderson was dealt with on a unique and
21 an individual basis. She was not dealt with as a
22 member of any so-called class of victims or
23 persons. She was dealt with on the basis of the
24 problems that she presented to the case as that
25 particular individual, and she was so dealt with

1 by experienced and competent counsel who exercised
2 her discretion as she saw fit. There was no bias.

3 In conclusion, Ms. Connor's evidence on the
4 adequacy of her preparation and the reasons for
5 the stay are not contradicted on the record in my
6 submission. And the facts found in that regard
7 should be on the basis of her evidence, without
8 any editorial opinions or judgement, because -- in
9 terms, rather, of its adequacy, because to do so,
10 would be, in my submission, to violate the rule of
11 prosecutorial independence.

12 This was a serious case. Given Ms. Connor's
13 background, experience and her reputation as a
14 hard-nosed prosecutor who wouldn't back down, it's
15 completely inappropriate, in my submission, to
16 characterize her actions, as Mr. Ward did, as
17 being cavalier. There was nothing cavalier about
18 anything that she did here.

19 Indeed, His Honour, Judge Romano explained he
20 not only assigned the case to Ms. Connor, but if
21 he had it to do again, he would assign it to her
22 again. That's a demonstration of confidence by
23 someone who knows her very well. You know her
24 only because you saw her here in the witness
25 stand. Judge Romano was her supervisor. He was

1 the administrative Crown. He dealt with her with
2 regularity. And I suggest, with respect, when he
3 says to you, "I had every confidence in her, I
4 gave her the file then, and knowing what I know
5 now, I would give it to her again," that's a very
6 solid basis, in my submission, to conclude that
7 she was a prosecutor who knew her duties and she
8 did her duties.

9 Those are the submissions I have.

10 THE COMMISSIONER: All right. Thank you, Mr. Doust.

11 Yes, Mr. Peck.

12 MR. PECK: Peck, on behalf of Gary Bass, Mr. Commissioner.

13 I want to speak briefly on his behalf. I
14 want to emphasize certain points and what I say
15 are certain misconceptions that arose around his
16 role and his position in the RCMP.

17 He served the RCMP and this country for 40
18 years, retiring in May 2011 as Deputy Commissioner
19 of Canada West. A long and distinguished and
20 highly-respected career. During the terms of
21 reference of this inquiry, he was, at various
22 times, the OIC, or officer in charge, of "E"
23 Division Major Crimes; and in July of 2000, he
24 moved to the position of OIC of what they call
25 "Criminal Operations" or "CrimOps".

1 He is an extremely experienced police
2 officer; has handled many, many high-profile
3 cases, including many homicide investigations; has
4 uniquely approached policing in a proactive
5 manner. He was responsible for the establishment
6 of the Provincial Unsolved Homicide Unit, which
7 was part of the "E" Division Major Crime, and he
8 was instrumentally involved in the creation of the
9 major crime management and accreditation process
10 in the mid-1990s. So, he has been very actively
11 involved in progressive policing, I will call it.

12 His assistance in this investigation goes
13 back some distance in time, and let me just put
14 four areas out for consideration. He provided
15 resources and investigative support to the
16 Vancouver Missing Women Review Team, and I will
17 expand on each of these areas: he assisted the
18 Coquitlam Detachment Pickton investigation; he
19 assisted the Chilliwack RCMP General Investigation
20 Section, GIS, in the Valley murders, and we will
21 come back to those, because they're very
22 important, they loom large in this case; and
23 later, the joint forces project known as "Project
24 Evenhanded". And every time he was called upon,
25 he gave assistance, provided funding or obtained

1 funding and manpower.

2 On September 16th, 1998, he sent a letter to,
3 in response to an invitation from then Vancouver
4 Police Inspector Kim Rossmo to attend a meeting
5 respecting the Downtown Eastside Missing Persons
6 Working Group. Now, what did he do in response to
7 that? He sent Constable McCarl of the Chilliwack
8 RCMP GIS. Why did he do that? Because Constable
9 McCarl was the lead investigator on the Valley
10 murders. What were the Valley murders? The
11 Valley murders involved three women from the
12 Downtown Eastside, sex trade workers, whose
13 remains were found --

14 THE COMMISSIONER: Yes, I am well aware of them, the Valley
15 murders.

16 MR. PECK: -- in the bush. And this was the work of a serial
17 killer. The RCMP was aware of that for two
18 reasons: DNA on two of the bodies; and similar-
19 fact evidence that linked all three.

20 So, it was a logical appointment for Mr. Bass
21 to send Mr. McCarl to that particular meeting.

22 Throughout the terms of reference, several
23 members of the Violent Crime Linkage Analysis
24 System, which was the brainchild of Staff Sergeant
25 Davidson, were involved with the Missing Women's

1 Review Team. Staff Sergeant Davidson, himself a
2 criminal profiler, was responsible for
3 establishing ViCLAS. His direct supervisor at
4 this time was Mr. Bass. He first, that is,
5 Davidson first provided assistance to the VPD with
6 respect to this matter in April 1999.

7 Mr. Bass found resources to assist Inspector
8 Moulton of Coquitlam in July of 1999 for the
9 surveillance of Pickton.

10 In August of 1999, he approved the assignment
11 of Corporals Nash and Justason from "E" Division
12 MCS to Coquitlam for the investigation of Pickton.

13 By August of 1999, Detectives Henley and
14 Ballantyne of the Unsolved Homicide Unit had also
15 been assigned to the Coquitlam investigations, all
16 under the auspices of Mr. Bass.

17 October 27th, 1999, he attended a meeting,
18 including Field and Shenher of VPD, as well as
19 Fell and Wolthers, McCarl and Sergeant Paulson of
20 Chilliwack. The concern there, in part, was the
21 Valley murders again. And there was a particular
22 person of interest, POI 1, sorry, 390 as a suspect
23 in both the missing women and Valley murders.

24 January 13th, a meeting was held, including
25 Field, Davidson and Filer of "E" class.

1 February of 2000, another meeting involving
2 these two forces and members of these forces.

3 Again, on February 14th, 2000.

4 And then on March 1st, 2000, we have the
5 meeting involving Bass, Paulson and Filer, and,
6 and Davidson of course, and that's the meeting
7 where Davidson said, "I would have presented my
8 three-page proposal," he has no notes of that
9 meeting. The only contemporaneous notes were
10 those of Mr. Bass.

11 Meet Davidson, Filer, Paulson re proposal on
12 task force - serial cases. Agreed to start
13 with an effort on Valley prostitute murders
14 first. DNA to be compared. Will add to
15 group when manpower becomes available.

16 Now, what's important about that is it's a
17 logical starting place, because it's a serial
18 killer involving Downtown Eastside women. They
19 have got DNA. They have got some similar-fact
20 evidence. They have got a highly-motivated,
21 highly-energetic serial killer on their hands.
22 They know that, because of where the bodies were
23 found.

24 Within two months of that meeting, Davidson
25 is meeting with the VPD to commence the file

1 review. Remember that Bass, Davidson and Adam all
2 said that a starting point for a major JFO, joint
3 forces operation, is a file review.

4 Then you will recall what happens. The files
5 were in no condition to be reviewed at that time,
6 May of 2000. The files were not in a condition to
7 be reviewed until about October/November of 2000,
8 at which point, Don Adam comes into the picture
9 and commences the file review, a time-consuming,
10 onerous process, but a necessary first step to a
11 joint forces operation, according to all who spoke
12 to that issue.

13 I want to deal finally with what I say are
14 the mistakes in the Evans report and some of the
15 misconceptions that I referred to earlier.

16 There was a suggestion that Mr. Bass should
17 have taken over the Coquitlam investigation.
18 That is a misunderstanding of his position at that
19 time. Remember that the Major Crime "E" Division
20 section was an assisting or assistance group
21 subject to being commanded by the officer in
22 charge of "E" Division, the commanding officer, or
23 the officer in charge of Criminal Operations.
24 They would simply give assistance when requested,
25 but they had no command authority and Bass had no

1 command authority to take over the investigation
2 of Coquitlam. And we heard that from a number of
3 people, including I think Superintendent Hall.

4 DC Evans expressed a view, with respect to
5 the March 2000 meeting, that nothing resulted from
6 this meeting. She was critical that Mr. Bass did
7 not create a multi-jurisdictional approach to the
8 missing women investigation as a result of the
9 information he heard at that meeting. He did not
10 have the authority to do that.

11 DC Evans did not have a clear understanding
12 of the organizational structure and reporting
13 relationships within the RCMP and this led to
14 repeated error. She interviewed former Chief
15 Constables Chambers and Blythe. She never
16 interviewed their counterparts at the RCMP. She
17 interviewed Mr. Bass and people beneath him from
18 the contemporaneous time.

19 At the very end of her report, she makes this
20 astonishing comment. This is at Page 9 -- Chapter
21 9, Page 2.

22 No one was looking for a serial killer.
23 Nothing could be farther from the truth. The RCMP
24 were well aware that there were serial killers at
25 work, not one, but more than one. And we know for

1 a fact now there's at least two, one has never
2 been found and that's the Valley murderer. She
3 says this in her report, page 8-128:

4 Documents reveal that Constable McCarl had
5 been trying to get extra resources to
6 investigate the three unsolved homicides
7 [meaning the Valley murders] since 1999.
8 Resources did not get applied to this
9 investigation until Project Evenhanded
10 commenced in 2001.

11 That's not so. McCarl had been working closely
12 with the VPD and "E" Division investigators
13 throughout '99 and 2000, and the decision of the
14 March 1st meeting was to pour more resources into
15 that.

16 The report says:

17 When the RCMP committed in late 2000 to
18 conduct a review of the missing women
19 investigation, Chief Superintendent Bass
20 agreed.

21 That agreement dates back to May of 2000, two
22 months after the March 1st meeting, not late 2000.
23 And finally, she says:

24 Throughout my review, I heard a recurring
25 theme of, no body, no evidence, no crime,

1 which, in my opinion, created an excuse for
2 ignoring the problem which permeated both the
3 VPD and the RCMP at different times.

4 That's not so at all from the RCMP
5 perspective, or Mr. Bass's perspective. He said,
6 the assumption of no body, no evidence, no crime
7 was not the way "E" Division Major Crime worked,
8 that he is not aware of any evidence suggesting
9 that this was a view held by anybody within the
10 RCMP.

11 The last thing I would say to you is, he made
12 a recommendation at the end of his testimony
13 respecting Vision Quest and the need for such
14 organizations to be properly funded. To the
15 extent that that falls within your terms of
16 reference, I leave that with you.

17 THE COMMISSIONER: All right. Thank you, Mr. Peck.

18 MR. VERTLIEB: I think Mr. Larson for Crab is next and then Ms.
19 White with him after.

20 THE COMMISSIONER: All right. Thank you. Mr. Larson.

21 MR. LARSON: Mr. Commissioner, Don Larson, organizer, president
22 for Crab - Water for Life Society, Downtown
23 Eastside. Have held that unpaid position for 30
24 years. We're an organization that is not an
25 agency, a much more grassroots street level.

1 Well, we became involved in this issue
2 roughly 21 years ago before the first Memorial
3 March. One year before that, we were, our group
4 was the only group in the Downtown Eastside
5 involved in that.

6 I would like to read two things today,
7 Mr. Commissioner.

8 THE COMMISSIONER: Yes.

9 MR. LARSON: First of all, in my report, which I would like to
10 give you copies of.

11 THE COMMISSIONER: Yes.

12 MR. LARSON: To me, Mr. Commissioner, this is the report on
13 behalf of Crab - Water for Life Society. I'm not
14 aware of what submissions Kelly White has. I have
15 not seen them and so I can't take any
16 responsibility personally for or on behalf of Crab
17 - Water for Life Society.

18 THE COMMISSIONER: Well, why don't you just give me your
19 submissions?

20 MR. LARSON: I will.

21 THE COMMISSIONER: I understand there is some difference of
22 opinion between you and her. So, why don't you
23 tell me what you want to say --

24 MR. LARSON: Yes, sir.

25 THE COMMISSIONER: -- and then I will listen to her after.

1 MR. LARSON: Yes, I understand.

2 So, Commissioner Wally Oppal, Q.C., Missing
3 Women Commission of Inquiry, June 5th, 2012.
4 Closing submission for Crab - Water for Life
5 Society.

6 If I may, I would like to begin Crab - Water
7 for Life Society's closing submission to the
8 Missing Women Commission of Inquiry with a quote:

9 We need to face suffering as we face
10 beauty: with no defences, no excuses.

11 That quote is from a person named Piero
12 Ferrucci.

13 The Missing Women Commission of Inquiry began
14 with the inspiring words and prayers from Eugene
15 Harry of the Quaker Church and Salish Nation.
16 The blanketing of Mr. Commissioner Wally Oppal by
17 Chief Ian Campbell and Kelly White and other
18 Salish women is a remembered moment of honor and
19 responsibility.

20 Due to the lack of sufficient funding from
21 the provincial government for enough lawyers for
22 Downtown Eastside, women's and First Nations
23 groups, many groups left the inquiry early on.
24 The vacuum left by the missing agencies could not
25 be completely filled.

1 On behalf of Crab - Water for Life Society, a
2 grassroots Downtown Eastside group formed in 1982,
3 I, Don Larson, stayed in the inquiry in loyalty to
4 the families of the missing women.

5 A crucial moment for me in the inquiry was
6 when we learned that the 1997 Robert Pickton file
7 on Ms. Anderson had been destroyed. Ms. Anderson,
8 of course, was the woman who died twice on the
9 operating table after a knife attack by Robert
10 Pickton.

11 I believe it was wrong that the four charges
12 against Robert Pickton for that attack were
13 dropped by the Port Coquitlam Crown counsel, and
14 that dropping of the four charges led directly to
15 many more women unnecessarily being brutally
16 murdered by Mr. Pickton.

17 Further, when Ms. Anderson significantly
18 decided not to testify at the Missing Women
19 Commission of Inquiry, it seemed to indicate that
20 other killers could be involved. And, and we
21 should note that the Vancouver Police Department,
22 VPD, had a file of over 500 serious violent
23 predators operating in the Greater Vancouver area.

24 As Detective Constable Lori Shenher of the
25 VPD said, nobody in government or police or

1 anybody else seemed to care enough to protect
2 these vulnerable women.

3 Crab - Water for Life Society became involved
4 in the missing women issue after reading a short
5 article in the *Vancouver Sun* newspaper that 27
6 Downtown Eastside women were already missing. How
7 did so many women go missing before the public was
8 notified and alerted?

9 I would like to read another quote.

10 Police described the stroll as a world of
11 drugs and prostitution
12 and most of all as a space of Aboriginality.

13 by Sharene Razack

14 From: Gendered Racial Violence and
15 Spacialized Justice:

16 The Murder of Pamela George.

17 Although it is difficult to say, systemic
18 sexism, racism and prejudice against people on low
19 income led to the deaths of at least 69 missing
20 and murdered women of the Downtown Eastside.

21 It was also difficult to listen to some
22 senior VPD officers assert that they had a first-
23 rate investigative team and they would have done
24 nothing differently. Clearly, there was
25 indifference, incompetence, and too often there

1 was even prejudice shown towards the missing
2 murdered women of the Downtown Eastside and their
3 families by both the VPD and the RCMP.

4 Just as the Pickton farm in Port Coquitlam
5 was a geographical location for murder, I allege
6 that the Astoria Pub on East Hastings, which was
7 frequented by Pickton, was another geographical
8 hot spot. For two decades, I have believed and
9 alleged that there was another active serial
10 killer, other than Robert Pickton, who also
11 frequented, this person frequented the Downtown
12 Eastside and the Astoria Pub.

13 Significantly, if these vulnerable street
14 women had been able to speak and to be listened to
15 by the VPD and the RCMP, they would probably be
16 alive today. And on that basis alone, Crab -
17 Water for Life Society has not supported the
18 legalization of prostitution, but rather has
19 supported the decriminalization of prostitution.

20 And we strongly support a Canada-wide inquiry
21 into missing women that is being called for by the
22 Assembly of First Nations. In a letter from the
23 Assembly of First Nations on April 12th, 2012,
24 they state:

25 We call on the support of all Canadian

1 authorities to facilitate the United Nations
2 Committee on the Elimination of
3 Discrimination of Women in conducting their
4 own independent investigation into the
5 tragedy of missing and murdered women, as
6 well as all other mechanisms that may be
7 required.

8 Further, the Native Women's Association of
9 Canada, in a letter dated March 7th, 2012, stated:

10 The NWAC still hopes that individual families
11 will find some answers through this inquiry
12 and will continue to seek real and long-
13 lasting solutions to the grave and systemic
14 violations of the human rights of Aboriginal
15 women and girls.

16 Our recommendations for consideration, and
17 this is partially written by Kelly White
18 originally. I gave you a copy, Mr. Commissioner,
19 way back at the Japanese Hall on Alexander Street.
20 You received the only copy. I had lots to hand
21 out but I was too scared to at the time. And this
22 is the final version, which I revised.

23 Our recommendations for consideration:

24 Due to the tragic events that befell 69
25 missing and murdered women of the Downtown

1 Eastside, it may be time to consider
2 decriminalization of prostitution. Thereby, pimps
3 and johns would be more actively prosecuted but
4 sex trade workers would no longer be legally
5 targeted.

6 The critical lack of on-street civilian youth
7 workers and sufficient police youth liaison
8 officers has been very deadly to the vulnerable
9 youth of the Downtown Eastside.

10 Regarding police, under "recommendations".
11 Geographical profiling using computers needs to be
12 utilized to trace missing people through, for
13 instance, "red flagging", people who do not pick
14 up their Welfare cheques.

15 We believe that more sensitivity training for
16 street police would be beneficial. We support a
17 community, independent civilian investigative body
18 for dealing with allegations of police misconduct.

19 And I heard you make a comment earlier, on
20 another day, Mr. Commissioner, where you said that
21 when there is allegations of serious police
22 misconduct, of course the police have to begin the
23 investigations. We understand that. But later
24 on, this system we have now is not working, and I
25 think the public is really starting to begin to

1 lack trust in the police.

2 THE COMMISSIONER: Yes. But what I also said was that, that
3 whatever investigation that police do --

4 MR. LARSON: Hm-hmm.

5 THE COMMISSIONER: -- has to be monitored by independent
6 civilian authority.

7 MR. LARSON: All right.

8 THE COMMISSIONER: And, and it may well be time to move to
9 another type of process whereby the police are not
10 involved in the investigation at all. But those
11 are things that the public and the governments
12 have to consider. Because many other provinces
13 have moved to a different model where the police
14 are no longer involved in the investigation
15 process, and it may well be time for this province
16 to, to move to that model as well.

17 At the end of the day, the bottom line really
18 is that the police have to be accountable to
19 civilian authority. They have to be responsible
20 to the community and, and they need to justify
21 their actions to the community. In any democracy,
22 that's, that's a fundamental premise.

23 Go ahead.

24 MR. LARSON: Thank you for your comments.

25 We are dismayed that 27 street women of the

1 Downtown Eastside were missing or murdered before
2 the police went public in the newspapers with this
3 information.

4 We support the Sister Watch program of the
5 Vancouver City Police, and the telephone number is
6 (604) 215-4777, Website, VPD.ca.

7 We support the reinstating of the Community
8 Native Police Liaison Office.

9 Regarding social service recommended
10 improvements. We need three levels of government
11 intervention to produce more shelters, facilities,
12 permanent housing, support/educational programs
13 for sex trade workers and low-income single
14 mothers and youth. In particular, inner-city
15 aboriginal youth need these facilities.

16 We recommend significantly more detox
17 facilities for vulnerable youth and women. These
18 new facilities should be both quickly accessible
19 for both short and long-term detox.

20 Outreach camping and healing programs for
21 inner-city youth, in particular aboriginal youth,
22 need to be made available.

23 We recommend educational and awareness
24 programs be taught in both primary and secondary
25 schools regarding First Nations culture.

1 We recommend professionally-trained
2 aboriginal/civilian liaison advocates be provided
3 to facilitate families who have experienced the
4 recent loss of a family member.

5 We reassert the need for a repatriation of
6 the 33 victims' bodies of Robert Pickton to their
7 families. We urge the VPD and RCMP uphold their
8 pledge of August 29th, 2010 ceremony at Crab Park,
9 Vancouver, BC, Canada, to pay full costs of the 33
10 funerals and all victims' families' travel costs
11 involved and for memorials.

12 Finally, Crab - Water for Life Society
13 traditionally holds an annual memorial for the
14 missing women at Crab Park, foot of Main Street,
15 Vancouver, BC, on February 14th, 11 a.m., also
16 known as St. Valentine's Day. There is a memorial
17 boulder at Crab Park inscribed to and dedicated to
18 the permanent memory of the missing women of the
19 Downtown Eastside and this is where our memorial
20 is held. We also have a dedicated memorial
21 boulder in memory of Wendy Poole, Tsay Key Dene,
22 People of the Mountains. We wish her case file to
23 be actively reinvestigated by the VPD and RCMP.
24 Our society designed and had installed both of
25 these memorial boulders.

1 I would like to close with this quotation
2 found hanging in the Aboriginal Front Door Society
3 located near Main and Hastings.

4 They are to be cherished and protected, even
5 at the risk of your life. They will know
6 sadness but will overcome it. They will know
7 alienation for they see past and through this
8 reality. They will endure where others
9 cannot. They will survive where others
10 cannot. They know love even when it is not
11 shown to them. They spend their lives trying
12 to communicate the love they know.

13 By Ann Cameron

14 From Copper Woman - The Children of
15 Happiness.

16 Due to some recent e-mails from Kelly White
17 to this commission, which were sent to everybody,
18 I want to say they're totally untrue, and I would
19 ask you, Mr. Commissioner, not to have any
20 comments about me or our society --

21 THE COMMISSIONER: Well, I'm not --

22 MR. LARSON: -- in this hearing.

23 THE COMMISSIONER: Well, I just don't want to get involved in
24 any dispute you may have with Ms. White.

25 MR. LARSON: That is what I am also saying. I don't want to --

1 THE COMMISSIONER: I just want to, I want to thank you for
2 your --

3 MR. LARSON: Thank you very much.

4 THE COMMISSIONER: Thank you.

5 MR. LARSON: I appreciate, Mr. Oppal, you bringing this inquiry
6 to a close and, and to fulfilling your mandate.
7 Thank you.

8 THE COMMISSIONER: Thank you, Mr. Larson. Thank you.
9 Yes, Ms. White.

10 MS. WHITE: **(EAGLE SONG SUNG IN COAST SALISH LANGUAGE)**

11 I thank the commissioner in the highest of
12 the honours about creating this assembly that the
13 public demanded, this public inquiry. I would
14 like to acknowledge our Salish territories and the
15 appreciations and respects that the commission, at
16 the creation of the commission, that the entire
17 public inquiry staff have made acknowledgement of
18 the territory and made effort to that
19 acknowledgement of our territories with opening
20 and closings of the -- of this commission.

21 I would like to acknowledge all of the people
22 -- participants at the inquiry, thank the inquiry
23 for their expertise, thank all of the lawyers for
24 their participation and their expertise throughout
25 the area. I would like to acknowledge the

1 families of the 33 women murdered.

2 I would like to thank Don Larson for his, his
3 writing, although I don't agree with any
4 participation of prostitution of our people. I
5 don't think it's right that anyone be a prostitute
6 or have a safe place for prostitution. That's my
7 only disagreement with our text there.

8 I have to say that I would like to appreciate
9 and acknowledge the families at this time and
10 invite the commission to, to stand in respects.
11 In reality, those 33 women who were murdered are
12 our own sisters, they represent our own mothers,
13 our own nieces, our own daughters, our own
14 granddaughters. That's who those 33 women
15 represent to me, my understanding. And
16 acknowledgement of the families, commissioner, I
17 invite the commission in total to stand up and
18 acknowledge those families. They weren't all able
19 to attend here, but I would like to acknowledge
20 the families there and condolences and, and the
21 feelings that they have had to go throughout this
22 whole commission and I invite the commission to
23 stand now for a few seconds of silence, maybe 33
24 seconds of silence. I am not going to put a stop
25 watch on, but I invite that respect now for the

1 whole commission.

2 **(33 SECONDS OF SILENCE)**

3 MS. WHITE: All right. Thank you, commissioner. I thank the
4 entire inquiry for that respects to the families.
5 I understand hearing the families must be hard. I
6 wouldn't condemn any one of the public inquiry
7 staff to go through that torture of listening to
8 the evidence, trying to create a semblance of
9 justice of why there is a stay of proceedings of
10 the murder of our women.

11 At this time, I would like to ask my sister,
12 Marlene George, to stand with me. And I don't
13 expect the families to stand up, but I would ask
14 my sister if she would help me.

15 I would like to thank the commission, too,
16 before I start for offering the families
17 acknowledgement as, as much as possible throughout
18 this commission. That's a hard thing to do.
19 There is many verbal apologies and oral apologies
20 on a, mostly on a daily basis on, on the part of
21 the police on the stand, and I appreciate that,
22 that that is respected and appreciated, as the
23 families need the most support as possible. And,
24 and if this was turned around and the people in
25 the public inquiry staff, if it was their women

1 that were murdered, I somehow think this would be
2 a better outcome.

3 I would like to acknowledge the
4 organizations, commissioner, and the people who
5 were instrumental in making this inquiry possible,
6 including some of the organizations: The BC
7 Liberties Assembly of First Nations, Walk 4
8 Justice, Union of BC Chiefs, the Memorial March
9 Committee, Amnesty International, Native Court
10 Workers of BC, the First Nations Summit, the
11 Vancouver Area Network of Drug Users, BC Ending
12 Violence Associations. These social justice,
13 human rights and antiviolence groups are only a
14 few of the 29 that made this inquiry possible by
15 public demand for 20 years, commissioner,
16 demanding the end of violence against our women in
17 Downtown Eastside. And they were not permitted,
18 however, by the government to apply crucial
19 evidence that would have assisted so there would
20 not be a stay of proceedings. Those, those
21 organizations were -- are instrumental, that meet
22 with the families on a daily basis and that serve
23 the, that service delivery on the families on a
24 daily basis. And, and I -- it's just -- it seems
25 against justice that all of those groups weren't

1 called at the first hearing that, that ended out
2 with the stay of hearing -- a stay of charges.

3 In theory, justice for all means that justice
4 should have been equal for everyone, and that was,
5 in my observation, would, would include that all
6 the women's families would be here. And, and I
7 understand that in the justice system, that every
8 one that is murdered has a right to a defence,
9 however, some of the families aren't represented
10 here, and I just had to, had to add that.

11 And the chosen ones, who have been privileged
12 to participate and review evidence from 1997 to
13 2000, including the experts at the table here, it
14 seems to be a hard thing, to go through all of
15 those documents. And those who were denied legal
16 representation, but should have been here, include
17 the human rights and social groups here I
18 mentioned earlier. And just to add, their boycott
19 of the commission reaffirms the process that the
20 public were denied equal access, according to my
21 understandings in the rule of law.

22 I am not a lawyer. I haven't participated on
23 the stand. This is my very first time making a
24 public inquiry participation. So, I hope that Mr.
25 Larson and my participation is helpful to the

1 inquiry process, to create recommendations that
2 abortion of justice will not happen again in the
3 Downtown Eastside.

4 We didn't plan to attend a public inquiry. I
5 was the most adamant to not have a public inquiry,
6 but I had to acknowledge those groups that made
7 this possible, commissioner. And I think that the
8 legal representation for the families in total
9 would have, would have enhanced the ability of why
10 a stay of charges would have happened and those,
11 those -- now that's after the fact. They weren't
12 here.

13 Having sat here and repeatedly heard our
14 aboriginal lawyer, Robyn Gervais, be shut down by
15 the commission when she represented our aboriginal
16 view is hurtful to the families, to my
17 understanding. And a lot of the process here is
18 hurtful to the families. But we're not here on a
19 personality issue. We are not here as defendants.
20 I recall you said earlier that we're not
21 defendants here to the staff, that this is a fact-
22 finding mission. And, and I think that if, if
23 there was, if there was equal justice, that the
24 aboriginal lawyer may have not taken it on herself
25 onus to, to leave this crucial assembly trying to

1 create justice out of a lobotomy of justice that
2 created the stay of charges previous to this
3 hearing, commissioner.

4 Having heard some of the evidence here
5 throughout the fall, winter and spring, including
6 the millions of documents, we weren't able to
7 provide a -- I wouldn't know how to look at those
8 files or what to ask for. So, I haven't seen any
9 of those. But I think there was a -- hearing the
10 evidence on the stand, the shredding of evidence,
11 claims that it was unnecessary to keep files
12 because they were retired, I thought murder
13 evidence stayed on the legal process. So, I
14 wouldn't know, because I am not involved in the
15 legal system.

16 But constant statements here that "it was too
17 far back, I can't remember," and jokingly saying,
18 "I'm an old fella, I was just following orders,"
19 remains hard on the soul of the families and, and
20 the public.

21 And evidence was heard here that, and we've
22 demanded publicly that way before '97 to 2002, but
23 we're talking about '97 to 2002 here. So,
24 evidence is heard here how world-renowned serial
25 killer profiler Kim Rossmo was demoted, and where

1 he went, I don't know if there was a transfer, and
2 after outlining the reality that there were three
3 possible serial killers active in the Downtown
4 Eastside.

5 And that there was the Vancouver -- and then
6 there was testimony of a policewoman clerk who was
7 reported very rude and racist and demeaning to
8 family members who reported their loved ones
9 missing that led to go nowhere. And, and in her
10 closing statement, she stated, "I felt used" by
11 her own forces. And unfortunately, the demeaning
12 of the family, of those families that were
13 reporting their missing and beloved sisters,
14 women, daughters, nieces, families, that didn't
15 enhance the ability to, to stop women from going
16 missing.

17 And also, listening to submissions throughout
18 the whole three seasons here and now we're coming
19 to a conclusion, I didn't hear anyone's
20 submissions to take responsibility. And in order
21 to take an illness, commissioner, a sickness of
22 mind of a murderer, we have -- I understand that
23 we have to take everything in, in whole and take
24 responsibility of what happened. Nobody is
25 perfect here. Nobody has a magic carpet or a

1 crystal ball that, you know, to make everything
2 perfect. I don't know anybody in the world that
3 doesn't have racism in the heart or sexism in the
4 heart, sometimes when they're reflected onto them.
5 But I have heard repeated denials up here, you
6 know, of activities by police forces that were --
7 and you said yourself there, that were to the
8 staff, "We're not here defending ourselves." The
9 staff acted as defendants rather than fact-finding
10 missionaries.

11 Uhm, I would like to introduce you,
12 commissioner, and the staff of the public inquiry,
13 we women are not the enemy of the state, but there
14 is a war on our women and I am here to put our
15 best effort to a ceasefire on the war of our women
16 in the Downtown Eastside, and greatly appreciate
17 that expertise of all those that made testimony
18 here to make that ceasefire happen.

19 We have the hearings of several murder cases
20 that are going on, the unsolved murders, and, and
21 implementations that there could be other serial
22 killers. Well, where's their arrest? I don't --
23 we have the Clifford Olsons. We have the missing
24 women serial killers. The ongoing murders, you
25 know, it's stated here that the disappearances and

1 the murders are ongoing, on this stand, in
2 testimony, commissioner.

3 And I don't want to demean the families or,
4 or belittle the families' efforts of being here,
5 or, or the participants that, that made evidence
6 at this, this inquiry. I would like to thank the
7 last man standing, which was a woman who was
8 assigned to the file without support, and it was
9 blatant in the evidence here on the stand. I
10 would like to make thanks to the rookie that broke
11 this case open. Our youth, it shows that our
12 youth have to be listened to and adhered to.

13 And it shows that the higher-ups involved in
14 this case have no remorse and full of denial,
15 "It's somebody else's fault. It isn't my fault."
16 On the stand, I have heard evidence of the
17 government representatives, Mayor Owen and Phillip
18 and representative Dosanjh, that they put
19 disclaimers that the government doesn't oversee,
20 the Police Board doesn't oversee, the police are
21 on their own.

22 So, it's like where -- the evidence has been
23 portraying denial of responsibility and somebody
24 is responsible. In fact, we are all responsible
25 for the safety of women in the Downtown Eastside,

1 even when it gets to the stand.

2 It seems like it's a police state in this
3 room here, because the public were denied by the
4 government access to lawyers and, and to put their
5 evidence on. And, and that attitude of the
6 government by denying the public servants that are
7 immediately involved with the families and
8 immediately taking their concerns, taking them to
9 the hospitals, taking them to the, the bad date
10 records, taking them to counselling needs to
11 support their families, it's a crying shame and is
12 a part of a lobotomy of justice that the Canada
13 government refused to let the public be
14 participant. And that is one of the treasons that
15 there was a stay of charges, because of the things
16 that happened in that court. The public were
17 denied interviews or access, or not denied, but
18 the public weren't asked for input, thus a stay of
19 proceedings.

20 And I would like to acknowledge,
21 commissioner, all the valuable time that the
22 people researched, that did have the prestige to
23 put evidence on the table here, I would like to
24 acknowledge them and thank them for the best way
25 they could involve themselves in regard to the

1 indiscriminate acts of aggression that caused the
2 murder, the brutal murder of our 33 families.

3 And I would like to recall this case of 33
4 women murdered and disappeared in Downtown
5 Eastside. I would like to recall as well the
6 discussion of questions of, of parties at Piggy's
7 Palace, the circle of acquaintances, including
8 Hells Angels, off-duty police officers, high-
9 ranking official government representatives,
10 including 1997 to 2002, because that's what we're
11 engaged to talk about at this time. However,
12 those were publicly known way before 1997 and
13 after 2002.

14 And on the stand here, we hear that missing
15 and murdered are still ongoing and it's an
16 unacceptable fact, that it's jokingly covered on
17 the stand here.

18 Regarding equal justice, commissioner, equal
19 justice and covering crucial matters such as
20 murder of our 33 beloved women who reside in
21 Downtown Eastside and are the families of our
22 organizations and the non-profit societies and now
23 the families of this commission, the souls of
24 these women will not go away from anyone that
25 presented evidence and that were denied evidence.

1 I just wonder why -- at the beginning of this
2 inquiry, I wondered why the government sanctioned
3 our partners in Sister Watch, the Vancouver Police
4 Department, to hire one of the firms that
5 represented Robert Willie Pickton. And it gives a
6 guise of explosion to alleged equality, justice
7 for all. I just think that there are so many law
8 firms in the country, why was it necessary for the
9 government to sanction one of the representatives
10 of Robert Willie Pickton to represent -- the firms
11 to represent the Vancouver Police.

12 How much money was made by the murder of
13 these women in courts, in the court that provided
14 the stay of proceedings? On the national,
15 provincial and local groups, how much money did
16 this court make on the blood of the 32 women
17 involved? How much money did the, did the
18 families have to suffer on the national and
19 provincial and local levels while they saw the
20 flashes on the media releases that were some in
21 discussion here?

22 You couldn't con, conquer the families' soul
23 and spirit that's still here and we stand strong
24 with the women, families of the 32 women involved
25 here. And I stand, too, for the seven families

1 that are not represented here. We will not be
2 weakened, yet we suffer indiscriminate acts of
3 aggression having the public be forced to be not
4 involved, because of refusal of the government's
5 equality of justice that would not let the public
6 participate in this public inquiry that created an
7 alleged semblance, alleged semblance of justice.
8 What credibility is there, or lack of credibility,
9 when our service delivery people that have most of
10 the answers of the women involved that went
11 missing and that ended up murdered, they weren't
12 interviewed by any of these forces. Why? Why did
13 that sickness of mind not reach out to the
14 relevant people in our communities? That is a
15 treason also, a part that created a stay of
16 charges on the murder. And why are we sitting
17 here discussing this when that judge should be
18 reprimanded. Where has that judge been
19 questioned? We can't question judges?

20 And finally, commissioner, I would like to,
21 to thank the families for their strength, their
22 endurance, and they will go on after this, but I
23 would like to think that there is going to be a
24 semblance of justice created for those families by
25 the end of your statements and in October. Now

1 the families are left hanging. For that much
2 longer, their souls are, are going to be tormented
3 over and over, every day, until, hopefully, good
4 recommendations comes out of the minute statements
5 that were here.

6 And the public represent a protest of the
7 murders and the missing of these women well before
8 1997. We heard on the stand, "Oh, I didn't know
9 there was missing women. Oh, I didn't recall.
10 Oh, it wasn't brought to my attention." Yet they
11 read the newspaper headlines every day.

12 And at our, at our, at our demonstrations, we
13 started with one commissioner. When my cousin was
14 dismembered outside the police station, we started
15 with one drum and we took our ceremonies out there
16 and found the body parts of my cousin in 1990.

17 So, it is no secret to any of the forces that
18 made evidence here that there was missing and
19 murdered going on. And don't tell me that
20 indiscriminate -- that there is no sexism and
21 racism and belittling of the public, because the
22 public aren't here. It's relevant.

23 No one takes responsibility of what happened
24 here. This is not a, a, a place to stroke the
25 egos or protect reputations. We're here to solve

1 what happened to our 33 women. If it was your
2 daughter, commissioner, if it was the head of the
3 RCMP or the head of the police department, this
4 outcome would be way different. That's a blatant
5 marginal magnifying glass in the world community
6 that makes our police forces the laughingstock of
7 the world community.

8 How many serial murders are going on here?
9 How many evidence on the stand said, "Yep, women
10 are going missing. Yeah, there are still
11 murderers out there." Come on. We can do better
12 than that. We can do better, by inviting the
13 public, by giving respects to the family lawyer.
14 One lawyer cut off how many times? Mr. Gratl was
15 cut off how many times representing the public,
16 representing our aboriginal lawyers? Please.
17 Give me any judge or lawyer or yourself that would
18 be able to look at millions of documents, prepare
19 witnesses with the whole town, service delivery,
20 human rights and social justice groups boycotting
21 the process. They did the impossible and they're
22 here and I thank you, and I thank you, and I thank
23 you, commissioner.

24 The soul of the country is raw. The soul of
25 the country faces unanswered questions, where,

1 what happened to the women, why. So, I recall
2 last week battles on the stand, "Give up your
3 statement, there is a coverup here." At the end
4 of the day, I heard on the stand, "Give up your
5 statement, there is a coverup here." Well, we're
6 not here for personality contests. Evidence is
7 supposed to be on the table, so in fairness. It
8 wasn't fair, in my -- in observing the process
9 here.

10 And in fairness, the war of our -- on our
11 women, Downtown Eastside was well-advertised
12 before 1997. On the stand, there is repeated
13 statements, "I didn't know, I wasn't aware of a
14 missing or murdered" from all the police academies
15 involved. Yet, our memorial group started with
16 one drum in 1990 that added up to thousands of
17 drums. In our town alone, way before 1997. So,
18 how could the police academies look at themselves
19 standing on this stand and say, "Oh, I didn't
20 know, I wasn't aware." Nine cities in this
21 country march because the blood of our women are
22 pimped off and prostituted off and court processes
23 that don't come to terms with justice for our
24 women.

25 Commissioner, I must commend you for sitting

1 through all this brutal information and I thank
2 you for reminding the people that were given the
3 permission to provide evidence. You're a constant
4 reminder that they're not defendants here. You
5 are seeking just -- you are seeking just evidence
6 on the stay of charges so that this would not
7 happen again.

8 And I leave it to you, commissioner, to
9 remember that when our families came here, we
10 unfolded in this Coast Salish language. The
11 murders of our women are still ongoing. There was
12 a process that created a stay of proceedings as
13 well, because the Government of Canada would not
14 investigate reserves in Mission and Tsawwassen
15 that bought landfill from the Pickton site. Why?
16 Because they said it wasn't possible, there wasn't
17 enough money. Well, how much money has been spent
18 on these courts? It's not relevant that somebody
19 might have evidence that bought landfill off of
20 Pickton so that other body parts and remains could
21 be found there?

22 I want to thank the families in closing.
23 Their recommendations, their strength of being
24 here continuously for 20 years and witnessing
25 lobotomies of justice after lobotomy of justice.

1 They're still seeking justice.

2 Recommendation, Canada government could have
3 accepted the declaration of indigenous peoples way
4 before 1997 and this may have not have happened,
5 if the justice systems would look at themselves
6 equal to all the civilians. Nobody is above the
7 law, but it appears here that we're in a police
8 state. There is only police on the stand, mostly.
9 We're not a police state. The murder victims were
10 not equally represented since the beginning of
11 those trials. And it must be -- we sit there on a
12 vigil around the clock because bodies are
13 uncovered, 750. So, the government is not
14 changing their attitude.

15 And it must be remembered, we reported Robert
16 Pickton in 1972 and '73 packing garbage bags,
17 walking through the reserve every day burying
18 things in the tide. Police were called on,
19 because there was a body burning outside the
20 reserve. People died drinking because there was
21 no justice. The police, "Ah, get out of here.
22 We're taking care of it." Well, those body
23 burnings, they identified Robert Pickton in 1972
24 and 1973, and here we are marginalized to talk
25 about 1997 to 2002.

1 What I, in closing, commissioner, add that
2 the justice system in total and the hierarchy
3 system in total needs to be turned inside out and
4 they must come to terms that police forces,
5 courts, judges are not above the law, partying
6 with Hells Angels or not.

7 **(COAST SALISH LANGUAGE SPOKEN)**

8 At the beginning, we brushed off these
9 workers of the commission with cedar, with our
10 sacred ways, that no evil come on them, that all
11 be protecting the families, the families' souls at
12 the beginning of the inquiry. At the middle and
13 the end, we have our Salish ways out there at
14 sunrise every day and at sundown. Every day, we
15 have our closing out there on our own for the
16 protection that truth prevail and that justice be
17 created by this assembly. And then we go home and
18 then put our vigil out so that we could tend to
19 the burial sites.

20 People of Government of Canada look at us as
21 commodities, as profit. Lastly, we're in the
22 unceded territories of the First Nations. 1973,
23 there's a 99-year lease of the lands of British
24 Columbia, before Columbus for some, and British
25 Columbia for others. That 99-year lease was due

1 in 1973. This inquiry is in the aftermath of the
2 Gustafsen Lake where police forces touted publicly
3 of spending their entire police budgets on an
4 armed occupation of elders and mental health
5 patients, less than 30. That was not necessary.
6 Neither was Oka and neither was Chiapas.

7 So, I compel all of those that are involved
8 here that profited off the blood of our women,
9 that's the way I look at it, the biggest Welfare
10 recipient of the country, this commission, on the
11 public's purse, besides the Queen.

12 The Queen and her disciples must come to
13 terms that we are a people that opened our house
14 and our land to a sick people that came here, and
15 we still hold our hands up in honor of every
16 single one of the nations on a daily basis that
17 work as public servants for the peoples.

18 In closing, sir, and last I add, I would like
19 to take the last 30 seconds to invite the
20 commission to rise for their own women, their own
21 mothers and daughters, nieces and granddaughters,
22 and think of it, just think if it was your 33
23 women, but acknowledge the families. It was their
24 33 women murdered, and in that, I will take my
25 final 33 seconds and invite the commission and

entire to stand in silence respecting the families involved.

(COAST SALISH LANGUAGE SPOKEN)

In the beginning, when we approached the, the public approached for a public inquiry, we said that we love our women and our men. With that, it's up to you to declare the evidence that is permitted here and try to create an assembly of justice that this will not happen again. And we pledge as, as, as civil servants, we combat the war on our women and it will end with public participation in courts or not.

Respects to the families.

(PRAYER SONG IN COAST SALISH LANGUAGE)

(33 SECONDS OF SILENCE)

With that, commissioner, thank you.

THE COMMISSIONER: Thank you. Thank you for attending, Ms. White.

MS. WHITE: Lastly, we extend appreciation and extend respects to the staff here and invite the commission to a memorial for the families tomorrow at Crab Park --

THE COMMISSIONER: Yes.

MS. WHITE: -- as one. We are one family, we are one mind and we will move forward in a good way. Thank you for your time.

1 THE COMMISSIONER: Thank you for attending. All right.

2 MR. VERTLIEB: That concludes the presentations for today.

3 Tomorrow we have approximately three hours of
4 submissions and I am going to suggest, if we may,
5 that we start at 9:15. It would be Mr. Woodall,
6 and he I understand will need slightly less than
7 40 minutes allotted, like other speakers today who
8 have not taken the allotted time, --

9 THE COMMISSIONER: All right.

10 MR. VERTLIEB: -- and some of the speakers tomorrow may well
11 not take their allotted time.

12 The pressure is to be finished in time
13 because, as Ms. White just indicated, there is the
14 event at Crab Park and I know, Mr. Commissioner,
15 that you wish to attend.

16 THE COMMISSIONER: Yes.

17 MR. VERTLIEB: So, we do need to be finished no later than 1:00
18 tomorrow so that you can be in attendance, as you
19 wish to be, on the invitation of those organizers
20 for 2 o'clock.

21 THE COMMISSIONER: Yes.

22 MR. VERTLIEB: So, if we start at 9:15, that should be ample
23 and then we will conclude tomorrow on schedule.

24 THE COMMISSIONER: Thank you, Mr. Vertlieb.

25 MR. VERTLIEB: Thank you.

1 THE REGISTRAR: This hearing is now adjourned for the day and
2 will resume at 9:15 tomorrow morning.

3 **(PROCEEDINGS ADJOURNED AT 3:35 P.M.)**
4
5

6 I hereby certify the foregoing
7 to be a true and accurate
8 transcription of the proceedings
9 herein to the best of my skill
10 and ability.
11
12
13

14 Gabriele Heise, RPR
15 Official Reporter, BCSRA No. 399
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