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Vancouver, BC
February 13, 2012

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

THE REGISTRAR: Order. This hearing is now resumed.

THE COMMISSIONER: Mr. Chantler.

MR. CHANTLER: Mr. Commissioner, Neil Chantler, counsel for the families of 25 murdered and missing women whose disappearances are the subject of this inquiry.

Mr. Commissioner, with me here today is Ms. Robin Whitehead, our research assistant. She's been assisting us with this inquiry and especially with the document issue.

Mr. Commissioner, this is an application brought in accordance with this commission's practice and procedure directive for a number of orders respecting the production of documents. Mr. Commissioner, your power to make such orders derives from Section 22 of the *Public Inquiry Act* and I'll read that quickly. That provides: At any time before making its final report --

THE COMMISSIONER: I'm satisfied that I have the legal authority to order the production of documents.

MR. CHANTLER: Thank you, Mr. Commissioner.

THE COMMISSIONER: Just tell me how this is relevant, how the

1 documents that you seek to have produced that
2 haven't been produced are relevant. That's
3 really all I need to know.

4 MR. CHANTLER: Mr. Commissioner, I intend to proceed through
5 three sections of my submissions, if I may.

6 THE COMMISSIONER: Yes.

7 MR. CHANTLER: You should have before you two binders, one
8 entitled Application Brief, a black binder, and
9 the other entitled Affidavit of Robin Whitehead,
10 that's a blue binder, and I'll be referring to
11 those throughout my submissions. My learned
12 friends have been provided with copies of these
13 application materials in advance of today with as
14 much notice as was possible in the circumstances.
15 If I may, I'd like to mark a copy of each of
16 those binders as an exhibit.

17 THE COMMISSIONER: Thank you.

18 THE REGISTRAR: To start off here, your black binder marked
19 Application Brief will be marked Exhibit 94 and
20 your blue binder, Affidavit of Robin Whitehead,
21 will be marked as Exhibit 95.

22 MR. CHANTLER: Thank you, Mr. Giles.

23 MR. HERN: Before we move on that, the affidavit appends a
24 number of documents at the end of it so now it
25 should be a non-public.

1 THE COMMISSIONER: Should be what?

2 MR. HERN: It should be non-public for the moment until it
3 gets vetted because there are a number of police
4 documents that are appended at the end that
5 haven't been vetted for the public release.

6 THE COMMISSIONER: You're telling me there are a number of
7 names or materials in that document that
8 shouldn't be released?

9 MR. HERN: That shouldn't be released before they're vetted,
10 just like all the other exhibits. It should
11 remain the number but just be non-public for the
12 moment.

13 THE COMMISSIONER: Yes.

14 THE REGISTRAR: That will amended as 95NR, non-redacted.

15 **(EXHIBIT 94: Application Brief)**

16 **(EXHIBIT 95NR: Affidavit of Robin Whitehead)**

17 MR. CHANTLER: My submissions will be divided into three
18 sections, as I mentioned: The state of document
19 production at this inquiry, number 1; number 2,
20 lessons learned at other commissions of inquiry;
21 and number 3, the specific orders we seek on
22 before of our clients at this application.

23 First, Mr. Commissioner, I wish to make a
24 few preliminary comments. In September 2010 when
25 Attorney General Mike de Jong announced this

1 inquiry, many people, including the families we
2 represent, felt a sense of cautious optimism. 16
3 months later midway through these hearings, that
4 optimism has faded. Our clients feel that it is
5 regrettable that we find ourselves at this stage,
6 four months into the evidentiary hearings,
7 required to apply for further and better
8 production of documents from the RCMP, Vancouver
9 Police Department, Criminal Justice Branch and
10 the Province of British Columbia to name a few.
11 These organizations appear to us to have withheld
12 relevant and probative documents from this
13 commission and this commission in turn has chosen
14 not to compel the production of these documents
15 from these organizations.

16 THE COMMISSIONER: First of all, I'm going to stop you there.
17 This is the first application that's been made
18 for the production, so you can't say the
19 commission has refused to order the compulsion.
20 My understanding is that up to now some 200,000
21 pages of documents have been disclosed. You and
22 Mr. Ward have been saying for quite some time
23 you're going to bring on this application and
24 that's why we're here today and I will hear you
25 on that.

1 MR. CHANTLER: Mr. Commissioner, the foundation of my comments
2 are at least 60 document requests that our office
3 has made to commission counsel since before these
4 proceedings began. In our view this application
5 should not have been necessary. All of the
6 documents and records we seek today have been the
7 subject of previous requests to commission
8 counsel, perhaps with a couple of exceptions,
9 made long ago. As well, another problem I
10 suggest is that relevant documents continue to
11 trickle in almost weekly, providing enormous
12 challenges to our ability to prepare for
13 witnesses and stay on the top of the state of
14 document disclosure.

15 As an example, I'd like to refer you, Mr.
16 Commissioner, to the document found at tab 76,
17 the affidavit of Robin Whitehead, the final tab.
18 This appears to be a Task Detail Report, a
19 document produced by Project Evenhanded. We've
20 seen many examples of this type of document
21 before. We can see that it was regarding a task
22 assigned on March 21, 2002 by Sergeant Wayne
23 Clary to Constable Mike Procyk, Project
24 Evenhanded. Mr. Commissioner, I believe you've
25 heard evidence thus far that during the terms of

1 reference there were four incomplete 911 calls
2 from the Pickton properties. This document
3 relates to the last of those incomplete 911 calls
4 on October 22, 2001. According to this document,
5 shortly after Pickton's arrest in February 2002,
6 Constable Procyk interviewed three officers who
7 attended the Pickton farm in response to that
8 incomplete phone call on October 22, 2001. In
9 the course of those interviews he learned that
10 while two attending officers had spoken with
11 Robert Pickton at his trailer, a third officer
12 had wandered around the farm, entered the barn
13 and encountered another man covered in blood
14 butchering a pig and holding a knife. We don't
15 know who this man was and it doesn't appear that
16 potential investigative lead was followed, but we
17 do know that three months after this incident
18 when the barn was finally searched on February 5,
19 2002, visible human remains found. Mr.
20 Commissioner, the point is this: This is a
21 relevant and probative document. This document
22 was originally created more than nine years ago.

23 THE COMMISSIONER: What is the document?

24 MR. CHANTLER: It's before you at tab 76, an exhibit to
25 Ms. Whitehead's affidavit.

1 THE COMMISSIONER: Yes.

2 MR. CHANTLER: We can see right on the face of it in the top
3 right-hand document that this document was
4 printed on October 27, 2011, probably in
5 preparation for this inquiry. That was three
6 months ago. Mr. Commissioner, this document
7 arrived on the Concordance database on Friday
8 last week along with 490 other pages of RCMP
9 documents. Until then we had never seen it,
10 heard about it and never heard that there was a
11 police encounter with an unidentified man in the
12 Pickton barn three months before it was searched,
13 which brings me to the first section of my
14 submissions, the state of document production at
15 this inquiry. We have routinely raised our
16 clients' concerns, long-standing concerns about
17 the state of document production and the manner
18 in which documents have sought to be produced by
19 this commission. I suggest that some of their
20 concerns have been shared recently by the
21 witnesses. Deputy Chief Evans testified that she
22 was very frustrated with document disclosure to
23 her in the course of preparing her report and she
24 had concerns relevant documents were not being
25 produced to her by the VPD and RCMP. She further

1 testified that she thought it was "ridiculous"
2 that some documents were disclosed to her only
3 after she conducted interviews related to those
4 documents.

5 Detective Constable Shenher in her testimony
6 agreed it was glaringly obvious to her that her
7 own investigative notes from the period under
8 review had not been disclosed to Deputy Chief
9 LePard, Deputy Chief Evans or returned to her
10 despite her requests. Sergeant Mike Connor in
11 his testimony revealed that no one had even asked
12 him to produce his relevant e-mails for the
13 benefit of this inquiry. I anticipate my learned
14 friends from the Department of Justice will
15 submit that Mr. Connor was incorrect, that he was
16 at some point in time asked to produce his
17 e-mails, but the point is this, Sergeant Connor
18 did not appreciate or act on those instructions.

19 Mr. Commissioner, I'd like to take you
20 briefly through the history of the families'
21 concerns about document production at this
22 inquiry. All of the correspondence I refer to
23 will be as briefly as possible. It is all
24 appended to Ms. Whitehead's affidavit and I can
25 direct you to any piece of correspondence that

1 you request.

2 On January 4, 2011, you granted the families
3 early standing along with the VPD, RCMP and CJB
4 due to their "unique and direct perspective" to
5 bring to this commission's work. On March 21 Mr.
6 Ward first wrote to Mr. Vertlieb with a request
7 for documents to enable us to begin to prepare
8 for these evidentiary hearings. On May 5, 2011
9 we were provided with an undertaking of counsel
10 which was required to be signed before any access
11 to any commission-related documents would be
12 granted. On June 7, 2011, we were granted access
13 to the Concordance database for the first time.
14 I'll pause to note that this was more than eight
15 months since our office had first been in touch
16 with the commission and more than six months
17 since Deputy Chief Evans had been provided access
18 to documents for the preparation of her report.
19 We have never had an explanation for why the
20 commission could not provide the families who
21 were granted early standing at this inquiry
22 earlier access to the documents. Immediately
23 upon accessing the Concordance database we
24 perceived problems with the content of the
25 disclosure. It was obvious to us that entire

1 classes of documents, relevant and probative
2 documents, had not been disclosed to this
3 commission. On August 14, 2011, Mr. Ward wrote
4 to commission counsel expressing grave concerns
5 about the adequacy of document production and
6 urging the commission to issue summons or
7 subpoenas for documents on each individual
8 participant at this inquiry. As I will discuss
9 in a moment, this was never done. Summons have
10 been issued on the Vancouver Police Department
11 and Criminal Justice Branch only, not a single
12 other participant in this inquiry, at least to
13 our knowledge. On October 6, 2011, just a few
14 days before these evidentiary proceedings began,
15 we delivered an application for further record
16 production to commission counsel identifying
17 numerous classes of documents we felt disclosure
18 had been inadequate. On November 30, 2011, more
19 than a month later, we received a letter from Mr.
20 Boddie, the commission's executive director, and
21 I'd actually like to turn to this letter, because
22 it's particularly telling. It's at tab 31 of the
23 affidavit of Robin Whitehead disclosure. In this
24 letter addressed to all participants, Mr. Boddie
25 advises that the commission had received over 60

1 document requests. Of those requests, 33 had
2 been disclosed or explained, 11 had been
3 requested of the owner, six were not then or
4 never were available, and 17 requests were
5 considered to be insufficiently clear or their
6 relevancy was considered to be unclear. It would
7 be unfair not to acknowledge the significant
8 efforts Mr. Boddie went to to obtain some of the
9 documents that we requested, but the point is
10 this, obviously numerous classes of documents
11 were not disclosed to this commission in a timely
12 fashion.

13 I'd like to turn to the chart that Mr.
14 Boddie attached to that letter, a couple of pages
15 on in which he's articulated each of the
16 requests, the date of the request and provided a
17 response. Over the page at page 2 of the chart,
18 item 6, I'll just give a couple of examples of
19 what these requests were all about. Item 6 is
20 for the records of the office of the Police
21 Complaint Commissioner relating to complaints
22 filed by, among others, Deborah Jardine that
23 should say, not Angela, in 1999 and 2002 directly
24 related to -- in response to the disappearance of
25 her daughter and the treatment she felt she was

1 afforded by the Vancouver Police Department. No
2 one sought to obtain these documents before our
3 request on September 23, 2011. These documents
4 were eventually disclosed to the commission on
5 October 17, 2011, and I can tell you that because
6 there is a field in the Concordance database that
7 provides for the date documents were uploaded.
8 The dates I'll be citing as to when documents
9 were disclosed to us were in accordance with that
10 date.

11 The item below, number 7, is a request for
12 VPD and RCMP members' notebooks. I can tell you,
13 Mr. Commissioner, that after this request was
14 made on September 23, 2011, we received the
15 notebooks of Field, Little, McKnight, Oger,
16 Clary, Davidson, Hensley, Kingsbury and Yurkiw.
17 Those were disclosed on October 18, 2011, one
18 week after the evidentiary proceedings had
19 already begun. These were investigators who
20 formed a part of the Missing Person Unit and
21 Project Evenhanded.

22 Just to give a couple of more examples, item
23 14 on page 5 of the chart is a request for
24 records maintained by members of the Vancouver
25 Police Board in respect of the missing women

1 investigations. We made this request on October
2 6, 2011, shortly before the hearings began. The
3 Vancouver Police Board did disclose its regular
4 meeting minutes, in-camera meeting minutes and
5 documents related to the missing women reward,
6 but only on October 25, 2011, 14 days after these
7 hearings began. Over the page a couple more
8 examples before I move on.

9 Items 18 and 19 on page 6 relate to e-mail
10 communications. We have made numerous requests
11 for further production of e-mail records from the
12 Vancouver Police Department and Royal Canadian
13 Mounted Police. This chart suggests that those
14 requests have been satisfied by the sparse
15 collection of e-mails that have made their way
16 into the files and have been disclosed. We
17 suggest there's far more and this response is
18 inadequate.

19 One final example is at item 26 on page 7 of
20 the chart. These are records directly relating
21 to the disappearance and the investigation that
22 followed of one of our client's daughters Tiffany
23 Drew. These documents are squarely within the
24 terms of reference. We had to request these
25 documents on October 6, 2011 and they weren't

1 disclosed to us until November 4, 2011.

2 The reason I have taken you to these
3 examples, Mr. Commissioner, is to demonstrate the
4 inadequacy of the approach taken to document
5 production at this inquiry. These institutional
6 participants, VPD, RCMP and CJB, to name a few,
7 have not in a timely and proper way sorted
8 through their records and been forthcoming with
9 all that are relevant to this inquiry.

10 Incidentally, I can report that as of today there
11 are 9,217 documents on the Concordance database;
12 a total of 1,812 of those documents have been
13 uploaded Concordance since commencement of these
14 hearings on October 11. That's 20 percent; 20
15 percent of these documents since the hearings
16 began. These are documents that have existed for
17 10 to 15 years. On January 31, 2012, after
18 numerous additional requests, which you can see
19 throughout the binder of exhibits, we summarized
20 some of our requests in a letter at tab 42. This
21 list is voluminous. We have not received any
22 response from the commission to suggest efforts
23 are being made to obtain these documents. As
24 most of these requests are included in the orders
25 sought in this application, I'll refer to them in

1 a moment. Mr. Commissioner, my current point is
2 this, there have been volumes of disclosure at
3 this inquiry but much of this has only come in
4 response due to our demands and it appears these
5 organizations have taken a selective approach to
6 document disclosure. Many relevant and probative
7 documents likely remain outstanding and the
8 commission's approach to document production has
9 fallen short of ensuring these documents are
10 produced. All of this, Mr. Commissioner, I
11 suggest, is the state we find ourselves in may be
12 attributed to the fact that the commission has
13 only issued summons to two institutional
14 participants. On October 5 we received a letter
15 from John Boddie enclosing those two summons.
16 For your reference, they're at tab 19 of the
17 affidavit. We've been told that the commission
18 has not issued a summons to the RCMP. We've been
19 told this is because of jurisdictional reasons.
20 We've been told that in place of a summons the
21 RCMP has simply agreed to produce whatever
22 documents it feels ought to be produced to the
23 inquiry in order to cooperate with the inquiry
24 and in good faith. If I may, Mr. Commissioner,
25 this is a bit like the asking the fox to guard

1 the henhouse. It is the ultimate conflict of
2 interest. The actions of numerous RCMP officers
3 from the lowest corporal to the deputy
4 commissioner are under scrutiny at this inquiry.
5 Your mandate, Mr. Commissioner, as you know, is
6 to determine the facts respecting the failed
7 missing women investigation for which the failure
8 of the RCMP is at least partly responsible. This
9 commission has put the RCMP in the untenable
10 position of having to choose between maintaining
11 public confidence and its handshake agreement, if
12 I may call it that, to disclose documents
13 relevant to this inquiry. To date the RCMP has
14 been under no legal obligation to produce
15 documents to this inquiry.

16 Mr. Commissioner, with the greater of
17 respect, we do not share your counsel's current
18 view that the RCMP cannot be issued a summons on
19 jurisdictional grounds. A similar argument was
20 raised before Commissioner Braidwood into his
21 inquiry into the death of Robert Dziekanski.
22 That inquiry is familiar to many into this room
23 and I won't go into it at length. RCMP officers
24 involved in Mr. Dziekanski's death challenged the
25 commissioner's ability to issue notices of

1 misconduct to them and his ability to make
2 findings of misconduct against them. They
3 argued, among other things -- and I'll take you
4 to the decision in a moment -- that this would
5 infringe upon federal jurisdiction to manage and
6 administer the RCMP. Their challenges were
7 quashed by Commissioner Braidwood and their
8 subsequent application for judicial review was
9 dismissed by the Honorable Mr. Justice Silverman.
10 Ultimately, the issue went before the Court of
11 Appeal, and I'd like to refer you to a couple of
12 passages from the Court of Appeal's decision.
13 This is in the Application Brief at tab 4. This
14 is the black binder at tab 4. The passages I'd
15 like to refer you to are at page 18, paragraphs
16 53 to 55, and I'll just read those passages to
17 you now. This is the Honourable Madam Justice
18 Saunders writing for the court.

19 We are urged by the appellants to view the
20 Supreme Canada jurisprudence as reserving
21 more latitude for a provincially appointed
22 commission to inquire into matters involving
23 an agency within provincial power, than
24 exists to consider matters involving a
25 federal agency.

1 It seems to me that jurisprudence cannot be
2 stated so simply or the cases distinguished
3 on this basis. Analysis must be directed
4 to the substance of the commission's action
5 or anticipated action in order to determine
6 its vires. Thus, as demonstrated by the
7 cases I have referred to, a provincial
8 inquiry may not be engaged as an alternate
9 to the criminal procedures provided by the
10 federal government. Nor may a provincial
11 inquiry trench upon areas of management or
12 administration of a federal agency
13 However, where such a direct focus or effect
14 is not present, I see no basis on which to
15 curtail what is otherwise a proper inquiry
16 directed by the province, under the terms of
17 the valid provincial legislation enacted
18 under the province's constitutional
19 authority over the administration of justice
20 in the province.
21 Accordingly, I see no basis upon which to
22 interfere with the order declining to
23 interfere with the notices of misconduct for
24 jurisdictional reasons.
25 Mr. Commissioner, in this commission we are

1 not seeking to supplant the criminal process or
2 to trench upon areas of management or
3 administration of the RCMP. All we are trying to
4 do is establish facts to determine what happened
5 in the missing women and Pickton investigations
6 between January 23, 1997, and February 5, 2002,
7 so that you can fulfil your mandate. In order to
8 do that we need thorough production from the
9 institutions under examination, including the
10 RCMP, and we need an order from you, Mr.
11 Commissioner, compelling that production. It is
12 apparent that the commission's laissez-faire
13 approach to document production has not inspired
14 full participation by some of the participants.
15 I submit, with the greatest of respect to your
16 final decision, that there is no principled
17 reason not to issue this summons.

18 That brings me to my second area of
19 submissions. Lessons learned at other
20 commissions of inquiry. I'd like to again refer
21 to the evidentiary hearings at the Braidwood
22 Inquiry. We all know late production of an
23 e-mail by the RCMP became a salient feature of
24 the Braidwood inquiry. I'd ask that you turn to
25 tab 5 of the Application Brief just for a moment,

1 please. I've included a few passages here of
2 Commissioner Braidwood's final report at Part 6,
3 specifically the comments he makes about the late
4 disclosure of the e-mail, page 174, the subject
5 Chief Superintendent Bent's November 5, 2007,
6 e-mail, he writes:

7 On June 16, 2009, three weeks after the last
8 witness at our evidentiary hearings
9 testified, and three days before closing
10 oral submissions were schedule to begin,
11 commission counsel received disclosure from
12 counsel for the Department of Justice of a
13 potentially significant e-mail.

14 We probably all know what the content of
15 importance of that e-mail was. It suggested that
16 four RCMP officers, the four RCMP officers
17 involved in Mr. Dziekanski's death, may have
18 formulated a plan of action before entering the
19 airport while their evidence in chief suggested
20 otherwise. Commissioner Braidwood called this
21 late disclosure appalling in his report. The
22 late disclosure of the e-mail required the
23 commissioner to adjourn the closing submissions
24 and reconvene hearings more than three months
25 later. Mr. Commissioner, the Braidwood

1 Commission is a lesson on the potential harm that
2 can be caused to an inquiry by the late
3 disclosure of documents. Late disclosure of
4 documents can require witnesses to be recalled
5 and effectively derail the inquiry process.

6 The next example I'd like to discuss is the
7 Somalia Commission of Inquiry. This commission
8 may be less familiar so I'll describe it to you
9 briefly. The Somalia Inquiry was called after
10 public outcry over the actions of Canadian troops
11 in the early 1990s. It was tasked with
12 investigating the chain of command system, the
13 leadership, discipline, actions and decisions of
14 the Canadian Forces, as well as the actions and
15 decisions of the Department of National Defence
16 in respect of the Canadian Forces' participation
17 in the UN peacekeeping mission in Somalia. The
18 principal conclusion of this inquiry is that the
19 mission went badly wrong. Systems broke down,
20 organizational failure ensued. The final report
21 was extremely critical of the procedures, support
22 and leadership of the Canadian Forces and the
23 Ministry of Defence. I suggest there was
24 similarities before the Somalia Inquiry and
25 Missing Women Inquiry in terms of the subject

1 under study. In both cases systems broke down,
2 leadership failed to taken ownership of the
3 problem and organizational failure ensued. This
4 at least would be consistent with the finding of
5 Deputy Chief Evans in her report. But there is
6 another similarity between the Somalia Inquiry
7 and this inquiry. One of the primary challenges
8 faced by the commissioners in that inquiry was
9 obtaining disclosure of documents from the
10 institutional participant under examination, the
11 Department of National Defence. In fact, one
12 entire chapter of the final report is devoted to
13 the enormous challenges the commission faced in
14 obtaining the documents it needed to fulfil its
15 mandate, chapter 39 of its report. That chapter
16 is entitled Openness and Disclosure of documents
17 and I've included the entire chapter at tab 7 of
18 my brief. There is also an executive summary of
19 that chapter which I've included at tab 6 and
20 I'll ask that we turn to that now. I intend to
21 read a couple of paragraphs from this inquiry
22 because I think they're appropriate. Starting at
23 the beginning:

24 In concluding our investigation we
25 encountered two unanticipated but related

1 obstacles that cast a large shadow on the
2 degree of cooperation exhibited by the
3 Canadian Forces and the Department of
4 National Defence, in particular its public
5 affairs directorate in its dealings with
6 our inquiry as well as on the openness and
7 transparency of the department in its
8 dealings with the public. DND through its
9 actions hampered the progress and
10 effectiveness of our inquiry and left us
11 with no choice but to resort to
12 extraordinary investigative processes in
13 order to discharge our mandate
14 appropriately.

15 The first obstacle relates to the compliance
16 by the DND with our orders for production
17 of documents under the *Inquiries Act* and
18 the delays and difficulties we faced in
19 dealing with the Somalia Inquiry Liaison
20 Team, or SILT.

21 I pause to note the difference in this
22 inquiry in one respect was that summons were
23 issued but document production remained a major
24 issue.

25 Skipping ahead to the bottom paragraph of

1 that first page:

2 The *Inquiries Act* provides commissioners
3 appointed under its terms with broad powers
4 of investigation and the right of access to
5 any information considered relevant to the
6 subject under study. Actions leading
7 directly or deliberately to delay in
8 producing documents, or alteration of the
9 documents and files ordered for the
10 purposes of fulfilling a mandate under that
11 act, should be viewed by all Canadians as
12 an affront to the integrity of the public
13 inquiry process and to our system of
14 government. In that light, the story of
15 non-compliance with the orders of a public
16 inquiry and the nature of the role played
17 by SILT in that story, which is recounted
18 in chapter 39, becomes all the more
19 shocking.

20 On a surface level, the events described in
21 chapter 39 suggest either a lack of
22 competence or a lack of respect for the
23 rule of law and the public's right to know.
24 Digging deeper, the difficulties we
25 encountered involved tampering with and the

1 destruction of documents. The cumulative
2 effect of these actions on our work cannot
3 be overstated. We depended on the receipt
4 of accurate information from the department
5 on a timely basis in order to decide which
6 issues to investigate and how the hearings
7 were to be conducted. The fact that the
8 production was not timely and the documents
9 were incomplete to such a great extent
10 meant that the work of the inquiry was
11 delayed and that our staff were constantly
12 occupied with document-related issues.

13 Mr. Commissioner, the allegations I've made
14 about the potential harm caused to this inquiry
15 by the failure of an institutional participant to
16 be open and forthcoming with documents are not
17 unique and not without precedent. I'm not
18 suggesting that the situation we find ourselves
19 in now is as dire as it was in the Braidwood or
20 Somalia inquiries, but we have to ensure we don't
21 get there. The principles here in this inquiry
22 are the same, openness and transparency of
23 government are of great importance to those
24 planning the future of policing in this province.
25 Actions that obscure the true facts related to

1 the missing women investigations that are the
2 subject of study at this inquiry is an affront to
3 the integrity of the public inquiry process, the
4 families of the missing women and the general
5 public.

6 Mr. Commissioner, I'll focus now on the
7 final section of my submissions which are the
8 orders sought today. Mr. Commissioner, as you
9 can appreciate, proving the absence of documents
10 we feel are necessary for this inquiry has been a
11 very challenging task. Mr. Ward, Ms. Whitehead
12 and I have done our very best based on experience
13 and in the interests of our clients to determine
14 what records ought to exist but have yet to be
15 produced to this inquiry despite their obvious
16 relevance and probative value. Many, if not
17 most, of these records have formed the subject of
18 requests to commission counsel, as I mentioned,
19 and exhibits to the Whitehead affidavit have
20 shown.

21 The orders we seek today are outlined in the
22 Amended Notice of Application that should before
23 you at tab 1 of the Application Brief. The first
24 order we seek is with respect to documents in the
25 possession or control of the Vancouver Police

1 Department. What we have done is requested
2 general catch-all order for production of
3 relevant records along with some more specific
4 requests -- or orders, rather, for documents or
5 classes of documents that we suggest ought to
6 exist but which have not been produced to this
7 inquiry. Given the summons that has been issued
8 on the VPD, you may feel such an order is
9 redundant but our hope is in the face of an order
10 the police department might be compelled to take
11 a closer look at the state of document production
12 and perhaps take a more careful look.

13 By way of example of missing documents that
14 might be caught by that general catch-all order,
15 there appear to be missing documents relating to
16 the investigation of our client's daughter
17 Cynthia Feliks. The official Vancouver Police
18 Department story as articulated in Deputy Chief
19 LePard's report is that Cynthia Feliks was
20 reported missing in 2001 to the New Westminster
21 Police Department. However, we know from our
22 clients and from stray notes scattered throughout
23 the disclosure, some of which are located in the
24 Whitehead affidavit at tabs 54 to 58, Cynthia was
25 reported missing to the VPD in 1999. We can turn

1 to one of those notes briefly at tab 54 of the
2 Whitehead affidavit just to give an example.
3 These are handwritten notes of Constable Dave
4 Dickson. Towards the end of this package of his
5 notes, I believe it's the second last page,
6 document VPD-001-003781. The first note at the
7 top of the page is dated Thursday, June 3rd,
8 1999. "Check into Cindy Mongovius missing,"
9 presumably, December 12, 1954 is her birthdate,
10 and then it reads: "Possibly deported." The
11 Vancouver Police were looking for Cindy Feliks or
12 Cindy Mongovius as she was also known in 1999.
13 It appears from the record that Vancouver Police
14 did very little. Our concerns are verified by
15 Deputy Chief Evans in her missing person
16 investigation summary for Cynthia Feliks which is
17 at tab 57 of the affidavit. I can tell you
18 briefly that Deputy Chief Evans in her assessment
19 of this particular missing woman investigation
20 file found under bullet number 1 of her
21 assessment, third page of that tab: "Apparently
22 reported to VPD in 1999 but no indication of
23 follow-ups or documents." At the very least, Mr.
24 Commissioner, a missing person report from the
25 Vancouver Police Department from 1999 in respect

1 of Cynthia Feliks' disappearance ought to exist,
2 as well as additional notes of Constable Dave
3 Dickson and Detective Constable Shenher in
4 follow-up.

5 As another example, there appear to be
6 missing documents related to the investigation of
7 our client's relative Elsie Sebastian. We know
8 from her daughters Donalee and Anne Marie who
9 testified in October that Elsie was reported
10 missing to the VPD several times, first as early
11 as 1992 and again in 1993. Deputy Chief LePard
12 in his report lists the date Elsie Sebastian was
13 reported missing as May 16, 2001, which is
14 clearly wrong, and I suggest a misapprehension of
15 the truth. Deputy Chief LePard should have had
16 available to him the document at tab 61 of the
17 affidavit. This is a Vancouver Police Department
18 Missing Person Report with a date of May 4, 1993.
19 The name of the missing person is Elsie Louise
20 Jones, which was another name for Elsie
21 Sebastian. The report was made by Mary Jones,
22 her mother, and there were three different
23 versions of this report, three different copies
24 of it, at tab 61. Now, this document, this
25 Missing Person Report, was only disclosed to us

1 as counsel for the families at this inquiry in
2 November 2011. After Elsie was reported missing
3 in 1993 we know that some investigative steps
4 were taken leading to her file being closed later
5 that year. If we look at the third copy of that
6 missing person report, the bottom of the report
7 says in the box at the bottom, "Report to band,"
8 in handwritten notes. "Reportee to check with
9 local police." Further over on the right-hand
10 side it says with a note dated September 14,
11 1993, "Info is she's been seen by relatives." So
12 some correspondence, some investigative steps,
13 some memoranda ought to exist.

14 Other examples include the investigative
15 files for Cara Ellis and Tiffany Drew.
16 Essentially all that has been disclosed with
17 respect to their files are summary documents
18 which refer throughout to numerous source
19 documents that have not been disclosed. Now,
20 these comments I'm making apply to the general
21 orders for production that we seek with respect
22 to the Vancouver Police and the RCMP. These
23 documents could be in either of their possession.

24 As a final example under this order, we know
25 that the Vancouver Police-Native Liaison Society

1 was a contact point for many aboriginal families
2 who tried to report their relatives missing. For
3 some confirmation of that point I refer you to
4 tab 63 of the affidavit which is a letter from
5 Sergeant Cooper of the Homicide Squad to
6 Inspector Biddlecombe of the Violent Crimes
7 Section, Vancouver Police Department. This
8 letter is dated January 9, 1998, and I'll just
9 read the first paragraph.

10 On 98 01 07 myself and Detective Constable
11 Tempest, Coroner's Liaison, met with Freda
12 Ens and Morris Bates of Police-Native
13 Liaison. Both have received complaints in
14 the recent past from people who have been
15 rebuffed by staff at both the public
16 information counter and communications when
17 attempting to file Missing Persons Reports.

18 This is a problem squarely within your
19 mandate. We ought to determine what records the
20 Vancouver Police-Native Liaison Society has.
21 Morris Bates and Freda Ens are currently not on
22 the commission's witness list although Mr. Ward
23 and I have sought for them to be added, and I can
24 tell you if either of them were to testify they
25 would likely suggest the Vancouver Police-Native

1 Liaison Society had a room full of documents,
2 many of which could relate to this inquiry. We
3 have very little disclosure.

4 THE COMMISSIONER: So who should have been subpoenaed from the
5 Native Liaison Society?

6 MR. CHANTLER: My understanding is while it existed it was an
7 arm of the Vancouver Police Department and it
8 would be under -- the documents kept and created
9 by the Vancouver Police-Native Liaison Society
10 ought to be in the possession or control of the
11 Vancouver Police Department.

12 THE COMMISSIONER: You say the VPD should have disclosed
13 those?

14 MR. CHANTLER: Absolutely.

15 MS. GERVAIS: Robin Gervais, counsel for aboriginal interests.
16 Mr. Chantler and I had discussed this in the
17 past. We both interviewed Morris Bates and
18 spoken to Freda Ens of the Native Liaison Society
19 and I just wanted to inform you, Mr.
20 Commissioner, that I spoke with Ms. Ens this
21 morning and she told me that they -- pardon me,
22 she now currently works for Victims Services and
23 she told me she has the documents in her office.

24 THE COMMISSIONER: Okay.

25 MS. GERVAIS: I'm not sure how that came to be.

1 THE COMMISSIONER: That might answer a few things. Thank you
2 for telling me that.

3 MR. HERN: Mr. Commissioner --

4 THE COMMISSIONER: Why don't I hear the rest of Mr. Chantler's
5 argument and then I'll hear from you.

6 MR. CHANTLER: Thank you, Mr. Commissioner, and thank you, Ms.
7 Gervais. Moving along, the next two orders
8 sought respecting the Vancouver Police Department
9 relate to the meetings of April 9 and May 13,
10 1999. I apologize, the application says May 19
11 instead of May 13. We've heard much about these
12 meetings.

13 THE COMMISSIONER: This is a meeting with the Attorney
14 General?

15 MR. CHANTLER: Correct, and the brainstorming session that
16 followed.

17 THE COMMISSIONER: Wasn't the cross-examination to the extent
18 that nobody knows whether there are any minutes
19 or not?

20 MR. CHANTLER: Well, I'll explain.

21 THE COMMISSIONER: Let me go a little further. Why do we need
22 notes from meetings which resulted in nothing
23 being done? As I understand it from what we've
24 heard so far, a number of police officers went to
25 see the Attorney General for two reasons. One,

1 to post a reward, and secondly, to provide more
2 resources for investigative purposes and
3 eventually a reward was posted but there wasn't
4 much else done. Is that not so?

5 MR. CHANTLER: Mr. Commissioner, I suggest that it is crucial
6 to your mandate that we determine who knew what
7 about Robert William Pickton when.

8 THE COMMISSIONER: No, no, but that's not my question. My
9 question is the meeting that took place resulted
10 in no help for the families.

11 MR. CHANTLER: That's correct.

12 THE COMMISSIONER: Okay. So nothing was done as a result of
13 that meeting from what we've heard so far, so
14 there was no response from the provincial
15 government; is that not so?

16 MR. CHANTLER: You are correct.

17 THE COMMISSIONER: So we can draw our own inferences from
18 that, and I know exactly what you're going to
19 tell me I should do at the end of the day and
20 that might be a meritorious argument. My point
21 is this: What do two need to know about what
22 happened in that meeting if we know it didn't
23 result in any help at all to the families?

24 MR. CHANTLER: The fact that nothing was done is certainly
25 part of the problem.

1 THE COMMISSIONER: It's all of the problem, isn't it?

2 MR. CHANTLER: I suggest to you that there's another enormous
3 problem that we're facing, and that is, it is
4 remarkable that no records have been produced
5 from that meeting.

6 THE COMMISSIONER: Were there records?

7 MR. CHANTLER: We don't know.

8 THE COMMISSIONER: So far nobody seems to know because the
9 only person who testified was Detective Constable
10 Shenher and she said she doesn't know whether
11 anybody made notes or what took place. I think
12 commission counsel might have something to say
13 about that later on.

14 MR. CHANTLER: If I just may add this one point. If there are
15 no records, there are no records. There is no
16 principled reason for you, with the greatest of
17 respect, not to order the production of such
18 records if they exist. So far the
19 participants --

20 THE COMMISSIONER: Nobody has asked for that yet, nobody has
21 asked for records of that meeting with the
22 Attorney General to my knowledge. Nobody has
23 come to me and asked me for the production of
24 records. The only thing I've heard so far is
25 that we don't even know if there were any

1 records, and that doesn't really answer the
2 question I had, so the records show that the
3 police said certain things and I assume the
4 Attorney General responded, but at the end of the
5 day no help was given to the families.

6 MR. CHANTLER: That's correct, Mr. Commissioner, and I stand
7 here before you today requesting such an order
8 for production.

9 THE COMMISSIONER: All right. Thank you.

10 MR. GRATL: Mr. --

11 THE COMMISSIONER: No, no, one person at a time. What do you
12 want to tell me?

13 MR. GRATL: I'll have my chance, I suppose.

14 MR. COMMISSIONER: Go ahead, Mr. Chantler.

15 MR. CHANTLER: Thank you. With respect to the second meeting,
16 the May 13, 1999 meeting, again, it would be
17 remarkable if there were no notes and my comments
18 apply to both meetings. Moving on, the next
19 order sought respecting the Vancouver Police is
20 at item D and it's for all relevant handwritten
21 notes and log book entries of Constable Dave
22 Dickson created during the time period defined by
23 the terms of reference. The log book of
24 Constable Dickson is just one example of the
25 incomplete state of the Vancouver Police notebook

1 disclosure. We have seven pages of notebook
2 entries from Constable Dickson -- I've referred
3 you to those already in my submissions --
4 although he was involved in investigating the
5 missing women from 1997 to 2001. He must have
6 other notes.

7 THE COMMISSIONER: Isn't he going to testify? Isn't Dave
8 Dickson testifying?

9 MR. CHANTLER: He's been moved from the commission's current
10 witness list.

11 MR. VERTLIEB: He will be coming to talk.

12 THE COMMISSIONER: All right.

13 MR. CHANTLER: We were advised only last week that Constable
14 Dickson would not be the next witness following
15 Sergeant Adam.

16 THE COMMISSIONER: Maybe not the next witness but apparently
17 he is being called.

18 MR. CHANTLER: We don't know that.

19 THE COMMISSIONER: Mr. Vertlieb has just said to us he's going
20 to be called.

21 MR. CHANTLER: In any event, Mr. Commissioner --

22 THE COMMISSIONER: He should be asked at that time what he did
23 with his notes and log books or whatever else he
24 has.

25 MR. CHANTLER: Certainly, Mr. Commissioner, but I suggest if

1 his notes exist they ought to have been produced
2 long ago, not when he testifies.

3 Item f) is an order for records of offline
4 CPIC searches of David Francis Pickton. We don't
5 have any such records and we suggest that it
6 would be relevant to this inquiry and we ask for
7 an order that they be produced. They can be
8 produced now, an offline CPIC search can be
9 produced now.

10 The second set of orders is with respect to
11 the Royal Canadian Mounted Police and, again, we
12 seek a general catch-all order for production of
13 relevant records followed by a couple of examples
14 of specific things that we say ought to exist and
15 ought to be produced. By way of example in
16 support of the need for this order, the RCMP's
17 approach to the disclosure of notebooks, with a
18 couple of exceptions, Sergeant Adam being one,
19 appears to provide partial sections of some
20 officers' notes for abbreviated time periods. It
21 appears to us that there ought to be either
22 notebooks, continuation reports, either of which
23 they were required to keep for every RCMP officer
24 involved in the Missing Women Investigations
25 throughout their involvement in those

1 investigations. Those have not been disclosed to
2 this inquiry. The RCMP policy requiring them to
3 take appropriate notes is found at Exhibit 64.
4 All we are seeking here is for a general order
5 for production of documents from the RCMP that
6 would include all relevant passages of members'
7 notebooks including members of the Special "O",
8 Special "I" and Provincial Unsolved Homicide
9 Units.

10 E-mails are another example of a class of
11 documents in which disclosure by the RCMP appears
12 to be insufficient. This concern particularly
13 applies to e-mails that have been sent by senior
14 RCMP officers. I'm going to read to you briefly
15 one small passage from the cross-examination of
16 Deputy Chief Evans by Mr. Ward. Mr. Ward asks
17 the question:

18 Q Now tell me about your problems getting RCMP
19 e-mails. You couldn't -- you couldn't find
20 or receive very much at all in the way of
21 RCMP e-mails, could you?

22 A No, I could not.

23 Q That wasn't because RCMP didn't use e-mail,
24 that's because they wouldn't be produced to
25 you for some reason, right?

1 A I don't think I can speak to the reasons why
2 I didn't see them. I just know I didn't see
3 a lot of them.

4 Q All right. And that concerned you?

5 A Yes.

6 Moving ahead -- just for the record, this is
7 the cross-examination conducted on -- I don't
8 have it before me -- I believe January 31 --
9 January 18. Mr. Ward asks:

10 Q But from all your police experience going
11 back to '83, your knowledge of how police
12 communicated with each other, you believed
13 that there would be a -- there would be a
14 body of e-mail communication between RCMP
15 members and perhaps between RCMP and VPD
16 members relating to the issues of the
17 Missing Women Investigations?

18 A I believe I commented on -- in my report
19 somewhere, and I wouldn't know what page it
20 was either, that I found a lot of the
21 communications I observed were one
22 directional, meaning I saw a lot of
23 documents from Corporal Connor and Detective
24 Constable Shenher but I didn't see a lot of
25 communication from senior management.

1 These are the words of Deputy Chief Evans
2 who probably reviewed this file in greater detail
3 than anyone has.

4 Item b) under the orders sought respecting
5 the RCMP is for correspondence between Mike
6 Connor and the Crown counsel, Mr. Peter
7 Gulbransen, relating to the investigation of
8 Robert Willie Pickton as a suspect in the missing
9 women investigations. In his testimony, Sergeant
10 Connor confirmed he had these communications with
11 Mr. Gulbransen, and we take the position these
12 communications are relevant and probative and not
13 subject to any privilege and ought to be produced
14 to this inquiry. That's all I'll say about
15 those.

16 Item c) is with respect to an order for
17 correspondence between Sergeant Mike Connor and
18 Sergeant Wayne Blizzard relating to the
19 investigation of Robert William Pickton as a
20 suspect in the missing women investigations. I
21 refer briefly to Exhibit 51 of the Whitehead
22 affidavit. This is a portion of the transcript
23 of the interview of Sergeant Connor conducted by
24 Deputy Chief Evans and I'll just read a couple
25 passages to you from that. Line 4, the question

1 is asked by Deputy Chief Evans:

2 Q No, let's, let's hold off on that. Well --
3 with regards to Corporal Clary, did you
4 document when you were phoning over there
5 to speak to him, saying, "Hey, you know, I
6 really want Pickton to be higher on the
7 list. What do I get -- how do I get him up
8 to number 1?" So --

9 A No, I didn't, I didn't -- I don't think I
10 documented it. I, I don't know if there was
11 e-mails that they sent. I know that I
12 originally sent Blizzard e-mails, you know,
13 earlier in the investigation about Pickton,
14 just advising him, but I don't know if
15 there was any e-mails to Wayne Clary or --

16 Q Yeah, I wasn't sure. Actually, I haven't
17 come across many correspondence of e-mails
18 to, or memos to -- with regards -- I see a
19 lot of 1624s, so I wasn't sure if that's
20 how people communicated in the RCMP. I
21 have a lot of information with regards to
22 e-mails and correspondence from other
23 agencies, but not from Vancouver, or for
24 the RCMP. So, I wasn't sure if that's a
25 way of the form of communication back them.

1 I'll end there, Mr. Commissioner. That
2 further supports the apparent lack of e-mails
3 from both police departments, but it certainly
4 confirms that Sergeant Connor sent e-mails to
5 Sergeant Blizzard about Pickton during the terms
6 of reference and I report to you those have not
7 been disclosed to this inquiry.

8 Item d) on the Amended Notice of Application
9 is for an order for the notes and records of
10 Detective Constable Lori Shenher created during
11 her tenure as an investigator in the Missing
12 Person Unit and later provided to Project
13 Evenhanded. We heard her testimony on this
14 subject on January 31 and I will briefly read a
15 passage to you from the transcript on that day.
16 Mr. Ward cross-examining Ms. Shenher asked the
17 following question -- this at page 231 of the
18 transcript, line 5.

19 Q Uhm, to sum it up, it is glaringly obvious
20 to you as you sit here today that your own
21 investigative notes made during the period
22 covered by the terms of reference between
23 1997 and 2002 remain in the possession of
24 the RCMP and have not been disclosed to you
25 or your counsel at this commission, correct?

1 A I believe so, yes.

2 Q Furthermore, it's glaringly obvious to you
3 that your own investigative notes from the
4 period under review have not been disclosed
5 to either Deputy Chief LePard, the VPD
6 reviewer, or to Deputy Chief Evans, the
7 commissioner-hired reviewer, to assist them
8 in their reviews, correct?

9 A I believe that's correct, because when
10 Deputy LePard was -- was trying to gather
11 all this information I kept communicating to
12 him that I -- that I believed there was more
13 and that it wasn't -- it wasn't being
14 provided.

15 Those are the words of Constable Lori
16 Shenher on the stand. We seek an order for
17 production of those notes in the terms set out in
18 the Amended Notice of Application.

19 Item e) is with respect to an order for
20 notes and records of Constable Sylvestri related
21 to his attendance at the Pickton residential
22 property on May 1, 1999. This is the
23 investigation that followed one of the incomplete
24 911 calls. The request we made for these records
25 was on September 23, 2011. The commission

1 indicated to us in response in the chart provided
2 by Mr. Boddie that it had requested these notes
3 but had not received them yet and to date these
4 notes have not been received so we seek an order
5 under the terms set out in the Amended Notice of
6 Application.

7 Item f) is for an order for records in the
8 possession of the RCMP relating to the well-
9 publicized allegations of systemic gender
10 discrimination and workplace harassment raised by
11 Corporal Catherine Galliford. This is an issue,
12 Mr. Commissioner, that in my respectful
13 submission this inquiry has to probe, whether or
14 not systemic gender discrimination and workplace
15 harassment played a role in the failed Missing
16 Women and Pickton investigations. We take the
17 position that documents related to
18 Ms. Galliford's allegations are relevant and
19 probative and ought to be disclosed to this
20 inquiry.

21 Items g) and h) relate to videos, videotapes
22 and audiotapes of interviews known to have been
23 conducted of Robert William Pickton shortly after
24 his arrest. Their relevance is clear and the
25 transcripts of those interviews have already been

1 disclosed. I submit there is no principled
2 reason why the video and audio of these
3 interviews also suspected to exist ought not to
4 be disclosed.

5 THE COMMISSIONER: Is this a videotape of a -- is this a
6 videotape of the confession that Pickton made?

7 MR. CHANTLER: Correct, the cell plant video.

8 THE COMMISSIONER: How does that help the commission? We're
9 not retrying Pickton here. Tell me how that
10 helps us. Our job here is to find out what went
11 wrong in the investigation of missing women
12 within those relevant dates, what errors were
13 made and how can we prevent those errors from
14 happening again in the future. So how does
15 Pickton's confession to the police help us?

16 MR. CHANTLER: I'm not suggesting that it's the confession
17 that is necessarily going to assist you with your
18 mandate. There may be other content to those
19 videos that does. There's no question that
20 documents created after February 2002 have the
21 potential to be relevant to this inquiry.
22 Furthermore, there seems not to be any issue that
23 these interviews and the cell plant video are
24 relevant because the transcripts have been
25 produced to us already.

1 THE COMMISSIONER: The fact it's been produced already doesn't
2 -- I just want you to tell me how his confession
3 or the transcript of his confession will help me
4 address the terms of reference regarding the
5 conduct of investigations by police regarding
6 missing women. Is Pickton going to tell us how
7 he escaped scrutiny?

8 MR. CHANTLER: He might. With respect, what we're seeking is
9 videotapes of the interviews conducted of him on
10 the days following his arrest. There's no
11 confession in any of those interviews but we'd
12 like to see the candor and the manner in which he
13 was interviewed and the content in which police
14 received information from Mr. Pickton. As an
15 example, Mr. Commissioner --

16 THE COMMISSIONER: Look, I want to help you get all the
17 relevant documents that you want in order to
18 assist you, but at the same time there's a
19 concept called relevance and so I'm having
20 trouble with this one, but go ahead.

21 MR. CHANTLER: You may decide, Mr. Commissioner, that the
22 interviews are relevant but the cell plant videos
23 are not and that's up to you.

24 THE COMMISSIONER: The other thing is, our terms of reference
25 are to February 5, 2002, the date of his arrest.

1 MR. CHANTLER: Mr. Commissioner, I would suggest that there
2 are numerous documents in the disclosure already
3 post-February 5, 2002 that are clearly relevant
4 in terms of them being interviews of other people
5 as to the conduct during the missing women
6 investigation, et cetera. As an example of how
7 important these videos are, we played the other
8 day some of the video conducted at the Coquitlam
9 RCMP detachment conducted by Constables Yurkiw
10 and Cater of Robert William Pickton with Gina
11 Houston in the room. Mr. Commissioner, I had
12 read that transcript before I viewed the video
13 and I had no appreciation until I saw the video
14 of how Gina Houston conducted herself in that
15 room and took control and answered questions and
16 dominated the interview. You don't get that from
17 a transcript.

18 THE COMMISSIONER: Okay. Go ahead.

19 MR. CHANTLER: So the videos will assist us in understanding
20 what happened. The portions of some of the
21 transcripts for those interviews and videos if
22 you're interested, Mr. Commissioner, for your
23 reference are at tabs 48 to 50 of the affidavit.

24 Moving along, item 3 under the order sought
25 is for a general order of production of a number

1 classes of documents we suggest might exist
2 directed specifically at the individual police
3 officers who have distinguished their interests
4 from the interests of their department by
5 retaining counsel and appearing at this inquiry.
6 This shouldn't be controversial at all. Your own
7 counsel, Mr. Vertlieb, suggested on the record
8 some time ago that summons would be issued to
9 each of these individuals and to our knowledge
10 that has not been done. It may well have been
11 but we haven't been advised. We seek an order in
12 the terms set out in this application.

13 Item 4 is for an order that the Province of
14 British Columbia produce or deliver to this
15 commission copies of all relevant records in its
16 possession or control, including but not limited
17 to handwritten notes, memoranda, correspondence,
18 e-mails and other physical and electronic records
19 and notes, agenda, memoranda, minutes,
20 correspondence and all other records related to
21 the meeting of April 9 that we've discussed.
22 Again, we know representatives of the Province of
23 British Columbia were at that meeting. No
24 records have been produced by the province with
25 respect to that meeting, and with the greatest of

1 respect to your final decision, there doesn't
2 seem to be any principled reason not to order
3 such documents if such exist.

4 Item number 5 of the order sought is for an
5 order respecting the Criminal Justice Branch.
6 We're seeking an order that the Criminal Justice
7 Branch deliver copies of all records in its
8 possession related to the January 27, 1998
9 decision to enter a stay of proceedings on
10 charges against Robert William Pickton. Now,
11 we're seeking the CJB's copy of the report to
12 Crown counsel which we understand has not been
13 disclosed. The version of the report to Crown
14 counsel that the CJB has disclosed they obtained
15 from the RCMP to my understanding. We're also
16 seeking of course any correspondence, notes,
17 e-mails, charge assessment memoranda or any other
18 physical or electronic records that relate to
19 that charge assessment decision. If they can't
20 be produced we're seeking an explanation why the
21 Criminal Justice Branch is unable to produce any
22 part of the file.

23 THE COMMISSIONER: Maybe you can answer this question for me.
24 Why is it important that we have the charge
25 assessment -- the evidence that made up the

1 charge assessment? We know a charge was laid, we
2 know obviously that the branch took the charge
3 seriously, the police took the charge seriously,
4 they laid the charge, Pickton was -- made an
5 appearance, a trial date was set, so the real
6 issue here is why didn't the trial go ahead.
7 That's the issue, not whether or not the
8 information contained in the report to Crown
9 counsel was adequate or inadequate. We can lose
10 the forest for the trees here. We know that the
11 real concern here is that the Criminal Justice
12 Branch issued a stay of proceedings against
13 Pickton in 1998. If you carry that argument to
14 the extension you're going to ask me to do at the
15 end of the day, you're going to say that there
16 was a strong case, the Crown should have
17 proceeded with it and had they proceeded with it
18 and a conviction resulted there would have been a
19 term of imprisonment and a lot of harm would have
20 been avoided at the end of the day, tragedies
21 would have been avoided at the end of the day.
22 But stepping back, what does it matter what was
23 in the Crown counsel report? Because the Crown
24 obviously thought there was more than enough
25 evidence or enough evidence to lay the charge and

1 they laid the charge. That's the purpose of the
2 report to Crown counsel.

3 MR. CHANTLER: That may well be, but there may and ought to
4 have been other records related to the decision
5 to stay the charges and, Mr. Commissioner, with
6 the greatest of respect, that is one of your
7 terms of reference, to determine and make
8 findings of fact respecting that decision.

9 THE COMMISSIONER: I know that.

10 MR. CHANTLER: I suggest to you it is an impossible task given
11 the records disclosed thus far.

12 THE COMMISSIONER: No, no. You haven't even answered the
13 question. The question is, how does the report
14 to Crown counsel help when we know the Crown laid
15 the charges? Obviously the Crown felt there was
16 enough evidence to sustain a conviction. The
17 guidelines are, is there a substantial likelihood
18 for conviction? They must have said yes. Is it
19 in the public interests to prosecute? Again, the
20 Crown must have said yes. Those decisions result
21 from what's in the Crown counsel report. All I'm
22 saying to you is that it seems to me redundant to
23 look at the Crown counsel report when we know the
24 Crown laid the charge. The real concern here is
25 why did they say stay it after it was laid.

1 MR. CHANTLER: Precisely, Mr. Commissioner, and we have no
2 understanding why that decision was made.

3 THE COMMISSIONER: I presume the Crown will be here to tell us
4 why they did it.

5 MR. CHANTLER: We certainly hope so. Furthermore, we have no
6 satisfactory explanation for why the Crown has
7 been unable to produce that file.

8 THE COMMISSIONER: All right.

9 MR. CHANTLER: We're seeking an order in part that if the file
10 indeed has been destroyed we see some record of
11 that and we get some explanation for why it was
12 destroyed because -- and I'd like to take you to
13 one document that is a part of the Criminal
14 Justice Branch's retention policy. This is at
15 tab 67 of the affidavit. This is an excerpt from
16 the Crown counsel policy manual with an effective
17 date of October 1, 1999. This document was
18 disclosed to us by the Criminal Justice Branch
19 for the purpose of this inquiry. What we know is
20 after three years this file, according to policy,
21 would have been assessed and a determination
22 would have been made as to whether it would be
23 set aside for archival review. In accordance
24 with this policy, this file must have been
25 retained for archival review as it related to a

1 serious personal injury offence as defined in
2 Criminal Code Section 752. Now, at bullet 6 on
3 this policy manual we see that staff must prepare
4 a list of the retained-for-archival review files
5 including this file. This file involves serious
6 bodily injury. It did fall within the examples
7 under bullet 3 so it would have been submitted
8 for archival review and it would have been
9 listed. We don't have that list. Whether
10 following the archival review process it was
11 determined that this file ought to be archived
12 for 75 years in accordance with policy or
13 destroyed is a complete mystery to us, to this
14 inquiry. We have no records confirming the
15 archival review took place, we have no records
16 describing what policy or procedures go into
17 archival review and what would have made that
18 determination.

19 THE COMMISSIONER: With all due respect, the archival review
20 of files that go into the Criminal Justice Branch
21 or into government really isn't a focal point of
22 what we're doing here. I'm going to go back to
23 what I asked you before and, with respect, you
24 haven't really answered it, that is, the relevant
25 question is, given the fact that the charges were

1 laid they must have felt there was strong enough
2 evidence to lay the charges. We had Lori Shenher
3 telling us in her view it was a strong case, you
4 had Staff Sergeant Connor telling us it was a
5 strong case. So you've got these people telling
6 us it was a strong case so why did they stay the
7 charge? That's what we're dealing with, not with
8 archival review of what they did with the file.
9 The file might be very interesting reading of
10 what happens in government after a file goes from
11 point A to point B but the question is, why did
12 they stay the charges? Archival review has
13 nothing to do with that.

14 MR. CHANTLER: Mr. Commissioner, I think we're in agreement
15 but we're failing to appreciate that.

16 Ms. Shenher and Mr. Connor's testimony is
17 precisely why we are so concerned about this term
18 of reference. It was a slam dunk case.

19 THE COMMISSIONER: Exactly.

20 MR. CHANTLER: The charges were stayed. We don't know why
21 they were stayed. The file that would tell us
22 why the charges were stayed has vanished.

23 THE COMMISSIONER: How would the file -- you're going to have
24 the prosecutor come here and the prosecutor will
25 tell us why it was stayed.

1 MR. CHANTLER: We hope the prosecutor is going to be here and
2 certainly when the prosecutor is here we will ask
3 those questions. There is no reason for those
4 relevant documents not to be before this
5 commission already.

6 THE COMMISSIONER: I take issue with the word "relevant". In
7 any event, I've already said to you what I think
8 is the real issue here and what seems to be an
9 apparently strong case didn't proceed and we need
10 to know why.

11 MR. CHANTLER: Mr. Commissioner, with respect, it ought to be
12 extremely concerning to you why there is no
13 explanation for the absence of this file. An
14 order for production would simply compel further
15 information.

16 THE COMMISSIONER: All right.

17 MR. CHANTLER: Moving on, item 6 in the Amended Notice of
18 Application is for an order that commission
19 counsel be directed to obtain and disclose to all
20 participants copies of the Port Coquitlam
21 provincial court file in *R v. Pickton*. We seek
22 this especially in light of the Criminal Justice
23 Branch's file. We understand that this court
24 file is under a publication ban.

25 THE COMMISSIONER: Have you ever seen any of these files? Do

1 you know what this file is going to disclose?
2 It's going to disclose there was a stay of
3 proceedings. That's what the court file will
4 disclose. The court file I can tell you won't
5 have anything in it. It will say such and such
6 date the Crown entered a stay of proceedings.

7 MR. CHANTLER: All right. We still seek production of that
8 file. It may well be that there is relevant
9 information in there. We respect your decision.

10 Item 7 of the Amended Notice of Application,
11 Mr. Commissioner, is -- it was added
12 inadvertently and I apologize. I won't make
13 submissions on this as I understand you've
14 already ruled on this.

15 Item number 8 is an order that commission
16 counsel be directed to disclose to all
17 participants correspondence related to its
18 communications with Crown counsel Don Celle. We
19 understand he's been retained for the purposes of
20 for producing an expert report to this
21 commission. We have always maintained that this
22 quasi-judicial process should be as transparent
23 if not more transparent than a trial, civil court
24 proceeding. Our position is that any such
25 communications passing to and from the commission

1 ought to be disclosed to all.

2 THE COMMISSIONER: My understanding is that Mr. Celle is ill.

3 Is there a report received from Mr. Celle?

4 MR. VERTLIEB: No, there is not yet. He is ill and he has
5 been working through it. This is not a surprise
6 to anyone.

7 MR. CHANTLER: Item 9 is for an order that the Organized Crime
8 Agency of BC and the Combined Forces Special
9 Enforcement Unit of British Columbia deliver
10 copies of all relevant records in their
11 possession and control to this commission,
12 including records of investigations into Robert
13 Pickton, David Pickton and members of the Hells
14 Angels Motorcycle Club associated with the
15 Picktons, as well as records of investigations
16 into activities at Piggy's Palace located at 2252
17 Burns Road. We know, Mr. Commissioner, that
18 CLEU, Coordinated Law Enforcement Unit which was
19 the predecessor to the Combined Forces Special
20 Forces Unit, was doing investigative work related
21 to the Picktons at least as early as 1988. We
22 have in the disclosure thus far limited documents
23 confirming this, including as an example, the
24 profile of David Pickton at tab 71 of the
25 affidavit. There is no need to turn to it but I

1 can assure you it's there. It's a document
2 produced by CLEU in which substantial details of
3 David Pickton are revealed. We suggest there may
4 well be similar documents relating to Robert
5 Pickton. It is reasonable to assume these
6 organizations have files relevant to the
7 activities of the Picktons during the terms of
8 reference. These are police organizations that
9 may have had information about the Picktons that
10 is not currently before this inquiry and we seek
11 an order in the terms set out in this notice.

12 Item 10 is for an order that E-Comm
13 Emergency Communications or E-Comm deliver copies
14 of all relevant records in its possession or
15 control to this commission. This would include
16 transcripts of 911 calls relating to the reports
17 of missing women. We've heard this come up.
18 This has been an issue squarely within the
19 mandate of this commission, or transcripts of
20 calls originating from the properties of Robert
21 and David Pickton. As I mentioned earlier in my
22 submissions, we know that during the terms of
23 reference at least four incomplete 911 calls were
24 made from the Pickton's properties. We have some
25 disclosure on these incomplete calls found at

1 tabs 71 to 73 and at tab 76. These incomplete
2 calls are clearly relevant and it is crucial to
3 your mandate that this inquiry reveals the
4 circumstances of these calls, including the times
5 of day, the number of callbacks made and anything
6 that could be heard on the line. These calls
7 occurred during the terms of reference while
8 Pickton was a prime suspect and they resulted in
9 police attendance on the farm in each case. We
10 have the transcript and audio of the 2001 call
11 I've referred to earlier, that has been disclosed
12 to us. E-Comm records are also relevant because
13 missing person reports were made to 911. I can
14 refer you to documents that confirm that if you
15 wish, but there has been evidence before this
16 inquiry that members of the public reported their
17 missing loved ones by calling 911.

18 Item 11, moving on, is for an order for
19 general production to the City of Vancouver,
20 Vancouver Police Board, Vancouver Police Union,
21 Criminal Justice Branch and Westcoast Reduction.
22 These participants and third parties may have
23 relevant and probative documents that could
24 assist you with your mandate. Again, with
25 respect to your final decision I suggest there's

1 no principled reason why you would not make such
2 an order that they produce relevant documents to
3 this inquiry that are within their possession or
4 control.

5 Mr. Commissioner, this application has been
6 brought in an effort to assist you with your
7 mandate. I submit that the documents we seek are
8 directly related to the terms of reference and
9 are crucial for you to obtain the facts necessary
10 for your final report. The commission has an
11 obligation to obtain production of all relevant
12 documents and in my respectful submission it has
13 not yet met that obligation. This commission has
14 relied on the good faith of the various
15 institutional participants including the VPD, the
16 RCMP and the CJB to produce all relevant and
17 probative documents in their possession or
18 control. Again, in my respectful submission
19 their good faith has not been enough and they
20 have shown that only by compulsion will this
21 commission obtain the documents it needs to
22 uncover the truth of what happened in the failed
23 missing women and Pickton investigations. This
24 may be the last opportunity we all have to
25 uncover the truth. In closing, I urge you to use

1 your powers of compulsion and restore the faith
2 our clients once had in this commission process.

3 Thank you, those are my submissions.

4 THE COMMISSIONER: Thank you for your thorough submission.

5 Thank you, Mr. Chantler. Who is going to go
6 next?

7 MR. GRATL: I was anticipating making submissions in support
8 of Mr. Chantler's inquiry.

9 THE COMMISSIONER: How long will you be?

10 MR. GRATL: Maybe five minutes. Is this a good time for the
11 morning break?

12 THE COMMISSIONER: Yes, we'll take the break.

13 THE REGISTRAR: The hearing will recess for 15 minutes.

14 (PROCEEDINGS ADJOURNED AT 11:02 A.M.)

15 (PROCEEDINGS RESUMED AT 11:26 A.M.)

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

17 MR. GRATL: Mr. Commissioner, Jason Gratl for Downtown
18 Eastside interests. It won't come as surprise to
19 hear that I generally support Mr. Chantler's
20 application. I did want to refer to a number of
21 special categories. The first is the Galliford
22 documents. I understand from an affidavit very
23 lately provided by counsel for the Government of
24 Canada that they take issue with the production
25 of all Galliford document on the footing that the

1 RCMP is currently engaged in an internal
2 investigation into those allegations of systemic
3 discrimination and sexism. In my respectful
4 submission that is not an excuse to withhold
5 documents from this public inquiry.

6 THE COMMISSIONER: It may be interesting, the systemic gender
7 discrimination if there is in the RCMP, but
8 that's not really what we're here for. We're
9 here to decide what went wrong in the Pickton
10 investigation, to put it simply.

11 MR. GRATL: Yes, and the allegations Ms. Galliford brings
12 forward deal with specifically Project Evenhanded
13 and some of the key investigators.

14 THE COMMISSIONER: I don't know that. Commission counsel has
15 interviewed her and I don't know what the
16 contents of that interview were, but I think it
17 might be a bit premature to jump to conclusions
18 from what we read in the media.

19 MR. GRATL: If we have allegations that key investigators are
20 making jokes about the use of sex toys found on
21 the Pickton farm we can be almost certain that
22 there's an attitude towards sexual conduct and
23 sexual misconduct that may have permeated the
24 investigation.

25 THE COMMISSIONER: That's one thing, but to go into gender

1 issues in the RCMP is something we're not really
2 going to get into. Those allegations are --
3 those allegations are obviously relevant and we
4 should hear them. Go ahead.

5 MR. GRATL: Indeed, we should have all documents dealing with
6 those allegations of sexism insofar as they
7 undermine the investigation. When we talk about
8 systemic factors undermining investigations we've
9 heard about the use of sexist and homophobic and
10 biased language within the Vancouver Police
11 Department. We've heard about how Fell and
12 Wolthers' conduct undermined investigative
13 cohesion and integrity at the Vancouver Police
14 Department level. We should have the same
15 opportunity with respect to the RCMP and the only
16 way really to get at the core of what happened
17 and even to -- the only way to even figure out
18 what questions needed to be asked is to engage in
19 a thorough document review. For that reason the
20 Galliford documents are of tremendous importance.

21 With respect to the Vancouver Police-Native
22 Liaison Society, I understand that my friend Mr.
23 Gervais indicated to you, Mr. Commissioner, that
24 Freda Ens retained some of the files, the
25 Vancouver Police-Native Liaison Society files. I

1 have reviewed Ms. Ens' interview conducted by
2 Deputy Chief Evans and Ms. Ens also refers to a
3 number of other documents including a letter she
4 wrote to then Chief Constable Canuel of the
5 Vancouver Police Department asserting -- and I'm
6 not sure what's in the letter -- but apparently
7 asserting there was racist decision-making within
8 the Missing Persons Unit at the Vancouver Police
9 Department specifically with respect to the
10 civilian employee, Sandra --

11 THE COMMISSIONER: Is that a surprise? We've already heard
12 that. We've already heard about comments made by
13 Ms. Cameron that were inappropriate so do we need
14 someone else to come and tell us about that as
15 well? That hasn't been contradicted.

16 MR. GRATL: The important part, Mr. Commissioner, is that if
17 the chief constable knew that Sandra Cameron was
18 racist and thereafter assigned Sergeant Cooper to
19 investigate it, then the question is why wasn't
20 something done about it.

21 THE COMMISSIONER: Mr. Gratl, Deputy Chief LePard told us that
22 everyone knew, it was well known. Her attitude
23 and her approach was well known and the real
24 problem here was that apparently nobody thought
25 that that department was important enough for

1 anybody to do anything. That really appears to
2 be the problem. They let Sandy Cameron go to her
3 own devices. The whole department apparently
4 knew about her.

5 MR. GRATL: I know there was that evidence. Here's the thing,
6 Mr. Commissioner, when it comes to proving
7 systemic discrimination or systemic bias, really
8 the only opportunity you have to demonstrate
9 systemic bias is to look at separate little
10 events that occurred and add them all up.

11 THE COMMISSIONER: I know that.

12 MR. GRATL: So it's important to have all those little events.
13 That's a specific item that I would be asking
14 for, this letter to Chief Constable Canuel
15 written by Ms. Ens. I would say generally to add
16 to my friend's submissions that there are very
17 few documents at the chief constable level from
18 Chief Canuel, Chief Blythe or Chief Chambers,
19 either to from, which is particularly surprising
20 given the public profile of the missing persons
21 brief, missing womens brief.

22 THE COMMISSIONER: Wait a minute. Is that surprising in light
23 of what Lori Shenher told us? She said nobody
24 seemed to care, nobody cared about the women and
25 she was left to her own devices and she was --

1 she received no guidance and nobody was too
2 concerned about her and that's the real problem
3 here, that the upper management at the time
4 didn't seem to care about these poor women that
5 were going missing. That's the evidence we've
6 heard so far.

7 MR. GRATL: Sometimes you get an e-mail saying, "I don't care
8 about these women," sometimes you get that.

9 THE COMMISSIONER: Well --

10 MR. GRATL: Another category of documents would be the media
11 liaison officers, Ms. Bloor, Sarah Bloor, Scott
12 Driemel and Anne Drennan. I'm under the
13 impression that the media liaison officer would
14 provide a weekly, if not daily, briefing to the
15 chief about all matters dealing with public
16 relations between the Vancouver Police Department
17 and the media. That's my impression but we
18 haven't seen any of those communications at all.
19 Those are of particular importance here, given
20 that there's an increasingly strong base of
21 evidence to suggest that the Vancouver Police
22 Department deliberately misled the public of the
23 evidence of a serial killer at work.

24 You asked about the importance of the April
25 1990 meeting given that nothing arose out of it.

1 In my respectful submission the product of that
2 meeting was a lack of action on the part of the
3 Attorney General. The important part though is
4 what input led to that lack of action, who said
5 what to discourage the Attorney General from
6 acting.

7 THE COMMISSIONER: I know there's a school of advocacy where
8 you try to overkill things. Lori Shenher told us
9 in that letter and the letter has been filed as
10 to what was said at that meeting. The fact that
11 seven officers or eight officers including senior
12 members saw fit to go and talk to the Attorney
13 General indicates to me that this was a serious
14 matter that they wanted to talk about. So why do
15 we need notes to do that? For lawyers notes are
16 everything, or some lawyers, and I don't discount
17 the importance of notes. However, if you've got
18 the results of the meeting why do we need the
19 notes? That's the question I pose.

20 MR. GRATL: Mr. Commissioner, you keep referring to Lori
21 Shenher and the testimony she gave but there
22 might be other witnesses in the future that give
23 different evidence from what Lori Shenher gave on
24 the stand. When it comes to finding out the
25 veracity of her evidence years afterwards

1 compared to the veracity of another witness's
2 evidence years afterwards there's nothing quite
3 like a document to resolve any inconsistencies or
4 contradictions.

5 THE COMMISSIONER: Is there any doubt about her veracity? She
6 helps the families by her evidence. She in fact
7 says we could have done more, we should have done
8 more and we're sorry for what we didn't do.

9 MR. GRATL: With the greatest of respect, Ms. Shenher's
10 testimony assisted Ms. Shenher more than anybody
11 else so there's some doubt --

12 THE COMMISSIONER: You can put that spin on it if you want.
13 We saw here the failed investigation, what impact
14 it had on her. If you're going to dismiss that
15 I'll hear from you on that. The fact is, she
16 said that -- at least I heard her evidence to say
17 that nobody helped her, the women were going
18 missing, she knew a lot of them, she knew Sereena
19 Abotsway, she knew Kerry Koski, she actually
20 dealt with them on a personal level and when the
21 arrest came on February 5, 2002 she was
22 devastated because they were so close, and she
23 admitted that mistake after mistake was made and
24 if you think that's self-serving then I'll hear
25 from you on that.

1 MR. GRATL: I'm a little troubled, Mr. Commissioner, that
2 you're accepting the evidence of -- you seem to
3 be accepting --

4 THE COMMISSIONER: I'm not accepting it. I'm saying that's
5 the evidence she gave. I'm not accepting it at
6 all because I haven't heard all of the evidence
7 and I haven't heard the arguments, but for you to
8 say it was self-serving, I think it's a little
9 presumptuous, that's all I'm saying.

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

11 THE COMMISSIONER: I mean, I've done a little bit of fact
12 finding in my life before. I know that at this
13 stage we can't make any findings of fact, we
14 haven't heard all the evidence, but that's what
15 she said so far.

16 MR. GRATL: Didn't she also say she sort of remembered
17 mentioning suspects at the April 9, 1999 meeting?

18 THE COMMISSIONER: Were there any suspects?

19 MR. GRATL: Not in her memo. Her memo says there were no
20 suspects but she amplifies that a little bit --
21 and I say amplifies charitably -- in her
22 testimony that she recalls maybe mentioning some
23 suspects at the April 9, 1999 meeting. That's
24 not in her memo and it's different from what is
25 in her memo and it would be helpful to have the

1 other recollections. To just accept what
2 Ms. Shenher has to say about that subject when it
3 contradicts her own April 9, 1999 memory --

4 THE COMMISSIONER: You can tell me at the end of the day that
5 she shouldn't be believed.

6 MR. GRATL: Well, I'd like to have the other documents in
7 order to test her version of events, her
8 supplemental version of events.

9 THE COMMISSIONER: If there are other documents.

10 MR. GRATL: I don't say everything Ms. Shenher had to say
11 shouldn't be believed but equally I say you
12 should take the witnesses' evidence with a grain
13 of salt until we hear the other evidence and
14 until we compare it to the documents.

15 THE COMMISSIONER: I think I know how to assess witness
16 testimony.

17 MR. GRATL: All right. I'll move on then. I do say she has
18 got oral evidence here not backed by her own
19 documents so it would be helpful to have the
20 these other versions from the April 1999 meeting.
21 Similarly in respect of the Crown file, we do
22 have a Crown file here that's disappeared.

23 THE COMMISSIONER: I've already heard that. Mr. Chantler, he
24 articulated that very well. I don't want you to
25 repeat what he said. Otherwise this inquiry is

1 going to go on forever. He made a sound
2 argument, he was lucid in what he said and I
3 don't need you to repeat what he said.

4 MR. GRATL: All right. I won't repeat it but what I will do
5 is I will emphasize, Mr. Commissioner, that if
6 the Crown file can't be located after due
7 diligence what we should do is we should pursue
8 Mr. Ritchie's file. Mr. Ritchie was counsel for
9 Robert William Pickton in the 1997 events and
10 it's not even necessary to go after
11 solicitor-client privileged matters. Mr.
12 Ritchie's file will have the particulars, it will
13 have his correspondence with the Crown and those
14 are -- it will replicate, in effect, many aspects
15 of the Crown file. It will be of tremendous
16 fact-finding use for your purposes so that we can
17 find out what exactly Mr. Ritchie persuasively
18 said to Ms. Connor to spur her to enter a stay of
19 proceed.

20 THE COMMISSIONER: That hasn't been the evidence at all yet,
21 Mr. Gratl. The evidence if you've been paying
22 attention to it has nothing to do with Ritchie.
23 Apparently from what we've heard the Crown was
24 concerned about the lack of diligence on the part
25 of the victim. That's what they're saying. So I

1 don't know, we'll have to wait until the Crown
2 testifies here and find out what happened, but
3 calling Peter Ritchie is a bit of red herring,
4 with all due respect.

5 MR. GRATL: On the other hand, we've had Mr. Doust asking
6 questions about reason number 3, maybe number 4
7 -- I'm not sure because we still don't have the
8 "will say" from Ms. Connor.

9 THE COMMISSIONER: We have to hear both sides of this is all
10 I'm saying.

11 MR. GRATL: Part of hearing both sides is having the
12 documentary basis. With all due respect, the
13 disappearance of a Crown file for attempted
14 murder in this kind of context is not impressive,
15 it's suspect. So replicating as much of that
16 Crown file as possible out of the Ritchie file
17 seems to be advantageous so that we can test
18 Ms. Connor's expected testimony about what
19 emerges from that reconstructed --

20 THE COMMISSIONER: I've heard that argument.

21 MR. GRATL: In any event, Mr. Commissioner, those are my
22 submissions.

23 THE COMMISSIONER: Thank you, Mr. Gratl.

24 MS. GERVAIS: Robin Gervais, counsel for aboriginal interests.
25 I would also like to support Mr. Ward's

1 application for certain classes of documents, and
2 to begin I'd like to start with the request for
3 Constable Dave Dickson's log book and notes. My
4 understanding is that Constable Dickson was an
5 officer that worked with the Native Liaison
6 Society, and I know that he also worked closely
7 with a lot of missing and murdered women and lot
8 of the aboriginal women on the Downtown Eastside.

9 Also with respect to records in the
10 possession of the RCMP relating to the
11 allegations of gender discrimination and
12 workplace harassment by Corporal Galliford, I've
13 heard your thoughts on this but I feel that
14 systemic discrimination is at the heart of what
15 the aboriginal community wants to get out of this
16 inquiry, and although there may not be
17 documentation of this in those documents there
18 may be, so I think it's worth looking at.

19 Also with respect to the E-Comm records, I
20 have interviewed a witness who I'm told will
21 provide evidence in these proceedings who worked
22 as a 911 dispatcher in the dispatch prior to its
23 transition to E-Comm who indicated that the
24 policy was if the person reporting the missing
25 woman or person did not have an address for that

1 person they were told not to take the report and
2 they were directed to report to the Missing
3 Persons Unit. She has also told me she would
4 often get calls back saying that she couldn't get
5 a hold of anybody at the unit, and I submit these
6 documents are relevant to that evidence.

7 I also support Mr. Ward's application for
8 e-mails sent and received by the VPD and the RCMP
9 officers involved in the missing women
10 investigation. I think that e-mail is often a
11 candid way of communicating between colleagues
12 and I think it could help illustrate any systemic
13 failings that are hidden in the formality of
14 official letters or communication and I feel that
15 we haven't seen a lot of e-mails in the
16 disclosure.

17 I also support Mr. Ward's application for
18 the missing person file of Elsie Sebastian. As
19 Mr. Chantler indicated this morning, there are
20 still a lot of outstanding questions about what
21 exactly happened in that case. If you remember
22 from Donalee Sebastian's testimony --

23 THE COMMISSIONER: I recall it.

24 MS. GERVAIS: Thank you. I just wanted to clarify my comments
25 this morning with respect to the Native Liaison

1 Society documents. Ms. Ens has advised me they
2 are not in her specific office but in the
3 building. She also has asked me to clarify she
4 doesn't have all the documents, she has the
5 client files.

6 THE COMMISSIONER: She has a letter she is prepared to
7 produce?

8 MS. GERVAIS: To be honest with you, I'm not sure she has that
9 letter. All she's told me is she has the client
10 files but she doesn't have all the documents. So
11 it still remains a question where the documents
12 are. Thank you.

13 THE COMMISSIONER: Thank you, Ms. Gervais.

14 MR. VERTLIEB: Mr. Commissioner, just because I anticipate
15 lengthier submissions from the VPD and the RCMP
16 and the CJB, Mr. Jones is here on the one small
17 issue and that's item number 5 and he just needs
18 a few minutes.

19 THE COMMISSIONER: Yes, Mr. Jones.

20 MR. JONES: Thank you, Mr. Commissioner, it's Craig Jones for
21 the Province of British Columbia. Some relief
22 has been sought in the application and I had a
23 talk with my friend Mr. Chantler and I think we
24 have a way forward. The difficulty is that the
25 province was given no notice of the application

1 and I found out about it actually after Mr.
2 Chantler had spoken to relief number 5.

3 Just to take you to that, it's an order that
4 the Province of British Columbia deliver to the
5 commission copies of all relevant records in its
6 possession or control, and I just pause there and
7 say -- an initial difficulty of course not having
8 been a party is it's difficult for us to
9 determine what is relevant to all of the issues
10 before the commissioner so a broad order will be
11 difficult for us to fulfil. At any rate, he says
12 including but not limited to handwritten notes,
13 memoranda, correspondence, e-mails and all other
14 physical and electronic records and notes,
15 agendas, memoranda, minutes, correspondence and
16 all other records relating to this particular
17 meeting of April 9, 1999. It's not a terribly
18 specific order and it doesn't say which
19 ministries or which other government entities,
20 and potentially it's an enormous search that will
21 likely turn up I would expect very, very little.
22 What we have done as you may be aware is we
23 received -- I should maybe back up a little and
24 say since the beginning of this inquiry we have
25 received no requests except the one from Mr.

1 Vertlieb that I'm going to discuss, but certainly
2 no requests from Mr. Ward, no requests from Mr.
3 Gratl with respect to any documents that we might
4 have, anything that we might have that would be
5 helpful to their appearances before the
6 commission.

7 A couple weeks ago we did receive a request
8 from Mr. Vertlieb because apparently a meeting in
9 which the then-Attorney General Mr. Dosanjh was
10 involved April 9, 1999 had become an issue before
11 the commission and we were asked to see if there
12 were any meeting minutes or documents that
13 emanated from that and we did a search and
14 discovered there weren't or if there were they
15 had been destroyed in accordance with the
16 retention policy which is three years retention
17 on those sorts of records. So what we're doing
18 now in anticipation I gather of more interest in
19 and around that meeting is we are undertaking a
20 more thorough and broader search that is going to
21 span at least a couple of years and is going to
22 look for essentially any missing women-related
23 files with the Attorney General.

24 THE COMMISSIONER: How long will it take to do that?

25 MR. JONES: We don't know that. As of this morning the

1 Assistant Deputy Attorney General has taken
2 personal direction over that search and I can
3 promise and I think I have committed to my friend
4 Mr. Chantler that we'll work with him and with
5 the commission to target as much as we can the
6 search to be useful. I should think it would be
7 useful to any government official that is going
8 to testify here to refresh his or her memory with
9 anything that we might come up with. Unless we
10 have a pretty targeted search, I'm not going to
11 be sure that we're going to be able to find
12 things in a timeframe that is going to be
13 particularly useful.

14 What my friend Mr. Chantler and I have
15 agreed to, and I think it's okay with Mr. Gratl
16 as well, was that he would not seek the relief in
17 5 with respect to an order against us and that we
18 would simply continue to work with him and with
19 the commission to produce a more targeted search.
20 If I've got that wrong perhaps Mr. Chantler
21 can --

22 THE COMMISSIONER: That sounds like a sensible solution if you
23 can work that out.

24 MR. CHANTLER: Thank you, Mr. Commissioner, Neil Chantler. I
25 thank my friend Mr. Jones for his comments. I

1 think that there's a slight miscommunication
2 between us because I accept that it was an
3 inadvertent mistake on our behalf not to give
4 notice to the province and I certainly don't
5 disagree with my friend in that regard. I
6 apologize for that inadvertent mistake. My
7 understanding was we would leave it, Mr. Jones
8 would make an effort to make a more focused
9 search, particularly starting with the records
10 relating to the meeting of April 9th, and
11 following that if we were unsatisfied we would
12 ask that he be given an opportunity to make
13 submissions to you on the order sought and you
14 would make your ruling at that time. It's not
15 that we're not seeking that order any longer,
16 it's just that it would be adjourned for the time
17 being.

18 THE COMMISSIONER: All right.

19 MR. CHANTLER: With respect to his comments about not
20 receiving any direct requests from us for those
21 meetings, that would be wholly inappropriate for
22 us in accordance with the commission's practice
23 and procedures directives. All of our requests
24 for outstanding documents are to be directed to
25 commission counsel and I can assure you we have

1 made numerous requests for records held by the
2 province related to the April 9 meeting. I don't
3 know whether those requests have been passed on
4 to the province or not.

5 THE COMMISSIONER: The commission is independent from the
6 province so that's pretty fundamental.

7 MR. CHANTLER: Correct. Mr. Commissioner, my understanding is
8 if we see a lack of relevant documents we make a
9 request --

10 THE COMMISSIONER: I accept your explanation it wasn't
11 advertent.

12 MR. CHANTLER: It's up to commission counsel to get those
13 documents. Thank you.

14 THE COMMISSIONER: Thank you.

15 MR. DOUST: Mr. Commissioner. My name is Doust, initials
16 L.T., and I am here for the Criminal Justice
17 Branch. With the kind permission of Ms. Tobias
18 and Mr. Hern I'm slated to be next in speaking to
19 you in response to this application.

20 Mr. Commissioner, I want to deal with
21 paragraph 4 of the application because that's
22 what is directed to the Criminal Justice Branch.
23 They're seeking the order that we deliver all
24 records in our possession and control relating to
25 the decision to enter the stay of proceedings,

1 and in particular, the Criminal Justice Branch's
2 copy of the report to Crown counsel. Our copy of
3 the report to Crown counsel was disclosed to the
4 commission on December 22 of 2010 and then again
5 in redacted form on February 7 of this year.

6 THE COMMISSIONER: You're telling me it's already been
7 disclosed?

8 MR. DOUST: Yes.

9 THE COMMISSIONER: Has it been disclosed?

10 MR. VERTLIEB: Mr. Doust is accurate.

11 THE COMMISSIONER: Was that disclosed to Mr. Ward?

12 MR. VERTLIEB: It all goes on Concordance and as far as I know
13 it has been disclosed. Now there is a problem
14 with the Crown file --

15 THE COMMISSIONER: Let me hear from Mr. Doust.

16 MR. DOUST: I will say we can provide the Concordance numbers
17 eventually if required. Paragraph b) the
18 correspondence and those e-mails, charge
19 assessment memoranda and other physical or
20 electronic records related to the charge
21 assessment decision. The commission made exactly
22 the same request of the Criminal Justice Branch
23 on the 21st of September 2011. We responded to
24 those requests on October 4 to the effect that we
25 would review the archives and produce any

1 relevant notes, internal memos, correspondence
2 and e-mail messages. We've not found any
3 additional correspondence. Furthermore, we have
4 given commission staff direct access to our
5 archives. In June the commission staff was able
6 to inspect the Criminal Justice Branch's archives
7 to request any additional documents that might be
8 helpful to the commission's work, so I say that
9 as well has been attended to.

10 Item c), records explaining the inability of
11 the Criminal Justice Branch to produce any part
12 of the file. With respect to that item, the
13 Criminal Justice Branch produced the June 6, 2000
14 document destruction authorization and the 1999
15 document destruction policy to the commission on
16 September 7 of 2011. Actually, the way that
17 happened, Mr. Commissioner, is we've already
18 received a summons for production of the
19 documents. We received that on the 18th of
20 August of 2011. We responded to that and in the
21 course of that response we provided a number of
22 documents and there's a listing of them in our
23 letter of September 7 to commission counsel. It
24 included a) the Crown counsel policy manual on
25 the destruction of documents held in Crown

1 counsel offices dated October 1, 1999, and
2 secondly, or b), a records destruction
3 authorization dated June 6 of 2000 that was in
4 specific relation to this file. So for my
5 friends to say things like it's disappeared, or
6 as Mr. Chantler said we have no idea what
7 happened to it, the file has been destroyed, we
8 provided the policies that govern destruction of
9 the file and we provided the specific
10 authorization and direction in relation to this
11 file. That's all we can do at the moment. I say
12 with respect we've covered off that particular
13 area.

14 As to the item number 6 in the Notice of
15 Application, that is the request of the Crown
16 counsel policy manual, and the document with
17 regard to it, we've not produced that. We didn't
18 know there was such a thing. It's one document,
19 we'll do a search and if we find it they'll have
20 it. Our pattern or history of cooperation and
21 disclosure in my submission is such that there is
22 no need for any kind of order. We're under
23 summons, we appreciate the significance of it and
24 we have not yet provided everything we have. We
25 have a few documents left that are going through

1 the process of redaction, but we provided
2 everything that we possibly could in as timely a
3 way as we could provide it.

4 Mr. Commissioner, there's one matter that I
5 cannot pass without comment and that's in
6 relation to an e-mail that I received on the 9th
7 of February from Mr. Ward. In that e-mail Mr.
8 Ward says, and I quote:

9 "Months ago we strongly suggested that it
10 would be logical to explore the factual
11 issues surrounding this issue early in the
12 hearings.

13 That is the issues in relation to Criminal
14 Justice Branch.

15 "That suggestion was ignored."

16 This is the portion I'd like you to be aware of.
17 He says:

18 "Now we have disquieting sense that a
19 'backroom deal' may have been made with the
20 CJB and that will preclude a proper inquiry
21 into this important issue."

22 I don't know what the effect or what that
23 backroom deal is supposed to be all about, but I
24 can tell you we absolutely deny there was any
25 such backroom deal made in regard to this matter.

1 The only basis for that suggestion is that that's
2 apparent, that is to say, they would have liked
3 to have this issue dealt with earlier. That's
4 the only basis I can see for making such an
5 allegation. It has, in effect, in my submission,
6 Mr. Commissioner, absolutely no foundation at
7 all. No foundation to make a suggestion of that
8 nature. There's no evidentiary basis for it, we
9 have no knowledge of any such thing, there has
10 been no deal, there no evidence of any deal.
11 This is a very serious allegation, Mr.
12 Commissioner, because it creates a cloud over the
13 process. It does so without any evidence of what
14 one would normally expect there to be before you
15 could make such a serious allegation. It carries
16 the suggestion of some impropriety by counsel for
17 both the commission and the CJB, again, without
18 any basis and it should not be left dangling out
19 there. It has no foundation at all. It's purely
20 speculative. It's serious to make such an
21 allegation against counsel, but in my submission
22 it has an even more significant dimension to it.
23 It is an oblique or even a direct attack on the
24 commission itself, on its personnel and most
25 importantly on the commission's credibility, on

1 the commission's fairness and propriety. In
2 fact, Mr. Ward specifically refers to such a
3 backroom deal and the fact that he does so could
4 well preclude a proper inquiry into this
5 important issue. I'm going to suggest there's
6 absolutely no basis for this suggestion made by
7 Mr. Ward and that therefore that suggestion
8 should be withdrawn by him and an apology should
9 be made to the commission, commission counsel and
10 counsel for the CJB. That's nothing less than
11 common courtesy and it's nothing less than
12 showing respect for the commission and counsel
13 for the commission and counsel for the CJB. It's
14 a baseless allegation, Mr. Commissioner, and not
15 only does it damage counsel against whom it seems
16 to be directed but it damages the commission
17 itself.

18 THE COMMISSIONER: Thank you, Mr. Doust. Any response?

19 MR. CHANTLER: Yes, please, Mr. Commissioner. I'd just like
20 to make a couple of points. With respect to the
21 report to Crown counsel of which much has been
22 made today, our information comes from the
23 commission directly and the chart that I referred
24 to earlier provided by Mr. Boddie. In that chart
25 in response to our request for records relating

1 to the stay of charges, it's reported that the
2 RCMP version of the report to Crown counsel had
3 been disclosed to us. So we -- it says the Crown
4 file was destroyed, the CJB disclosed the RCMP
5 version of the file. So we're led to believe
6 from commission counsel that the Crown has gone
7 and got another version of the report to Crown
8 counsel from RCMP and that's what's been
9 disclosed at this inquiry.

10 THE COMMISSIONER: Wait a minute. You've been told -- you've
11 been given a policy of the destruction.

12 MR. CHANTLER: Mr. Commissioner, the Criminal Justice Branch's
13 response to the request for this wholly important
14 file that forms the subject of one of your terms
15 of reference is entirely unsatisfactory and I'd
16 like to refer you to a document in the affidavit.
17 Tab 68 of the affidavit of Robin Whitehead. This
18 is the Records Destruction Authorization that has
19 been disclosed to this commission and has been
20 referred to by my learned friend. This document
21 can in no way confirm the Pickton file was
22 destroyed. This document relates to a date range
23 which would cover, amongst many other files, the
24 Pickton file. We have no idea whether the
25 Pickton file after the archival review was deemed

1 worthy of destruction.

2 THE COMMISSIONER: Was there not an accompanying letter that
3 came with this?

4 MR. CHANTLER: Nothing.

5 THE COMMISSIONER: Doesn't this explain what happened to the
6 file, that is, it was destroyed because of the
7 archival policy?

8 MR. CHANTLER: It most certainly does not. This document can
9 in no way can be directly tied to the Pickton
10 file other than applying to a range of dates in
11 which the Pickton file occurred. Furthermore,
12 this document isn't even complete. The bottom of
13 this document in handwriting says, "Please
14 confirm destruction and return." Whether that
15 destruction was ever confirmed is unknown to us.
16 The bottom section of the form is incomplete.
17 But my earlier comments remain. We have no idea
18 what the outcome of the archival review was. The
19 Pickton files, it should be on a list of files
20 sent for review and we should have some
21 understanding of what went into that review
22 process.

23 THE COMMISSIONER: Are you prepared to deal -- the more
24 germane issue is the allegation Mr. Doust says is
25 completely baseless and he's demanding an

1 apology. Do you want to deal with it or let Mr.
2 Ward --

3 MR. CHANTLER: I will only say this, Mr. Commissioner, the
4 allegation of a backroom deal has not been made.
5 The letter said we had a disquieting feeling that
6 something like that may be happening, please
7 prove us wrong. We are sure such a thing would
8 not happen but it certainly would be nice to see
9 the commission's cooperation in this respect.
10 There is some foundation for those comments. The
11 Criminal Justice Branch's disclosure has been
12 lacking, I suggest, and certainly if that message
13 was taken wrongly I apologize on behalf of our
14 office.

15 THE COMMISSIONER: All right. How long will you be, Mr. Hern?

16 MR. HERN: I think I'll be half an hour but hopefully I can
17 move ahead quickly.

18 THE COMMISSIONER: I think I'm going to have to leave, I have
19 a medical problem -- a medical appointment I have
20 to attend to today. Let's get started and we'll
21 see what happens.

22 MR. HERN: Mr. Commissioner, do you need to start lunch at an
23 earlier time?

24 THE COMMISSIONER: No, no. We'll go until 12:30 and we'll
25 come back at the usual time, 1:45. I might have

1 to cut you off and then continue in the morning.

2 MR. HERN: No problem. For the record, it's Sean Hern on
3 behalf of the Vancouver Police Department. Mr.
4 Commissioner, I'm going to be referring to Mr.
5 Chantler's application and also his Exhibit 46 to
6 the affidavit that's in front of you which is an
7 e-mail from Mr. Chantler to Mr. Dickson and it
8 effectively sets out some particulars of his
9 allegations that the VPD disclosure has not been
10 complete. If you can have tab 46 at hand I'll be
11 referring to that shortly.

12 A few general comments to begin. With
13 respect to the Vancouver Police Department, it
14 began disclosing documents to the commission
15 shortly after this inquiry was called and after
16 the issues of confidentiality within the police
17 investigative documents were sorted out. It was
18 only later in response to I understand Mr. Ward's
19 request that the commission issued a subpoena to
20 the Vancouver Police Department on October 5,
21 2011, and that's at tab 19 of Mr. Chantler's
22 affidavit he has put forward. There is
23 effectively as a result of that subpoena an order
24 in place from the commission to produce all
25 relevant documents which exist and the Vancouver

1 Police Department has no issue with that
2 whatsoever. There is no basis in my respectful
3 submission, no basis whatsoever to question the
4 Vancouver Police Department's good faith in
5 cooperating with the commission to produce what
6 is relevant. There may be some disagreements or
7 some different perspectives on what is relevant
8 in this matter and that is of course bound to
9 happen. That's for you or for your commission
10 counsel to sort out and we've been diligent in
11 responding where documents have been identified
12 as relevant and asked to be produced. The
13 Vancouver Police Department called for this
14 inquiry. We know we're going to be criticized
15 and we have been self-critical and we're doing
16 everything we can to assist.

17 The context here, as you know, is that it's
18 a huge scope in terms of years, in terms of
19 people, in terms of issues and so on, and I
20 reject Mr. Chantler's suggestion that much of the
21 disclosure has come about at his office's demand.
22 That is just simply not true.

23 I also reject the suggestion that the upload
24 date is the same date that should be inferred as
25 the disclosure date to the commission. There is

1 in a number of cases some significant delays and
2 that is I understand as a result of the third
3 party electronic provider.

4 But, in any event, the important thing to
5 recognize is that in a public inquiry of this
6 nature there is going to be a dialogue between
7 the commission and the participants as to what is
8 relevant to the proceedings, and the perspective
9 of the police agency at first instance is of
10 course going to be different than the
11 perspectives of the other participants as to what
12 is relevant. So it's natural participants coming
13 from their own perspectives, their own interests,
14 own client group, are going to identify documents
15 that are derivative of things that are in the
16 existing record put forward and say, hey, what
17 about this? This looks interesting so please
18 produce this. That request goes to the
19 commission and if the commission agrees it comes
20 to the police agencies, and we have been looking
21 for the documents. The fact that document
22 requests arise during the course of the
23 commission's proceedings or derivative of witness
24 testimony is entirely natural and appropriate.
25 That's what you expect in the commissions, that's

1 what always happens and that's what has been
2 going on here on many occasions.

3 I would acknowledge, willingly acknowledge,
4 that some of Mr. Ward and Mr. Chantler's requests
5 have been very useful in terms of identifying
6 locations where some relevant documents may be
7 that we did not consider at the outset. For
8 example, Mr. Ward asked about Mr. Rossmo's civil
9 trial file and asked that those lists of
10 documents be obtained and reviewed and we did
11 that and we found a couple of e-mails from Mr.
12 Rossmo that had not been in the file. That's
13 very helpful, that's a normal process within the
14 inquiry and we accept that.

15 Now, turning to the specific allegations
16 here, the actual requests when you get down to it
17 in Mr. Chantler's application and his particulars
18 are quite narrow and you will see that the VPD
19 does not take much of a dispute with their
20 relevance. The question is whether they exist or
21 not and in many cases he's asking --

22 THE COMMISSIONER: Tell me what doesn't exist. What does Mr.
23 Chantler want that is relevant that doesn't
24 exist?

25 MR. HERN: What I would like to do to make it orderly, Mr.

1 Commissioner, is turn to the application itself
2 and going through the particulars with respect to
3 the Vancouver Police Department and I'll tell you
4 what the response is and whether anything can be
5 done about them and then we'll go to his e-mail
6 at tab 46 and do the same thing.

7 It's the first item on page 1 that begins
8 with the Vancouver Police Department, the item
9 1a) is his most general request and in my
10 submission that's simply unnecessary. That's
11 already been made, it's been accepted and it's
12 the subject of your subpoena and that's what
13 we've been doing and have done. So if we could
14 turn to --

15 THE COMMISSIONER: You're telling me that everything in 1a)
16 has been complied with?

17 MR. HERN: Yes, except for some specific things and I'll tell
18 you about those shortly, but that's the general
19 compliance rule that we've been dealing with.
20 That is, that everything relevant to the Missing
21 Women Investigation get produced to this
22 commission.

23 1b) is his concern about the April 9, 1999
24 meeting with the Attorney General. We have
25 produced what we have with respect to that which

1 we don't have any notes of those meetings. We've
2 heard from witnesses, we've searched for notes.
3 We would love to find those notes but at this
4 time we are not aware of anyone from the
5 department having taken notes and you've heard
6 that people who were at the meeting don't recall
7 whether anyone was taking notes. If we can find
8 those notes, great, but right now they don't
9 exist and there's simply no order that you can
10 make that can compel something from nothing.

11 Item 1c) the May 19, 1999 brainstorming
12 meeting. We've produced the notes identified as
13 Geramy Field's from that meeting and that's all
14 we have. We have searched for notes, we would
15 love to find those notes because that's a useful
16 addition to the record, we don't dispute that
17 they're relevant but we don't have that. That
18 happens from time to time. The RCMP has located
19 one note they have in their files and at the
20 moment that's all that's been identified as being
21 available.

22 Item 1d), monthly updates. This links to
23 e-mails generally. These were the monthly
24 updates that Detective Constable Shenher referred
25 to and stated that she sent out I believe by

1 e-mail to other VPD members during her tenure.

2 Now, the VPD has advised the commission, and
3 I know this information has been passed on to Mr.
4 Ward's office many times, that we do not have
5 archived e-mails prior to February 2003. Mr.
6 Ward knows that very well. That was the subject
7 of sworn evidence at the Frank Paul Inquiry when
8 he was seeking e-mails from a similar time
9 period. The e-mails we have that have been
10 printed out and kept in a file or kept by
11 somebody in their binders are what we have. We
12 can't obtain e-mails prior to that time, they
13 don't exist.

14 le), log books of Dave Dickson. Mr. Dickson
15 is not my witness in that he has been acting on
16 his own behalf. I understand he may have a
17 lawyer at this time but he has been in regular
18 communication with the commission counsel so I
19 don't know what the story is with his log books.

20 THE COMMISSIONER: Does Mr. Dickson have a separate lawyer?

21 MR. GRATL: I can advise that Don Morrison is representing
22 David Dickson.

23 THE COMMISSIONER: Did anyone notify Don Morrison?

24 MR. GRATL: I don't think so.

25 MR. CHANTLER: I can advise this is the first we have heard

1 that Don Morrison is representing Constable
2 Dickson.

3 MR. HERN: In any event, I don't know what the story is with
4 Mr. Dickson's log books, whether Mr. Dickson
5 suggests that the VPD has possession of these log
6 books. We're not aware of any. We have produced
7 the notes that we have -- the notes Mr. Chantler
8 refers to have come back out of Project
9 Evenhanded, which I understand Mr. Dickson gave
10 some of his notes to Project Evenhanded, and if
11 anyone wishes to tell me Mr. Dickson says you can
12 find my notes in such and such place please do
13 and we will look there. That is a request that
14 should be left with commission counsel.

15 Item 1f), offline CPIC searches of Dave
16 Pickton. That's not a request that has ever been
17 passed on to the VPD before. If commission
18 counsel deems that to be relevant and appropriate
19 we'll happily conduct those searches. I'm sure
20 Project Evenhanded has done it many times in
21 their investigation of Dave Pickton post-February
22 2002 but that's a new request as far as I know
23 and if that's deemed necessary we'll deal with
24 it.

25 The last item on the application that has

1 relevance to me is item 11 on page 4, Mr.
2 Commissioner, which refers to a general
3 production order for the Vancouver Police Board.
4 The Vancouver Police Board is my client as well.
5 We have produced the relevant documents from the
6 police board and that was done ages ago. I don't
7 -- there's no indication here of any specific
8 document they say hasn't been produced, so in my
9 submission there's no --

10 THE COMMISSIONER: You say that's been done?

11 MR. HERN: Yes. That stuff has all been produced. If there's
12 something specific that someone says look, this
13 is missing or this witness says something about a
14 specific document and it isn't in the production
15 I'm certainly happy to go and look for it, but to
16 my knowledge and understanding everything from
17 the police board has been produced, it's all on
18 Concordance.

19 Turning then to Exhibit 46, we have another
20 enumerated list of ten more items from Mr.
21 Chantler. As I say, this was in response to
22 Dickson's e-mail asking for clarification and he
23 has put forward in item 1 -- have you got that,
24 Mr. Commissioner? It's on the second page of the
25 e-mail.

1 THE COMMISSIONER: Yes.

2 MR. HERN: Item 1, documents related to the missing persons
3 investigation of Cynthia Feliks, and I'll just
4 speak to the first three together because there
5 are three of the missing women, Elsie Sebastian
6 and number 3 is Cara Ellis. Those records are
7 certainly records that the VPD would like to
8 have. The missing persons files, as you know,
9 were not kept in an order that the VPD can be
10 proud of at this juncture. They were the subject
11 of an intense and critical audit in 2004, they
12 are the subject of much discussion in Deputy
13 Chief Evans' report and of criticism in Deputy
14 Chief LePard's report. So if there are any
15 missing persons documents that we can obtain for
16 the record we certainly want to put those forward
17 and I don't know what theory anyone would advance
18 to suggest that we would not want to disclose
19 those things.

20 With respect to Ms. Feliks' file, there has
21 been some notes that Mr. Chantler referred to
22 that came back from Project Evenhanded that
23 referenced a file number, and this is exactly the
24 kind of dialogue I was referring at the outset
25 which is that an individual like Mr. Chantler who

1 has his specific client interests in mind is
2 going to pour through the records and identify
3 things that may need to be looked into in order
4 to identify additional records. That's
5 excellent, we will look into that and I hope we
6 are able to produce that Missing Persons Report.
7 Perhaps it's simply filed under that number as
8 opposed to being cross-referenced to her name.
9 We will do that immediately.

10 With respect to Ms. Sebastian's file, you'll
11 recall that Ms. Sebastian's daughters testified
12 early in the proceedings and their heart-
13 wrenching tale of their difficulties in getting
14 the VPD to look into this issue. The VPD does
15 not have any further file materials. We have
16 looked extensively for those and if there's any
17 leads as to somewhere else that we might look to
18 find something relating to Ms. Sebastian we'll
19 certainly want to do that. Ms. Sebastian's
20 family did have contact with the Native Liaison
21 Society and so hopefully one of the files Ms. Ens
22 has contains some reference to Ms. Sebastian and
23 that will help us find answers for her family.

24 With respect to Cara Ellis' file, you will
25 recall testimony from her relative in October

1 that a Missing Persons Report was made and taken
2 over the phone and that the only record that we
3 have of Ms. Ellis' Missing Persons Report is from
4 later after the Pickton arrest in 2002. Should
5 there be a file if that conversation occurred?
6 Yes, there should be a file. Do we have it? No.
7 Would we like to produce it? Absolutely. Right
8 now I know of nothing. We've looked for it,
9 we've searched for it extensively. If there's
10 some place that someone identifies that we ought
11 to look that might not be immediately obvious
12 then please let me know because we would like to
13 find that file.

14 As I say, that links to the question of what
15 is the theory when we see in Mr. Ward's blog that
16 there's some kind of cover-up or whitewash going
17 on here. Nothing could be further from the case
18 in terms of wanting to produce records. This
19 inquiry is looking into the absence of action by
20 the Vancouver Police Department in a number of
21 instances and we would certainly want to be able
22 to show there was more action on those fronts.
23 There's just no compelling theory in my
24 submission as to any possible reason that we
25 would ever want to withhold anything like that.

1 Number 4, relevant documents Vancouver
2 Police-Native Liaison Society. We're very happy
3 Mr. Gervais has located those. That is something
4 that we've been working with commission and Ms.
5 Gervais for a lengthy time looking for these
6 documents. This is a program that is important
7 in respect of the VPD's relationship with the
8 aboriginal community and is something that needs
9 to be looked at. I never suggested they weren't
10 relevant, only that they weren't in the
11 possession of the Vancouver Police Department,
12 and now we find they're in the possession of
13 someone else, Ms. Ens from Victims Services, and
14 that's excellent and hopefully that will lead us
15 perhaps to find the rest of the files as well.
16 That was a separate society that dissolved under
17 some difficulties at the board level on that
18 society and so it's not entirely surprising that
19 things are not put away in an orderly fashion,
20 but we'll hear from Ms. Ens about that.

21 Number 5, senior management team notes
22 regarding Pickton. Of course those would be
23 relevant. Do we have any others than from that
24 which we've disclosed? No.

25 Number 6, media liaison files. We have,

1 contrary to Mr. Gratl's indication, we've
2 disclosed an extensive amount of documents
3 relating to media liaison work between
4 Ms. Drennan, Ms. Bloor and Mr. Driemel. Those
5 are in binders in the initial production of the
6 VPD that went over to the commission shortly
7 after Christmas. Whether there are other notes
8 that are relevant, I can check again. I'm not
9 aware of any. Ms. Drennan has been interviewed
10 twice by Deputy Chief LePard. Those interview
11 notes are available. She was interviewed by
12 Deputy Chief Constable Evans as well. I'm not
13 aware of anything further. If there was
14 something relevant, yes, of course we would
15 produce it.

16 Sandy Cameron's employment file, number 7,
17 that has been reviewed and the items related to
18 missing women produced. There were two
19 additional unrelated letters on conduct that
20 could potentially have been argued to be
21 relevant. I showed those letters to the
22 commission counsel and it was accepted that they
23 were not sufficiently relevant to produce in
24 relation to Ms. Cameron. Of course Ms. Cameron
25 has some privacy interests over her employment

1 file generally but with respect to the missing
2 women items that are relevant those have been
3 produced.

4 Item 8, Mr. Driemel's employment file. This
5 is one I do take issue over its relevance. I do
6 not see that the poorly chosen joke Mr. Driemel
7 told that resulted in his departure is relevant.
8 It's outside of the timeframe of this inquiry, it
9 was something that came up between you and Mr.
10 Ward earlier in an exchange where Mr. Ward was
11 asking to probe into this issue and you, Mr.
12 Commissioner, took the view that it wasn't
13 relevant and I certainly support that. I don't
14 think this has any relevance to the missing women
15 investigation.

16 Item number 9, e-mails and other
17 correspondence from senior VPD including but not
18 limited to Chief Blythe to Mayor Owen. Again,
19 yes, that would be relevant if it related to the
20 missing women investigation and if I had it I
21 would produce it. We don't have that and I
22 understand that Mayor Owen is going to testify.
23 Perhaps he can speak to any communications that
24 are not in writing.

25 Item 10, documents related to the complaints

1 against Freda Ens and Morris Bates identified in
2 Bob Cooper's memorandum dated July 9, 1998. I'm
3 not sure exactly what that relates to. I haven't
4 received a request for those documents from
5 commission counsel but I'm certainly willing to
6 look into the matter and see if there's something
7 that we've overlooked. There's no issue with
8 that.

9 That's the end of those items. As you've
10 heard, there's very few things in dispute.
11 There's really only four items here, two of which
12 we've been asked about before -- not asked about
13 before, the Dickson notes and the Dave Pickton
14 offline CPIC, and two items which we need to
15 follow up on, Ms. Feliks' file number that's in
16 the Dickson notes and this complaint against Ens.
17 That's two items that require some follow-up out
18 of the tens of thousands of documents we've
19 produced.

20 THE COMMISSIONER: You're telling me that all of this -- this
21 application wasn't necessary, that the two of you
22 could have worked this out?

23 MR. HERN: Absolutely. I know further that our record of
24 production with having two outstanding items here
25 is better than Mr. Ward's outstanding requests.

1 When I cross-examined Ms. Frey here in October
2 she agreed to provide her investigative notes and
3 agreed to provide a newspaper article that she
4 said she had from Suzanne Fournier. Those have
5 never been produced. After Ms. Sebastian's
6 daughter testified she explained she wrote a
7 letter to the chief constable's office and we
8 went back and manually reviewed every piece of
9 correspondence from that period that went to the
10 chief's office. If a letter was written to the
11 VPD generally that's where it would go and we
12 reviewed manually every letter and weren't able
13 to locate that. Mr. Ward advised that his office
14 would obtain the file copy, the electronic copy
15 of the letter in the event that showed us
16 somewhere else that we might look but I haven't
17 received that either. There's three outstanding
18 requests from Mr. Ward he hasn't followed up on.

19 Before I sit down, Mr. Commissioner, and I
20 do note the time, I want to say this. Mr. Ward
21 has been making some very grave allegations
22 against the Vancouver Police Department and
23 others on his blog outside of this courtroom,
24 including the use of the terms "cover-up,"
25 "whitewash," "bag of tricks" and "sanitizing the

1 documentary record ". What I would like to know
2 at some point, whether it's after this
3 application or during, I would like to know if
4 these few document requests that have been put
5 forward here against the VPD are the evidentiary
6 basis of those grave allegations? If not, I want
7 to know what -- I submit you should direct Mr.
8 Ward and his office to put it on the table. What
9 is it that he says he sees now as evidence of
10 those grave allegations, because we want to deal
11 with them, we want to deal with them in this
12 room, not outside this room, so it preserves the
13 integrity of this process, of your process, as
14 well as addresses any outstanding issues in
15 relation to the Vancouver Police Department or
16 the Board.

17 THE COMMISSIONER: Thank you, Mr. Hern. We'll adjourn.

18 THE REGISTRAR: This hearing is now adjourned until 1:45 p.m.

19 **(PROCEEDINGS ADJOURNED AT 12:31 P.M.)**

20 **(PROCEEDINGS RESUMED AT 1:46 P.M.)**

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

22 THE COMMISSIONER: Just a couple of things. It would help if
23 you have one of these applications to talk to
24 each other. I learned after we had your
25 application, Mr. Chantler, that a lot of these

1 documents are not in contention and Mr. Hern said
2 they had been either provided or they will
3 provide them. It would save a lot of time if you
4 get together beforehand and tell me what's
5 contentious and what isn't.

6 MR. CHANTLER: I have a comment about that, Mr. Commissioner,
7 on that very point. It seems to me what I've
8 heard from my friend Mr. Hern and it seems to me
9 from the materials I reviewed at the lunch break
10 from the Department of Justice that there has
11 been much communication between those parties and
12 the commission staff directly in relation to our
13 requests for documents that we have never been
14 made aware of.

15 THE COMMISSIONER: Some of them apparently were disclosed to
16 you on -- either on the website or on Concordance
17 or wherever it was. For instance, the
18 prosecution files, Mr. Doust said all that
19 material was available. Anyway, I don't want to
20 get into a discussion here about what was
21 available or not but it -- I don't want to have
22 to babysit everybody here.

23 MR. CHANTLER: Mr. Commissioner, with respect, I have not
24 heard my friend Mr. Hern say, "We've given them
25 all the documents they're asking for." I've

1 heard him say, for the most part, with respect to
2 our application, "We've already looked for those
3 things and they don't exist." I appreciate and
4 accept that he had those communications with
5 commission counsel. That message was never
6 relayed to us and that's why we're here today
7 with respect to those issues.

8 THE COMMISSIONER: Mr. Doust said the prosecution file was
9 sent along with all the other documents and Mr.
10 Vertlieb said that they were there for you.

11 MR. CHANTLER: And I have explained that the information we
12 had from commission counsel --

13 THE COMMISSIONER: You know what, I'm not going to get into
14 it. I'm telling you that as a general policy it
15 would help me, help the commission and help us
16 deal with these matters in an expeditious manner
17 if people would get together.

18 MR. CHANTLER: I absolutely agree. I don't want there to be
19 any misunderstanding that I have misrepresenting
20 something to you.

21 THE COMMISSIONER: I didn't suggest that for a minute. I
22 didn't suggest you misrepresented. All I said is
23 it helps if the lawyers talk. That happens all
24 the time in the Supreme Court -- not all the time
25 but a lot of the time where lawyers just don't

1 speak to one another and they go into the
2 courtroom and all these things take place.

3 MR. CHANTLER: Mr. Commissioner, we've been asking for
4 correspondence between the commission counsel and
5 the other parties on the document issue for ages
6 and we haven't seen any of that correspondence
7 until today.

8 MR. GRATL: I should say, Mr. Commissioner, that the
9 Department of Justice counsel specifically asked
10 us not to correspond with them directly. They
11 wanted all requests to be made to commission
12 counsel and for DOJ to receive its requests from
13 commission counsel. So, in that sense, we've
14 always been triangulated.

15 THE COMMISSIONER: One other thing, tomorrow is the Womens
16 March and out of respect we will not be sitting
17 tomorrow afternoon. We will sit only in the
18 morning tomorrow. Thank you. We have to
19 regrettably adjourn today at 2:45. I know you
20 want longer than that and that's fine. We'll
21 hear you for the length of time that you need to
22 respond.

23 MS. TOBIAS: Thank you, Mr. Commissioner. Cheryl Tobias
24 appearing for the Government of Canada.

25 By way of the bottom line, Mr. Commissioner,

1 I would like to make two comments at the outset
2 of my submissions to you on the disclosure
3 application. That is, that our position is that
4 with few exceptions disclosure appropriate that
5 the requests have been complied with and that
6 disclosure appropriately has been made.

7 Now, Mr. Gratl stood to -- perhaps "protest"
8 is too strong a word -- but more or less
9 protest --

10 THE COMMISSIONER: What he's really saying is that you won't
11 talk to them.

12 MS. TOBIAS: Well --

13 THE COMMISSIONER: I put it bluntly and starkly there and
14 it --

15 MS. TOBIAS: That's somewhat of an overstatement. It's proper
16 procedure for a commission of inquiry. What you
17 will see if you look at the table that my learned
18 friends refer to in their application, they made
19 a large number of requests to commission counsel.
20 Commission counsel decided that some of those
21 requests were legitimate and some of them
22 weren't, and so we responded to the legitimate
23 requests. That is the system, that is the
24 function of your counsel. It's not because we
25 don't want to talk to other counsel, and I do

1 take exception -- if my friend means to
2 characterize that we are not willing to cooperate
3 with other counsel or enter into discussions with
4 them that is not the case. When it comes to a
5 question of what should be produced or shouldn't,
6 we await, as is proper to do, commission
7 counsel's decision on the matter first and then
8 we respond.

9 THE COMMISSIONER: I want to hear from you why you won't
10 produce the documents that they say that you
11 should produce that you have now.

12 MS. TOBIAS: Well, I intend to go into that, but I will say in
13 my submission it is important for you to
14 understand what system has developed between the
15 Government of Canada and the commission counsel,
16 your counsel, for production of documents,
17 because you need to have that framework to make
18 your decision as to whether some of these
19 requests and assertions are valid or not. And
20 secondly, you need to understand that because, as
21 you've seen, the application is in general terms,
22 for example, "Disclose all relevant notes
23 including but not limited to the following," the
24 assertion as I understand it is that in some
25 measure in some way that's not disclosed, that

1 has not been happening and that could not be
2 further from the truth.

3 You have heard the -- Mr. Hern at least has
4 alluded to comments that Mr. Ward has made partly
5 inside this room and partly in his blog,
6 references to "cover-up," "white wash" and so
7 forth.

8 THE COMMISSIONER: I don't know what he said in his blog
9 because I don't read his blog. Tell me what he's
10 said in both places, please.

11 MS. TOBIAS: All right. I have a copy of what I understand to
12 be a blog. It says it's "Posted by Cameron
13 Ward".

14 MR. CHANTLER: Mr. Commissioner, I just ask what the relevance
15 is of what Mr. Ward in his personal time on his
16 blog has to say about this inquiry, how that has
17 anything with what we're doing today and how that
18 has any relevance and why these personal attacks
19 should be lodged at Mr. Ward when he's not here
20 to defend himself?

21 MR. HERN: Where is he?

22 MR. DICKSON: Come on.

23 THE COMMISSIONER: I understand what you're saying.

24 MR. CHANTLER: Does Mr. Dickson have anything to say about
25 that?

1 THE COMMISSIONER: No, no. I don't want to get into this now.

2 I don't know what he has said in his blog. It
3 may be that we might have to deal with it if it's
4 dealing with some of the issues such as cover-up
5 and -- I'm concerned about the term that the
6 commission has enabled a cover-up and I don't
7 want to hear from you, I want to hear from Mr.
8 Ward on that at some stage. I'll ask him to
9 reply to that because that's something I'm
10 concerned with. I've been in the system a long
11 time and I don't want to be in a position where
12 I'm "enabling a cover-up". I need to hear some
13 real evidence as to how this commission is
14 "enabling a cover-up". So I'll hear from Mr.
15 Ward one that.

16 MR. CHANTLER: With respect, I provided that evidence to you
17 today.

18 THE COMMISSIONER: I don't see how the inquiry -- in any
19 event, I don't want to get into it with you.
20 I'll deal with Mr. Ward on that. Go ahead.

21 MS. TOBIAS: Direct quotes from Mr. Ward's blog aside, and if
22 you want me to tell you what it says I will --

23 THE COMMISSIONER: No.

24 MS. TOBIAS: -- I don't think I will in light of the exchange
25 you just had.

1 THE COMMISSIONER: No.

2 MS. TOBIAS: The tenor and substance of the application and
3 the application being made for all relevant
4 notes, for example, to be disclosed says in so
5 many words that the Government of Canada has not
6 been forthcoming, has not cooperated with this
7 commission, and it is my submission that nothing
8 could be further from the truth, and I personally
9 and my team take great exception to the
10 suggestion that we as officers of the court have
11 participated in anything -- cover-up or anything
12 of the like. What I propose to do now is take
13 some time to take you through the way in which we
14 have approached the job of bringing to your
15 commission that information and those documents
16 which you need to fulfil your mandate.

17 THE COMMISSIONER: All right.

18 MS. TOBIAS: Mr. Chantler has taken you through and mentioned
19 a couple of references such as the reference that
20 he mentioned made by DC Evans in her evidence and
21 those references, as we will show, are in my
22 submission selective and misleading in the sense
23 that they are by no means an appropriate
24 characterization of the disclosure process that
25 we have followed. My friend I will mention --

1 and this is somewhat in passing -- also made
2 reference to the fact that no summons was issued
3 to the Government of Canada or the RCMP for
4 documents and as has referred you, for example,
5 to the Braidwood case. In my submission what the
6 Court of Appeal said about notices of misconduct
7 cannot enlighten you as to the appropriateness of
8 summonses.

9 THE COMMISSIONER: I think in fairness he said that the facts
10 are not analogous to what we're doing here.

11 MS. TOBIAS: Precisely. But what is on point is the decision
12 of the Supreme Court of Canada in the *Keable* case
13 when the court directly addressed the question of
14 whether a provincial commission of inquiry could
15 issue an order that the federal Crown produce
16 documents to it and the answer unequivocally was
17 no. In my submission that is the real reason why
18 we are not the recipient of the summons. That is
19 in my submission completely tangential here
20 because the Government of Canada has promised its
21 complete cooperation with this inquiry and has
22 made good on its promise as you will see.

23 THE COMMISSIONER: You're telling me that the Government of
24 Canada has made good on its promise except in
25 those areas where constitutionally it can't?

1 MS. TOBIAS: Yes, and those areas where there's a good reason,
2 a legitimate reason not to. The way I'm going to
3 approach this is there have been two affidavits
4 put forward and Mr. Giles has that.

5 THE COMMISSIONER: I have them.

6 MS. TOBIAS: They're affidavits #1 and #2 of Sarah Armstrong
7 sworn today. They're separated because one deals
8 with the process generally and the other deals
9 with the specific allegations made in the
10 application as pertains to the RCMP. So I'm
11 going to address you on the general process, my
12 learned colleague Mr. Majawa is going to take you
13 through the specifics.

14 THE REGISTRAR: Ms. Tobias, could you let me know which one is
15 1 and which one is 2?

16 MS. TOBIAS: The top right-hand side of the first page is
17 marked affidavit #1, Mr. Giles.

18 THE REGISTRAR: I see it. Thank you.

19 MS. TOBIAS: I'd ask they be marked as the next two exhibits
20 NR.

21 THE REGISTRAR: Affidavit number 1 will be marked as 96NR and
22 number 2 will be marked as 97NR.

23 **(EXHIBIT 96NR: Affidavit #1 of Sarah Armstrong)**

24 **(EXHIBIT 97NR: Affidavit #2 of Sarah Armstrong)**

25 MS. TOBIAS: I want to go back to the evidence of DC Evans

1 that my friend alluded to. She clarified in her
2 evidence that her main concern was with the
3 timeliness of disclosure rather than with its:
4 Adequacy and furthermore confirmed there were few
5 instances where the document she requested did
6 not exist or could not be obtained, and those
7 comments were made on January 16 at pages 123 to
8 124 and January 17 at pages 7 to 8.

9 With respect to the disclosure process,
10 there are some exigencies of which you ought to
11 be aware going forward and to some extent I know
12 that you are already. Disclosure in a case like
13 this is a huge process, it's an ongoing process
14 and it is not in this case, as is every lengthy
15 prosecution or every civil litigation case, a
16 perfect process. The fact that -- that's one
17 point. Part of what makes this very difficult
18 is, for example, the Evenhanded investigative
19 file runs to a couple of million pages and the
20 investigative file is not the end of it. An
21 investigative file documents evidence collected,
22 procedures undertaken. It does not necessarily
23 document the reasons why certain courses of
24 action were chosen and others were discarded.
25 Those sorts of things are very important to your

1 inquiry, so they're not necessarily found in
2 those files.

3 Secondly, it's not only the Evenhanded file
4 we're concerned with here because the
5 investigations in other cases have become
6 relevant and materials such as policies and so
7 forth that are likely are not on the file.
8 That's all to say there's the Evenhanded file and
9 there's a lot of other material and lot of other
10 places to go.

11 Finally, what is relevant in an inquiry
12 evolves to some extent with the evidence, so
13 issues come up that could not have been
14 anticipated early on. Various of my learned
15 friends have said to you there must be notes that
16 have not been disclosed, there must be this,
17 there must be that. Not every single page of the
18 investigation or the investigation record through
19 those years is relevant to your inquiry. The
20 fact that it is not all being disclosed should
21 not be at all surprising. Decisions about what
22 is relevant and what is not relevant is the duty
23 of every counsel in every case, every civil
24 litigation case and every prosecution. It is not
25 evidence of a cover-up or lack of cooperation

1 that there has been selection and it's not
2 evidence that the RCMP are seeking to disclose to
3 you only that which the RCMP might consider to be
4 advantageous and, indeed, you have seen a lot of
5 material that if that were the basis for
6 selection you would never have seen.

7 I'm going to take you through the first
8 affidavit by Sarah Armstrong and what you will
9 glean from it in my submission are two or three
10 things. The first is that the process by which
11 disclosure was made was determined through
12 careful consideration of the appropriate and best
13 procedure in consultation with your counsel.
14 Secondly, the question of what could be produced
15 has been made considerably more work by the need
16 to vet material before it goes out, and that is
17 not a reflection of a desire to be less than
18 cooperative. It is simply a reflection of the
19 legal necessity to maintain privilege and to
20 respect the privacy interests of people who are
21 caught up and who are mentioned in those
22 documents, and I'm going to say a bit more about
23 that as I go through. I would ask you to turn up
24 the affidavit. Mr. Giles, I've forgotten what
25 number is affidavit #1, please.

1 THE REGISTRAR: 96NR.

2 MS. TOBIAS: The first item in this affidavit I would ask you
3 to note is actually Exhibit Q of that affidavit.
4 You might recall that on Thursday I stood before
5 you to ask to mark an e-mail that was sent out by
6 the RCMP instructing -- this e-mail is dated
7 October 6, 2010, so well before the Government of
8 Canada became a participant in this inquiry,
9 instructing, and I quote, "every member and
10 employee of the RCMP in possession of records
11 both electronic and hard copy or any other items
12 relating to the police investigation of women
13 reported missing from the Downtown Eastside of
14 Vancouver between April 1, 1996, and December 9,
15 2007, are hereby ordered to secure and maintain
16 all such records until further notice." That
17 instruction went out immediately and you will see
18 that it in fact covers the period of time much
19 broader than the actual terms of reference of
20 this inquiry.

21 If I can refer you to paragraph 2 of the
22 affidavit, you will see that starting in early
23 December of 2010 there were dealings between my
24 team and commission counsel with respect to what
25 procedure for disclosure should be followed. As

1 you'll see from paragraph 3, those discussions
2 continued -- well, let me back up for a moment.
3 On December 3, 2010, there was the discussion
4 about the RCMP having been granted standing and
5 you'll see from paragraph 4 on the same day that
6 my colleague Mr. Brongers expressed the
7 Department of Justice's interest in discussing
8 how best to effect document disclosure. You will
9 see in the following paragraphs that discussion
10 continuing.

11 I'd ask you to refer to paragraph 8, a
12 reference to a meeting between my colleagues, Mr.
13 Brongers and Ms. Hoffman, with your counsel and
14 other parties including my learned friend Mr.
15 Hern, and you'll see that the initial discussions
16 were of a proposal whereby your counsel would
17 have free rein through all the RCMP documents to
18 decide what should be disclosed following which
19 the documents they selected would be vetted and
20 provided to all participants.

21 Now, I'm not telling you this to say, well,
22 perhaps that would have been a better way. The
23 reason why I'm telling you this, as I said, is
24 these different options were discussed between
25 counsel but the fact of the matter is that the

1 Government of Canada was perfectly prepared to
2 have this commission have free rein through the
3 documents, but as you'll see for its own good
4 reasons, your counsel decided that it would be
5 preferable if your -- if the commission did not
6 receive material until it had been properly
7 vetted and in a state that could be shared
8 immediately with every participant.

9 Those discussions led to a point when as is
10 set out in paragraph 11 on December 15, I wrote a
11 letter to set out the basis on which the
12 Government of Canada intended to effect
13 disclosure and it's Exhibit F. I would ask you
14 to turn that document up. The letter, as I said,
15 dated December 15, 2010, and at the bottom of the
16 page you'll see reference to the discussion I
17 just told you about, that the commission made the
18 decision that only documents ready to go to
19 participants should be provided. On page 2 at
20 the top of the page is set out the fact that the
21 manner in which documents are going to be vetted
22 in order not to obscure investigative steps that
23 were taken, the names would be replaced with
24 unique identifiers to make it apparent when
25 certain people were the subject of investigative

1 steps, and then a rider that you will see
2 repeated over and over again, "As discussed
3 yesterday, if the redactions in a particular
4 document cause difficulties we will be happy to
5 review it and do our best to alleviate your
6 concerns."

7 I'd ask you to turn over the page and glance
8 down at the list of kinds of vetting that would
9 be done. The general procedure is set out in
10 paragraphs 1 to 7. But if you look at the type
11 of information that was going to be vetted out,
12 it's my submission that it's very clear that
13 those are appropriate and necessary vetting
14 procedures. From publications bans, court orders
15 to matters that are privileged, to police
16 investigative techniques, to protect ongoing
17 investigations, material that is potentially
18 covered by the *Canada Evidence Act*, Section 37 to
19 39, and irrelevant personal identifiers. Later
20 -- I'll just tell you this now so we don't have
21 to do it twice. On February 1, 2011, there were
22 a couple of extra items added to do with
23 statutory requirements to maintain
24 confidentiality such as that contained in Section
25 241 of the *Income Tax Act*.

1 I'll pause parenthetically to note that in
2 *Regina v. McNeill*, and that's the decision of the
3 Supreme Court of Canada in 2009 and I'll give you
4 the reference but I'm not going to ask you to
5 turn it up, it's 1 Supreme Court Reports 66. At
6 paragraph 19 the court recognized that even in a
7 prosecution the people whose references appear in
8 criminal files do retain a privacy interest.
9 That privacy is not lost and in my submission
10 just a way in which the court has recognized the
11 legitimacy and importance of those kinds of
12 interests that they also need to be protected.
13 So that is the kind of thing that is incorporated
14 when we refer to what is called "irrelevant
15 personal identifiers".

16 In my submission you've heard comments from
17 time to time that I'm sure counsel who have
18 signed undertakings and so forth there ought not
19 to be those concerns, but in my submission that
20 simply does not remove the necessity to deal with
21 this vetting process before matters go out to the
22 participants generally. Undertaking or not,
23 privileged material is privileged.

24 I'm going to go back to the affidavit and to
25 paragraph 15 on page 4. You'll see reference

1 there that your counsel wrote to confirm that the
2 commission agreed with the proposed vetting and
3 disclosure protocol as set forward by my office.
4 Paragraph 17, the correspondence of December 24,
5 2010, was explained certain factors that made it
6 difficult to provide a comprehensive list of all
7 the documents in the Project Evenhanded database.
8 I think what you probably have gleaned but I'll
9 mention it just to be make sure, is that when
10 Project Evenhanded started Project Evenhanded
11 received materials from the Project Amelia
12 investigation that the Vancouver City Police had
13 been pursuing. It received a hard copy file that
14 was, as you've heard, evidence from, for example,
15 Detective Constable Shenher that the file was in
16 disarray because they were trying to get it
17 organized to have it reviewed. There was that
18 file and then there was also the SIUSS database
19 and material was going into the SIUSS database
20 but it had not all been entered, there were
21 difficulties with it, et cetera, et cetera.
22 You've heard that. Evenhanded inherited that
23 material. It was eventually because of
24 difficulties with SIUSS incorporated into a
25 different database on a different platform called

1 E & R and to some extent reorganized and it was
2 eventually incorporated and that's what we've
3 been working with this all this time, and that
4 database of course has grown with the
5 investigation.

6 In this letter as explained and set out at
7 the top of page 5, sub a), that the vast majority
8 of the documents relevant to these discussions
9 are contained within that computer database and
10 that it is structured on the input of tasks which
11 are then linked to documentation, information and
12 persons relevant to those tasks. It is not per
13 se a chronological summary of what happened on
14 day 1 and what finished on day 100. It's a
15 different kind of organization. Also the volume
16 is enormous, you've heard that, and furthermore,
17 a large number of individuals were involved in
18 those. I'm noting the time -- did you say 2:30?

19 THE COMMISSIONER: We'll go to about 2:40 or so.

20 MS. TOBIAS: Thank you. So we started out by providing as is
21 set out in paragraph 18 a preliminary list of
22 anticipated disclosure and disclosure dates. As
23 is set out in paragraph 19, there were particular
24 categories of documents that were difficult from
25 a disclosure viewpoint, and so discussions ensued

1 on how to deal with those. Some of these you've
2 heard about. First of all, unidentified human
3 remains, file reviews and the file review
4 concept -- you've heard some of that by now --
5 when Evenhanded began the first task of the team
6 was to review files throughout the province of
7 offences that were similar to find all the
8 persons of interest, to make sure that those were
9 all included. So, in effect, the job of these
10 investigators was to look at hundreds and in fact
11 thousands of different files. So the question
12 became since many of those files are still under
13 investigation, you add the volume of those files
14 to what already is in Evenhanded, that's an
15 obvious problem. The other categories were, as
16 you see on the top of page 6, the Alley murders
17 database and that's a reference to an
18 investigation followed up as part of the file
19 review into particular victims who were found in
20 Vancouver during the terms of reference dates I
21 believe. What's referred to as the SIUSS tip
22 sheets, the Evenhanded cases, you've heard some
23 of that and I'll go into that in more detail
24 later, and the Valley murders database because
25 there was interest in that. You've heard about

1 the Valley murder investigation, a completely
2 separate investigation. The question became
3 whether the commission was better served by
4 having a summary of what was done in those
5 particular aspects with an opportunity to get
6 more detailed documents, rather than take the
7 whole basket, enormous basket of documents with
8 all the delays that would ensue and vet them and
9 provide them.

10 Going to paragraph 21, we're now in January
11 of 2011 and what became the question was how
12 disclosure should be made to Deputy Chief Evans.
13 The question being, in essence, should Deputy
14 Chief Evans be approaching the RCMP to get
15 additional materials she might be interested in
16 looking at, should she be looking at redacted
17 material, unredacted material, so on and so
18 forth. The position that I took and my office
19 took was also that there were a number of
20 disclosure duties being fulfilled at that time
21 that the commission counsel had asked for and
22 that if Deputy Chief Evans asked for additional
23 material then that would detract from that
24 process, so there had to be a clear understanding
25 of how that would be approached.

1 THE COMMISSIONER: She said there was material she asked for
2 that wasn't produced.

3 MS. TOBIAS: If you look at her evidence as a whole, there
4 were some items she didn't get that she hoped to
5 get, but, generally speaking, it was timeliness
6 of disclosure. As I'm about to take you through,
7 the timeliness of disclosure was always and
8 continues to be an issue because of the need to
9 assemble and properly vet material because
10 sometimes material is very voluminous. For
11 example, the request for the cases that I'm going
12 to mention to you is a request for a large volume
13 of material and can't be turned on a dime.

14 THE COMMISSIONER: Why wasn't that explained to her? A clear
15 reading of her report is that she asked for
16 material, the RCMP wouldn't produce it to her.
17 Why wasn't that ever explained to her?

18 MS. TOBIAS: With respect, I don't think that that is the
19 bottom line of her report and her evidence. As I
20 will take you through, there was a great deal of
21 material provided to her and what I'm about to
22 tell you about is the agreement made with the
23 commission as to how we would go about fulfilling
24 requests that she made from time to time for
25 documents. I'd ask you to turn up Exhibit I to

1 the affidavit which concerns that topic.

2 THE COMMISSIONER: Exhibit 5?

3 MS. TOBIAS: I. It's a letter dated January 14, 2011. At the

4 bottom of the page, the concerns being that the

5 documents, the DC Evans' review should be the

6 same -- that's our position -- the same that

7 would be available to other participants in the

8 inquiry. Over the page, secondly, given the

9 volume we were dealing with it was imperative

10 that the document disclosure process be governed

11 by a stage process in which there was a priority

12 developed. If you turn over to Exhibit J, it was

13 agreed at the bottom of the page that the

14 commission staff were willing to receive

15 disclosure in a redacted format, that the basis

16 of the redactions may be subject to later review.

17 Over the page, the commission agreed that DC

18 Evans direct her request for documents through

19 commission counsel.

20 If you flip over a couple of exhibits to

21 Exhibit L, you'll see a letter dated February 1,

22 2011.

23 THE COMMISSIONER: L?

24 MS. TOBIAS: Yes. February 1. Now, I mentioned a little

25 while ago that the disclosure protocol, vetting

1 protocol was changed somewhat and here is the
2 change and this version as is attached to this
3 letter was the version the commission put into
4 effect and put on the website. If I can have one
5 moment. Again, you'll see from -- I'm not going
6 to go through the specifics but on page 2 under
7 the question regarding preliminary disclosure
8 schedule, it ends at the last paragraph, "Until
9 now we have not heard from the commission as to
10 the specific types of documents that you are
11 interested in receiving. We have always been
12 open to discussing with the commission what other
13 specific classes of documents are needed for the
14 purposes of the inquiry." So there was a request
15 for a meeting between counsel.

16 Would you flip to Exhibit M, please. It's a
17 letter dated February 2, 2011, and this
18 addresses, as you'll see, further to a letter
19 from commission counsel of January 25 -- I think
20 it should be 2011 -- regarding the question of
21 whether the RCMP should provide DC Evans with
22 unvetted material. We express the view that to
23 do so would be counterproductive for two reasons.
24 The first being despite the instruction she not
25 base her opinion on such material, there are

1 bound to be questions about whether she may have
2 done exactly that. And secondly, that other
3 parties such as the families of the missing women
4 may wish to have one or more of their own experts
5 review the material and advise the parties and
6 would naturally expect to have access to the same
7 material. So from that I would ask that you
8 conclude that this was an important question and
9 that the decision was made that it was
10 appropriate for DC Evans not to have access to
11 anything that the participants would not have
12 access to, but that would necessarily mean that
13 the vetting process would slow down the pace with
14 which we could fulfil her requests for
15 disclosure. You'll see that it was decided that
16 she send her requests directly to the RCMP, and
17 over the page I'd ask you to note, item number 2,
18 that we will give her request the highest
19 priority which means that we would turn our
20 attention from whatever we were dealing with at
21 the commission counsel's request to deal with her
22 request first and that we would provide the
23 vetted version of material she requests to
24 commission counsel on the understanding that
25 commission counsel would then make it available

1 to her promptly, and it's my understanding that
2 that was done. And should she wish to have any
3 of the redactions reconsidered that we would do
4 that and that we would work together to resolve
5 any issues that arose in that request.

6 My colleague rose to remind me that I was in
7 slight error when I talked to you about vetting
8 protocol a moment ago. The final version is the
9 version that was attached to the letter of
10 February 17 which is Exhibit O, the next one. I
11 don't think a great deal turns on that for the
12 purpose of my submissions for the moment. I'd
13 ask you to turn to Exhibit P, the letter dated
14 February 24, 2011, and the e-mail question had
15 arisen as part of an interaction with your
16 counsel and the explanation is set out here in
17 large measure. There's more that you'll receive
18 later but at this stage what was explained is as
19 set out in the second paragraph. First of all,
20 the use of e-mails in the period covered by the
21 terms of reference was much more limited than it
22 is today. The second is that RCMP had a
23 particular policy to do with retention of e-mails
24 in effect at that date. Those policies were
25 attached to the letter but are summarized here.

1 The next page beginning: "As stated in the first
2 page of Inspector Emory's letter, much of the
3 information that is communicated in RCMP e-mails
4 is considered 'transitory in nature' and those
5 documents by policy may not be retained. It was
6 and continues to be the responsibility of
7 individual members to print off those e-mails
8 that qualify as a record and to place the hard
9 copy on the file or electronically archive it on
10 a separate storage device." "Otherwise," as is
11 set out in the bottom of that page and top of the
12 next, "e-mails were retained for 90 days." So
13 the bottom line was as set out, unless a member
14 took steps to retain a particular e-mail, e-mails
15 from the time periods in question will have been
16 deleted long ago in accordance with the RCMP
17 policies. It also means that there's no central
18 repository from which all RCMP e-mails in the
19 relative time period can be retrieved. So as you
20 saw from the e-mail, all RCMP members who have
21 potentially relevant records were asked in
22 October of 2010 to retain them.

23 The other e-mail policy that was important
24 was that there was procedures and business rules
25 developed specifically for Project Evenhanded and

1 that was also attached and, again, as set out in
2 the next paragraph, it was up to the individual
3 investigators to decide whether a particular
4 e-mail should be retained and this remains the
5 case on that file today. So where that leads us
6 is if I am asked to produce every relevant e-mail
7 I can't go to one particular place labelled
8 "e-mails". It's a question of whether the
9 records relating to specific things happen to
10 include e-mails. So the approach to disclosure
11 was and had to be to deal with disclosure on a
12 subject matter basis, and if those records
13 included e-mails then those e-mails would be
14 disclosed, but it was not practical or, indeed,
15 even possible to go on a search specifically for
16 e-mails through the large volume of file
17 materials that we've been dealing with. That is
18 essentially what is set out in the second last
19 paragraph of that letter.

20 Next I'd like to -- I'm noting the time, Mr.
21 Commissioner. The next set of categories of
22 documents are going to take me a few minutes to
23 cover together.

24 THE COMMISSIONER: It may be convenient if we adjourn until
25 the morning. Thank you.

1 THE REGISTRAR: This hearing is adjourned until tomorrow at
2 9:30 in the morning.

3 **(PROCEEDINGS ADJOURNED AT 2:39 P.M.)**

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

16

17

18 Margaret M. Wills

19 UNITED REPORTING SERVICE LTD.

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