

1 **Vancouver, B.C.**

2 **April 19, 2012**

3 **(PROCEEDINGS RECONVENED AT 9:30 P.M.)**

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

5 MR. VERTLIEB: Mr. Commissioner, the witness today is Mr.
6 Romano, who we've heard was administrative Crown.

7 THE COMMISSIONER: Yes.

8 MR. VERTLIEB: That is the scheduled witness for the day, and
9 based on the estimates we've been given it will
10 not be the full day.

11 THE COMMISSIONER: Okay.

12 MR. VERTLIEB: And that would leave some time at the end of the
13 day if there's any need to discuss any other
14 issues. So perhaps Mr. Romano could take the
15 witness stand, please, and we can commence his
16 evidence.

17 THE REGISTRAR: Good morning. Would you just turn on your
18 microphone, please.

19 **RICHARD ROMANO: Affirmed**

20 THE REGISTRAR: Would you state your name, please.

21 A Richard Romano, R-o-m-a-n-o.

22 THE REGISTRAR: Thank you. Counsel. You may be seated.

23 THE COMMISSIONER: You may have a seat.

24 A Thank you.

25 **EXAMINATION IN CHIEF BY MR. VERTLIEB:**

1 Q Thank you, Mr. Giles. Mr. Romano, let's deal with
2 your background in the law. You were called to
3 the bar in 1982. Where did you do your law?

4 A May 10th, 1983, I was called to the bar.

5 Q Thank you. And where did you study?

6 A I articulated with a law firm in New Westminster,
7 Baumgartel Gould Tretiak, and after I completed my
8 articles I spent five and a half years with them.
9 January the 1st, 1989, I commenced work with the
10 Crown counsel office. I was in Langley for a year
11 as a trial Crown. That was followed by a short
12 stint in Maple Ridge for four months as trial
13 Crown. I then went to Whalley, and I was the
14 administrative Crown, the trial Crown. I was the
15 only Crown there for the youth court in Whalley.
16 And then when the new courthouse was built in
17 Surrey in 1991 I moved to that courthouse for
18 about a year as a trial Crown and an admin. Crown
19 with respect to youth matters. And then in 1992 I
20 went to New Westminster for a couple of years.
21 One was trial Crown, one was admin. Crown and
22 trial Crown. August 1994 I went to Port Coquitlam
23 through until the fall of 2003 as administrative
24 Crown, and then I was -- left the administrative
25 Crown job and I did some trial work for a few

1 months, and in the beginning of March, middle of
2 March 2004 I went to New Westminster and I was the
3 Acting Deputy Regional Crown through until
4 December 2004 and then the acting title was
5 dropped and I was the Deputy Regional through
6 until December 2nd, 2005, when I was appointed to
7 the Provincial Court bench in Abbotsford.

8 Q Thank you. Tell us about the duties of an
9 administrative Crown, and you can be specific to
10 what you were doing from '94 till the fall of
11 2003.

12 A The vast majority of my time was spent doing
13 charge approvals and trial scheduling. In
14 addition I frequently went into court and did bail
15 hearings. I did the occasional trial. There was
16 also committees that I sat on and meetings that I
17 attended to. But as I said, the majority of time
18 was spent doing charge approvals and trial
19 scheduling.

20 Q And we've discussed charge approval as it exists
21 in British Columbia with your colleague, Ms.
22 Connor, so I am not going to take you through
23 that. There is written material from the Crown on
24 charge approval and what are the principles that
25 apply.

1 A Yes.

2 Q And you have perhaps seen those in your
3 preparation to give evidence before Commissioner
4 Oppal this morning.

5 A I have.

6 Q And those documents that are here before us are
7 consistent with your understanding of the charge
8 approval process and how you applied it in your
9 time in that job?

10 A Yes.

11 Q Thank you. Now, there is a report to Crown that
12 has been marked as an exhibit. I'm referring to
13 the binder of documents that everyone here is
14 familiar with. You have reviewed that report to
15 Crown concerning Robert William Pickton, and it
16 was dated April 1 of 1997?

17 A Yes.

18 Q And in there there's a handwritten document that
19 appears to have been written by you where the
20 original three charges were expanded to four
21 charges?

22 A That's right. I added the fourth count of
23 aggravated assault.

24 Q And you've reviewed that document, and that is
25 correct as far as your memory is concerned?

1 A Yes.

2 Q Thank you. Now, I wanted to then ask you about
3 the facts that were known to you at the time and
4 just cover this very briefly because it's not
5 really material to the terms of reference and the
6 job the commissioner has been asked to do, but
7 what were the facts, as you understood them, from
8 that report to Crown counsel?

9 A I'm not sure of the question. I mean, the facts
10 were as set out in the report to Crown.

11 Q So that would be part of your normal function, to
12 review the report, as you did, and consider
13 whether those charges were appropriate or some
14 other charges needed to be instituted?

15 A Exactly.

16 Q Was there anything about that case back in 1997
17 that was particularly of importance to you,
18 anything that you specifically recall from the
19 case back in that time frame?

20 A In terms of the charge approval, it was --
21 obviously it was a very serious case. I was well
22 aware of that having gone through the report to
23 Crown. But comparatively speaking, it was one of
24 many very serious cases that we had on a
25 consistent basis.

1 Q And approximately how many charge approval
2 assessments would you make in a year when you were
3 administrative Crown?

4 A I would say conservatively I would review 2000
5 reports.

6 Q In a year?

7 A Yes.

8 Q Thank you. When you were working on the case in
9 1997 as administrative Crown and considering the
10 charge approval process, did you know the name
11 Robert William Pickton?

12 A No.

13 Q Is there anything you knew about that name that
14 made you have special attention to the file?

15 A No.

16 Q Now, we've heard about the file being designated a
17 red file.

18 A Yes.

19 Q Who designated it as a red file?

20 A I did.

21 Q And what's the significance of that?

22 A The significance of a red file in the offices I
23 was a part of was basically to give anybody that
24 was going to be handling the conduct of the
25 prosecution to be aware from the outset that this

1 case needed advance preparation.

2 Q What does that mean in a practical way?

3 A Well, each trial Crown has their own approach to
4 their prosecutions, but I would hope and assume
5 that when they see the red file they're aware that
6 they've been assigned this file and they will take
7 the file well in advance of the trial date and
8 review it and make the decisions in terms as to
9 how they are going to approach the prosecution,
10 which would be prepare it well in advance of the
11 trial date in contrast to say something as simple
12 as a shoplifting case, which most Crown would be
13 quite capable of picking up on the day of the
14 trial and running the trial.

15 Q So just to help us understand what you mean by
16 well in advance, what does that mean to you?

17 A Well, I was also responsible for the trial
18 scheduling, and as I mentioned earlier, that was a
19 big part of my job, and I would get the judges'
20 rota from the judicial case manager probably three
21 to four months in advance. I'd get these
22 schedules of the judges, and then I would take the
23 courtrooms that were open or scheduled to be open
24 up to four months in advance, and I would draft
25 trial schedules, and on the trial schedules I

1 would note which Crown had conduct of the trials
2 in which courtroom, and also on the trial
3 schedules that the Crown would receive they would
4 see the red files that were noted because I would
5 always note the red file so that the Crown was
6 well aware when they received their schedule and
7 looked at their schedule, "I've been assigned this
8 red file," and for the most part I would hope that
9 they would have plenty of time to look at it in
10 advance, because the schedules I would draft and
11 distribute would be your next -- your trial
12 assignments for the next four months on average.

13 Q So on average a Crown who would be assigned a file
14 would have on the red files four months advance
15 notice to be preparing for that case?

16 A Approximately.

17 Q And is that what you mean when you say well in
18 advance?

19 A Well, perhaps I should add that there's -- for
20 those types of files, yes. There's another --
21 there's other files that are even a step above
22 that that we considered Major Crime files that
23 were prosecuted by the Major Crime Crown that came
24 from New Westminster, and those cases were
25 assigned even earlier than -- but they were also

1 red files.

2 Q So a Major Crime file might be a gang-related file
3 where there would be complexity?

4 A Certainly. All murders would be prosecuted by the
5 Major Crime prosecutors from New Westminster, but
6 there was other cases that attracted enough
7 attention that they would have been assigned to
8 some of the senior Crown out of the New
9 Westminster office.

10 Q Thank you. But in this case the red file would
11 have meant not that heightened sense of
12 preparation, it would be into what you've
13 described as a four-month window, more or less?

14 A Yes.

15 Q Now, do you have any recall of the assignment of
16 this file to Crown from the time you approved
17 charges until Ms. Connor took the file over
18 sometime after October 22 of '97?

19 A All I can say is what I gather from the record of
20 proceedings that the file made its way through the
21 normal course at that time, which was to go to
22 disclosure court in Burnaby and be reviewed by the
23 Crown at disclosure court in Burnaby, and once
24 that process was complete and if there were no
25 admissions or pleas to be had it would be set for

1 trial, and if I recall in reviewing the material,
2 the trial would have been set in September or
3 October for the February date.

4 Q Ms. Connor has told us that she received the file
5 by way of assignment sometime after October 22 of
6 '97.

7 A That's -- I think that's probably accurate.

8 Q But you have no independent memory of when the
9 file was assigned to her?

10 A No.

11 Q Did you have any dealings with the file once it
12 was -- left your trial assignment schedule?

13 A I wouldn't have even had dealings with the file at
14 the trial assignment scheduling stage. The
15 dealings I had with the file would have been on
16 April 1st when I approved the charges. I noted in
17 the material that I reviewed that there was
18 correspondence that I sent to the investigating
19 officer from Mr. Ritchie, defence counsel,
20 requesting further disclosure, and I would have
21 included a copy of that correspondence, forwarded
22 it in memo form to the investigating officer
23 saying, "Please be advised, here's a letter from
24 defence counsel requesting the following
25 disclosure. Please provide that disclosure as

1 soon as possible." By -- when I look at the
2 record of proceedings, the last time I would have
3 looked at that file would have been -- would have
4 been in and around April 20th, and then that file
5 was off of my desk and on its way to disclosure
6 court, and I would have never looked at the file
7 again.

8 Q Thank you. That's helpful to hear that. In terms
9 of the disclosure requests, were they requests
10 that one could consider in the normal course of
11 lawyer's work on behalf of an accused person?

12 A Yes.

13 Q There was nothing unusual about the requests?

14 A No.

15 Q Now, let's move then to the actual term of
16 reference that the commissioner's been asked to
17 deal with, and that is the facts surrounding the
18 stay of proceedings that was entered in January of
19 1998.

20 A Okay.

21 Q And you understand that the record indicates there
22 was a stay entered on January 26 of 1998?

23 A Yes.

24 Q And the reason we've asked you to come is to have
25 you give us the best recall you have of the facts

1 relating to those events.

2 A Unfortunately, I don't have an independent
3 recollection of the facts.

4 Q Let me just ask you some questions around these
5 events just so that we have your best evidence on
6 it.

7 A Sure.

8 Q Now, if there was going to be a stay of
9 proceedings on a serious case, such as an attempt
10 murder, tell us about the normal practice as it
11 would relate to the Crown on the file and you as
12 administrative Crown.

13 A Well, a lot of it depends on who the Crown is, but
14 in this particular case it was Ms. Connor, who I
15 was very confident in her decision-making ability
16 and judgment, and that's in large part the reason
17 she was assigned this case now that I look back on
18 it. It was a female complainant. I was always
19 concerned when it was a female complainant that if
20 at all possible I assigned a senior female Crown
21 to do the prosecution because in my experience
22 female complainants are more comfortable with
23 female Crown. So that went into the decision-
24 making process when I assigned the file, who's
25 best suited to prosecute this file, and it wasn't

1 a difficult decision at all because Ms. Connor was
2 the senior Crown in our office, she was female,
3 and she seemed like -- she was and in my opinion
4 is a perfect fit to prosecute that case.

5 Q Was there any requirement that if Ms. Connor as
6 Crown wished to enter a stay that she get your
7 approval?

8 A No. In terms of the policy, I don't -- my
9 recollection of the policy is I don't think the
10 Crown is required in that type of case to come to
11 me to get my approval that they're going to stay
12 it, but from a practical point of view the Crown
13 routinely came to me when they were going to stay
14 any kind of charge because -- the reasoning was
15 twofold: to make sure that I am aware that the
16 case is not proceeding, and also to make sure that
17 I'm liaising with the judicial case managers that
18 the trial time that's been scheduled for these
19 trials is going to be lost and we have to make
20 arrangements as to what trials might be moved as a
21 result of these trials being stayed.

22 Q So you would be informed because of your
23 administrative duties in making sure the court
24 time is being used properly?

25 A Yes.

1 Q If Ms. Connor wanted to, as it were, pick your
2 brain, discuss the file with you, was she free to
3 do that?

4 A Sure. I had an open-door policy. The Crown
5 routinely came into the office and asked questions
6 and consulted with me, but for the most part the
7 senior Crown, they didn't need any advice or
8 assistance. They were more than capable.

9 Q Now, we've heard from Ms. Connor, and the evidence
10 seems to suggest that the meeting with the
11 complainant, Ms. Anderson, was either on January
12 23 of 1998 or January 26 of 1998. Do you have any
13 recall of talking to Randi Connor, the senior
14 Crown, about the Anderson case back in the month
15 of January of 1998?

16 A No, I don't have an independent recollection of
17 talking to her.

18 Q And you have gone through the file materials
19 carefully with a view to seeing whether or not
20 your memory could be --

21 A Yes.

22 Q -- prompted, as it were?

23 A Yes.

24 Q Ms. Connor says she has spoken with you about it
25 and discussed the concerns. Do you accept that

1 that happened?

2 A Yes.

3 Q You mentioned she was senior Crown. We understood
4 from her that she had been practising for many
5 years, and that's what you refer to when you say
6 senior Crown?

7 A Yes.

8 Q In fact, was she senior to you at the bar?

9 A Yes.

10 Q Did you have any reason to have concern about her
11 decision-making ability?

12 A No. I was very confident in her decision-making
13 ability.

14 Q Now, I want to ask you about an area that's
15 emerged here, and that is that the Crown file was
16 destroyed. We've heard evidence from regional
17 Crown, who talked about the policy and how it
18 appears there was an error, the policy was not
19 followed. Are you informed about that issue
20 having occurred in the attempt murder case of
21 Pickton?

22 A I am now.

23 Q Did you have any involvement at all in the
24 destruction of the file?

25 A I had no involvement in the retention and

1 destruction of files. That was the support staff
2 that looked after that. The procedure was in
3 place. Whenever I went to the Crown offices I
4 simply -- the procedure that was in place remained
5 in place.

6 Q Now, I wanted to ask you another area. You
7 actually were the Crown who approved the first two
8 charges of murder against Pickton?

9 A Yes.

10 Q And that was done obviously after the search
11 warrant of February 5, 2002?

12 A Yes.

13 Q And we know that there were more charges added.
14 I'm not going to go into that with you. The
15 question I have for you is this. When you came to
16 deal with Pickton on charges of murder, did you
17 connect him back up to this event that had
18 happened in 1997? Did you, in other words, in
19 your memory say, "Oh, I remember him. He's --

20 A No.

21 Q -- the person I dealt with in '97"?

22 A No, I didn't -- well, I shouldn't say no because I
23 don't know what material I had in front of me in
24 2002. I don't remember if there would have been
25 something in the material I had in front of me

1 telling me that there was a stay of proceedings
2 entered in 1998 with respect to this individual.
3 But on seeing the file, no, I wouldn't have made
4 the connection that this Pickton that was the
5 named accused in 2002 was the accused from 1997.
6 I would need something further to tell me that. I
7 didn't have a memory of it.

8 Q That's what I was getting at. You had no memory
9 that this is the same person --

10 A No.

11 Q -- that you had dealt with in '97?

12 A No.

13 Q Are there any other facts that you can assist the
14 commissioner with concerning the stay of
15 proceedings entered by the Crown on January 26 of
16 1998?

17 A No.

18 MR. VERTLIEB: Thank you very much, sir.

19 A Thank you.

20 MR. CHANTLER: Commissioner, Neil Chantler.

21 THE COMMISSIONER: Yes.

22 **CROSS-EXAMINATION BY MR. CHANTLER:**

23 Q Mr. Romano, I am counsel for 25 families of
24 murdered and missing women whose disappearances
25 are the subject of this inquiry, and I just have a

1 few questions for you today.

2 A Sure.

3 Q I have a few less questions than I might have had
4 in light of your evidence that you don't have any
5 independent recollection of your meeting with Ms.
6 Connor, but I'd like to ask you a couple of
7 questions about the Crown's retention policy and
8 the destruction of the file. Have you made any
9 efforts independently to inquire into the
10 circumstances of the destruction of the file?

11 A No.

12 Q Okay. And would you agree that it appears that
13 the Crown's document retention policy has been
14 breached in this case by the destruction of the
15 file?

16 A I'd have to have the policy in front of me to
17 confirm that there would have been a breach.

18 Q All right.

19 A I mean, my -- it appears so from what I've heard.

20 Q And do you, Mr. Romano, have any knowledge at all
21 as to why it was destroyed rather than archived in
22 light of the policy?

23 A Only what I've read in Andrew MacDonald's
24 affidavit.

25 Q And can you describe for us what that affidavit

1 says on this issue?

2 A Well, if I had the affidavit in front of me I
3 could read it to you verbatim.

4 Q All right. I'll leave it aside for now. Now, I
5 appreciate that it's been more than 10 years since
6 these events transpired.

7 A 15.

8 Q Certainly. But this isn't the first time you've
9 been called upon to recollect your dealings with
10 Ms. Connor or the file; is that correct?

11 A Yes, it is.

12 Q Were you not in any way consulted after Robert
13 Pickton's arrest in February 2002 with respect to
14 your recollection and dealings --

15 A No.

16 Q -- with the file?

17 No. Now, you have given evidence that it was
18 your decision to identify this file as a red file?

19 A Yes.

20 Q You considered this a serious case right --

21 A Yes.

22 Q -- off the bat?

23 A Yes.

24 Q Do you feel that more could have been done in
25 reflection in the preparation stage of the file

1 for trial, and I anticipate an objection, and I'm
2 not asking you to question in any way Ms. Connor's
3 exercise of discretion, I'm merely asking if as a
4 matter of fact you see the amount of preparation
5 that was done as typical or perhaps as less than
6 typical?

7 MR. DOUST: Well, I am objecting to that on the basis of the
8 appeal court's judgment --

9 THE COMMISSIONER: Yes.

10 MR. DOUST: -- in *Davies*, Mr. Commissioner. That question has
11 no relevance whatsoever.

12 THE COMMISSIONER: I know that. I know that. In law under the
13 *Davies* decision of the Court of Appeal you, in
14 fact, are doing that, Mr. Chantler, so I have to
15 agree here with Mr. Doust.

16 MR. CHANTLER: Thank you.

17 Q Mr. Romano, the families we represent are
18 understandably very interested in an analysis of
19 this issue, and by the Criminal Justice Branch's
20 own admission as many as 22 of the women who were
21 ultimately identified to the Pickton property went
22 missing after these charges were stayed. My final
23 question for you is simply whether you think
24 there's anything on reflection that the Criminal
25 Justice Branch can learn from this file and this

1 experience?

2 A Sorry, can you ask the question again?

3 Q Is there anything the Criminal Justice Branch can
4 learn from this?

5 A I don't know.

6 MR. CHANTLER: All right. Those are my questions. Thank you.

7 THE COMMISSIONER: Thank you, Mr. Chantler.

8 **CROSS-EXAMINATION BY MR. ROBERTS:**

9 Q Good morning, sir. It's Darrell Roberts, and I
10 appear for Marion Bryce, who lost a daughter to
11 Pickton, and I have a couple of questions for you.

12 A Sure.

13 Q Could you turn, please, in the binder which
14 contains that report. I think it's marked as
15 Exhibit 133. My numbering could be incorrect.
16 It's the binder that's entitled "Stay of
17 Proceedings re Pickton 1997 Charges", documents,
18 etcetera.

19 A Okay. I've got it in front of me.

20 Q And there's a tab 14.

21 A Yes.

22 Q Which is identified in the index as correspondence
23 with Gibbons Ritchie.

24 A Yes.

25 Q Could you find a letter that's addressed to you,

1 sir, that's October 22, 1997, by Peter Ritchie to
2 you?

3 A Yes, I've got it.

4 Q Thank you. Now, my note of your evidence in
5 answer to a question or more of my learned friend
6 Mr. Vertlieb was that you last looked at the file
7 April 22, 1997?

8 A Yes.

9 Q This letter is October 22, 1997. It's addressed
10 to you. I must assume, unless you tell me I'm
11 wrong, that you received the letter and looked at
12 it?

13 A I'm not sure whether I would have -- whether the
14 support staff would have passed that
15 correspondence along to the trial Crown that was
16 assigned the file to respond to it or whether I,
17 in fact, looked at this letter and would have
18 given it to the Crown assigned to the file to
19 respond to the correspondence. That would have
20 been my usual practice. If there was someone
21 assigned to prosecute the file, I would simply
22 pass the correspondence along to them. There was
23 nothing unusual for me to receive a lot of
24 correspondence addressed to me simply because I
25 was the administrative Crown, but a lot of times

1 the support staff would sort of vet that
2 correspondence if there was Crown assigned to the
3 trials and have them respond to the
4 correspondence.

5 Q I could understand you having a specified policy
6 to that effect, but in my lifetime normally
7 letters that are addressed to me, I see them. I
8 may get somebody else to deal with them, but I see
9 the letter. Isn't that your policy too?

10 A Well, yes, I assume that that was what happened,
11 that I did see the letter.

12 Q All right. But wouldn't that put you into the
13 file to have a look at it to see what you are
14 going to do with the letter?

15 A Not necessarily because I would say if someone's
16 been assigned to this file that they can look at
17 the file and respond to the correspondence.

18 Q All right. If you'd take a moment to look at the
19 letter, would you, please, Mr. Romano.

20 A Sure.

21 Q Mr. Ritchie is writing this letter about having
22 attended a pre-trial conference. Did you attend
23 that conference as well in front of Judge Holmes?

24 A No. The only appearance I made on the file was on
25 April 8th.

1 Q Pardon me?

2 A The only court appearance I made on the file was
3 on April 8th, 1997, to conduct the bail hearing.

4 Q All right. So this would have been somebody else?

5 A There was a number of Crown in disclosure court
6 that appeared on that file.

7 Q All right. A couple more questions. The next
8 paragraph reads:

9 I am quite hopeful,
10 says Peter Ritchie,
11 that they will be lengthy admissions,
12 he's referring to the judge wanting or suggesting
13 that there be admissions in writing,
14 that they will be lengthy admissions made in
15 this case respecting issues such as medical
16 questions, continuity, photographic evidence,
17 I always fumble this word,
18 toxilological evidence and other matters.

19 And then he says:

20 Since I understand this file has recently
21 been turned over to you, I am writing to
22 request that the process of making admissions
23 be moved ahead.

24 The question I have for you is it's not an unusual
25 process for both counsel in a serious criminal

1 matter to engage in an endeavour to put some
2 matters in writing so to avoid having to call
3 evidence about them, right?

4 A Yes.

5 Q And the matters covered here are fairly extensive,
6 aren't they? I take it perhaps that requires you
7 to have some knowledge of the file, but you have a
8 case here of attempted murder, unlawful
9 confinement, a knife is involved, blood is
10 involved, drugs are involved, Corporal Connor or
11 under his supervision there were photographic
12 evidence taken, both still photographs and video
13 photographs taken of the interior of Pickton's
14 trailer, and items of evidence would have been, I
15 assume by reason of the reference to continuity,
16 been passed perhaps from one person to another, so
17 this would take a reasonable effort of time to
18 write up the admissions; am I not right?

19 A Yes.

20 Q And, of course, the law is that the Crown is to
21 write up the admissions and then seek the
22 statements of fact to be admitted and then seek to
23 see if defence counsel can agree to them; am I not
24 right? That's the law as expressed in *Castellani*,
25 for example. The Crown writes up the admissions.

1 Defence counsel can't write them up to suit
2 themselves and then put them to the Crown?

3 A Okay.

4 Q Do you accept that?

5 A Yeah.

6 Q All right. So it was the job of Crown counsel to
7 write up these admissions of fact?

8 A If there were going to be admissions, yes.

9 Q If they were going to be written up?

10 A Yes.

11 Q Well, let's take a moment and turn to another
12 letter from Mr. Ritchie, please. January 13,
13 1998.

14 A Yes.

15 Q Do you have that one?

16 A Yes. It's addressed to Ms. Connor.

17 Q I can't hear your voice, sir.

18 A It's addressed to Ms. Connor.

19 Q I understand that, but the reason for referring to
20 it, turn to page 2. Mr. Ritchie says:

21 I look forward to your draft admissions in
22 this case. I do not anticipate that
23 factually we are far apart and hope that we
24 can move the matter with some dispatch.

25 Now, it's Ms. Connor's evidence here that as of

1 the date of the 13th she had not drawn the
2 admissions of fact and as of the 23rd or 26th of
3 January, 1998, whichever date it was she
4 interviewed Ms. Anderson, she still had not drawn
5 up the admissions of fact. That would leave --
6 let's accept her evidence for the moment for the
7 purposes of my question. That leaves about one
8 week to trial, scheduled for February 2nd?

9 A Yes.

10 Q That's a pretty short period of time to try and
11 get an agreement on the admissions of fact on
12 these various subject matters, is it not?

13 A No.

14 Q So you -- doesn't it often happen that they have
15 to go through two or three drafts?

16 A I've walked into court the day of trial while
17 we're in the process of completing the admissions.

18 Q Well, I guess you're much more expeditious than I
19 am. I have found it takes -- can take a period of
20 time. In any event --

21 A It can. It can, and it depends on the individual
22 Crown and the cooperation you're getting from
23 defence counsel.

24 Q Surely it's better to start the process sooner
25 rather than later?

1 A Well, I think the process, from what I can gather
2 from the correspondence, the process was under way
3 on January the 13th, and Ms. Connor would be the
4 best -- the only person suited to answer the
5 question because she was responding to the
6 correspondence.

7 Q But you red flagged this file?

8 A Yes.

9 Q Which suggests that this process should have
10 started sooner rather than later?

11 A No, I can't agree with that. Again, that's the --
12 the individual Crown that's assigned to prosecute.
13 Different prosecutors take different approaches,
14 and I know in hindsight it's very easy to say that
15 everything should have been done well in advance
16 of the trial date, but, unfortunately, sometimes
17 things don't work out that way.

18 Q Well, the red flag, if it means anything, if I
19 understood your evidence, is that the preparation
20 should start more quickly in this case than in
21 some other cases?

22 A Yes.

23 Q All right. One other area for consideration. Did
24 you know when you approved the charges that the
25 complainant was a feature part of this case?

1 A Of course.

2 Q Of course. Did you know the complainant was
3 addicted to drugs?

4 A Well, when I look at the investigator's comments
5 in the report to Crown --

6 Q I'm not asking you now. Did you know at the time
7 that the complainant was addicted?

8 MR. ANDREWS: I ask that my friend not interrupt the question.
9 He didn't have a chance --

10 MR. ROBERTS: I didn't think I did.

11 MR. ANDREWS: -- to finish what he was saying.

12 THE COMMISSIONER: Well, I think he's trying his best to answer
13 in putting the -- as to when that happened in
14 the --

15 A Did I know that she was a drug addict?

16 MR. ROBERTS:

17 Q Yes.

18 A No.

19 Q All right. So whether or not she was a drug
20 addict is not a reason for you to red flag the
21 file in terms of an advance preparation?

22 A That factor in and of itself, would I indicate if
23 I had a witness or a complainant or a victim,
24 whatever term you want to use, if that was the --
25 would I designate a file --

1 Q I didn't ask you what you would have done. I just
2 wanted to know did you know.

3 A No.

4 Q So it wasn't a factor in your red flagging it?

5 A No.

6 Q So tell me what it was that caused you to red flag
7 it? Was it simply the seriousness of the charges?

8 A That was a big part of it.

9 Q A big part of it?

10 A Yes.

11 Q Was there anything else?

12 A Well, the time that was going to be taken for the
13 trial to be heard was a factor. Because of the
14 length of time that was going to be occupied
15 advance preparation would be required. It wasn't
16 a half-hour or an hour trial. It was going to be
17 scheduled for a number of days. So that was a
18 factor. The length of the trial, the seriousness
19 of the charges, the -- I anticipated that there
20 were going to be some problems with the
21 complainant.

22 Q On what basis if you didn't know she was a drug
23 addict?

24 A Just because of the nature of the complaint.

25 Q I see. So you knew she was -- the nature of the

1 complaint. What are you focusing on there?

2 A Well --

3 Q That she was a sex trade worker?

4 A Yes, in part.

5 Q If you knew she was a sex trade worker, didn't
6 that take you into the realm of knowing she was a
7 drug addict?

8 A Well, when you say knowing -- if you're asking me
9 to confirm that I knew that she was a drug addict,
10 the answer is no, I didn't know she was a drug
11 addict, but when I read it, of course, I am going
12 to come to the conclusion that it's a strong
13 probability that she's a drug addict.

14 Q All right. Normally the witnesses for the items
15 of medical questions, continuity, photographic
16 evidence, evidence about blood and other
17 toxicology matters, those matters would have to be
18 addressed by witnesses, some of them expert
19 witnesses?

20 A Yes.

21 Q They'd have to be lined up in advance for the
22 trial date and scheduled for trial?

23 A Yes.

24 Q Do you know whether or not Ms. Connor had done
25 that?

1 A No.

2 MR. ROBERTS: I have no further questions. Thank you, sir.

3 A Thank you.

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

5 Q Mr. Romano, my name is Jason Gratl. We met
6 earlier. I'm counsel for the Downtown Eastside --

7 A Yes.

8 Q -- affected individuals and communities. You
9 testified earlier that Ms. Connor came to you
10 or -- came to you before entering a stay of
11 proceedings and discussed the case?

12 A I testified that I don't have an independent
13 recollection of Ms. Connor coming to me and having
14 a meeting, but I'm satisfied based on what's been
15 said that she must have come to me. But I don't
16 recall her coming to my office and sitting down
17 and us having a meeting or the details of the
18 meeting.

19 Q You're saying you don't have any reason to doubt
20 her testimony?

21 A No.

22 Q And you prefer her own recollection to yours, in
23 effect?

24 A Well, that's one way of putting it.

25 Q It would have been your practice to discuss not

1 only the stay of proceedings of the lead or most
2 severe charge, but also any less severe charges
3 that were set out on the information?

4 A Yes.

5 Q And then it would have also been your practice to
6 discuss whether the prosecution might be
7 successful on lesser and included offences?

8 A Are you -- are you talking about my practice in
9 general or with reference to these specific
10 charges?

11 Q These types of discussions that you have with
12 Crown, even senior Crown, about entering a stay of
13 proceedings. When they come to you, especially in
14 a context where you initially approved the
15 charges, you would discuss whether a prosecution
16 on a lesser included offence could be successful?

17 A Yes.

18 Q And similarly, you would discuss other remedies
19 outside of criminal charges, such as 810 peace
20 bonds, where a complainant has reasonable grounds
21 to fear for their safety?

22 A Not in this file we wouldn't have.

23 Q Why do you say that?

24 A Because it wouldn't have been -- that wouldn't
25 have been even a remote possibility given the

1 serious nature of these charges, that we would
2 have entertained a section 810 information as
3 opposed to the charges that were approved.

4 Q Why do you say it would have been a remote
5 possibility?

6 A I said it wouldn't have been even a remote
7 possibility because it was -- from our point of
8 view as the Crown, these charges were so serious
9 those would have been the charges that should have
10 been proceeded with.

11 Q Even if -- I mean, in order to obtain an 810 peace
12 bond, which is effectively a type of restraining
13 order under the Criminal Code, the Crown doesn't
14 need to show beyond a reasonable doubt that an
15 individual has committed an offence but only
16 reasonable grounds on objective and subjective --

17 A Yes.

18 MR. ANDREWS: I am going to object here because it appears to
19 me --

20 THE REGISTRAR: Would you use the microphone, please.

21 THE COMMISSIONER: Sorry?

22 MR. ANDREWS: Mark Andrews, counsel for the witness. I am
23 going to object here because it appears to me that
24 Mr. Gratl is once again going down that line where
25 he's seeking to essentially engage the witness in

1 a discussion about the kind of mental processes
2 that were or could have been engaged in the course
3 of a discussion about staying the proceedings.

4 THE COMMISSIONER: Well, I don't think he's referring specific
5 to this case. He's going into policy as to what's
6 done with lesser included charges.

7 MR. ANDREWS: Well, nevertheless, the only -- I mean, your
8 terms of reference deal with this particular stay.

9 THE COMMISSIONER: I know that.

10 MR. ANDREWS: The only -- of course you do, sir. The only
11 reference -- the only relevance that this would
12 have is if he's suggesting that it goes to what
13 occurred in this particular case, and it appears
14 to me that he's asking the witness questions with
15 respect to the kind of mental processes that could
16 have been engaged in in terms of dealing with this
17 case through using general practice.

18 THE COMMISSIONER: Well, with respect, I have to disagree with
19 you, Mr. Andrews. He's asking what the general
20 practice is about lesser included charges and what
21 the policy in the Crown office is, and that's
22 fine. So he's not second-guessing the Crown here
23 as to what happened in this case.

24 MR. ANDREWS: Well, I think he's suggesting other ways the
25 matter could have been proposed -- could have been

1 dealt with.

2 THE COMMISSIONER: Well, that isn't what he said. What he's
3 saying -- so far all he's done is asking about the
4 policy of lesser included charges, and there's
5 nothing wrong with that. So go ahead, Mr. Gratl.

6 MR. DOUST: May I?

7 THE COMMISSIONER: Yes.

8 MR. DOUST: With the greatest respect, Mr. Commissioner, what
9 he's really getting at is what should have been
10 done, otherwise what could have been done is
11 irrelevant.

12 THE COMMISSIONER: Well, he hasn't -- he's entitled to ask what
13 the general policy is about lesser included
14 charges. That's all he's asked. He hasn't asked
15 -- I don't know what his ultimate purpose is, but
16 when he goes there we'll deal with it.

17 MR. DOUST: But with respect, it isn't relevant unless it's
18 there for that. There's no other conceivable
19 relevance to that question in relation to your
20 inquiry with respect to this specific incident.

21 THE COMMISSIONER: Well, he's entitled to know what the general
22 policy is as to the background, so I've made the
23 ruling.

24 MR. DOUST: I accept it.

25 THE COMMISSIONER: All right.

1 THE REGISTRAR: For the record, that was Mr. Doust addressing
2 the bench.

3 MR. GRATL:

4 Q Mr. Romano, I was asking about 810 peace bonds
5 just --

6 A Generally.

7 Q -- generally, that a reasonable prosecutor is not
8 required to prove beyond a reasonable doubt that a
9 complainant has an objective --

10 A Basis for fear.

11 Q -- basis for fear for her physical or
12 psychological safety.

13 A Yes.

14 Q All that's required is the Crown to show
15 reasonable grounds?

16 A Yes.

17 Q It's basically easier to get a peace bond?

18 A Pardon me?

19 Q It's just easier for a prosecutor to get a peace
20 bond than it is to approve criminal charges? The
21 threshold is lower?

22 A That's an interesting question. I suppose it
23 depends on the witness, how successful the witness
24 is in conveying her fear.

25 Q All right. But the threshold, the legal

1 threshold --

2 A Yes.

3 Q -- is lower?

4 The strength and credibility of the evidence
5 required to meet the burden is lesser?

6 A Yes.

7 Q And it would be standard practice when making
8 charge approval decisions to consider whether a
9 peace bond, section 810 peace bond would be an
10 available option?

11 A In a case -- are we specifically talking about
12 this 1997 charge approval?

13 Q I was just speaking generally. I mean in domestic
14 assault situations, for example, it would be --

15 A Yes, a section 810 is -- I would hesitate to use
16 the word routinely considered, but it's certainly
17 an option that's available.

18 Q So in a domestic assault context, for example, if
19 it's proving difficult or there's some doubts
20 about whether or not the prosecution can prove
21 if -- that beyond a reasonable doubt the husband
22 has beaten his wife and is guilty of assault, a
23 section 810 peace bond would be considered?

24 THE COMMISSIONER: So why are we talking about peace bonds here
25 when we've got charges of attempted murder and

1 confinement and all of those? What's the
2 relevance of a peace bond? Peace bonds under
3 section 810 are imposed in different circumstances
4 to keep the peace and all of those factors, but
5 we're into a different scenario here altogether,
6 are we not?

7 MR. GRATL: Well, it's an --

8 THE COMMISSIONER: I don't understand.

9 MR. GRATL: -- assault context.

10 THE COMMISSIONER: I don't understand the point of this.

11 MR. GRATL: It's an assault context where the complainant is
12 afraid for her safety.

13 THE COMMISSIONER: Well, the issue here is whether the stay of
14 proceedings ought to have been granted.

15 MR. GRATL: But I think the Crown counsel policy when
16 considering when charges have to be laid cascades
17 downwards in terms of looking first at the most
18 serious offences where the prosecution can be
19 successful, then looking at lesser offences and
20 lesser included offences, and then looking at a
21 peace bond as the final option in cases involving
22 violence.

23 THE COMMISSIONER: Well --

24 MR. GRATL: I'm just exploring --

25 THE COMMISSIONER: -- I don't see where that even arises in the

1 circumstances of this case. Ms. Connor said that
2 the reason she stayed the charge, she wasn't
3 satisfied under the guide -- under the policy
4 guidelines that they could proceed with this case
5 because of the condition of the complainant, so
6 where is the issue of peace bonds and lesser
7 included charges? How is that relevant?

8 MR. GRATL: All right.

9 THE COMMISSIONER: All right.

10 MR. GRATL:

11 Q I take it then you don't recall having a
12 conversation about peace bonds with Ms. Connor?

13 A No.

14 Q Now I've got a question in respect of bail
15 matters, and I anticipate some objection from Mr.
16 Andrews possibly.

17 THE COMMISSIONER: All right. Ask the question and we'll deal
18 with it.

19 MR. GRATL: All right.

20 Q Before speaking with Ms. Connor about the stay you
21 had already formulated in your mind that the
22 accused did not represent a threat to sex workers
23 on the Downtown Eastside; is that correct? That's
24 the question that I want to ask.

25 MR. ANDREWS: Well, I indicated to my friend that I would

1 object.

2 THE COMMISSIONER: Your microphone, please.

3 MR. ANDREWS: I indicated to my friend that I would object to
4 questions which he indicated yesterday he was
5 going to be asking this witness which related to
6 inquiries into this witness's conduct at the bail
7 proceedings, and if that's where we're going, I do
8 have an objection.

9 THE COMMISSIONER: I agree with you that whether or not he was
10 granted bail on the earlier occasion really is not
11 relevant. What we're focused on here is the
12 propriety of the entry of the stay of proceedings.
13 I mean, you know, Pickton was obviously granted
14 bail, and I don't know what the conditions are,
15 and I'm not so sure they're really relevant, but
16 what's important here is why did the Crown enter a
17 stay of proceedings in light of the evidence that
18 they had. That's really what we need to focus on.

19 MR. GRATL: And just to provide a little background to the
20 questioning, what we have in this situation is
21 RCMP officers who don't arrest Mr. Pickton at the
22 hospital because it's an inconvenience. In my
23 submission, that would be taking a rather cavalier
24 attitude towards the dangers posed by Mr. Pickton.
25 And then at the other end of the charges we have a

1 Crown who did not apply the exceptional
2 circumstances test on the basis that Mr. Pickton
3 did not represent an extreme danger. And in
4 between we have this witness, who has a
5 conversation with Ms. Connor before that stay is
6 entered, and I want to ask this witness firstly
7 whether he had formulated an opinion about whether
8 Mr. Pickton represented a danger to sex workers on
9 the Downtown Eastside at the time -- before he had
10 a conversation with Ms. Connor, and in order to
11 get at that I want to put to him the bail
12 conditions that were imposed ex parte on Mr.
13 Pickton, which don't involve a no-go condition to
14 the Downtown Eastside, which in my submission
15 would be a reflection of the level of danger that
16 this witness attributed to Mr. Pickton.

17 THE COMMISSIONER: But that really isn't what we're here for.

18 MR. GRATL: Prior to his conversation with Connor.

19 THE COMMISSIONER: No.

20 MR. GRATL: And I appreciate that the terms of reference do not
21 include, I think regrettably -- I think
22 regrettably they don't include the bail
23 conditions, because we know some women lost their
24 lives in that period between the time the charge
25 was laid and the stay of proceedings, so the

1 absence of bail conditions, a no-go condition, is
2 not part of the terms of reference, not something
3 you can look at directly, but in my respectful
4 submission the issue of whether Mr. Pickton
5 represented a danger and whether this witness had
6 formulated an opinion as to Mr. Pickton's threat
7 to sex workers is highly relevant to your terms of
8 reference.

9 THE COMMISSIONER: Well, first of all, he's already said he has
10 no recollection about that at all, and, secondly,
11 the bail hearing really are so remote and so
12 remote from the terms of reference that they're
13 not really admissible. You can argue at the end
14 of the day that the system as a whole let down the
15 victims and let down the safety of the general
16 public by allowing him to be loose. That's
17 something you can argue. But, you know, we can't
18 get into whether or not he should have been
19 granted bail after he was arrested. The real
20 issue here is why was there a stay of proceedings
21 when he was in the system. That's what we're
22 dealing with.

23 MR. GRATL: Those are my submissions. Thank you, Mr.
24 Commissioner.

25 THE COMMISSIONER: All right. Thank you.

1 MR. GRATL: And given your ruling, those are my questions as
2 well.

3 THE COMMISSIONER: Thank you, Mr. Gratl. Ms. Narbonne.

4 **CROSS-EXAMINATION BY MS. NARBONNE:**

5 Q Thank you. I'm Suzette Narbonne. I'm counsel for
6 the aboriginal interest. I take it in the charge
7 approval process you would have reviewed the
8 report to Crown counsel; is that correct?

9 A Yes.

10 Q And you still have that book in front of you; is
11 that right?

12 A I do.

13 Q I'm wondering if you could just look at tab 3,
14 which is the report to Crown counsel, and tell me
15 if that's the document you would have reviewed.

16 A Sorry, it's tab 3?

17 Q Yes. Yes, tab 3.

18 A You're right.

19 Q Yes, that's it?

20 A Yeah.

21 Q The police provide short "will says"; is that
22 right?

23 A Yes.

24 Q And I take it that's something that is of
25 assistance to the Crown who's doing the charge

1 approval because it's a quick synopsis of what you
2 can expect from the witnesses; is that right?

3 A Yes.

4 Q And that's something you would have reviewed?

5 A Yes.

6 Q Okay. So I'm just going to take you to page 7 of
7 35, and that's the "will say" from Anderson. Do
8 you see that right at the very top?

9 A What I have -- the page I'm looking at reads --
10 it's -- on the bottom left it says page 19 of 35.

11 Q Oh, sorry. No. Could you -- do you have a page 7
12 of 35?

13 A Oh, you're talking about the "will say" of Ms.
14 Anderson?

15 Q Yes. Can I just take a look and make sure we're
16 on the same page here.

17 A Yes. "...she is working prostitute in the
18 Vancouver East End"?

19 Q Yes. And what else does it say about her?

20 A Well, she says she's a heroin addict.

21 Q Does that help you refresh your memory about
22 whether or not you knew she was a heroin addict at
23 the time you approved charges?

24 A No, it doesn't help refresh my memory.

25 Q Okay. But that is something you would have looked

1 at when --

2 A Yes.

3 Q -- you approved charges?

4 A Yes.

5 Q Okay. So would it -- if I suggest to you that at
6 the time you approved charges you knew she was a
7 heroin addict, do you think that's more likely
8 than not?

9 A Yes.

10 Q Okay. Now, you've also told us that from your
11 review of the record of proceedings it appears
12 this went through the normal course and then a
13 trial date would have been set sometime in
14 September or October; is that right?

15 A I'd have to see the date on the trial scheduling
16 memo to know the -- that would tell me the exact
17 date the trial was set.

18 Q I know, and we don't have that, and we don't have
19 the trial notice either, right, but you did --

20 A I thought -- I thought there were --

21 Q Is there something in there? Well, I'll take you
22 to the record of proceedings, and maybe you can
23 find it for us.

24 A I'd have to -- I thought in the material I
25 reviewed that there was a trial scheduling memo,

1 and it would have had a date on it.

2 Q Tab 16. My friend has assisted me here.

3 A Okay.

4 Q And again we are in Exhibit 133, and looking at
5 the page numbers at the bottom, page --

6 A Sure.

7 Q -- 42. Does that help?

8 A Yeah, I've got it.

9 Q Okay. Can you --

10 A October 16th, 1997, it appears as if there was a
11 pre-trial conference, and then it went over to
12 October 22nd, and that may have been the date that
13 the trial dates were set or -- set, and then the
14 November 4th appearance date, according to the
15 record of proceedings, indicates that the accused
16 was to confirm the trial date on that date.

17 Q Okay. So you told us that you would do your trial
18 scheduling some months in advance --

19 A Yes.

20 Q -- of course, right?

21 And a file like this is a red-flagged file,
22 and it shows that on the file and on the schedule,
23 right?

24 A Yeah.

25 Q Okay. So by October is it most likely that this

1 file gets assigned to someone?

2 A I would have expected so, yes.

3 Q All right.

4 A The schedules -- the trial Crown would have had
5 their schedules, as I mentioned earlier, three to
6 four months in advance, so if I was the trial
7 Crown I would have expected to have on my desk in
8 front of me my schedule for the next three to four
9 months. So October, November I assume Ms. Connor
10 would have been aware that she had been assigned
11 this trial.

12 Q Okay. And in the normal course -- I mean, I'm not
13 familiar with the courthouse where you were
14 working, but does a Crown get assigned to a
15 specific courtroom for a period of time or --

16 A No.

17 Q Okay.

18 A No.

19 Q Because this is a longer trial than normal, right?

20 A That's right, and in all probability she would
21 have been scheduled -- the week prior she probably
22 would have been scheduled to be out of court to
23 prepare this trial.

24 Q Okay. And is it also likely that she would have
25 been -- you would have had to look at it and say,

1 "Okay, I've got a four-day trial coming up. I
2 need to assign a Crown just to those four days"?

3 A Yes.

4 Q Okay. And that would probably happen sometime in
5 October after the date's set?

6 A As soon as I was made aware of the trial date and
7 I had the judges' rota for the month of February I
8 would have done the assignments for February.

9 Q And then you've also told us -- I'm not going to
10 take you to the tab unless you want to go back
11 there, but tab 14 was that letter of October 22nd
12 where -- that someone sends to you.

13 A Right.

14 Q And you probably would have given it to the
15 assigned Crown, right?

16 A Yes.

17 Q Okay. And it's a letter where specific disclosure
18 is being asked for. It appears that some Crown no
19 longer has conduct of the file, someone new is
20 going to have conduct of the file, right?

21 A Right.

22 Q So is it likely that Ms. Connor is the person who
23 would have been given that letter, because we're
24 now looking --

25 A Yeah.

1 Q -- at October 22nd?

2 A Likely she would have been given that letter.

3 Q Okay. And you've told us that your view of red
4 files is that they require some advance
5 preparation, right?

6 A Yes.

7 Q And I take it that was common knowledge in your
8 office?

9 A Yes.

10 Q Okay. And certainly an experienced prosecutor
11 like Ms. Connor at the time would have been aware
12 of that?

13 A Yes.

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

15 THE COMMISSIONER: Thank you, Ms. Narbonne. All right. Who's
16 next? Mr. Doust.

17 MR. DOUST: I think it's me. I don't have the list in front of
18 me.

19 **CROSS-EXAMINATION BY MR. DOUST:**

20 Q Yes, it's Len Doust, appearing for the Criminal
21 Justice Branch. Judge Romano, over the years I
22 take it you had worked fairly extensively with Ms.
23 Connor in the sense that she was in the same
24 office or offices as you and you were familiar
25 with what she was doing?

1 A She -- I worked -- during the 1980s is when I was
2 doing some defence work. I had dealt with Ms.
3 Connor while she was doing Crown work. And when I
4 went to the Crown office in 1989 as part of the
5 Fraser Region, that's when I first began working
6 with Randi. The Port Coquitlam office was the
7 first office we worked in together.

8 Q And you came to know her in terms of her
9 competence?

10 A Definitely.

11 Q And what can you say about her competence?

12 A Very competent.

13 Q You came to know her in terms of her diligence?

14 A Very diligent.

15 Q And can you tell the commissioner maybe on a scale
16 of one to ten based on your experience in dealing
17 with her both as a prosecutor from your point of
18 view and also in dealing with her as a defence
19 counsel what would you say with respect to her
20 aggressiveness in pressing the Crown's cases and
21 the Crown's positions?

22 A Very aggressive.

23 Q She had a reputation, as a matter of fact, for
24 being a hard-nosed Crown, didn't she?

25 A Yes.

1 Q And she was not a Crown who would easily or
2 readily, from what you had seen of her, easily or
3 readily back away from a case unless she had a
4 very good reason for doing so?

5 A I agree with that.

6 Q You assigned this case to her?

7 A Yes, and I would do it again.

8 Q I take it that clearly implies that you had
9 absolute confidence in her in terms of her ability
10 to prepare and take this case through to
11 conclusion?

12 A Yes.

13 Q And finally, can you comment at all on her
14 judgment from the perspective of the Crown based
15 on your experience with her, including your role
16 as the administrative Crown?

17 A Sorry, the question again is?

18 Q Her judgment.

19 A Sound judgment.

20 MR. DOUST: Yes. Thank you.

21 THE COMMISSIONER: Thank you, Mr. Doust.

22 **CROSS-EXAMINATION BY MR. MAKOSZ:**

23 Q Mr. Commissioner, Rory Makosz for the Government
24 of Canada. Mr. Romano, you may be aware that the
25 commissioner has indicated an interest

1 particularly in systemic factors in the course of
2 this inquiry. Are you aware of that?

3 A To some degree.

4 Q And you were the admin. Crown at Coquitlam
5 throughout the period of the terms of reference?

6 A Port Coquitlam.

7 Q Port Coquitlam. Thank you. And as such I think
8 you're probably well-placed to describe the
9 general context in which the Crown was working at
10 that time.

11 A Yes.

12 Q And that's essentially what I want to explore with
13 you. I want to focus essentially on the Crown
14 practices throughout that time and their
15 relationship with the police. My questions are
16 going to be largely general and contextual with
17 some reference to this particular case.

18 MR. ANDREWS: Excuse me for a moment, but I thought this
19 witness was here to give evidence with respect to
20 the stay, and I'm having some difficulty seeing
21 how the way in which the Crown office functions
22 generally and interactive with the police goes to
23 the issue that is in the terms of reference before
24 you in 4(b).

25 THE COMMISSIONER: Well, here the police officer who had

1 conduct of the file has already made comment about
2 the stay of proceedings, and so it's relevant for
3 me to know what the relationship is between the
4 Crown and the police.

5 MR. ANDREWS: As concerned with the stay of proceedings or
6 generally, sir?

7 THE COMMISSIONER: No. Well, this is by way of background, and
8 I have to have knowledge of what was in the
9 background of the relationship, and obviously the
10 ultimate question here is the stay of proceedings,
11 but I can't decide that in isolation unless I know
12 what the relationship was between them, so I don't
13 -- I see no difficulty in what he's doing here.

14 MR. ANDREWS: All right.

15 MR. MAKOSZ: And if I may, Mr. Commissioner, I think the
16 context of that relationship between the Crown and
17 the police actually transcends this particular
18 investigation because obviously that's something
19 that's ongoing through other parts of the
20 investigation that are the subject of other parts
21 of the terms of reference. And if it sets my
22 friend at ease, I do intend my questions to be
23 quite general. I'm not intending to question the
24 exercise of the discretion in this case.

25 THE COMMISSIONER: One of my duties here is to ensure that --

1 or to make recommendations where necessary as to
2 future conduct and future policies.

3 MR. ANDREWS: I appreciate that, sir, although it appears to
4 me, and I hesitate to stray into these grounds
5 except to the extent they relate to this witness,
6 it does appear to me, sir, that your terms of
7 reference with respect to recommendations do not
8 extend to the conduct of the prosecution by the
9 Criminal Justice Branch or by this witness, with
10 respect.

11 THE COMMISSIONER: You know, I need to know the background.
12 Now, I've made the ruling.

13 MR. ANDREWS: I understand that, sir.

14 THE COMMISSIONER: Go ahead.

15 MR. MAKOSZ:

16 Q Mr. Romano, you discussed the charge approval
17 practices in your office, and I just want to go
18 through that very, very briefly with you. It's
19 fair to say, I think, that the review that you
20 conduct at the charge approval stage is not as in
21 depth a review as you would for preparation for
22 trial, for example?

23 A I agree with you.

24 Q And when you were doing your charge approval
25 reviews, you've said that I think you did about

1 2,000 a year, if that's right?

2 A Yes.

3 Q And so you don't really have time to go into the
4 depths of a file, for example, reading lengthy
5 witness statements or informations to obtain that
6 kind of thing?

7 A No, I read whatever's been provided. I don't take
8 shortcuts. If the material is in front of me, I
9 review the material in its entirety, including the
10 witness statements. Whatever the police have
11 provided in the report to Crown I read.

12 Q And the purpose behind doing that, I take it then,
13 is to look for any problems at the outset that you
14 can basically head off before this thing proceeds
15 on its way through the process, in addition to
16 obviously looking at whether or not the charge
17 will be approved?

18 A Well, the first step is to make sure that the
19 charge approval guidelines are being complied
20 with.

21 Q And that's what I was going to turn to, because I
22 don't need to take you through these in detail,
23 but obviously the admissibility of evidence is a
24 key factor in the charge approval decision?

25 A Yes.

1 Q And this is something -- admissibility, of course,
2 is a concern for any prosecution?

3 A Yes.

4 Q And it's -- that's essentially because it's not
5 only what evidence the investigation, the police
6 investigation has produced, it's also how that
7 evidence was obtained that's important?

8 A Yes.

9 Q And so essentially the investigative practices of
10 the police can have a direct impact upon the
11 viability of a prosecution?

12 A Yes.

13 Q And so I wanted to explore with you the
14 communication that the Crown and police have in
15 general with respect to investigative practices.
16 It's quite common that the police during the
17 course of an investigation will seek and receive
18 legal advice from the Crown's office, for example?

19 A I'm a little reluctant to say it's quite common.
20 I would say it's -- it's not a matter routine that
21 the police come looking to the Crown for legal
22 advice. In large part I assume it depends on the
23 nature of the investigation and if they're
24 gathering evidence and they're seeking an opinion
25 as to -- to making sure that the evidence is going

1 to be admissible.

2 Q Perhaps a better way of putting it is it wouldn't
3 be unusual for the police to do so?

4 A No.

5 Q And in addition, if a case ends up being stayed or
6 fails at trial, the Crown will often debrief with
7 the lead investigator and explain the reasons for
8 that and the background behind what happened?

9 A Yes.

10 Q And on occasion members of the Crown will put on
11 educational, I suppose seminars for members of the
12 police on specific new issues of law?

13 A Yes.

14 Q And so in all these ways the Crown is effectively
15 educating the police but also reinforcing the
16 importance of their investigative conduct?

17 A Exactly.

18 Q And in the result the police are conscious not
19 only of what evidence they're getting to build a
20 case but how they go about getting that evidence?

21 A Yes.

22 Q And there's an example in this case and with
23 respect to a search of Mr. Pickton's trailer. Do
24 you recall that occurring?

25 A Do I recall the search occurring or do I recall

1 mention being made in the report to Crown of a
2 search of the trailer?

3 Q Mention in the report to Crown.

4 A Yes, I do.

5 Q And in this case, if you'll recall, Sergeant
6 Connor actually initially viewed the trailer with
7 the consent of Mr. Pickton's niece?

8 A Yes.

9 Q And rather than engage in a search and collect
10 evidence at that point, he went on to obtain a
11 warrant?

12 A Yes.

13 Q And that was how the evidence from the trailer was
14 actually obtained in this case?

15 A Yes.

16 Q And this is an important step because when you get
17 to the prosecution stage a search that's conducted
18 under a warrant is presumptively reasonable?

19 A Yes.

20 Q And whereas a consent search or a warrantless --
21 which is a form of warrantless search, of course,
22 is prima facie unreasonable?

23 A That's my understanding of the law.

24 Q So when you're coming to a prosecution, if you
25 have a search that's based on a warrant, the

1 defence faces the burden of successfully
2 challenging that warrant and arguing the evidence
3 should be excluded?

4 A Yes.

5 Q Whereas if you only have the consent of a party,
6 the Crown bears an onus of proving the consent was
7 informed?

8 A Yes.

9 Q And, of course, the Crown also has to establish
10 that the search didn't exceed the scope and
11 purpose of that consent; is that fair?

12 A Your analysis is correct.

13 Q And so is it fair to say that all things being
14 equal it's generally preferable from the Crown's
15 perspective to have a warrant to support a search
16 as opposed to not having a warrant or proceeding
17 by consent?

18 THE COMMISSIONER: So where are we going with all of this?

19 MR. MAKOSZ: Well, in this case, Mr. Commissioner --

20 THE COMMISSIONER: It's a nice argument on section 8 of the
21 Charter, but tell me how that relates to what
22 we're here for.

23 MR. MAKOSZ: Well, I was going to come to it, Mr. Commissioner.
24 Just to point out that Mike Connor in taking the
25 tack that he did, in pursuing a warrant even after

1 having already seen the trailer, was clearly aware
2 of this issue and how it could affect the
3 prosecution later on and so took steps
4 accordingly.

5 THE COMMISSIONER: Well, I assume that since he sent a report
6 to Crown counsel and the Crown was satisfied that
7 it met the test for the laying of charges that all
8 that was done, and what we're really concerned
9 with now is whether or not the stay of proceedings
10 was entered properly, putting it very generally
11 and somewhat crudely, but that's really what we're
12 here for. I mean, I don't know if it helps me to
13 know what evidence that Corporal Connor gathered
14 prior to that. We assume that they had enough
15 evidence to lay the charges, so --

16 MR. MAKOSZ: Then I'll explain, Mr. Commissioner. I'm not --
17 I'm simply using this as one example of the police
18 looking forward to the prosecution, because that's
19 something that continues throughout the terms of
20 reference with respect to all the investigations,
21 is the police have to be cognizant of the impact
22 of the steps they take at the investigative stage
23 on the ultimate prosecution.

24 THE COMMISSIONER: Well, I think we know that the -- from what
25 Connor testified to and what Shenher testified to

1 that they were looking forward to the prosecution
2 because they believed that the Crown had a strong
3 case, so I don't know where that gets us as far as
4 Mr. Romano is concerned. I mean, it's nice that
5 we've got an interesting discussion here going on
6 search and seizure. But, anyway, I want you to
7 move on.

8 MR. MAKOSZ: I will move on, Mr. Commissioner.

9 Q I want to change over to a topic in respect to the
10 categorization of this file because at the charge
11 approval stage you're reviewing it, but you're
12 also categorizing the file. It was categorized in
13 this case as a red file?

14 A Yes.

15 Q And in your "will say" -- your "will say" says
16 that this is because it required more advance
17 preparation than is ordinarily the case?

18 A Yes.

19 Q I wanted to explore with you, is that because of
20 the seriousness of the file or because of the
21 complexity of the file?

22 A Both.

23 Q And is that distinct -- you may be familiar with
24 the Crown policy with respect to serious and
25 sensitive cases.

1 A Yes.

2 Q Is a red file in that sense distinct from a
3 serious and sensitive case?

4 A There's some overlap.

5 Q So would it be true that all serious and sensitive
6 cases are red files but not --

7 A Yes.

8 Q -- all red files are necessarily serious and
9 sensitive cases?

10 A Exactly.

11 Q And this was not a serious and sensitive case?

12 A In terms of the policy?

13 Q Yes.

14 A I don't think it would have fallen into that
15 category if we're on the same page in terms of the
16 policy I think you're referring to. Is this the
17 policy where it has to be referred to the regional
18 Crown --

19 Q Yes.

20 A -- when a stay is entered?

21 Q If you need a reference, it's at tab 26 of Exhibit
22 133.

23 A No, this case wouldn't have fallen into that
24 category in my view. And I think the reason I say
25 that is the policy itself addresses -- or it says:

1 This policy should affect a very small
2 percentage of the cases dealt with by Crown
3 Counsel,
4 and this case wouldn't fall into that very small
5 percentage.

6 Q Thank you. And there's another categorization,
7 and I think you've alluded to it, with respect to
8 major crimes, because prosecutions can be
9 specially assigned as well almost at the outset,
10 can they not?

11 A They are, yes.

12 Q And this is -- the reason for not specially
13 assigning this file is that it wasn't something
14 that was going to require any kind of complex
15 contact with the police throughout the course of
16 the prosecution?

17 A I don't know about that. There always should be
18 some ongoing contact with the police. With a file
19 of this nature there should be.

20 Q Well, let me explore that a little bit just by
21 looking at this case, for example. If a case
22 isn't specially assigned after the charge approval
23 stage, it goes into essentially an administrative
24 process where it will go to disclosure court,
25 arraignment court, it will be set down on trial

1 lists, it will be handled by different
2 prosecutors, and it won't come into any individual
3 prosecutor's control until that prosecutor is
4 assigned as trial Crown for that file; is that
5 fair?

6 A Yes.

7 Q And the only exception to that really would be in
8 the case of a specially assigned file?

9 A Yes.

10 Q And so essentially no one throughout that period
11 is preparing for trial until -- unless and until
12 they are assigned as trial Crown?

13 A No. When it's making its way through disclosure
14 court, the disclosure court Crown are well aware
15 of sort of setting up the trial if it's going to
16 happen.

17 Q And that's perhaps my flaw with my question
18 really, is when I mean preparing it for trial I
19 mean looking at it in a very in-depth way in terms
20 of -- I mean, disclosure is one thing. It's
21 something that has to happen, and there's a
22 process for it. But an in-depth analysis of the
23 trial and the evidence and its likely
24 admissibility at the trial, that doesn't really
25 happen until trial Crown gets a hold of it?

1 A That's fair.

2 Q And so in this case it appears that -- well, let
3 me first just clarify. The trial Crown would
4 obviously not get assigned to the file until a
5 trial date was actually set?

6 A Yes.

7 Q And the best that we can do is to guess that a
8 trial date would have been set sometime in late
9 October, early November of 1997 in this case?

10 A Yes.

11 Q Which would have given Randi Connor as trial Crown
12 about three months to prepare for trial?

13 A Yes.

14 Q And what's complicated by -- her preparation
15 obviously is going to be complicated by the fact
16 that she has other things on her plate during that
17 three-week period leading up to trial as well?

18 A Yes.

19 Q And I think you mentioned that you would try to
20 ensure in your scheduling that a trial Crown would
21 have the week before trial, for example, as time
22 to prepare?

23 A Yes, and also if the trial Crown came to me and
24 said that they needed additional time over and
25 above what the schedule was providing them for, I

1 would make every effort to make sure they got the
2 additional time they needed.

3 Q And are there any -- were there any formal
4 practices or policies in your office with respect
5 to once a file has been assigned to a trial Crown
6 with respect to their having to review it
7 immediately?

8 A Was there a policy in place that it was incumbent
9 upon them to review the file, review a red file as
10 soon as they came to --

11 Q Yes.

12 A -- receive the knowledge that they were
13 prosecuting a red file?

14 Q Yes.

15 A No. The approach is entirely up to the individual
16 prosecutor.

17 Q And this becomes significant in this case,
18 obviously, because if you have a severely addicted
19 witness, you're going to require some time just to
20 rehabilitate them?

21 A Could you ask that question again, please?

22 Q Certainly. If you've got a witness who is
23 severely addicted and necessary to your
24 prosecution, you are going to need to take steps
25 to rehabilitate that witness before they testify,

1 and that process is going to take quite some time?

2 A I think that's fair comment.

3 Q Because I think -- I'm sure there would be no
4 disagreement that rehabilitating a seriously drug-
5 addicted witness is not an easy thing to do
6 regardless of how much time you might have to do
7 it?

8 A That's fair comment.

9 Q And so if someone has only three months -- if a
10 trial Crown only has three months with which to
11 prepare the file, they really need to identify the
12 problem with that witness, if there is a problem,
13 as soon as they can?

14 A Yes.

15 Q And that would be done by contacting and
16 interviewing the witness?

17 A And liaising with the Crown-based Victim Services
18 as well as the police-based Victim Services, and
19 the one thing I've noted, that in the police-based
20 Victim Services notes that in May of 1997 the
21 victim didn't want to be involved in -- with the
22 resources that might have been available to assist
23 her. Her comment to the Victim Services worker
24 according to the material I reviewed is that she
25 only wanted to be notified with respect to court

1 appearances.

2 Q And that's really the point that I'm coming to, is
3 because the challenge that Randi Connor is facing
4 is, one, she's got a three-month time period in
5 which to work, and she's got extreme demands on
6 her time with respect to her other work during
7 that period?

8 A You'd have to ask Randi if that's the way she felt
9 at the time.

10 Q You'd agree this is a busy office that you're
11 working in at that time?

12 A Yes.

13 Q And there may be cases where, for example, a Crown
14 may have multiple trials in the same courtroom on
15 the same day even?

16 A Sorry, the Crown would have multiple trials?

17 Q Certainly if a Crown is assigned to a list in a
18 courtroom, they may have multiple trials on that
19 list for the same day?

20 A You're right. There was 12 to 16 hours of court
21 time booked every day, and there was probably --
22 in an average courtroom there would be three to
23 four trials set that the Crown would be
24 responsible for.

25 Q And so Ms. Connor really has to balance her

1 preparation looking three months into the future
2 with all these current or more pressing duties
3 that are closer in the future?

4 A And she was very capable of doing that.

5 Q And what makes it, I think, harder for her is that
6 if she's trying to contact that witness and that
7 witness can't be contacted or doesn't return phone
8 calls or doesn't make meetings, that complicates
9 things for her?

10 A Definitely.

11 Q And I take it the police can provide some
12 assistance, if they're requested to, with respect
13 to contacting the witness?

14 A Yes.

15 Q But they also can't force the witness to do
16 anything that they don't want to do?

17 A You're right.

18 Q And I think it's fair to say, and if you'd agree
19 with me, that reasonably you can't expect any
20 agency to cure a person of a serious drug
21 addiction, you can only ask them to rehabilitate
22 that witness long enough for them to give
23 evidence; is that fair?

24 A Yes.

25 Q And this is a process, if that's going to happen,

1 that would really have to happen before the trial
2 date was set because -- or, sorry, once the trial
3 has been set because otherwise you wouldn't know
4 when you need them to be clean and sober to
5 testify?

6 A Say that again.

7 Q The process of rehabilitating a witness in that
8 condition would have to begin after a trial date
9 has been set because otherwise you wouldn't know
10 when you would need them to be clean and sober and
11 able to testify?

12 A Yes.

13 Q And the last area I wanted to touch on with you is
14 just with respect to what happens with a file
15 after a stay of proceedings has been entered, and
16 in your "will say" it says that the normal
17 practice in your office was for serious files, if
18 a trial Crown was looking at staying them, was to
19 discuss that first with the admin. Crown?

20 A Prior to entering the stay?

21 Q Prior to entering the stay.

22 A That was the -- that was the practice pretty much
23 for all files whenever there was going to be a
24 stay of proceedings. As I mentioned earlier, a
25 big part of this is the trial scheduling, which is

1 a daily challenge when cases are being stayed that
2 the court time be utilized and to give me the
3 earliest opportunity to liaise with judicial case
4 managers to move things around that needed to be
5 moved around and to change the schedules of Crown,
6 but also if there was going to be any fall-out
7 from the decision, that I would be aware of it and
8 I wouldn't be taken by surprise by getting a phone
9 call from someone who would say, "I want to speak
10 to you about a charge that was stayed."

11 Q And by "someone" you're referring to a police
12 investigator?

13 A Whether it be a police investigator, whether it be
14 the complainant, or anybody for that matter.

15 Q And you've talked about how the consultation with
16 trial Crown in that respect will help in terms of
17 scheduling, but I think there's also a -- the
18 admin. Crown plays a sounding-board role
19 effectively with trial counsel?

20 A More so with the young prosecutors.

21 Q And did that -- do you have any recollection of
22 that type of conversation happening with Ms.
23 Connor in this case?

24 A Just acting as a sounding board?

25 Q Yes.

1 A I can't recall the conversation, so I don't know
2 what the details -- whether it was a situation
3 where Randi was -- was asking me, bouncing ideas
4 off me as to the other alternatives or whether she
5 was simply explaining to me, "This is the decision
6 I am going to make. This is why I'm making the
7 decision."

8 Q But at the very least, even if she's not asking
9 for approval, and I understand she doesn't
10 necessarily need it, you would have an
11 understanding of the basis for the stay based on
12 that conversation?

13 A Yes.

14 Q And I'm just going to the policy. Tab 25. If you
15 could just turn to that very quickly. There's a
16 policy relating to the appeal of stays of
17 proceedings.

18 A Yes.

19 Q Perhaps review would be a better word than appeal.

20 A No, that's -- I think that policy relates to
21 appealing the charge approval, where charges
22 haven't been approved the police have a -- can --
23 according to this provision, they can ask for an
24 appeal of the charge approval being reviewed.

25 THE COMMISSIONER: This invariably happens when a police

1 officer is not satisfied with a Crown's decision,
2 right?

3 A Not to approve the charges, yes.

4 THE COMMISSIONER: Right.

5 MR. MAKOSZ:

6 Q You've predicted my next question as to the scope
7 of this particular policy, but I think you've also
8 sort of alluded to the fact that the police might
9 call you if they had a complaint with respect to a
10 stay of proceedings.

11 A Yes.

12 Q And you would -- if that happened shortly after
13 the stay of proceedings was entered and the trial
14 Crown had spoken to you about it, you would
15 presumably have some idea of what they were
16 talking about?

17 A Yes.

18 Q And then the final area I wanted to explore with
19 you just with respect to reactivations of stays,
20 it was Ms. Connor's evidence that she had stayed
21 hundreds of cases in the course of her career in
22 all likelihood and she could only recall having
23 one of them be reactivated. Has it been your
24 experience as well that reactivating a stay is
25 extremely rare?

1 A Yes.

2 Q And there are complications that can arise with
3 respect to a reactivated stay or a re-laid charge
4 in the form of delay arguments, Charter, etcetera?

5 A Abuse of process arguments, yes.

6 Q And Crown would be cognizant of that if they were
7 asked to reopen a stayed file?

8 A Yes.

9 Q Or to approve a re-laid charge?

10 A Yes.

11 MR. MAKOSZ: Thank you. Those are my questions.

12 MR. VERTLIEB: That is the list of scheduled questions from
13 cross-examination. I have just one area I wanted
14 to cover in re-exam, please.

15 THE COMMISSIONER: All right.

16 **RE-EXAMINATION BY MR. VERTLIEB:**

17 Q Do you have the binder in front of you there,
18 Exhibit --

19 A I do.

20 Q -- No. 133?

21 Thank you. This arose from Mr. Roberts'
22 question, Mr. Commissioner, just to assist us. Do
23 me a favour, please, turn to tab 16.

24 A Yes.

25 Q And it's the second page, please.

1 THE COMMISSIONER: 15 or 16?

2 MR. VERTLIEB: 15, Mr. Commissioner. Second page.

3 A The record of proceedings?

4 MR. VERTLIEB:

5 Q Yes.

6 A Yes.

7 Q So it came to me as a question when I heard Mr.
8 Roberts ask you about your dealings. Look at that
9 column that's got "Crown".

10 A Yeah.

11 Q So the "RR", that would be you?

12 A That's me. "RC" is Randi Connor. "VT"
13 is Vittorio Toselli.

14 Q Wait. Hold on. Too quick for me. So that seems
15 to be the only time you have actually dealt with
16 this file?

17 A The only time I dealt with it in court.

18 Q In court, yes. So just run through those other
19 initials for us because these would be people that
20 you would be acting as admin. Crown to, please.
21 So "RC"?

22 A Well, I'd be acting admin. Crown with respect to
23 the Port Coquitlam appearances. The disclosure
24 court appearances, I was not the administrative
25 Crown for disclosure court.

1 Q Thank you.

2 A But "RC" would be Randi Connor. "VT" would be
3 Vittorio Toselli.

4 Q I'm sorry?

5 A Vittorio Toselli. "BMC" is Bev MacLean.

6 Q And where is Bev MacLean?

7 A Bev MacLean is the -- or back in '97 would have
8 been at disclosure court in Burnaby.

9 Q Thank you. Keep going, please.

10 A The last entry that I see on the record of
11 proceedings is Randi's Connor on September 8th,
12 1997, and then I see the October 16th, 1997
13 pre-trial conference, and there's no entries for
14 who was the Crown or the defence, so I don't know
15 whether the scheduled court appearance was struck
16 from the list on that date or not. And then I see
17 over the page on October 22nd, '97, that there's a
18 notation the file was returned to Coquitlam, which
19 tells me that it had run its course in disclosure
20 court and it was returned to Port Coquitlam for
21 Mr. Pickton to appear to confirm his trial date,
22 and that was on November 4th, '97, that "RC",
23 who's Randi Connor, appeared on behalf of the
24 Crown, the accused appeared in person.

25 Q What does "CTD" mean?

1 A Confirm trial date.

2 Q And then those dates that have nothing beside them
3 are written in advance by the court clerk just to
4 schedule the trial dates to make it easier for
5 someone to fill in what happened on each of those
6 dates?

7 A That's right.

8 Q But, of course, nothing happened because there was
9 no trial?

10 A That's right.

11 Q Just go back to the first page of the record of
12 proceedings. You'll see September 8th, '97, at
13 9:30 a.m. Courtroom 3 "CNT" means continuation?

14 A Yeah. I'm a bit confused by that notation because
15 it may be -- may represent a continuation of the
16 June 24th, 1997 pre-trial conference, but that
17 doesn't make a lot of sense to me either.

18 Q Okay. Now, you'll see the reference to "RC",
19 which is Randi Connor?

20 A Yes.

21 Q And then there's something stroked out and beneath
22 it looks like "SL"; is that right?

23 A That's the -- under the heading of "Results"
24 it's -- you see in the initials that read down the
25 "Results" column where it says "IBJ". That stands

1 for initiated by judge. "IBD" stands for
2 initiated by defence. "IBC" stands for initiated
3 by Crown. The "SL" that appears under the
4 September 8th, 1997 entry, "SL", I'm not sure what
5 that notation stands for.

6 Q Okay. Let me just see while we're on this. So
7 the disclosure was in Burnaby. You wouldn't have
8 had any involvement with that?

9 A No.

10 Q And November 4, '97, confirm trial date.
11 Appearance "P", what does that mean?

12 A Sorry, which entry are you looking at?

13 Q November 4, '97.

14 A Yes, appearance in person. That means the accused
15 made a personal appearance. The clerk was "LM".
16 That was Lila MacDonald. And the "RC" is Randi
17 Connor. Under the "Results" column is initiated
18 by defence. Under the "Custody" column is the
19 letter "N", which means not in custody, and the
20 initials of the judge, "DS", or Dave Stone.

21 Q Dave Stone. And he was in Port Coquitlam, was one
22 of the judges in that district?

23 A Yes.

24 Q Why the star under the column "REP/REC"?

25 A I don't know.

1 Q So "P" means it was in person, meaning Pickton --

2 A Meaning the accused appeared in person.

3 Q Just while we have you here, look at the last
4 page, and this confirms the date the stay was
5 entered, January 26, '98?

6 A Yes, and the counts 1 through 4 were stayed.

7 Q And directed by? That signature, that is --

8 A Randi --

9 Q -- Randi Connor?

10 A -- Connor's signature.

11 MR. VERTLIEB: Okay. Thank you. I appreciate your time going
12 through that for us.

13 A You're welcome.

14 MR. VERTLIEB: So that is the evidence then of Mr. Romano --

15 THE COMMISSIONER: All right.

16 MR. VERTLIEB: -- Mr. Commissioner. Perhaps the witness could
17 be excused and we could just --

18 THE COMMISSIONER: Thank you for appearing.

19 A Thank you.

20 (WITNESS EXCUSED)

21 MR. VERTLIEB: The only other issue that perhaps we could
22 address for a few moments is this concern around
23 the manuscript being -- your decision being
24 revisited. There's been considerable e-mail
25 traffic on the subject, and a number of the

1 lawyers have weighed in with differing views.
 2 There's some talk about having submissions and
 3 setting dates and asking -- not from us, though,
 4 but from others saying people should come and
 5 bring their calendars and set dates. One of the
 6 other counsel suggested written argument. And so
 7 I just wanted to raise it right now with you.
 8 What is your feeling about this issue? It arose
 9 when Mr. Ward asked you to revisit your ruling
 10 that you made --

11 THE COMMISSIONER: This has grown like top seed, to use an
 12 expression. I didn't realize that this much
 13 attention ought to be devoted to this document,
 14 but obviously there are people who think it should
 15 be. But, in any event, initially I was prepared
 16 to deal with it a long time ago, and I could never
 17 get Mr. Ward or Mr. Crossin in the room at the
 18 same time, and so tell me where are we in this.
 19 The last time I dealt with it it was my
 20 recollection that we were waiting for Mr. Crossin
 21 to come back, and he's still not here, so --

22 MR. VERTLIEB: Mr. Crossin can't be here today. I spoke with
 23 him.

24 THE COMMISSIONER: Okay.

25 MR. VERTLIEB: So where it's left is that after Ms. Shenher was

1 brought back for cross-examination --

2 THE COMMISSIONER: Yes.

3 MR. VERTLIEB: -- as a result of the manuscript Mr. Ward asked
4 you to reconsider your decision --

5 THE COMMISSIONER: Yes.

6 MR. VERTLIEB: -- that you had made in that it not be marked.

7 There are differing views of the differing lawyers
8 here, so the real question is whether -- it's
9 totally your call, of course -- do you want to
10 have oral argument or do you prefer to have
11 written argument.

12 THE COMMISSIONER: Okay. Mr. Gratl, do you want to say
13 something?

14 MR. GRATL: Yes, Mr. Commissioner.

15 THE COMMISSIONER: Yes.

16 MR. GRATL: It appears as though the lines of opposition are
17 fairly clear. Independent counsel for aboriginal
18 interests wants to see the document admitted. I
19 myself on behalf of Downtown Eastside community
20 and individuals who are affected would like to see
21 the document admitted. Counsel for 25 families
22 would like to see the document admitted. I
23 understand that Mr. Woodall for Constable Fell
24 opposes the admission. Obviously Constable Fell
25 is mentioned in the document, and his reputational

1 interest might be affected, and so it's
 2 appropriate for him to have views. Counsel for
 3 the Vancouver Police Department I'm informed is
 4 opposed to the admission of the document. Mr.
 5 Crossin is opposed to the admission, but it's not
 6 clear whether it's on behalf of Detective
 7 Constable Shenher or the Vancouver Police Board or
 8 which client in particular that he's acting for
 9 might be opposed.

10 THE COMMISSIONER: What does it matter? What does it matter?

11 MR. GRATL: What does it matter who's opposed?

12 THE COMMISSIONER: Yeah. I mean, he's representing Detective
 13 Constable Shenher. He doesn't want the document
 14 in. So whether he's speaking on behalf of someone
 15 else as well is really of no concern to me or
 16 should to anyone else, so I just have to deal with
 17 the grounds of his opposition. That's all I'm
 18 concerned with here.

19 MR. GRATL: Well, my -- I hear what you're saying, Mr.
 20 Commissioner, but I think it's ordinary for
 21 counsel to identify the parties on behalf of whom
 22 they're making submissions. I don't know if I'm
 23 asking for too much, but -- so we have these
 24 differing lines --

25 THE COMMISSIONER: Okay.

1 MR. GRATL: -- and there's quite a vigorous distance between
 2 the two lines. In my submission, there's some
 3 public importance to the question of
 4 admissibility, there is a very strong demarcation
 5 of positions, and it's appropriate to have oral
 6 argument here. And I appreciate that Mr. Woodall
 7 has suggested written argument, but, in my
 8 respectful submission, this is an issue that ought
 9 to be aired publicly. We shouldn't have a
 10 decision based on written submissions that do not
 11 form part of the public record. We should have
 12 these parties on record as to -- and identify
 13 which parties are opposed, have these parties on
 14 record in public saying why they don't want the
 15 public to see these documents. This is -- it's a
 16 public forum, and we should have transparency and
 17 accountability of the participants.

18 THE COMMISSIONER: What makes you think transparency and public
 19 accountability can't be achieved by written
 20 argument that's filed?

21 MR. GRATL: The public won't have access --

22 THE COMMISSIONER: It's an open hearing. Why would you say
 23 it's not transparent?

24 MR. GRATL: The public doesn't have access to those written
 25 arguments unless they become marked as exhibits.

1 THE COMMISSIONER: Well, you know, we can correct that in a
2 hurry.

3 MR. GRATL: There's a lower level of public scrutiny because
4 the written argument won't be webcast --

5 THE COMMISSIONER: Well, here's --

6 MR. GRATL: -- and because none of the information will be
7 posted to the commission of inquiry website, and
8 so that's what lends itself to the higher level of
9 transparency and accountability for oral argument.

10 THE COMMISSIONER: All right. Thank you. Is there anyone else
11 that has any views that want to deal with it now?

12 MR. HERN: I just want to clarify for the record that Mr.
13 Crossin represents Lori Shenher as part of his
14 mandate on behalf of the union. I represent the
15 board and the department. And how this matters
16 gets heard I have no opinion on.

17 THE COMMISSIONER: Okay. Thank you. Yes.

18 MS. HATCHER: Mr. Commissioner, it's Claire Hatcher for Fell
19 and Wolthers. Just responding to Mr. Gratl's
20 submission, Mr. Woodall is not here, but my friend
21 has correctly stated that we think it's prudent
22 that it go by written argument. We're not trying
23 to shield anything. I agree with your comments
24 these things can be filed and made available. If
25 we're going to hear it orally, that's fine, we'll

1 make ourselves available. The dates have been
 2 circulating amongst counsel. We'll make ourself
 3 available. We do respectfully suggest, however,
 4 that a notice of application be filed.

5 THE COMMISSIONER: Sorry?

6 MS. HATCHER: A notice of application should be filed by those
 7 seeking the admission because I think there has
 8 been a prior ruling. So if there's any new basis,
 9 some law, some grounds, and also some transcript
 10 references from Ms. Shenher's evidence on the 4th
 11 of April to assist us so that we're not scrambling
 12 to respond, I think that's appropriate perhaps to
 13 clear the ice. So that's our position. We'll
 14 make ourselves available to hear it, but I think
 15 written submissions would be more orderly and more
 16 efficient and still in the public.

17 THE COMMISSIONER: All right. Thank you. Anyone else?

18 MR. GRATL: I think, Mr. Commissioner, I think Ms. Hatcher's
 19 suggestion about a written notice of application
 20 makes a lot of sense in terms of identifying
 21 particularly where Constable Fell is identified in
 22 the transcript. I think that can be done with a
 23 key search term on the publicly posted
 24 transcripts.

25 THE COMMISSIONER: Okay. I don't want to spend any more time

1 in the hearings on this. We've sort of beaten
2 this thing to death, and it may be -- I don't know
3 if it's entirely warranted. Having said that, in
4 fairness to everyone here, whether you're pro or
5 con, I am going to order there be written
6 argument, and you're going -- you have to tell me
7 why this document is relevant and what are we
8 going to learn from this document that we already
9 haven't learned from her oral evidence that she's
10 already given here, and you might want to deal as
11 well with the rules of evidence. So those are
12 some of the factors that I need to consider.
13 They're all relevant as far as I'm concerned as to
14 whether or not the -- this is a manuscript that
15 she prepared some time after the arrest of Pickton
16 where she expresses her private views, and they
17 were initially going to be public. In any event,
18 she's given various opinions or opinions about the
19 investigation and what the police did and what
20 they didn't do and what her view's are on the
21 personalities of the police officers down there.
22 So, anyway, you tell me how that's relevant, and I
23 expect those people who are opposing it will deal
24 with the same issues. All right.

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

1 MR. VERTLIEB: So that concludes what we can do today. Just to
2 give people an outline for next week, we have Ms.
3 Sandy Cameron and the 911 phone person coming
4 Monday for a day and a half. And, again, not
5 everyone gives estimates. People should read the
6 process directive once again that you issued, Mr.
7 Commissioner, and your desire to hold people
8 strictly accountable to time estimates being
9 provided.

10 THE COMMISSIONER: Okay.

11 MR. VERTLIEB: Obviously if the time estimates come in for
12 greater than the time allotted then we will need
13 to make decisions on how much time we are going to
14 allocate.

15 THE COMMISSIONER: All right.

16 MR. VERTLIEB: Which, of course, you can't do until you have
17 people telling you how much time they want.

18 THE COMMISSIONER: All right.

19 MR. VERTLIEB: And then we start the Major Crime panel on
20 Tuesday afternoon, and they're scheduled for the
21 rest of the day Tuesday and Wednesday and
22 Thursday, and again we need estimates, and it
23 could be the case that you'll need to make a
24 decision on how much time people will be allotted.

25 THE COMMISSIONER: All right.

1 MR. VERTLIEB: In doing so I say to you that Karey Brooks and I
2 are doing everything we can to shorten the time
3 that we take. Typically in inquiries, in our
4 experience in reading, commission counsel would
5 take the longest time unfolding the narrative for
6 the benefit of the commissioner and the
7 participants would have some time allotted. This
8 inquiry has not followed that, and we're not
9 critical of that approach. The reality, though,
10 is that we have been trying to minimize our
11 examination in chief out of respect for the
12 participants and giving them maximum time,
13 although this next week will have fulsome evidence
14 that needs to be brought before you by commission
15 counsel. We will do that as part of our job for
16 you.

17 THE COMMISSIONER: All right.

18 MR. VERTLIEB: So that's the outline for next week, and we're
19 at the stage now where we need to be -- all of us
20 need to be disciplined about how we proceed in
21 terms of providing time estimates.

22 THE COMMISSIONER: All right. Thank you. Mr. Gratl.

23 MR. GRATL: Mr. Commissioner, there are two other outstanding
24 housekeeping matters. The first is to set a
25 schedule for the written submissions.

1 THE COMMISSIONER: Yes.

2 MR. GRATL: And I'm proposing a notice of application and
3 written submissions by Wednesday of next week.

4 THE COMMISSIONER: What is this for?

5 MR. GRATL: For the Shenher manuscript. What I don't want, Mr.
6 Commissioner, I don't want this application to
7 deal with the Shenher manuscript one way or
8 another, I do not want it to drift interminably,
9 and that's what I think gave rise to the flurry
10 of e-mails.

11 THE COMMISSIONER: You know what, I could have dealt with this
12 two months ago. I was waiting for you -- not for
13 you, for Mr. Ward and Mr. Crossin. So this thing
14 has been extended by counsel not directing their
15 minds as to whether or not that document ought to
16 be filed. So I'm -- you want to set the deadline
17 for Wednesday. I'll set it for this afternoon if
18 you want, you know, if you want to get this thing
19 moving. I'm not the cause of the delay here. So
20 you let me know, all of you should let me know
21 when think you can reasonably prepare and file
22 written arguments.

23 MR. GRATL: Well, that's what I'd like to do today --

24 THE COMMISSIONER: Yes.

25 MR. GRATL: -- because we have time. We don't have another

1 witness scheduled, and we still have -- we still
2 have an hour before the lunch hour.

3 THE COMMISSIONER: We don't need an hour to set this.

4 MR. GRATL: No, I know, but we have time right now, and I'd
5 really like to set a schedule.

6 THE COMMISSIONER: Okay. You say Wednesday. Wednesday is
7 agreeable to you?

8 MR. GRATL: I'm saying Wednesday for the applicants.

9 THE COMMISSIONER: Yes.

10 MR. GRATL: And then the following Monday for the respondents,
11 those who oppose, and then the next Wednesday for
12 any reply.

13 THE COMMISSIONER: Does anybody have any objection to that time
14 frame?

15 MR. HIRA: I came down specifically --

16 THE COMMISSIONER: Mr. Hira.

17 MR. HIRA: Ravi Hira. I came down specifically for this. I
18 have no difficulty with the time frame proposed
19 except for Monday, April the 30th. I need about
20 five to ten minutes. It's a very trite area of
21 law. I just cannot be here on Monday, the 30th.
22 What --

23 THE COMMISSIONER: This is a deadline for filing the documents.

24 MR. HIRA: That's fine.

25 THE COMMISSIONER: There's not going to be any more oral

1 argument on this.

2 MR. HIRA: If it's for filing, what I was going to suggest is
3 you could direct me to file a written submission.
4 It's brief. It's trite. It should be pretty
5 straightforward.

6 THE COMMISSIONER: All right. Okay. Thank you.

7 MR. GRATL: All right. So that's what I would propose,
8 Wednesday and then Monday and then Wednesday for
9 reply.

10 THE COMMISSIONER: Okay. I'll make that order.

11 MR. GRATL: And then the last housekeeping matter, which has
12 been outstanding for many, many months, is the
13 documents marked for identification as Exhibits A
14 and J. Those are the Lowman materials. I don't
15 know if -- it's going back a way, but the
16 materials I put to Professor Lowman haven't yet
17 been marked as an exhibit, and I would like to ask
18 Exhibit A -- that the Lowman materials be marked
19 as an exhibit and also Exhibit J, which is the
20 materials dealing with what I called once, I
21 referred to as the bias --

22 THE COMMISSIONER: I don't even know what those documents are.
23 Does anybody know what they are?

24 MR. GRATL: I think they're sitting on the counter there. It
25 took a long time to edit these documents, and I'm

1 asking that those be marked as exhibits, the next
2 two exhibits so that they may be posted to the web
3 for public consumption.

4 MR. VERTLIEB: That's agreeable.

5 THE COMMISSIONER: Sorry?

6 MR. VERTLIEB: That's agreeable. That is agreeable.

7 THE COMMISSIONER: What? I'm not --

8 MR. VERTLIEB: We agree.

9 THE COMMISSIONER: They should marked as exhibits. All right.

10 We'll mark them as exhibits.

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

12 THE COMMISSIONER: All right. Thank you.

13 THE REGISTRAR: Now, are those to be marked as NR?

14 MR. GRATL: No, no. They've already been edited, I think, by
15 the Vancouver Police Department, and commission
16 counsel have had a look at them, and they've been
17 edited properly for --

18 THE REGISTRAR: They've been properly edited. In that case,
19 for identification document marked as A will
20 become Exhibit 145. For identification J will
21 become 146.

22 **(EXHIBIT 145: Document entitled: Book of**
23 **Documents, 220 pages, each containing independent**
24 **VPD document identification numbers)**

25 **(EXHIBIT 146: Document entitled: Binder of**

1 **documents containing 271 pages)**

2 THE COMMISSIONER: All right. Thank you. We'll adjourn.

3 MR. GRATL: Thank you.

4 THE REGISTRAR: The hearing is now adjourned for the day and
5 will resume on Monday at 9:30.

6 **(PROCEEDINGS ADJOURNED AT 11:20 A.M.)**

7

8

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

13

14 Leanna Smith
15 Official Reporter

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